AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 22 DECEMBER 2021



Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held via teleconference on Wednesday 22 December 2021 Commencing at 10.00

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 15 DECEMBER 2021

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 15 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	**DA2021/1222 - 12 BAREENA DRIVE BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2021/868454**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. That Council as the consent authority **approves** Development Consent to DA2021/1222 for alterations and additions to a dwelling house on land at Lot 6 DP 758044, 12 Bareena Drive, Balgowlah Heights, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1222

Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 6 DP 758044, 12 Bareena Drive 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:	Michael Alexander Baxter Joanna Margaret Baxter
Applicant:	Fineline

Application Lodged:	26/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/08/2021 to 20/08/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 12%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,277,922.00

Executive Summary

The proposal is for alterations and additions to the existing dwelling, including an extension to the first floor and a new garage and involves a variation to the Floor Space Ratio development standard of the Manly Local Environmental Plan 2013 (MLEP 2013) of 12%. Despite the non compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts from the street frontage or adjoining and surrounding properties.

As a result of the public exhibition of the application there were no submissions.

The application is referred to the Northern Beaches Development Determination Panel for determination due to the contravention of the Floor Space Ration development standard exceeding

10%.

The application has been assessed against the relevant environmental planning instruments and the outcome of this assessment is detailed within this report.

Based on the detailed assessment contained within this report, the application has been recommended for approval subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of the following alterations and additions to an existing dwelling:

- Demolition of existing carport, entry steps and terrace
- Excavation works
- New attached double garage
- First floor addition
- Ground floor alterations and additions
- New front fence and landscaping

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.4.2 Privacy and Security
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

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 6 DP 758044 , 12 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Bareena Drive, Balgowlah Heights. The site is regular in shape with a frontage of 16.46m along Bareena Drive and a depth of approximately 38m. The rear boundary measures 17.355m. The site has a surveyed area of 645.4m². The site is located within the R2 Low Density Residential zone and accommodates a one and two storey rendered house with a tile and metal roof. There is an in ground swimming pool within the rear of the site. Vehicular access to an attached garage and carport forward of the dwelling is available via a concrete driveway from Bareena Drive. The site slopes from the southern rear towards the northern frontage with a fall of approximately 4 metres. The site is identified as being located within bushfire prone land. The site is characterised by small and medium size trees and shrubs forward of the existing dwelling. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mix of original and contemporary dwellings that are one, two and three storeys. Nolan Place Reserve is located directly opposite the site.

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:

- CDC2018/0424 was approved by a private certifier on the 16 May 2018 for the construction of a swimming pool and associated landscaping works

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	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an arborist report and stormwater plans. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic

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 suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 28 June 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 06/08/2021 to 20/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	**General Comments** Environmental health have been requested to provide comment on the proposed development relating to the proposed solid fuel heater. The fireplace flue exhaust location on the plans is within 6000 mm (horizontally) from a neighbouring structure, and will not comply with the distance criteria in AS 2918:2018. It is also not clear if the flue structure is within 3000mm of the roof line of the building which also must be demonstrated. The proposal is not supported until it is demonstrated that the flue exhaust complies with AS 2918:2018.

Internal Referral Body	Comments
	Environmental Health also require information that demonstrates that the fireplace will comply with the emission reductions set out in Australian Standards 4012 and 4013. **Amended comments 12/12/21** Details of the setback distances for the flue from rooflines and the neighboring roofline have been provided which demonstrates compliance with Australian Standard 2918:2018. The applicant also provided the proposed solid fuel heater model for installation which meets the required efficiency set out in Australian Standard 4012 and 4013. Environmental Health are satisfied with the proposal subject to conditions being imposed.
Landscape Officer	This application is for the alterations and additions to an existing residential dwelling. Alterations include the minor demolition of site structures including the existing carport, as well as internal structures in order to facilitate internal re-configurations. Additions are inclusive of a new garage, a ground floor extension as well as a new first floor. Council Landscape Referral section has considered the application against the Manly Local Environmental Plan, and the following Manly DCP 2013 controls: • 3.3.1 Landscaping Design • 3.3.2 reservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping **Original Comments - 29/07/2021** The Statement of Environmental Effects provided with the application notes that no significant trees are to be removed as part of the proposal. Upon review of the Architectural Plan and Site Survey, it is evident that some of the existing vegetation at the front of the site will be required to be removed, however this portion of vegetation is considered exempt due to either species or heights being below 5m. For this reason, this vegetation may be cleared without Councils approval. Concern is raised regarding the proposed works particularly in relation to trees located in the adjoining property to the west. As the proposal seeks to construct a new garage below that of the existing garage level, excavation is required to a depth of 1.16m. This excavation, and the construction of new retaining walls along the western boundary, appears to be located well within the Tree Protection Zone (TPZ), as well as Structural Root Zone (SRZ), of a number of trees located in the adjoining property. As no Arboricultural Impact Assessment has been provided with the application, the true impacts of these proposed works are not fully known. All trees within neighbouring properties are prescribed trees, irrespective of species, and for this reason are require to be protected and retained. Any negative impacts to both the short-term and long-term health of these trees would not be

Internal Referral Body	Comments
	supported. The retention of these trees, as well as those located towards the rear of the site is key to satisfying control 3.3.2, as key objectives of this control include "to protection and enhance the urban forest of the Northern Beaches", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". It is therefore recommended that an Arboricultural Impact Assessment be provided with the application in accordance with Councils Development Application Lodgement Requirements. This Arboricultural Impact Assessment is required to assess the impacts of the proposed works, specifically the driveway and garage excavation, on existing trees in adjoining properties. It should be noted that any encroachments into the TPZ of 10% or greater, or any encroachment into the SRZ at all, is deemed major and requires a tree root investigation as per AS4970-2009, specifically *Clause 3.3.3 Major Encroachment*. Additional concern is raised regarding some of the proposed species on the Landscape Plan provided, specifically *Olea europaea* and *Howea fosteriana*. Both of these trees have been identified as exempt species, and as a result are undesirable trees. It is recommended that these be substituted for locally native alternatives, however this can be addressed through conditions of consent rather than resubmitting amended Landscape Plans. The completion of the proposed landscape works, inclusive of the required tree species changes, is vital to satisfy control 3.3.1 and 4.1.5, as key objectives of these controls include "to encourage appropriate tree planting and maintenance of existing vegetation", "to maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland", as well as "to maintain and enhance amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area". The landscape component of the proposal is therefore not currently supported due to the unknown impacts of proposed works on trees in the adjoining property to the west. It is recommended that an Arboricultural Impact Assessment be provided with the application in accordance with Councils Development Application Lodgement Requirements. This Arboricultural Impact Assessment is required to assess the impacts of the proposed works, specifically the driveway and garage excavation, on existing trees in adjoining properties. It should be noted that any encroachments into the TPZ of 10% or greater, or any encroachment into the SRZ at all, is deemed major and requires a tree root investigation as per AS4970-2009, specifically *Clause 3.3.3 Major Encroachment*. Upon receipt of the required information, further assessment can be made. **Updated Comments - 1/11/2021** Following original concerns raised regarding the impacts of proposed works on trees in adjoining properties, an Arboricultural Impact

Internal Referral Body	Comments
	Assessment has since been provided with the application. This Arboricultural Impact Assessment has identified two trees located within the adjoining property to the west, adjacent to the proposed garage and bin storage area. Both of these trees have been identified as being in good health and vigour, with moderate landscape significance and retention values. As these trees are located within the adjoining property, they must be retained and protected throughout proposed works. The Arboricultural Impact Assessment has noted that the existing garage footing has already likely impeded live roots from entering the site, hence subject to sensitive demolition and construction, no significant roots are likely to be further impacted or disturbed by the proposed works, and both trees are viable for retention. A number of tree protection measures, including the appointment of a Project Arborist, have been recommended, ensuring that any negative impacts towards these trees are reduced as much as possible. Considering the above information, the Arborists recommendations are supported. The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plan, inclusive of the required species changes.
NECC (Development Engineering)	2nd Development Engineering referral The new stormwater plan has been provided. Development Engineering has no objection to the application subject to the following conditions of consent. 1st Development Engineering referral The proposed impervious area is over 60% of the total site areas. In accordance with Council's Water Management for Development Policy, an on site stormwater detention system (OSD)must be provided to control the discharge into Council's drainage network. However, no OSD has been designed and submitted in this development. As such, Development Engineering cannot support the application due to the clause 3.7 of Council's Manly DCP 2013.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable.

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. A421405 dated 2 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 who provided a response stating that the proposal is acceptable.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

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

(b) coastal environmental values and natural coastal processes,

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

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

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

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not encourage public access or amenity along the foreshore area nor impact on the natural foreshore processes.

(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:
Council is satisfied the proposed works are designed, and can be managed to avoid adverse impacts based on the matters in this clause.

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:
Council is satisfied that the proposed works will not have any adverse impacts on any of the above.

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:
Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (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	8.4m	N/A	Yes
Floor Space Ratio	FSR: 0.40:1 (258.16m^2)	FSR: 0.45:1 (293.3m^2)	12%	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore 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:	0.40:1 or 258.16m^2
Proposed:	0.45:1 or 293.3m^2
Percentage variation to requirement:	12%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

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

The applicants written request argues, in part:

- The proposed FSR complies with clause 4.1.3.1 MDCP numerical provision it is "deemed to comply" with the objectives as outlined, which if complied with, demonstrate the maintenance of appropriate visual relationships between new development and the existing character and landscape of an area.
- The proposed new works present a compliant building height and a two storey presentation to Bareena Drive.
- Observers would not find the bulk and scale of the proposed development as viewed from Bareena Drive to be offensive, jarring or unsympathetic in a streetscape context.
- The proposal is considered to be consistent with the predominate built form along Bareena Drive and the streetscape.
- The proposal provides for an enhanced landscaping regime along Bareena Drive.
- It is not expected there will be any unreasonable privacy, solar access or view loss as a result of the development

Despite the variation to the floor space ratio development standard, it is considered that it proposes a built form that maintains a level of consistency with existing dwellings and recently approved development. The additional setbacks to the first floor and the proposed landscaping will assist in minimising the visual bulk and ensure consistency with the desired streetscape character. The proposed development will continue to present a two storey form that is not expected to result in any unreasonable adverse impacts for neighbouring properties. In addition the proposed development promotes good design and contributes to the visual quality of the streetscape.

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

Zone objectives

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:

Although the existing dwelling does not comply with the maximum height of buildings control, the proposed alterations and additions present a maximum height of 8.4m. The proposed dwelling will be consistent with the height of existing and recently approved development along Bareena Drive. The additional setbacks to the first floor will ensure a built form that is consistent with neighbouring dwellings to ensure that the bulk and scale of the development does not result in any unreasonable impact on the existing and desired streetscape character of the locality.

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 proposal is not considered to result in an unreasonable bulk or scale within the locality. The works are not likely to obscure any important landscape and townscape feature.

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

Comment:

The proposed alterations and additions are considered to be consistent with the existing character of the streetscape and given the generous front setback and additional setbacks to the first floor creating further articulation the development is not considered to be visually prominent from the Bareena Drive frontage. The proposed landscaping within the front setback is expected

to enhance the existing site conditions and ensure consistency with the desired outcomes.

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

Comment:

The proposed alterations and additions are not expected to impact on any view corridors or result in any unreasonable view loss. Privacy mitigation measures including screening, setbacks and landscaping have been incorporated into the design to ensure no unreasonable privacy impacts . Private open space areas are predominantly located on ground level with smaller balconies and privacy screening to ensure no unreasonable overlooking or onlooking.

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:

Not applicable.

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 alterations and additions will provide for sufficient amenity and function for the residents within a low density environment.

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

  Comment:
  Not applicable, the site is used for residential purposes only.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 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).

6.2 Earthworks

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

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

In this regard, before granting development consent for earthworks, Council must consider the following matters:

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment: On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.9 Foreshore scenic protection area

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 proposed alterations and additions to the existing dwelling are not expected to result in any view loss from a public place to the foreshore or any overshadowing of the foreshore. The proposed development is suitable for the location and will not result in any conflict between land based and water based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 645.4m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	E: 6.8m (based on gradient 1:20)	5.8m	N/A	Yes
4.1.2.1 Wall Height	W: 6.7m (based on gradient 1:30)	5.8m	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.4m	N/A	Yes
	Parapet Height: 0.6m	0.2m	N/A	Yes
	Pitch: maximum 35 degrees	27 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	10.2m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.9m (based on wall height)	E: 1.3m (ground floor), 1.3m (first floor) W: 0.8m (ground floor), 2.2m (first floor)	32% 58% N/A	**No** **No** Yes
	Windows: 3m	0.8m - 2.2m	27-74%	**No**
4.1.4.4 Rear Setbacks	8m	Dwelling: 6.8m Cabana: 2.1m	15% 74%	**No** **No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	46% or 297.3m^2	24%	**No**
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	34% or 102.5m^2	15%	**No**
	3 native trees	<3 trees	N/A	**Yes**
4.1.5.3 Private Open Space	18sqm	<18sqm	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	6.2m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 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	No	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
4.1.10 Fencing	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

3.4.2 Privacy and Security

The proposal comprises of alterations and additions to the existing dwelling including an extension to the existing first floor and terrace area above the proposed garage. The terrace area is forward of the dwelling and is considered to be elevated private open space and therefore a merit consideration is detailed below.

The new first floor balcony to the new bedroom is of a modest size and is not expected to result in any unreasonable privacy impacts.

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:

The proposed new terrace area is located adjoining the open plan kitchen, living and dining area and above the new garage. The proposal seeks to utilise the area above the new garage to increase open space area and provide additional recreational opportunities for the occupants. Slatted timber privacy screening and plantings have been incorporated along the western elevation of the terrace and site boundary to ensure a reasonable level of privacy will be maintained for the adjoining dwelling at 13 Bareena Drive. The terrace is setback 10.2m from the northern front boundary and is not considered to result in any unreasonable loss of privacy as the property adjoins Nolan Place Reserve across the road to the north and there are no direct lines of sight.

A timber slatted privacy screen has also been included on the new first floor bedroom balcony to ensure a reasonable level of privacy is achieved.

The new windows along the eastern and western elevation are not expected to result in any unreasonable privacy impacts or direct line of sight.

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:

The proposal will not result in any unreasonable loss of access to light and air.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed terrace area will provide an opportunity for casual surveillance.

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.

4.1.3 Floor Space Ratio (FSR)

Whilst the proposed floor area does not exceed the maximum variation to FSR for undersized lots as described under this clause, the development is technically non compliant with the FSR requirement as prescribed under Clause 4.4 of the Manly LEP 2013. Refer to the discussion under Clause 4.6 of this report for relevant considerations concerning the varying of this development standard.

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

Description of non-compliance

The proposal presents non compliances to the side and rear boundary setback controls as a result of existing and proposed works.

The proposed side setbacks on the eastern side are 1.3m (ground floor) and 1.3m (first floor) which result in a 32% non compliance to the minimum requirement. The side setbacks on the western side are 0.8m (ground floor) which result in a 58% non compliance to the minimum requirement. The non compliances on the eastern side boundary are as a result of the existing footprint of the building and the alterations and additions along this boundary are limited to within the envelope of the existing dwelling.

The dwelling will be setback 6.8m to the rear boundary, presenting a 15% non compliance to the minimum requirement. The dwelling will comprise of an increased rear setback to the dwelling as a result of the reconfiguration of the dwelling. The existing cabana is also located within the rear setback.

The consideration below is limited to the non compliance as a result of the proposed works on the western side boundary and the rear dwelling alterations.

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 proposal readily complies with the front setback control and the first floor extension on the western side presents a modest setback to the side boundary. The proposal is considered to respond appropriately to the existing streetscape and desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between*

buildings to create a rhythm or pattern of spaces; and
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed works are not expected to result in any unreasonable amenity impacts. Privacy mitigation measures have been incorporated into the design to ensure a high level of privacy will be achieved between dwellings. In addition it is not expected the works will result in any view loss or unreasonable overshadowing.

The new garage will continue to provide for safe access to the site from Bareena Drive.

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

Comment:

The existing site constraints including the footprint of the existing dwelling limit the full compliance with this control and as a result a level of flexibility is required.

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:

Although the proposal will not meet the required landscape area it will continue to provide for generous dense landscaping within the front setback to enhance the streetscape and soften the built form.

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

Comment:

A bushfire assessment has been conducted and it is determined the development is acceptable.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

The site will have a landscaped area of 102.5m^2 or 34% of the total open space. This is a 15% variation

to the required control of 40%.

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 proposed alterations and additions do not seek to remove any significant trees or vegetation. There are also new native plants proposed within the front setback. These are listed within the planting schedule.

There are no changes to the existing landscaping within the rear of the site.

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 does not seek to remove any existing soft landscaped areas and seeks to provide additional planting within the front setback.

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

Comment:

The proposed new planting within the front setback will enhance the visual quality of the streetscape. The proposed and existing vegetation will ensure a reasonable level of privacy is maintained.

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

Comment:

The proposal does not seek to remove any soft landscaped area than existing. The proposal has also been reviewed by Council's Development Engineer and is supported subject to conditions.

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

Comment:

The proposal will minimise the spread of weeds and the degradation of private and public open space.

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

Comment:

Existing wildlife corridors will be maintained.

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.

4.1.10 Fencing

The proposed new front fencing is a maximum of 1.5m high. The proposed height is acceptable given at least 30% of the timber fence will be open/transparent as a result of the slatted timber. The proposal also comprises of a new retractable gate. A condition has been recommended to ensure the gate will open wholly within the property boundary and not into Council's road reserve.

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 $12,779 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,277,922.

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2021/1222 for Alterations and additions to a dwelling house on land at Lot 6 DP 758044, 12 Bareena Drive, 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**
DA01 Site Plan/Site Analysis RevA	30 June 2021	Fineline
DA02 Basement Floor Plan RevE	7 July 2021	Fineline
DA03 Ground Floor Plan RevE	7 July 2021	Fineline
DA04 First Floor RevE	7 July 2021	Fineline
DA05 North and West Elevations RevD	7 July 2021	Fineline
DA06 East and South Elevations RevD	7 July 2021	Fineline
DA07 Section A-A & B-B RevC	7 July 2021	Fineline
DA08 Colour and Finishes Schedule RevA	7 July 2021	Fineline

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Stormwater Plan Sheet 1 of 2	15 October 2021	Michal Korecky
Stormwater Plan Sheet 2 of 2	15 October 2021	Michal Korecky

Reports / Documentation – All recommendations and requirements contained

within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboriculture Construction Impact and Management Statement	October 2021	Growing My Way Tree Consultancy
Stormwater Report	15 October 2021	Michal Korecky
Bushfire Assessment Report	28 June 2021	Sydney Bushfire Consultants

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L100 Cover Sheet Landscape Calulcations	6 July 2021	Outdoor Establishments
L101 Landscape Plan Front Garden	6 July 2021	Outdoor Establishments
L102 Plant and Material Imagery Plant Schedule	6 July 2021	Outdoor Establishments
L201 Landscape Elevation Front Entrance	6 July 2021	Outdoor Establishments

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	30 June 2021	Paul Abbott

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

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

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $12,779.22 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $1,277,922.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

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

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

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

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

8. **On-site Stormwater Disposal Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal system in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY , and generally in accordance with the concept drainage plans prepared by Michal Korecky, drawing number 21110, dated 15/10/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer.

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.

9. **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.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **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) all demolition, excavation and construction works within the TPZ's and SRZ"s of trees to be retained.

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.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
i) Section 5 - Discussion,
ii) Section 6 - Site Specific Tree Plan of Management.

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.

14. **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.

15. **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.

16. **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.

17. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH 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.

18. **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

19. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:
i) substitute the proposed *Howea fosteriana* with a native alternative, minimum 75L pot size. Suggested species include: *Livistona australis,*
ii) substitute the proposed *Olea europaea* with a native alternative, minimum 75L pot size. Suggested species include: *Angophora hispida, Corymbia ficifolia* or *Waterhousia floribunda* (as proposed elsewhere on site).

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.

20. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

21. **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.

22. **Installation and certification of solid/fuel burning heater**
The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide the Principal Certifying Authority certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

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

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

to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

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

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: To maintain local environmental amenity.

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

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

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

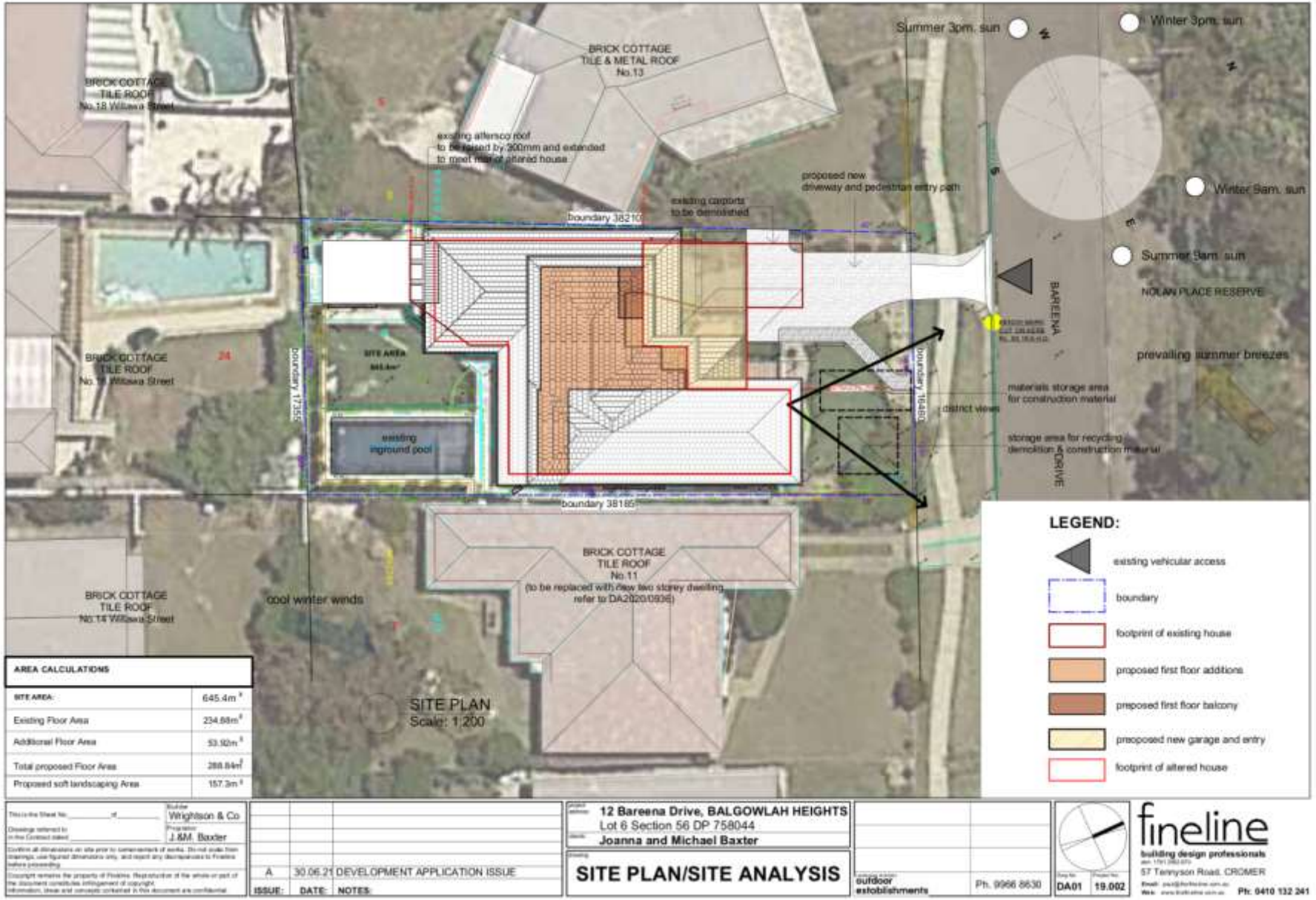
26. **Operation of solid fuel burning heaters**
The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications.

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

27. **Front Gate**
The pedestrian and vehicular access gates shall only be opened within the property boundary. For the avoidance of doubt the gates shall not open onto Council's road reserve.

Reason: To protect the amenity of surrounding land users and maintain the public domain.


BRICK COTTAGE TILE & METAL ROOF No.13
BRICK COTTAGE TILE ROOF No.18 Wilawa Street
existing alfresco roof to be raised by 300mm and extended to meet rear of altered house
existing carports to be demolished
proposed new driveway and pedestrian entry path
boundary 38210
Summer 3pm. sun
Winter 3pm. sun
Winter 9am. sun
Summer 9am. sun
BAREENA
NOLAN PLACE RESERVE
prevailing summer breezes
BRICK COTTAGE TILE ROOF No.16 Wilawa Street
24
SITE AREA
boundary 17355
existing inground pool
boundary 16480
district views
materials storage area for construction material
storage area for recycling demolition & construction material
DRIVE
boundary 38185
BRICK COTTAGE TILE ROOF No.11
(to be replaced with new two storey dwelling refer to DA2020/0936)
BRICK COTTAGE TILE ROOF No.14 Wilawa Street
cool winter winds
SITE PLAN
Scale: 1:200
LEGEND:
existing vehicular access
boundary
footprint of existing house
proposed first floor additions
preposed first floor balcony
preoposed new garage and entry
footprint of altered house
AREA CALCULATIONS
SITE AREA: 645.4m²
Existing Floor Area 234.68m²
Additional Floor Area 53.92m²
Total proposed Floor Area 288.84m²
Proposed soft landscaping Area 157.3m²
Builder Wrightson & Co
Drawings prepared by J.&M. Baxter
A 30.06.21 DEVELOPMENT APPLICATION ISSUE
ISSUE: DATE: NOTES:
12 Bareena Drive, BALGOWLAH HEIGHTS
Lot 6 Section 56 DP 758044
Joanna and Michael Baxter
SITE PLAN/SITE ANALYSIS
outdoor establishments Ph. 9966 8630
DA01 19.002
fineline
building design professionals
57 Tennyson Road, CROMER
Ph: 0410 132 241



Builder	Wrightson & Co	
Drawings referred to in the Contract dated	Prepared for	J.&M. Baxter

ISSUE	DATE	NOTES
D	07.07.21	DEVELOPMENT APPLICATION ISSUE
C	08.06.21	CLADDING OPTION
B	23.04.21	ISSUE FOR DISCUSSION, finish resolution
A	26.03.21	PRELIMINARY ISSUE FOR DISCUSSION

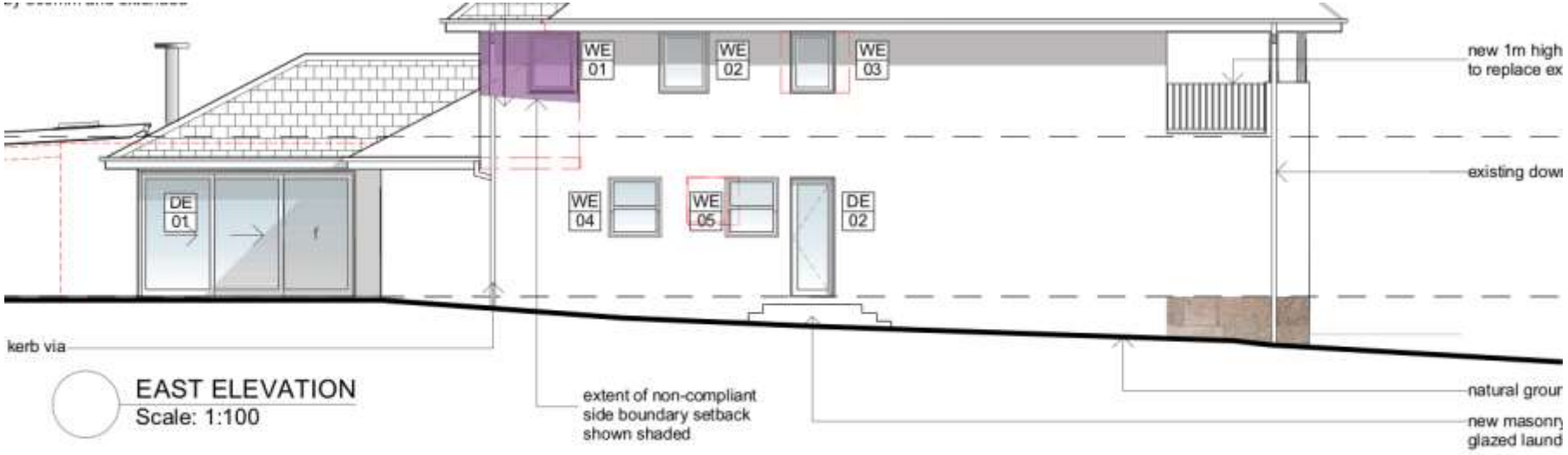
12 Bareena Drive, BALGOWLAH HEIGHTS
Lot 6 Section 56 DP 758044
Joanna and Michael Baxter

NORTH & WEST ELEVATIONS

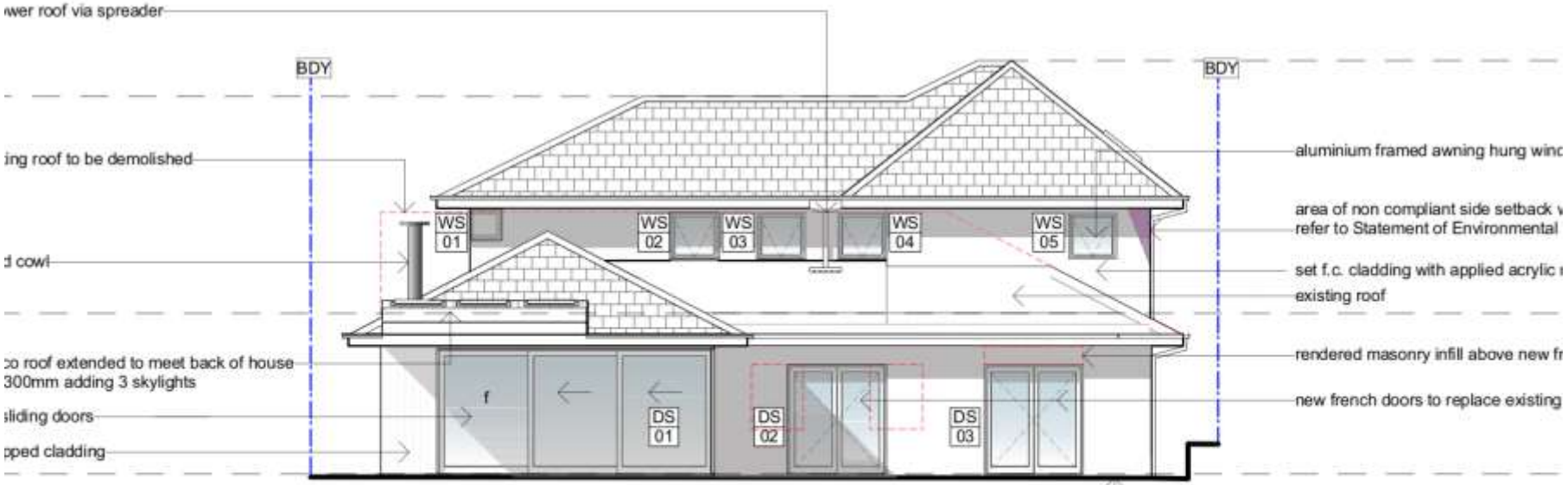
outdoor establishments Ph. 9966 8630

DA05 | 19.002

fineline
building design professionals
57 Tennyson Road, CROMER
Ph: 0410 132 241



EAST ELEVATION
Scale: 1:100



SOUTH ELEVATION
Scale: 1:100

fineline
ABN: 17 612 952 870
57 Tennyson Road
Cromer NSW 2099

6th July 2021

The General Manager
Northern Beaches Council
Belgrave Street
MANLY NSW 2095

Clause 4.6 variation requests – F.S.R.
Alterations and Additions to existing dwelling at
12 Bareena Drive, Balgowlah Heights

Floor Space Ratio

1.0 Introduction

This clause 4.6 variation has been prepared to form part of a Development Application for the alterations and additions to an existing dwelling, and makes a request for approval to vary the floor space ratio control as set out in the Manly LEP 2013.

2.0 Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 258m². The objectives stated in this clause 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 property has a site area of 645.4 m^2 . It has been determined that the proposal will result in a total gross floor area on the site of 288.8m². This represents a floor space ratio of 0.44:1 and therefore non-compliant with the FSR standard by 30.64m² or 11.86%.

I note that clause 4.1.3 of Manly Development Control Plan 2013 containsFSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the that the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone "R" in which a minimum Lot area of 750m² is required. The site having an area ofonly 645.4m² is significantly below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the L.E.P. F.S.R. development standard pursuant to clause 4.6 of the L.E.P. is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of F.S.R. is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 288.8m² of gross floor area proposed, representing an F.S.R. of 0.38:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the D.C.P. variation provision. We note that such provision contains the following note:

> *Note: FSR is a development standard contained in the L.E.P. and L.E.P. objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:*
>
> *Objective 1) To ensure the scale of development does not obscure important landscape features.*
>
> *Objective 2) To minimise disruption to views to adjacent and nearby development.*
>
> *Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

As the proposed G.F.A./ F.S.R. complies with clause 4.1.3.1 M.D.C.P. numerical provision it is also "deemed to comply" with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of M.L.E.P. provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain

development standards to particular development, and

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

Clause 4.6(2) of MLEP 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.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the floor space ratio provision at 4.4 of M.L.E.P. which specifies a maximum F.S.R. however 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 MLEP 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 bysubclause (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 developmentwithin the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General 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 preconditionis found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) of M.L.E.P. provides:

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

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court 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), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still 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 M..LE.P. from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6and 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 standardare 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 purposewould be defeated or thwarted if compliance was required with theconsequence that compliance is unreasonable: Wehbe v PittwaterCouncil at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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 M.L.E.P. 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 willbe in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planningand Environment been obtained?

5. Where the consent authority is the Court, has the Court consideredthe matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP?

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Actincludes:

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

Clause 4.3 MLEP prescribes a height provision that relates to certain development. Accordingly, clause 4.3 MLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set outin Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

> *(a) to ensure the bulk and scale of development is consistentwith the existing and desired streetscape character,*

Response: This objective relates to streetscape character and in this regard the proposed represents a building that is compliant in height and has a 2 storey presentation to Bareena Drive. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 Ihave formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from BareenaDrive, to be offensive, jarring or unsympathetic in a streetscape context.
The predominate built form along Bareena Drive consists of 1 and 2 storeyresidential dwellings and in this regard the proposal is considered to be consistent within the streetscape.

This objective is satisfied as 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,

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 288.8m² of gross floor area proposed, representing an FSR of 0.38:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provisionapplicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

Objective 1) To ensure the scale of development does not obscure important landscape features.

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify any landscape or townscape features that I would consider important in terms of their visual significance. The proposal will provide for an enhanced landscaping regime above the existing circumstance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance,achieves this objective as the building density and bulk, in relation to a sitearea, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

Note: FSR is a development standard contained in the L.E.P. and L.E.P. objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the L.E.P. in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscureimportant landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed G.F.A./ F.S.R. complies with clause 4.1.3.1 M.D.C.P. numerical provision it is also "deemed to comply" with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area*.

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 M.L.E.P. F.S.R. standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built from character of the area.

In relation to landscape character, the application proposes the implementation of an enhanced site landscape regime and provides for a building footprint which is not compliant with the total open space, however an improvement over existing conditions, but does comply with the landscaped area M.D.C.P. controls. The building will sit within a landscaped setting.

An appropriate visual relationship between new development and theexisting landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non- compliance, achieves the objective as it maintains 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,*

Response: In responding to this objective. Privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land have been adopted.

Views

There will be no impact on any view corridors as a result of this development, as assessed against the planning principal for view sharing known as *Tenacity Consulting v Warringah Council (2004) NSWLEC 140.*

Privacy

Having regard to clause 4.1.3.1 Manly D.C.P. F.S.R. provisions, which inform the 288.8m² of gross floor area proposed, representing an FSR of 0.38:1(based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause
3.4.2 are also referenced in relation to these provisions namely:

> *See also objectives for privacy at paragraph 3.4.2 of this plan.*
>
> *3.4.2 Privacy and Security*

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;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

As previously indicated the proposed F.S.R. complies with the D.C.P. numerical F.S.R. control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development.*

Notwithstanding, the spatial relationship, coupled with appropriate setbacks, prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views. Appropriate fenestration is proposed to the east and west side boundary facing elevations to mitigate any risk to privacy to neighbouring dwellings. Private open space areas are predominately located at ground floor level with smaller balconies with privacy screening located off the first floor bedrooms. In this regard, it is considered that the appropriate measures have been included in the design to limit the impact to the privacy of neighbouring dwellings.

Given the spatial separation maintained between the balance of surrounding properties I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams SD01,SD02, and SD03 demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impacts to neighbouring properties. The works will not create any unreasonable additional overshadowing as shown on the shadow diagrams prepared by Fineline.
The majority of the overshadowing is a result of existing development. Inthis regard, it is considered that the proposal is consistent with the DCP control.

The objective is achieved in this regard.

Visual amenity/ building bulk and scale

As indicated in response to objective (a) The bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005)NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The building, notwithstanding theFSR non-compliance, achieves the objective through thoughtful design that minimises adverse environmental impacts on the use and 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 retentionof local services and employment opportunities in local centres.*

Response: N/A

Having regard to the above, the proposed building form which is non- compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance would be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with theconsent of council. The stated objectives of the zone are as follows:

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

Response: The development seeks to renovate a dwelling house on the site which will provide for the housing needs of the community within a low density residential environment. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant development, as it relates to F.S.R., demonstrates consistency with objectives of the R2 Low Density Residential zone andthe F.S.R. standard objectives.

4.2 B Clause 4.6(4)(b) – 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 asa 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 consentauthority 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].

It can be seen that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflectedby floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly D.C.P. reflect an acceptance that the F.S.R. standard on undersized allotments does not provide for the orderly and economic use and development of the land and represents an abandonment of the F.S.R. standard on undersized allotments. The proposal satisfies such provisions.

The proposed development achieves the objectives in Section 1.3 of the EPAAct, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants(1.3(h)).

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied becauseit is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPPis the consent authority where a variation exceeds 10% or is to a non- numerical standard, because of the greater scrutiny that the L.P.P. process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

As there is no statutory or environmental planning impediment to the granting of an F.S.R. variation in this instance; and as there will be no unreasonable externalities that arise from the proposal, we request that the proposed alterations and amendments to 12 Bareena Drive Balgowlah Heights be approved as presented.

ITEM 3.2	**DA2021/0668 - 95 BOWER STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2021/868192**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. That Council as the consent authority **approves** Development Consent to DA2021/0668 for alterations and additions to a dwelling house on land at Lot 81 DP 8076, 95 Bower Street, Manly, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0668

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 81 DP 8076, 95 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
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 Ikuyo Feldman
Applicant:	Your Beautiful Home Pty Ltd

Application Lodged:	31/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/06/2021 to 18/06/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 11%
Recommendation:	Approval

Estimated Cost of Works:	$ 3,171,026.50

EXECUTIVE SUMMARY

The application seeks consent for alterations and additions, including the construction of a new upper floor over an existing one and two storey dwelling.

In response to the notification of the application, five (5) submissions were received in objection to the development, raising concern with regard to view loss, privacy and the potential heritage significance of the existing dwelling. In response to these concerns, and those raised by Council during the assessment process, the application has been amended such that the proposal will not result in any unreasonable impacts upon views or privacy, and a considerable portion of the original features of the non-heritage listed dwelling will be retained. Overall, the consent authority can be satisfied that the matters raised by the community have been reasonably resolved.

The proposal involves a minor exceedance of the maximum building height development standard. The non-compliant element, being the gable roof over the front balcony, does not attribute to any unreasonable impacts upon the surrounding environment and has been designed specifically to respond to the architectural style of the existing dwelling. The application is supported by a request to vary the maximum building height development standard and the consent authority can be satisfied that all matters prescribed by clause 4.6 of MLEP 2013 have been satisfactorily addressed.

As the cost of works of the development exceeds $1 million and as more than 3 submissions were received, and as the development involves a variation to a numerical development standard that is greater than 10%, the application is referred to the DDP for determination, with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling. The resultant dwelling will comprise:

Lower Ground Floor: double garage and storage,
Ground Floor: three bedrooms, three bathrooms, laundry, entrance porch & lobby, living room, piano room and covered deck,
Upper Floor: main bedroom, WIR, ensuite, kitchen, butlers pantry, living, dining, bathroom and covered decks.

Stairwells and a lift are proposed to provide access between the three levels.

The application also proposes tree removal, landscaping, widened access driveway and new fencing.

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 - Zone R1 General Residential
Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

SITE DESCRIPTION

Property Description:	Lot 81 DP 8076 , 95 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site is identified as 95 Bower Street, Manly (Lot 81, DP 8076). The site is an irregularly-shaped corner allotment; the primary (northeast) road frontage adjoins Bower Street, and the southeast frontage adjoins College Street. The northwest side and southwest rear boundaries adjoin residential allotments. The total area of the site is 799.7m^2 (survey). The site is moderately sloped, with a maximum southwest-to-northeast (i.e. rear-to-front) downhill slope of approximately 5.8 metres. The site is located within the R1 General Residential zone under MLEP 2013; the northeast, southeast and southwest boundaries all adjoin R1-zoned sites/areas, while the northwest boundary adjoins an RE1 Public Recreation zone. The site is mapped as being affected by class 5 acid sulfate soils and biodiversity considerations and is within the Manly Foreshore Scenic Protection Area; the eastern-most parts of the site are also mapped as being flood affected (low and medium risk areas). The subject site is also mapped by the DCP as being within an Assessment of Significance Area (Bandicoot). The subject site does not contain a heritage item and is not within a Heritage Conservation Area. The northeast boundary however adjoins a mapped heritage item (Item no. I90, 'Street trees (*Acaucaria heterophylla*)'); the site is also in proximity to a number of other mapped heritage items, the two closest of which are as follows: • Item no. I2, 'All stone kerbs', approximately 7.5 metres northeast subject site, and • Item no. I131 , 'St Patrick's Estate'), approximately 22 metres southwest of the subject site. Development on the site consists of a single storey dwelling with a garage beneath. The dwelling is located within the centre/northwest part of the site, and the driveway to the garage and associated crossover is on the northwest side of the site. Other development on the site include retaining walls and pathways around the dwelling.

	Detailed Description of Adjoining/Surrounding Development Development on adjoining sites to the southwest consists of detached dwelling houses; the site adjoining the northwest boundary contains a unnamed public reserve. Residential-zoned areas within the surrounding areas consist predominantly of residential development that is of varying densities (i.e. dwelling houses and smaller-scale residential flat buildings) and some isolated commercial development. Areas further to the north include Fairy Bower Beach and Cabbage tree Bay, while areas further to the southeast contain the St Patrick's Estate/International College of Management) and associated sites.

Map:



SITE HISTORY

On 10 February 2021, a pre-lodgement meeting was held with respect to the proposal currently before Council.

On 31 May 2021, the subject application was lodged.

On 20 July 2021, Council wrote to the applicant, raising concerns with regards to the following:

- Building height
- View loss
- Roof terrace
- Heritage significance

On 13 August 2021, amended plans were presented to Council to demonstrate the deletion of the upper floor roof terrace.

On 23 August 2021, an amended clause 4.6 submission was presented to Council.

On 20 September 2021, certification was received from a registered surveyor confirming the height and placement of height poles at the subject site.

Note: The time frames associated with the erection of height poles and subsequent view loss site inspections were impacted by the Covid-19 health restrictions that prevented access to the site for an extended period of time.

On 3 December 2021, further amended plans were presented to Council. The amended plans demonstrate a reduction to the size of the upper floor, with the retention of a greater proportion of the existing roof form. The further amended plans also reduce the forward projection of the front gable roof, lower the pitch and maximum RL of the roof, and reduce the width of the driveway (consistent with that recommended by Council's Development Engineer).

In circumstances where the amendments result in reduced impacts to surrounding properties and noting that the changes are consistent with those recommended by the neighbouring property owners to address view loss concerns, the amended plans were not formally notified (consistent with the provisions of Council's 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 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested during the assessment process and subsequently provided.

Section 4.15 Matters for Consideration'	Comments
	Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter ca be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is 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 04/06/2021 to 18/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Hugh Burns	45 Bower Street MANLY NSW 2095
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
Richard Lamb & Associates	Suite 1A 134 Military Road NEUTRAL BAY NSW 2089
Reddall Street Pty Ltd	Townhouse 1 51-55 Upper Pitt Street KIRRIBILLI NSW 2061
Mr Rodney Owen Duncan	97 Bower Street MANLY NSW 2095

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

- **View loss**
  Submissions have been received from and on behalf of the owners of 29 Reddall Street and 31 Reddall Street raising concerns with regard to the potential impact upon views arising from the proposed development. The submissions suggest that the level of impact could be reduced by virtue of a reduction to the pitch of the roof. The applicant has provided amended plans incorporating this suggested change, in addition to a reduction in the width of the upper floor, which will further reduce the impact upon views.

  The submissions received from and on behalf of the owners of 29 Reddall Street and 31 Reddall Street also requested that landscaping be limited to no more than 6m in height, to maintain existing view corridors. A condition of consent has been recommended in this regard, which requires all but one tree, being the replacement of the existing Cheese Tree proposed to be removed, to be limited to 6m in height.

  A submission has also been received from the adjoining property owners of 97 Bower Street, raising concern with regard to the potential loss of the view to St Patrick's Cathedral from a lower floor side window.

  As discussed with regard to clause 3.4.3 of MDCP 2011, the resultant impact upon views is considered to be reasonable and view sharing between properties is achieved.

- **Visual privacy**
  A submission has been received on behalf of the owner of the adjoining dwellings at 31 and 35 Reddall Street, raising concerns with regard to visual privacy. In particular, the submission makes reference to the need for screening of the south-eastern upper floor terrace to prevent overlooking of the terrace from the adjoining properties to the south-west, that are likely to be redeveloped in the near future to maximise the water views available to the north-east. It is not considered reasonable for Council to enforce additional screening measures to prevent overlooking from a potential development that has not been lodged or approved by Council. The privacy screen proposed along the south-western elevation of the terrace is considered to provide suitable privacy between properties based on the current context of the site.

- **Heritage significance**
  A submission has been received in objection to the proposal on heritage grounds. Whilst the existing dwelling is not nominated as an item of local or state heritage significance, the application was supported by a Heritage Impact Statement that states:

  "The dwelling dates from the mid c1920s (c1924) and comprises an Inter-War period dwelling which references a substantial Inter-War Californian Bungalow...

The subject site has moderate historical significance as mid-20th century dwelling, which form part of later phase of development in the area following the subdivision of the St Patrick's College Estate. The site therefore has some historical association with the college site...
The subject site has moderate aesthetic significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period, with internal decoration and details largely intact. However, it is noted that there are other better examples of the style in the vicinity and the estate, with more substantial features and decoration, and in better condition."

The potential heritage significance of the dwelling has been carefully considered by Council's Heritage Officer, who is now satisfied that, subject to conditions of consent, the amended proposal is an appropriate response for the development of the non-listed site.

No matter raised in the submissions received is considered to warrant the refusal of the subject application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**No objection, with conditions.** *The development application is for alterations and additions to an existing dwelling.* *Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan zone E3 Environmental Management, 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 3.3.1 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 development application is accompanied by a Landscape Master Plan and a Arboricultural Impact Assessment.* *The Landscape Master Plan provides an indication of existing trees to be retained and removed, and includes augmented hard and soft landscape treatments and tree replacement. The Landscape Master Plan does not nominate planting layout and species and conditions of consent shall be imposed for Amended Landscape Plans. Tree replacement planting within the front setback as nominated on the Landscape Plan shall be limited to a height of 8 metres to coincide with the top of the roof level to ensure neighbouring views are not impacted.* *The Arboricultural Impact Assessment report recommends the removal of three (3) native trees identified as T1 (Cheese Tree), T6 (Cheese Tree) and T7 (Brush Cherry) and one (1) native fern T5 (Tree Fern). Existing tree T1 is assessed as in fair to poor condition with minimal potential for improvement, T6 and T7 are located within the development footprint and are currently exempt under the 2 metre*

Internal Referral Body	Comments
	rule proximity to existing building, and T5 has self-sown into the existing retaining wall. Two (2) exempt species, identified as T2 and T4 are proposed for removal and these do not require Council consent. One native Tree Fern identified as T3 is recommended for retention, and the report provides tree protection measures. *Landscape Referral raises no objections to the development proposal, subject to conditions of consent.*
NECC (Bushland and Biodiversity)	**No objection, with conditions.** *Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:* • *NSW Biodiversity Conservation Act 2016 (BC Act)* • *Manly LEP Clause 6.5 (Terrestrial Biodiversity)* • *Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat).* *The application seeks approval for alteration and additions to an existing dwelling, and construction of a new pedestrian path and new rear roof terrace.* *The Arboricultural Impact Assessment report recommends the removal of three (3) native trees identified as T1 (Cheese Tree), T6 (Cheese Tree) and T7 (Brush Cherry) and one (1) native fern T5 (Tree Fern). Existing tree T1 is assessed as in fair to poor condition with minimal potential for improvement, T6 and T7 are located within the development footprint and are currently exempt under the 2 metre rule proximity to existing building, and T5 has self-sown into the existing retaining wall. Two (2) exempt species, identified as T2 and T4 are proposed for removal and these do not require Council consent.* *The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, the development is to be accompanied by a 'test of significance' prepared in accordance with Section 7.3 of the BC Act. An ecological impact assessment with test of significance for the endangered bandicoot population has been submitted with the DA and concludes that the proposal will not have a significant impact on the population. Given that the proposal is largely within the existing footprint, Council's Biodiversity referral body concur with this conclusion, subject to recommended conditions to maintain bandicoot access and mitigate construction-related impacts.*
NECC (Coast and Catchments)	**No objection, with conditions.** *The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements*

Internal Referral Body	Comments
	of the Manly LEP and DCP. The proposed development meets Clauses 12, 13 and 15 of the Coastal Management SEPP (13 and 14 do not apply) and meets the requirements of the relevant clauses of the Manly LEP and DCP. The impacts on the coastal environment have been assessed as acceptable subject to conditions.
NECC (Development Engineering)	**No objection, with conditions.** *Development Engineering has no objection to the application subject to the following conditions of consent.*
NECC (Stormwater and Floodplain Engineering – Flood risk)	**No objection, with conditions.** *The proposed DA generally meets the flood controls in the LEP and DCP. The proposed DA is outside the 1% AEP flood extent.*
Strategic and Place Planning (Heritage Officer)	**No objection, with conditions.** HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject property is within the vicinity of a number of heritage items: **Item I131 - St Patrick's Estate** - 151 Darley Road (Primary address, alternate address 106 Darley Road) **Item I90 - Street trees (Acaucaria heterophylla)** - Bower Street (from Cliff Street to College Street) Details of heritage items affected Details of the heritage items as contained within the Northern Beaches inventory is as follows: **Item I131 - St Patrick's Estate** Statement of significance: 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

Internal Referral Body	Comments
	adaptive reuse of the key buildings, the site has retained its integrity and still presents as a cohesive whole. Physical description: St Patrick's Estate is a complex cultural landscape comprising many significant components, including buildings, grounds, gardens and landscape elements (including walls, pathways, and 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. **Item I90 - Street trees (Acaucaria heterophylla)** Statement of significance: Listed for its aesthetic importance to the streetscape. Continuity with the earlier street tree plants of Manly 'Village' area. Physical description: Norfolk Island pines (Araucaria Heterophylla). Appear to have been planted in the early 1900's.

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	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A	

Consideration of Application

The proposal seeks consent for alterations and additions to the existing dwelling, including substantial demolitions and a first floor addition. Although, not a listed under Manly Local Environmental Plan 2013, the property appears to contain elements of an Inter-war Californian bungalow style building. It is noted that, the original features of the existing dwelling, including most of the internal original fabric, has been preserved and still intact. This proposal is for substantial alterations and additions to the existing building,

Internal Referral Body	Comments
	changing the existing building form from single storey to a two storey building by removing the existing roof and adding a second floor. The subject site is not a listed heritage item under the Manly Local Environmental Plan 2013, however it is considered that the property appears to contain elements of a substantial Inter-war Californian Bungalow. Therefore, the potential heritage significance should be taken into consideration in accordance with Manly DCP 2013: *Clause 133.2.1.2 Potential Heritage Significance* *If the property is assessed as having merit as a potential heritage item, the heritage controls and considerations in this plan will apply. (3.2.1 Consideration of Heritage Significance)* The application includes a Heritage Assessment by Damian O'Toole Town Planning and Heritage Services, which has assessed both the potential heritage significance of the site and the impact of the proposed development on identified heritage items in the vicinity. The report has determined that the house is not of significance and that the proposal is acceptable when assessed against the identified significance of the heritage items in the vicinity. However, the building itself has been identified as "*representative of Inter-War Californian Bungalow Style*" in the same report and the following statement from the same report demonstrates that the property has moderate significance in accordance with the assessment of significance against the criterion set by the NSW Heritage Office: "*The subject site has moderate heritage significance as a substantial Inter-War dwelling house which formed part of the original mid-20th century development following the subdivision of the wider St Patricks Estate. Whilst the dwelling is largely intact externally, it is probable, based on visual inspection of on-site fabric, that changes have been made to the internal floor plan that have affected its overall significance".* The Heritage Guidelines by NSW Heritage Office states that "*The level of heritage significance at State or local levels can only be determined by comparison with other like items. The attributes described for criteria (f) and (g) will assist in the determination of significance. A heritage item is not to be excluded on the ground that items with similar characteristics have already been entered on a statutory list",* and the Heritage Assessment report by Damian O'Toole Town Planning and Heritage Services states in the criteria (g) that "*The subject site has moderate representative value representative significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period."* The report continues as *"Whilst the site has moderate aesthetic significance, with many features of the Inter-*

Internal Referral Body	Comments
	War period (including internal decoration and details) largely intact, it is noted that there are other better examples of the style in the vicinity, with more substantial features and decoration, and in better condition." and concludes as "The site does not meet the threshold for Local heritage listing as an individual item." However, an item will be considered to be of State (or local) heritage significance if it meets one or more of the criterion set by Heritage Council of NSW, and the report states that the property meets the criteria in more than one criterion: *Criterion (A) - Historical Significance* *Comments – The subject site has moderate historical significance as mid-20th century dwelling, which form part of later phase of development in the area following the subdivision of the St Patricks College Estate. The site therefore has some historical association with the college site.* *Criterion (C) - Aesthetic Significance* *Comments – The subject site has moderate aesthetic significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period, with internal decoration and details largely intact. However, it is noted that there are other better examples of the style in the vicinity and the estate, with more substantial features and decoration, and in better condition.* *Criterion (G) - Representativeness* *Comments – The subject site has moderate representative value representative significance as an original mid-20th century Inter-War period dwelling which has many features of the Inter-War period.* Therefore, the conclusion stated in the Heritage Assessment report is inconsistent with the "NSW heritage assessment criteria". it is believed that, as stated above, the possibility of a moderate significance of the existing building should be taken into consideration in designing the internal alterations and the new additions as outlined below: • retention of the original fire place and the adjoining art-deco style cabinetry in the living room • retention of the internal original fabric including the plaster ceilings with some ceilings with plaster decoration, original lights fittings with some ceiling roses, picture rails, cornices, skiting boards where possible • retention of the original timber doors or timber with multi-paned glazing doors • retention of the original windows where possible • a more considerate approach to the first floor addition - retention of part of existing roof for interpretation of the original single level bungalow • deletion of the southern roof terrace and the external stairs leading to this terrace

Internal Referral Body	Comments
	Revised comments Amended plans, received in 03 September 2021, have resolved one concern Heritage had with the proposal, but there are still remaining concerns, regarding maintaining the heritage values and integrity of the original building. Given the highly prominent location of the property and the visibility of the long frontage of the site from a number of viewpoints including the Marine Parade Walkway, it is considered that the design of the first floor addition is not appropriate as it dominates the heritage details of the existing building, removes the existing roof and diminishes the single storey presentation of the original building. Therefore, Heritage recommends a more considerate approach to the first floor addition. If the Applicant is unwilling to make required amendments as stated, than Heritage do not support the DA proposal. **Revised comments - 09 December 2021** Amended drawings, received on 30 November 2021, demonstrate improvement from the previous amendments. However, it is considered, that the prolonged negotiations have not yet achieved the best outcome for the existing building, therefore conditions of consent are required. The front balcony above the existing bay window is required to be set back from the sides to allow this retained roof below to be at the same level of the retained portion of the main roof (at the internal corners). In other words, the retained portion of the original roof should include the sloping section of the roof above the bay window. It is also required to reduce the first floor roof overhang, that its width should not exceed the width of the existing main roof overhang, to reduce the impact of this addition on the existing building when viewed from Bower Street. Therefore, no objections are raised to this application on heritage grounds, subject to four conditions. <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? Yes
	Further Comments
	COMPLETED BY: Oya Guner, Heritage Advisor/Reviewed by Anne-Maree Newbery

Internal Referral Body	Comments
	DATE: 30 July 2021, Amended 06 October 2021/Reviewed 14 October 2021, Reviewed 09 December 2021 Planner comment: Two of the four conditions recommended by Council's Heritage Officer, being those that require amendments to the proposed development, have been consolidated into one condition in the attached draft determination.

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. A412525_03, dated 24 May 2021).

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

SEPP (Coastal Management) 2018

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

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

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

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	9.435m	0.935m or 11%	No
Floor Space Ratio	0.6:1 (479.82m²)	0.43:1 (343.2m²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The proposal is consistent with the objectives of the R1 General Residential Zone, as follows:

- *To provide for the housing needs of the community.*

  Comment: The proposed development provides for the enlargement of an existing dwelling house to a degree that is more commensurate with that of surrounding development. The resultant development will continue to contribute to housing stock within the Manly locality.

- *To provide for a variety of housing types and densities.*

  Comment: The resultant single dwelling house will contribute to the varied mix of residential development along Bower Street and throughout the wider locality.

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

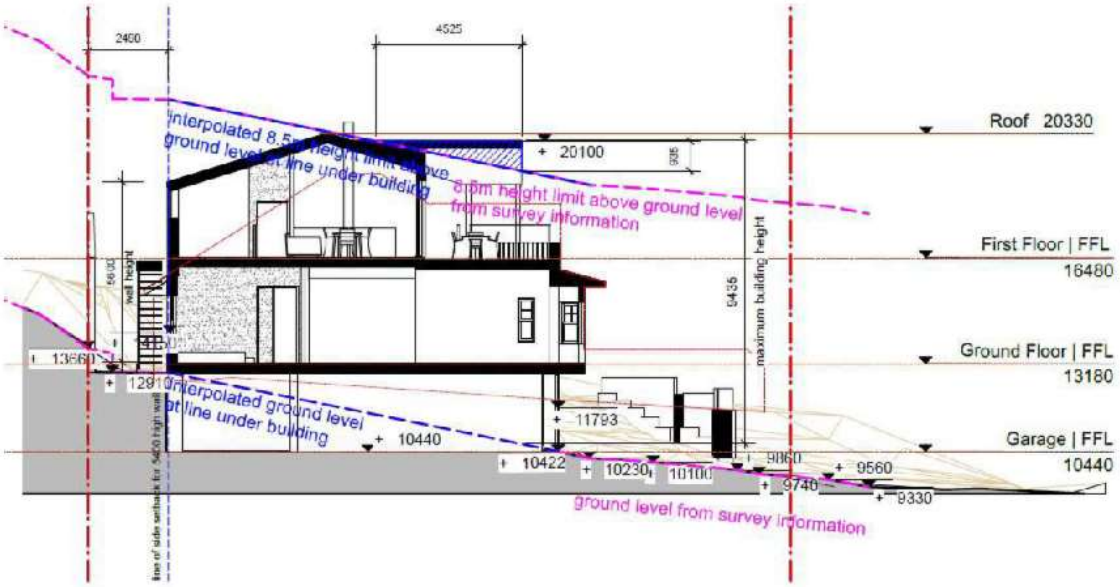
  Comment: Not applicable.

4.3 Height of buildings

With a maximum height of 9.435m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

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

What is the extent of the breach?
The proposed development reaches a maximum height of 9.345m, representative of a 0.935m or 11% variation the the 8.5m maximum building height development standard. The maximum height occurs at the the north-eastern end of the front gable, with the extent of non-compliance receding away from the street, as shown in the section, below.



Has the applicant's submission addressed the relevant criteria?
Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clause 4.6 of MLEP 2013. The submission has been considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

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

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

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

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

- *The proposed new works which include a compatible style and character, reflected through the introduction of the complementary gable roof form over the first floor terrace which retains the style and form of the dwelling as it currently contributes to Bower Street is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EP&A Act.*
- *The proposed alterations and additions introduce modulation and architectural relief to the*

building's facade, whilst maintaining a modest bulk and scale, which promotes good design and improves the amenity of the built environment (1.3(g)).

- *The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings 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 additional floor area will provide for improved amenity within a built form which is compatible with the Bower Street locality which also promotes the orderly and economic use of the land (cl 1.3(c)).*

Further, the written request highlights that the non-compliance occurs over a part of the site that has been excavated to not only accommodate for the existing garage but also the associated driveway access. If you were to consider pre-existing natural ground levels below the existing dwelling and driveway, the proposal would comply with the 8.5m height plane.

Overall, The applicant's submission has established sufficient environmental planning grounds to justify the proposed contravention of the building height development standard.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matter required by clause 4.6(3) of MLEP 2013.

Is the proposal in the public interest?
Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

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

- *To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

  Comment: The proposed development appears to be nestled into the natural slope of the land, and with the exception of the front gable roof detail, is generally maintained well below the height plane. The proposed upper floor addition is an appropriate contextual response to the development of the site, that is compatible with the height of surrounding development and the character of the locality.

- *to control the bulk and scale of buildings,*

  Comment: The proposed development is well articulated, with varied materiality to reduce the scale of the development. The minor height exceedance occurs at the front of the gable roof form over the proposed upper floor balcony. The gable roof form is setback from the facade of the level below and is an open structure that does not attribute to excessive bulk or scale. It is also noted that the FSR of the development is 0.43:1, well below the 0.6:1 maximum FSR prescribed for the site.

  In an area where the majority of surrounding development appears to be at or above the maximum development standard, the bulk and scale of the proposal is considered to be reasonable.

- *to minimise disruption to the following:*
  (i) views to nearby residential development from public spaces (including the harbour and foreshores),
  (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
  (iii) views between public spaces (including the harbour and foreshores),

  Comment: As discussed with regards to clause 3.4.3 of MDCP 2013, the proposed development does not result in any unreasonable impacts upon views currently enjoyed by adjoining properties. Whilst portions of existing view corridors will be obstructed by the proposal, it is generally the main ridgeline of the proposed roof form that attributes to this impact, which is maintained below the maximum building height.

- *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

  Comment: The proposed development does not result in any unreasonable overshadowing of adjoining properties.

- *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

  Comment: Not applicable - The site is located within the R1 General Residential zone.

Furthermore, as discussed separately above, the proposal is consistent with the relevant objectives of the R1 General Residential zone.

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

Has concurrence been obtained?
Pursuant to clause 4.6(4) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with the correspondence from the Executive Director at the Department dated 2 November 2021 and the DDP Charter, the DDP may assume the Secretary's concurrence in relation to the determination of development applications for Class 1 buildings where the development contravenes a numerical standard by greater than 10%.

Conclusion
Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposed building height variation can be supported.

5.10 Heritage conservation

The existing dwelling is not identified as an item of local or state heritage significance, the site is not located within a heritage conservation area and neither the site nor the dwelling are listed or described in Schedule 5 of MLEP 2013. The provisions of clause 5.10 of MLEP 2013 are not applicable.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 799.7m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings	1 dwelling	-	Yes
	Min. Dwelling Size: 112m²	366.7m²	-	Yes
4.1.2.1 Wall Height	SW: 6.8m (based on gradient 1:20.9)	5.4m - 6.0m	-	Yes
	NW: 7.3m (based on gradient 1:8.5)	5.1m - 7.3m	-	Yes
4.1.2.2 Number of Storeys	2	3	1 storey or 50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.6m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (Nil - 3m)	3.9m - 8.3m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	SW: 1.9m	ground: 1.8m (existing) upper level: 2.5m		Yes
	Habitable Windows: 3m	1.8m (existing) >3m (proposed)	-	Yes
	Secondary street frontage: 2.54m (side setback)	8.0m - 13.0m	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	Common boundary: 6m	ground: 2.36m (existing) upper level: 6.0m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (439.8m²)	529.6m² or 66%	-	Yes
	Open space above ground 25% of total open space (110m²)	90.2m² or 17%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area (35%) of open space (153.9m²)	313m² or 59%	-	Yes
	3 native trees	8 trees	-	Yes
4.1.5.3 Private Open Space	18m²	>18m²	-	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	6.7m or 25.6% (unchanged)	-	Yes
Schedule 3 Parking and Access	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 x 100 = 95 then 100 - 95 = 5% variation)

The application is appropriately characterised as alterations and additions. Non-compliance with the numeric requirements of the DCP associated with existing structures are considered to be acceptable and are not addressed further in this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	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
4.1.1 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)	No	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	No	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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Views to Shelly Beach and the ocean are currently enjoyed over the subject site by neighbouring properties. In response to the notification of the application, submissions were received in objection to the potential impact upon such views from the owners of dwellings at 29 and 31 Reddall Street. A further submission was also received from the adjoining property owner of 97 Bower Street raising concern with regard to the potential loss of a view to St Patrick's Cathedral that is currently available over the subject site.

Height poles were erected to demonstrate the indicative height of the original proposal. An assessment of the level of impact based upon these height poles and with regard to the four step planning principle developed in *Tenacity Consulting v Warringah Council* has been undertaken, as follows:

29 Reddall Street

1. The dwelling at 29 Reddall Street is located immediately to the south-west of the subject site. The occupants of the dwelling at 29 Reddall Street currently enjoy views to Shelly Beach and the ocean in a north-easterly direction and views along the coast in a northerly direction.

2. From the kitchen/dining and living room at the rear eastern corner of the upper level, the primary orientation is towards Shelly Beach in a north-easterly direction, with additional views along the coastline in a northerly direction. The views are obtained over the northern side and rear boundary, and over down slope properties, including the subject site.

   From the primary area of the balcony, located in the northern corner of the upper level, the view is limited by vegetation, with a primary orientation to Shelly Beach. The view to Shelly Beach is obtained over the rear boundary and over down slope properties, including the subject site.

   All views are currently enjoyed in both a seated and standing position.

3. The proposed development will impact upon views towards Shelly Beach from the kitchen/dining area, living area and balcony to varying degrees.

   From the kitchen and dining area, the roof of the proposal will obstruct a portion of the foreground water view that is partially obstructed by other buildings and vegetation. The views to the surf break adjacent to Shelly Beach, the large expanse of ocean and views of the coastline remain unaffected by the proposal. The impact upon this view is considered to be minor.

   From the living area, the roof of the proposal will obstruct a portion of the foreground water view that is partially obstructed by other buildings and vegetation. The views to the surf break adjacent to Shelly Beach, the large expanse of ocean remain unaffected by the proposal. The impact upon this view is considered to be minor.

   It is the view corridor from a seated position in the primary area of the balcony that is most affected by the proposal, as depicted in Image 1, below. The originally proposed roof would have resulted in the obstruction of the majority of the foreground water currently enjoyed. The impact upon this view was considered to be moderate.



Image 1 - View from primary rear balcony of 29 Reddall Street in seated position.

ORIGINAL PROPOSAL.

However, the application has since been amended to reduce the pitch of the roof by 370mm, as suggested by the owners of 29 Reddall Street, which provides a greater retention of the proportion of water below the surf break and the headland interface. Furthermore, the setback of the upper floor from the north-western side boundary has been increased, which provides for a greater proportion of the immediate foreground water view to be retained. Whilst amended height poles have not been erected, the owner of the property at 29 Reddall Street has provided detailed view analysis of this outcome. Based upon this information, the assumed impact upon this most corridor is shown in Image 2, below.



Image 2 - View from primary rear balcony of 29 Reddall Street in seated position.

AMENDED PLANS.

Based on the amended plans, the cumulative impact upon views currently enjoyed from 29 Reddall Street is considered minor.

4. The amended plans, which minimise the pitch of the roof and increase the setback of the upper floor from the north-western side boundary, are considered to represent a skilful design solution that ensures view sharing between properties is achieved. The impact upon the views currently enjoyed from 29 Reddall Street is reasonable.

<u>31 Reddall Street</u>

1. The dwelling at 31 Reddall Street is located immediately to the south-west of the subject site. The occupants of the dwelling at 31 Reddall Street currently enjoy views to the ocean, including the surf break adjacent to Shelly Beach in a north-easterly direction.

2. The views are obtained from the living/dining room at the rear of the middle level of the dwelling in a north-easterly direction. The same views are also available from the bedroom on the level above and from the garden situated a level below. The views are obtained across the rear boundary and over down slope properties, including the subject site.

3. The proposed development will impact upon views towards Shelly Beach from the living/dining room, and to a much lesser degree, the bedroom above. The impact from the living/dining room of the original proposal is shown in the red outline in Image 3, below, with the impact of the amended proposal demonstrated by the semi-transparent outline slightly below. The amended development will result in the obstruction of the immediate foreground water view, consistent with the alignment of the roofs of the waterfront properties. The impact is considered to be minor.



Image 3 - View from living/dining room of 31 Reddall Street.
ORIGINAL AND AMENDED.
Source: Richard Lamb on behalf of 31 Reddall St.

The proposed upper floor addition will result in the total obstruction of the water views currently available from the rear garden, as shown in Image 4. The impact upon views from the garden is considered to be devastating.



Image 4 - View from rear garden of 31 Reddall Street.
ASSUMED AMENDED PROPOSAL.

However, in consideration of the vulnerability of the views currently enjoyed from the garden area, which would be lost as a result on any increase to the height of the existing dwelling, and noting the views retained from other areas of the dwelling, the cumulative impact upon views from 31 Reddall Street is considered to be minor.

4. Whilst the proposal will result in the complete loss of views from the rear garden, this impact is considered to be reasonable in circumstances where it is a compliant second storey addition that is creating the impact. The rear garden has benefited from the current views for an extended period of time, largely as a consequence of the comparably undeveloped/original state of the existing dwelling at 95 Bower Street.

   It is acknowledged that the pitch of the front gable roof of the proposed development at 95 Bower Street will result in a minor loss of water views. However, the impact is not considered to be offensive or detrimental to the retained view. This is somewhat affirmed within the submissions received, which confirm that a reasonable view sharing arrangement is achieved as a result of the amended plans (being the plans that represent the 370mm reduction to the ridge line suggested in the submissions).

97 Bower Street

1. The dwelling at 97 Bower Street is located to the north-west of the subject site. The occupants of the dwelling at 97 Bower Street currently enjoy views towards Shelly Beach and the ocean in a north-easterly direction. Views to St Patrick's Cathedral are also available in a south-easterly

direction.

2. The views towards Shelly Beach and the ocean are obtained from the study, master bedroom and ensuite on the lower level, the living area on the upper level, and from the roof deck. These views are obtained across the front boundary and over the top of down slope properties.

   The views towards St Patrick's Cathedral are gained from windows along the south-eastern side elevation at both the upper and lower levels and from the roof deck, across the side boundary and over the subject site.

3. The proposal will not result in any impacts upon views to the ocean from anywhere within the dwelling at 97 Bower Street. The impact of the proposal is limited to the view of St Patrick's Cathedral from the study on the lower level. The impact of the original proposal upon this view is shown in Image 5, below.



Image 5 - View from lower level study of 97 Bower Street (standing).
ORIGINAL PROPOSAL.
Source: Owner of 97 Bower Street.

The impact highlighted in Image 5 reflects the original proposal, which has since been lowered in height and setback an additional 4.39m from that shown, such that it is likely that the view will be wholly or partially retained. However, even if the view was to be lost in its entirety, the impact is still considered to be minor, as the primary outlook from the study is towards the ocean which remains unaffected by the proposal and as the view towards St Patrick's is otherwise retained from the levels above.

4. In circumstances where the siting of the upper floor is setback in compliance with the 6m setback control, and when that part of the development is maintained well below the height limit with a minimal roof pitch, the proposal is considered to be a skilful design solution, despite the level of impact upon this view corridor. The view corridor in question is highly vulnerable to obstruction by vegetation growth, particularly noting that the view is obstructed by existing vegetation from a seated position. The impact upon the views enjoyed from 97 Bower Street is reasonable and view sharing between properties is achieved.

Overall, the proposed development will not result in any unreasonable impacts upon views currently enjoyed, and the proposed development is consistent with the requirements and objectives of this clause.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

With a maximum height of 3 storeys in any one place, the proposed development is inconsistent with the two storey height limit prescribed by this control. A significant proportion of surrounding and nearby development reaches or exceeds three storeys in height, and as such, the height of the development in storeys cannot be said to be inconsistent with the character of the locality. Furthermore, the three storey element is limited is size/scale and does not contribute to any unreasonable impacts upon the amenity of adjoining properties.

Clause 4.1.2.2 of MDCP 2013 does not prescribe any specific objectives relating to the limitation on the number of storeys, but rather defers to the objectives of clause 4.3 (Height of buildings) of MLEP 2013. As discussed with regard to clause 4.3 of MLEP 2013, the proposed development is consistent with the objectives of the height of buildings development standard and as such, the proposed variation to the two storey height limit is supportable on merit.

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 $31,710 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $3,171,027.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

The applicant has worked with Council to satisfactorily resolve all concerns. The proposed development is considered to be a contextually appropriate response for the development of the site.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0668 for Alterations and additions to a dwelling house on land at Lot 81 DP 8076, 95 Bower 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**
DA02 Site Plan, issue C	10 December 2021	Your Beautiful Home
DA03 Basement, issue B	10 December 2021	Your Beautiful Home
DA04 Ground Floor, issue B	10 December 2021	Your Beautiful Home
DA05 First Floor, issue B	10 December 2021	Your Beautiful Home
DA06 Roof Plan, issue C	10 December 2021	Your Beautiful Home
DA07 North East Elevation, issue C	10 December 2021	Your Beautiful Home
DA08 South West Elevation, issue C	10 December 2021	Your Beautiful Home
DA09 North West Elevation, issue C	10 December 2021	Your Beautiful Home
DA10 South East Elevation, issue C	10 December 2021	Your Beautiful Home
DA11 Section A-A, issue C	10 December 2021	Your Beautiful Home
DA12 Section B-B, issue C	10 December 2021	Your Beautiful Home

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
SW-1, Drawing No. 21035, issue 1	22 April 2021	Michael Korecky
SW-2, Drawing No. 21035, issue 1	22 April 2021	Michael Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment Report	8 April 2021	Hugh the Arborist
BASIX Certificate A412525_03	24 May 2021	Efficient Living Pty Ltd
Flora and Fauna Assessment	6 May 2021	GIS Environmental Consultants

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Landscaping Master Plan	27 April 2021	Harrison's Landscaping

In the event of any inconsistency between conditions of this consent and the

drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

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

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must

not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $31,710.27 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 $3,171,026.50.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Amended Landscape Plan**
The approved Landscape Master Plan referenced in Condition 1 of this consent is to be amended, as follows:

a. Garden areas nominated in the Landscape Master Plan shall include detailed planting layouts including species selection, quantities, and pot sizes,
b. The three (3) nominated replacement trees within the front setback facing College Street shall be selected from Northern Beaches Council's Native Tree Guide - Manly Ward. With the exception of one direct replacement of the Cheese Tree species - *Glochiodion ferndinandi*, all trees are to be small trees, with a maturity height no more than 6 metres above natural ground,
c. Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings and other trees,
d. Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views,
e. All garden beds shall be mass planted including shrub planting at a 200mm pot container size, and groundcover planting at a 140mm pot size.
f. Provision of native plant species to provide new and/or improved low dense clumping habitat to provide for potential bandicoot foraging and nesting in accordance with Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat). The planting schedule should comprise species such as Lomandra sp. Dianella sp., Banksia spinulosa, Caustis sp., Xanthorrhoea sp., Isolepis sp., Juncus sp., Calochlaena sp., Callistemon sp., Gleichenia sp. and Grevillea 'Robyn Gordon'.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided

to the Certifying Authority prior to issue of the Construction Certificate.

Reason: Landscape amenity and habitat.

8. **Stormwater Disposal**
The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. The maximum discharge into the street kerb shall be 25 l/s.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. **Fencing for Wildlife Passage**
Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Plans are to be certified as complying with this condition and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

10. **Fencing for Wildlife Passage – Ecologist Certification**
Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

The Project Ecologist is to provide written certification of compliance to the Certifying Authority prior to issue of any Construction Certificate.

Reason: To preserve wildlife corridors.

11. **Project Ecologist**
A Project Ecologist is to be employed for the duration of the approved works.

The Project Ecologist must be an accredited assessor under the NSW Biodiversity Conservation Act 2016.

Employment of a Project Ecologist is to provide an engagement letter, which is to be submitted to and certified by the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

12. **Photographic Archival Record**

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

This record must be submitted and approved by the Certifiying 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:

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

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

13. **Amendments to Approved Plans - Heritage Consideration**
The following amendments are to be made to the approved plans:

a. The front balcony above the bay window is required to be set back from the sides, to allow this retained portion of the roof below to be at the same level (height) of the retained portion of the main roof (matching height at the internal corners). In other words, the retained portion of the original roof should include the sloping section of the roof above the bay window.
b. The first floor roof overhang should not exceed the width of the existing main roof overhang.

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

Reason: To allow the interpretation and preserve the significance of the original building.

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

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

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

Reason: To ensure all approved works are constructed within the subject site and in a manner

anticipated by the development consent.

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

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

Reason: To facilitate suitable vehicular access to private property.

16. **Materials & Finishes**
Details of the proposed colour scheme and finishes (clearly identified and cross referenced) must be provided to Council's Heritage Officer.

Written approval from Council's Heritage Officer is to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the materials and colours are complementary to the existing building.

17. **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.

18. **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.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):
i) T1 and T6 - Cheese Tree
ii) T5 - Tree Fern
iii) T7 - Brush Cherry

Existing trees T1, T6 and T7 are subject to tree replacement in accordance with the Amended Landscape Plan.

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

Reason: To enable authorised building works.

21. **Dead or Injured Wildlife**
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) 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 complaint 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.

24. **Road Reserve**
The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

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

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

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

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

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

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

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

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

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

27. **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.

28. **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.

29. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH 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.

30. **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.

31. **Implementation of Ecologist Recommendations**
All biodiversity-related measures recommended within the approved Flora and Fauna Assessment referenced in Condition 1 of this consent are to be implemented prior to and during construction

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

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 Amended Landscape Plan required by this consent.

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

Reason: Environmental amenity.

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/

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. **Bright Lighting**
No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

35. **No Weeds Imported On To The Site**
No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

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

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

36. **Certification of adherance with Ecologist Recommendations**
Prior to the issue of the occupation certification, the Project Ecologist is to provide the Principal Certifying Authority with written certification that the development has been undertaken in accordance with the recommendations of the Approved Flora and Fauna Assessment referenced in Condition 1 of this consent.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

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

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

Reason: Proper identification of buildings.

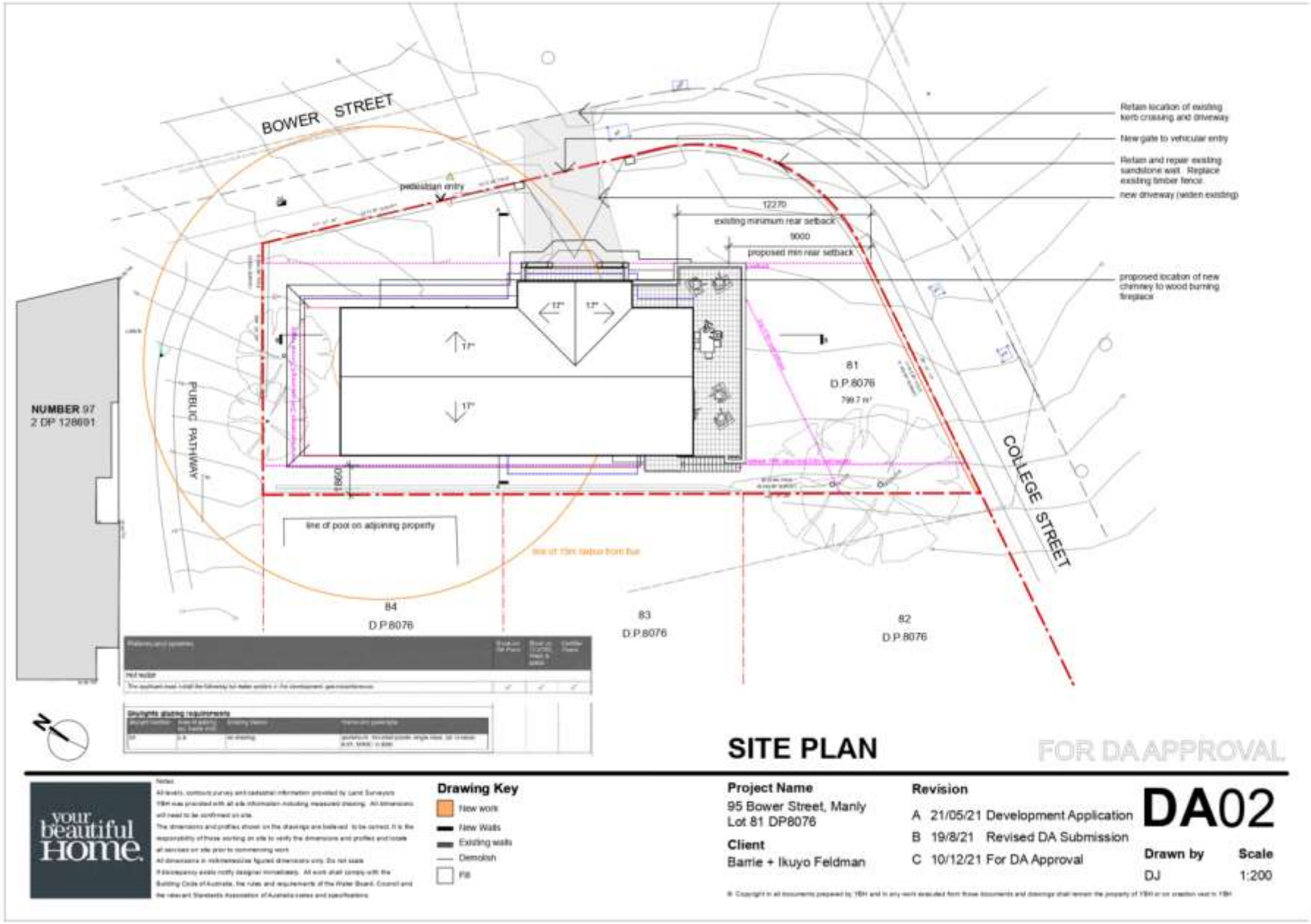
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

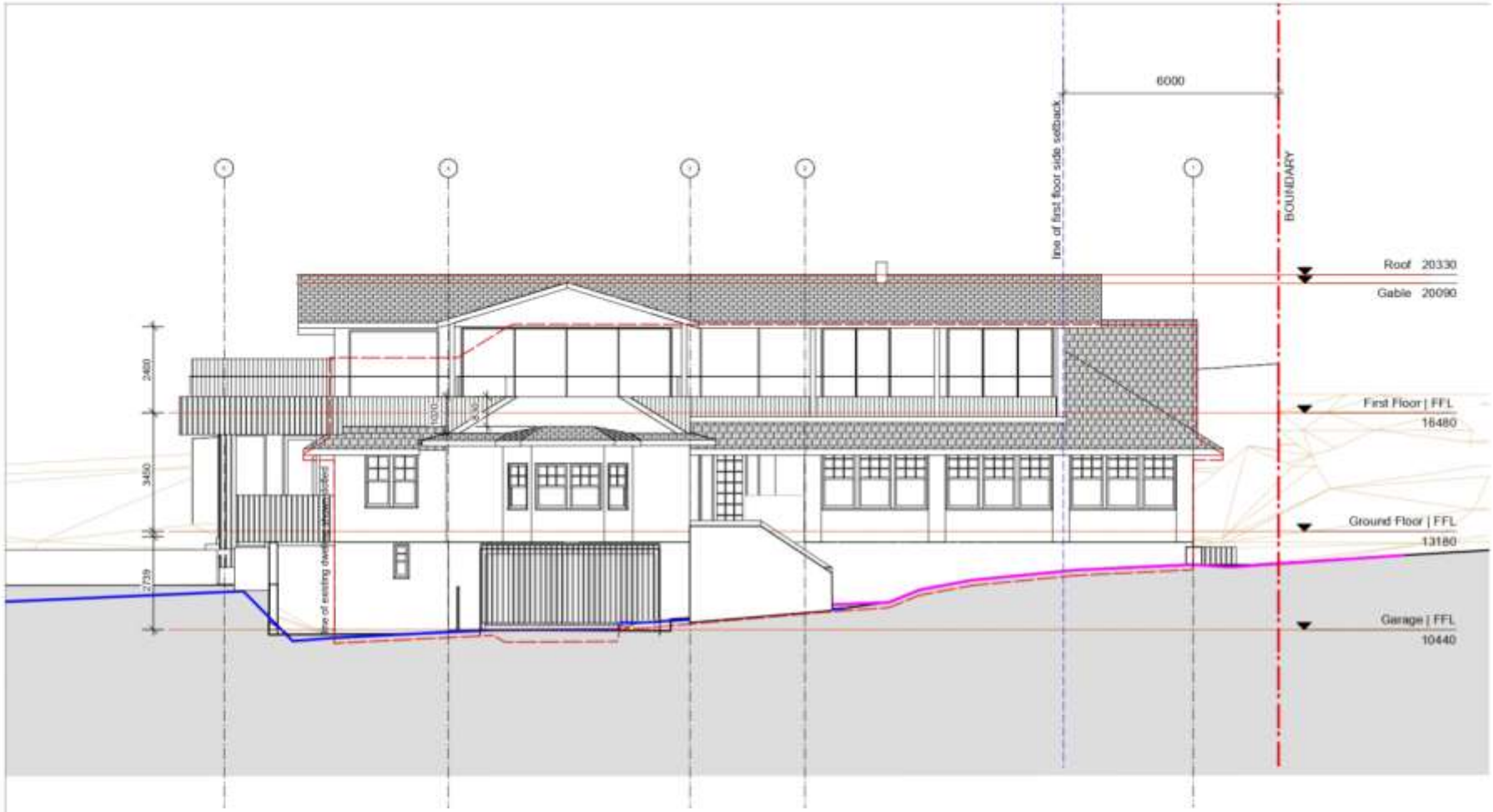
38. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time 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.


BOWER STREET
pedestrian entry
Retain location of existing kerb crossing and driveway
New gate to vehicular entry
Retain and repair existing sandstone wall. Replace existing timber fence.
new driveway (widen existing)
12270
existing minimum rear setback
9000
proposed min rear setback
proposed location of new chimney to wood burning fireplace
NUMBER 97
2 DP 128691
PUBLIC PATHWAY
81
D.P.8076
799.7 m²
COLLEGE STREET
line of pool on adjoining property
84
D.P.8076
83
D.P.8076
82
D.P.8076
SITE PLAN
FOR DA APPROVAL
your beautiful Home.
Drawing Key
New work
New Walls
Existing walls
Demolish
Fill
Project Name
95 Bower Street, Manly
Lot 81 DP8076
Client
Barrie + Ikuyo Feldman
Revision
A 21/05/21 Development Application
B 19/8/21 Revised DA Submission
C 10/12/21 For DA Approval
DA02
Drawn by
DJ
Scale
1:200



NORTH EAST | ELEVATION

FOR DA APPROVAL

your beautiful Home.

Notes:
All levels, contours survey and cadastral information provided by Land Surveyors
YBH was provided with all site information including measured drawing. All dimensions will need to be confirmed on site.
The dimensions and profiles shown on the drawings are believed to be correct. It is the responsibility of those working on site to verify the dimensions and profiles and locate all services on site prior to commencing work.
All dimensions in millimetres(no figure) dimensions only. Do not scale.
If discrepancy exists notify designer immediately. All work shall comply with the Building Code of Australia, the rules and requirements of the Water Board, Council and the relevant Standards Association of Australia codes and specifications.

Drawing Key
- New work
- New Walls
- Existing walls
- Demolish
- Fill

Project Name
95 Bower Street, Manly
Lot 81 DP8076

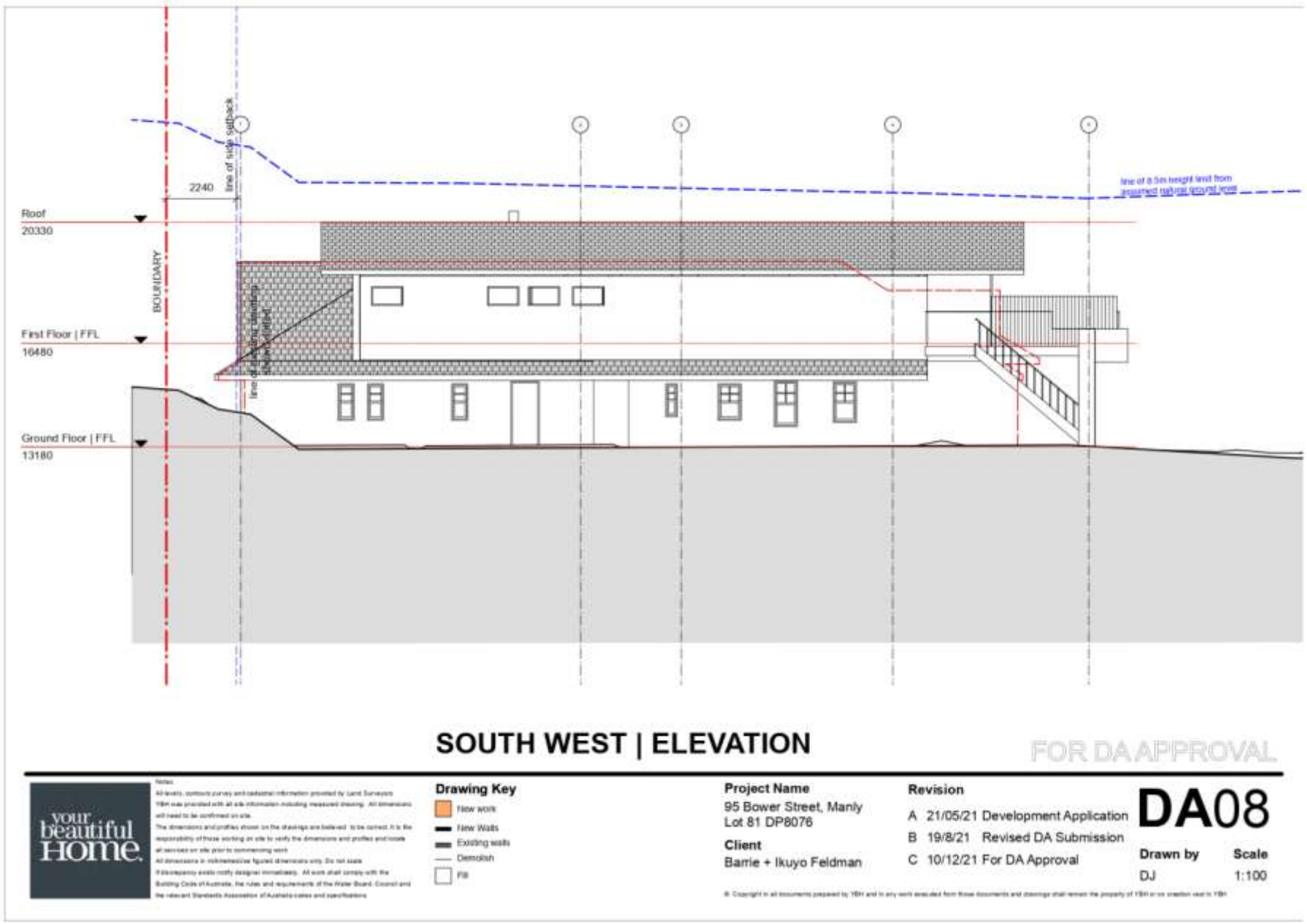
Client
Barrie + Ikuyo Feldman

Revision
A 21/05/21 Development Application
B 19/8/21 Revised DA Submission
C 10/12/21 For DA Approval

DA07

Drawn by DJ
Scale 1:100

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SOUTH WEST | ELEVATION

FOR DA APPROVAL

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Notes:
All levels, contours survey and cadastral information provided by Land Surveyors
YBH was provided with all site information including measured drawing. All dimensions will need to be confirmed on site.
The dimensions and profiles shown on the drawings are believed to be correct. It is the responsibility of those working on site to verify the dimensions and profiles and locate all services on site prior to commencing work.
All dimensions in millimetres/as figured dimensions only. Do not scale.
If discrepancy exists notify designer immediately. All work shall comply with the Building Code of Australia, the rules and requirements of the Water Board, Council and the relevant Standards Association of Australia codes and specifications.

Drawing Key
- New work
- New Walls
- Existing walls
- Demolish
- Fill

Project Name
95 Bower Street, Manly
Lot 81 DP8076

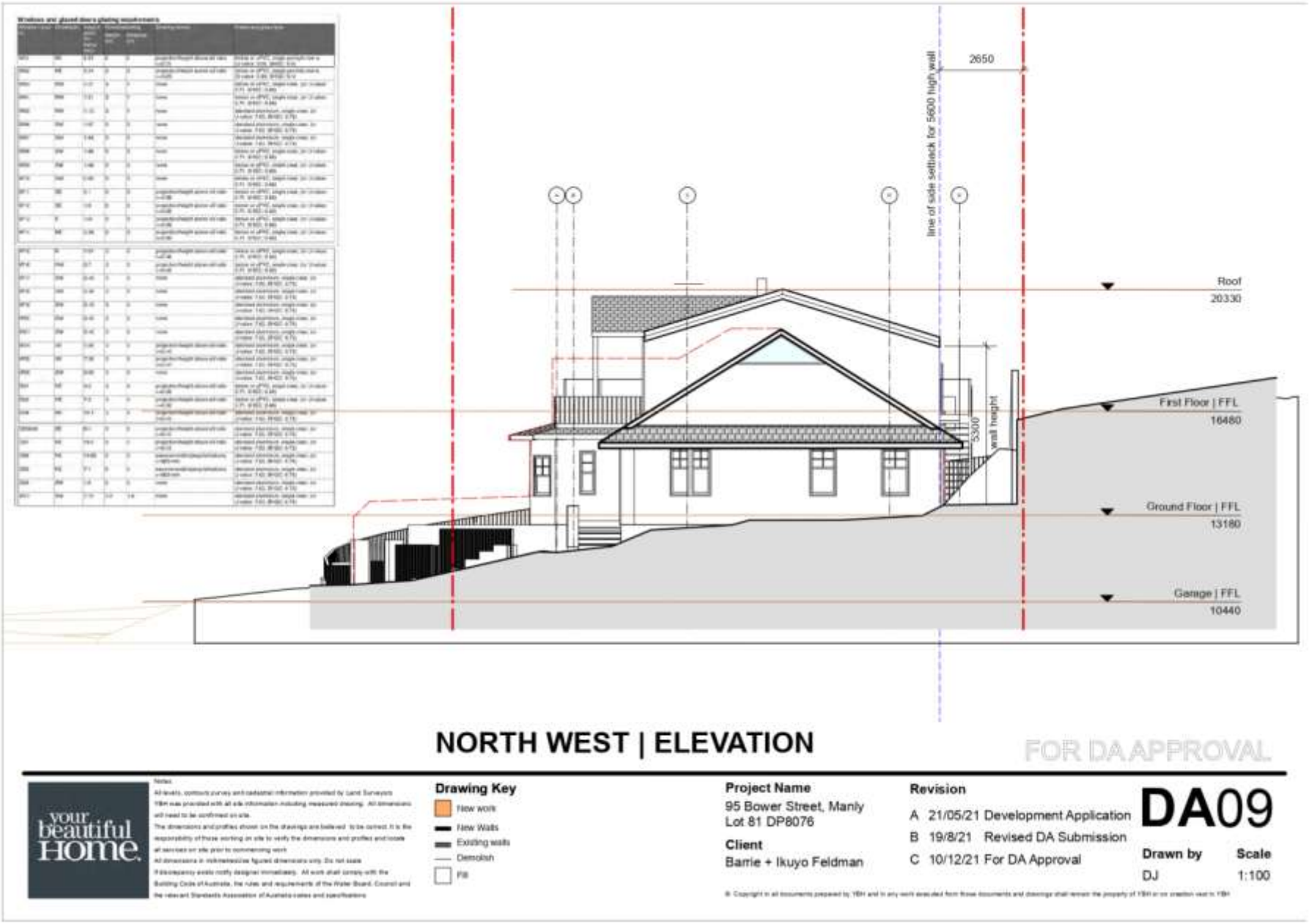
Client
Barrie + Ikuyo Feldman

Revision
A 21/05/21 Development Application
B 19/8/21 Revised DA Submission
C 10/12/21 For DA Approval

DA08

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Scale 1:100

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NORTH WEST | ELEVATION

FOR DA APPROVAL

your beautiful Home.

Drawing Key
- New work
- New Walls
- Existing walls
- Demolish
- Fill

Project Name
95 Bower Street, Manly
Lot 81 DP8076

Client
Barrie + Ikuyo Feldman

Revision
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B 19/8/21 Revised DA Submission
C 10/12/21 For DA Approval

DA09

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SOUTH EAST | ELEVATION

FOR DA APPROVAL

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Notes:
All levels, contours survey and cadastral information provided by Land Surveyors
YBH was provided with all site information including measured drawing. All dimensions will need to be confirmed on site.
The dimensions and profiles shown on the drawings are believed to be correct. It is the responsibility of those working on site to verify the dimensions and profiles and locate all services on site prior to commencing work.
All dimensions in millimetres(mm) figured dimensions only. Do not scale.
If discrepancy exists notify designer immediately. All work shall comply with the Building Code of Australia, the rules and requirements of the Water Board, Council and the relevant Standards Association of Australia codes and specifications.

Drawing Key
- New work
- New Walls
- Existing walls
- Demolish
- Fill

Project Name
95 Bower Street, Manly
Lot 81 DP8076

Client
Barrie + Ikuyo Feldman

Revision
A 21/05/21 Development Application
B 19/8/21 Revised DA Submission
C 10/12/21 For DA Approval

DA10

Drawn by DJ

Scale 1:100

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APPENDIX

REVISED WRITTEN REQUEST - CLAUSE 4.6 SUBMISSION MAXIMUM BUILDING HEIGHT

REVISED WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

95 BOWER STREET, MANLY

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S MAXIMUM BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For:	Additions and alterations to an existing dwelling
At:	95 Bower Street, Manly
Owner:	Barrie and Ikuyo Feldman
Applicant:	Barrie and Ikuyo Feldman C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This revised written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum height of a building as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This request considers the revised architectural plans prepared by Your Beautiful Home, Drawings No's 01-20 dated 1 September 2021, which have been prepared in response to issues raised by Northern Beaches Council in its initial assessment of DA2021/0668.

2.0 Background

Clause 4.3 of MLEP sets out the maximum height of a building as follows:

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

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
(b) to control the bulk and scale of buildings,
(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),
(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
The Height of Buildings Map specifies a maximum building height of 8.5m.

The proposed additions are up to 9.77m in height when measured above the excavated driveway level below the north-eastern elevation of the first floor gable roof, resulting in a non-compliance of 1.27m or 14.94% to the control, as noted in Figure 11 (Extract from Sheet DA18.3).

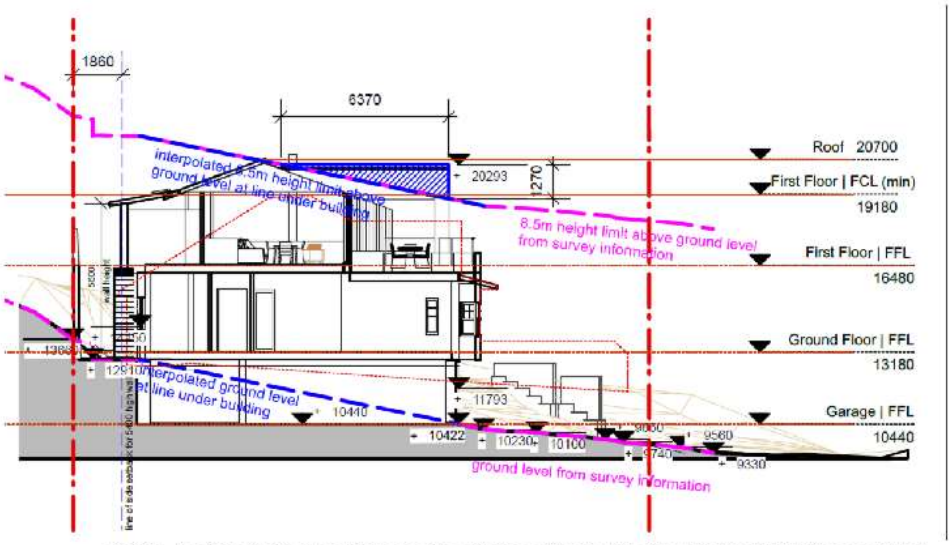


Fig 11: Section indicating proposed roof exceeding Council's Height of Buildings control (Source: Your Beautiful Home)

An examination of the site conditions indicates that the existing garage level and driveway has been excavated below the predominant yard levels of the site, which has contributed to the height of the proposed first floor and the gable roof over the north-eastern terrace.

Figures 12 (extract from Sheet DA 18.2) over represents an interpolated ground line through a section cut at the garage and upper floor terrace roof terrace which utilises the existing external ground levels to assess the pre-existing site conditions.

Figure 13 (extract from Sheet DA 18.2) represents the existing surveyed external ground levels from an external view of the dwelling and the relative height of the proposed works from the south-eastern elevation.

It is readily apparent from both Figures 12 & 13 that the that the visual height of the development when considered from most external views of the dwelling and when considered above the pre-existing interpolated ground level through the basement area, complies with the maximum 8.5m height control.

This approach was adopted is consistent with the interpretation of 'existing ground level' as established in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*.

The Bettar discussion considered the application of the height development standard and in the circumstances of that case, it was indicated relying on existing basement levels would result in the height control artificially rising and falling across the site. The Court took the approach of measuring height relating to the development proposal to its context in the streetscape. Accordingly, regard has been given to the height of the subject non-compliant aspects of the proposal and adopting this approach. When measured to the external ground levels, the building will largely appear as being less than the 8.5m in maximum height.

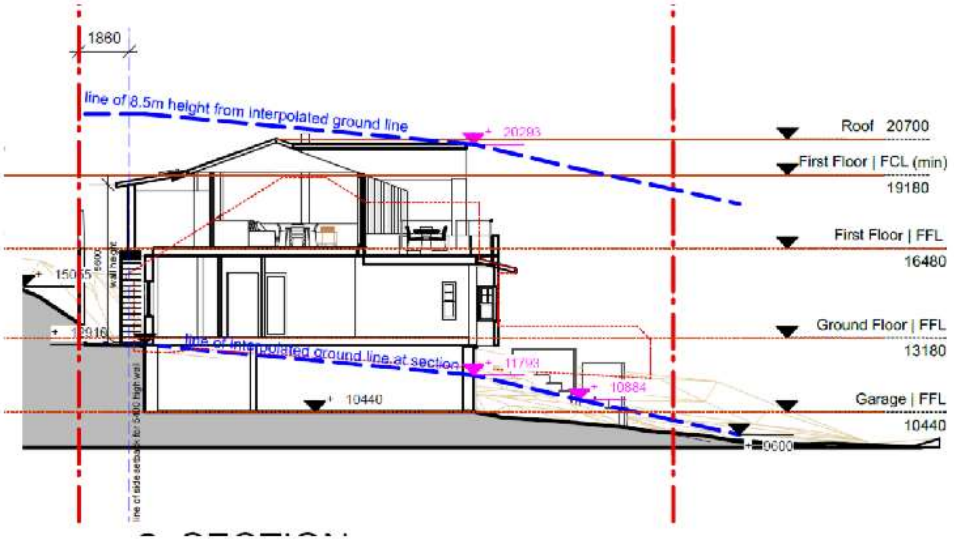


Fig 12: Section indicating proposed roof complying with Council's Height of Buildings control above interpolated ground level
(Source: Your Beautiful Home)

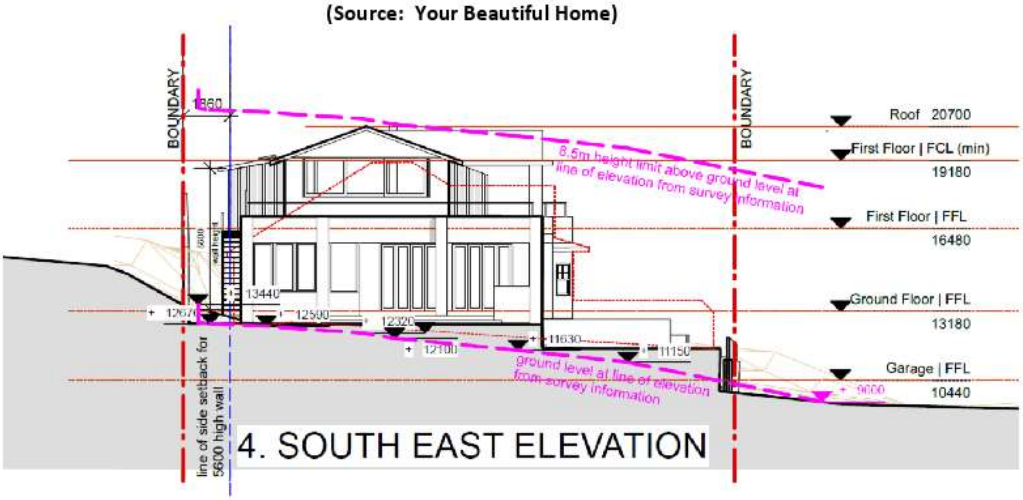


Fig 13: South-east elevation indicating proposed roof complying with Council's Height of Buildings control above surveyed external ground levels
(Source: Your Beautiful Home)

The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines "building height" as:

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

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

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

Is clause 4.3 of MLEP a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in relation to an aspect of the development and includes:

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

(b) Clause 4.3 relates to the maximum height of a building. Accordingly, clause 4.3 is a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument 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 Standard Instrument 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 relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of MLEP 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 MLEP 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 height of a building standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the maximum height of a building development standard pursuant to clause 4.3 of MLEP which specifies a maximum building height of 8.5m. As a consequence of the site slope towards the front boundary and the existing built form the proposal will present a maximum height of 9.77m or exceed the height control by 1.27m or 14.94%.

The element of the proposed development which exceeds the maximum height control is the proposed gable roof cover above the first floor south-eastern terrace, located directly of the main living rooms of the dwelling. The gable roof form has been specifically included as it represents a compatible scale and style to the existing gable roof of the single story dwelling (see Figure 14 below) and makes in important contribution to the architectural consistency of the proposed alterations with the current dwelling, continuing its relationship with east history of the site and the surrounding development.



Fig 14: Existing view of the subject dwelling, looking south-east from Bower Street, indicating the existing gable roof form which is to be replicated immediately above this portion of the dwelling, and over the proposed first floor terrace
(Source: Your Beautiful Home)

In this instance, 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 MLEP provides:

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

(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

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

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

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 MLEP 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 4.4 of MLEP from the operation of clause 4.6.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum height of a building development standard contained in clause 4.3 of MLEP.

5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m for development in this part of Manly.

5.3 The proposed alterations and additions to the dwelling will present a maximum height of will 9.77m or a non-compliance of 1.27m which is a variation to the height control of 14.94%.

6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP 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 R1 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 MLEP?

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 provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

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

The proposal seeks to accommodate the additions within a complimentary building form, with the slope of the site towards the street resulting in a portion of the gable roof form over the first floor eastern terrace being up to 9.77m in height.

As previously detailed in Figure 14, the element of the building which exceeds the maximum height control relates to the proposed gable roof over the north eastern first floor terrace, which is a design approach to retain the current style and form of the gable element facing Bower Street and reflect the streetscape contribution of the existing dwelling within the new works.

The overall building height respects the surrounding character and the design seeks to minimise the visual impact through the modest roof form and articulated wall lines.

The proposed external colour and materials palette utilises darker finishes to the building façades and is intended to ensure that the building's visual height and scale is further minimised.

The proposal has been architecturally designed to complement the streetscape. The desired future character is not defined in the planning controls, but the proposal is consistent with topographical landscape, the prevailing building height and the LEP & DCP controls which form the future character in the area.

This objective is achieved.

(b) to control the bulk and scale of buildings,

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

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.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and low profile roof form will suitably distribute the bulk of the new floor area.

(c) to minimise disruption to the following:

- ***(i) views to nearby residential development from public spaces (including the harbour and foreshores),***
- ***(ii) views from nearby residential development to public spaces (including the harbour and foreshores),***
- ***(iii) views between public spaces (including the harbour and foreshores),***

Due to the general slope of the site towards the north-east, the neighbouring properties enjoy views towards Cabbage Tree Bay.

The proposal will provide for a low profile roof form which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

As the proposal will see the construction of alterations and additions to an existing dwelling, the shadow analysis prepared by Your Beautiful Home details the proposed shadow impacts.

The assessment confirms that the proposed alterations and additions will not result in any change to the existing solar access available to neighbouring properties.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The new works are contained within an existing disturbed area of the site, and maintain suitable separation from the foreshore. The site is not within a conservation area, and will not detract from the significance of any nearby heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Bower Street and will reflect the existing single dwelling uses in the vicinity.

A suitable area of soft landscaping is maintained.

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 low pitch roof form maintains modulation and architectural relief to the building's facade, and distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, whilst maintaining a modest bulk and scale, which promotes good design and improves the amenity of the built environment (1.3(g).

- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings 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 additional floor area will provide for improved amenity within a built form which is compatible with the Bower Street locality which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new works which include a compatible style and character, reflected through the introduction of the complementary gable roof form over the first floor terrace which retains the style and form of the dwelling as it currently contributes to Bower Street is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the maximum building height and manages the bulk and scale and maintains views over and past the building from the public and private domain.

The element which breaches the height control plays an important architectural role in maintaining the existing streetscape character of the development and by paying respect to the current built form elements, reinforce the buildings important historic contribution to the locality.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio 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 R1 General Residential 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 R1 General Residential zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation to the building height control, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R1 General Residential zone for the following reasons:

- ***To provide for the housing needs of the community***

The proposal provides for alterations and additions to an existing dwelling, which is permissible development within the R1 zone.

The proposal will maintain a generous area of soft landscaping. The existing vegetation on site will be retained and assist with softening and screening the built form of the development.

The proposed alterations and additions maintain a similar bulk and scale to the existing development on site, and will therefore not be overbearing within the foreshore locality.

The new works are therefore considered to be in keeping with the ecological and aesthetic values within the locality.

- ***To provide for a variety of housing types and densities***

As outlined above, the proposal maintains a detached single dwelling, which is suitable for the subject site.

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

This control does not directly relate to the subject development.

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 MLEP?

(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.

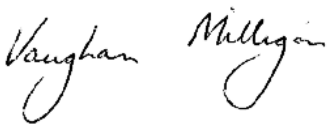
8.0 Conclusion

This development proposes a departure from the maximum height of a building control, with the proposed additions to the existing dwelling to provide a maximum overall height of 9.77m. The new works will respect and complements the site's location.

This written request to vary to the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.3	**DA2021/1448 - 106 PRINCE ALFRED PARADE NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE, INCLUDING A DETACHED DOUBLE CARPORT AND SWIMMING POOL**
REPORTING MANAGER	**TONY COLLIER**
TRIM FILE REF	**2021/864402**
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 DA2021/1448 for Alterations and additions to a dwelling house, including a detached double carport and swimming pool on land at Lot 25 DP 13457 and Lot PO 5606, 106 Prince Alfred Parade Newport, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1448

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 25 DP 13457, 106 Prince Alfred Parade NEWPORT NSW 2106 Lot PO 5606, 106 Prince Alfred Parade NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house, including a detached double carport and swimming pool
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:	Teresa Aruego Easter
Applicant:	Bruce Stafford & Associates Pty Ltd

Application Lodged:	20/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/08/2021 to 14/09/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 19.53%
Recommendation:	Approval

Estimated Cost of Works:	$ 985,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Development Application DA2021/1448 for alterations and additions to a dwelling house, including a detached double carport and swimming pool at 106 Prince Alfred Parade, Newport.

The maximum building height of the proposed development is 10.16m above the existing ground level, which represents a 19.53% variation to the Height of Buildings Development Standard. As the variation to the height standard exceeds 10%, the application is referred to the DDP for determination.

The applicant has demonstrated that compliance with the height standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 19.53% variation to Clause 4.3 of Pittwater LEP 2014.

When considered on its merits, the bulk and scale of the resulting development is considered to be acceptable in the circumstances of the case, noting that the proposed alterations result in lowering the building by 1.34m and that the side elevations of the dwelling house will be retained. The proposed alterations to the northern (rear) façade result in a terraced style built form that steps down in height with the slope of the land. These factors will ultimately improve the dwelling's presentation to the foreshore area and Pittwater waterway.

The application was exhibited for 14 days and did not receive any submissions.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

The application is recommended for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house. Specifically, the works are as follows:

Driveway, Carport and Access

- Remove existing driveway.
- Demolish existing hipped roof carport and construct a new double carport with a flat roof.
- New storage under proposed carport.
- New driveway crossover and access stairs within the road reserve.

Roof

- Demolish existing hipped roof and reconstruct a flat roof.

Level 3

- Internal alterations to provide a modified floor plan, at large consisting of bedrooms and bathrooms.
- New windows.
- Lift shaft.
- New external balcony on rear (north) elevation.
- Retention of side walls.

Level 2

- Internal alterations to provide a modified floor plan, at large consisting of kitchen, living and dining rooms.
- Removal of internal stairs and provide new staircase.
- Lift shaft.
- New windows.

- New partially covered external balcony to provide outdoor dining/living area.
- Retention of side walls.

Level 1

- Internal alterations to provide a modified floor plan, at large consisting of a rumpus room, pool room, gym, guest bedroom and a bathroom, with steam room/sauna.
- The existing walls and roof over the pool are to be removed and the existing swimming pool is to be reconfigured by reducing the size/length of the pool.
- New windows.
- Retention of side walls.

Ancillary Works

- Landscaping and external stairs.
- Reparation works below Mean High Water Mark to jetty stairs, sea wall and boat shed.

Note: Conditions have been included with this consent to remove any works below the Mean High Water Mark (MHWM) and the Boat Shed from the approved scope of works. This is discussed in further detail under the 'Application History' section of this assessment report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.10 Newport Locality
Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential

Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D10.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D10.4 Building colours and materials
Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 25 DP 13457 , 106 Prince Alfred Parade NEWPORT NSW 2106 Lot PO 5606 , 106 Prince Alfred Parade NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Prince Alfred Parade, Newport. The site is regular in shape with a frontage of 13.54m and respective depths of 42.67m and 44.5m along the eastern and western side boundaries. The site has a surveyed area of 581.7sqm. The site is located within the E4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a three storey dwelling house, including a swimming pool within an enclosed area. Existing waterway structures (boatshed and jetty) located below the MHWM serve the site. The site includes canopy trees within the front and rear portions of the site, including species' representative of the endangered Pittwater Spotted Gum Community. The site experiences a fall of approximately 15m that slopes away from the front boundary towards the MHWM, representing an approximate slope of 33.7% across the entire site. The site is environmentally constrained with landslip and estuarine flooding hazards. **Description of Surrounding Development** The surrounding built environment is characterised by detached low density residential development on sloping sites, typically 2-3 storeys in height. Numerous waterway structures are also prevalent within the locality.

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 no recent or relevant applications for the site.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 1 October 2021.

Following the preliminary assessment of the application, which included the afore-mentioned site visit, Council wrote to the applicant raising concern of the following aspects of the proposal:

- Estuarine Hazard Management
  The alterations to the boat shed are located below the adopted estuarine flood planning level and an Estuarine Risk Management Report was not submitted with this application.

- Works below MHWM
  The application involved works below the MHWM and the required land owners consent from the Department of Crown Lands was not submitted with this application.

- Parking and Access
  The applicant had not demonstrated that the driveway and carport satisfied the grades and dimensions outlined within *AS2890.* Additionally, the access stairs within the road reserve did not demonstrate a minimum 2.5m clearance from the road edge.

- Visual Privacy
  The large entertaining deck located off the kitchen, living and dining areas posed unreasonable privacy implications. Council requested that privacy screens be erected along the eastern and western elevations to prevent overlooking into adjacent properties.

- Clause 4.6 Request

Council requested that the applicant's Clause 4.6 written request prepared for the building height non-compliance be amended to correctly reference the maximum building height in relation to an extrapolated ground line across the sloping site. The Clause 4.6 initially referred to the finished floor level on the lower ground floor as the existing ground level, which is an incorrect approach to calculating building height.

Following discussions with the applicant, written correspondence was provided to Council by the applicant requesting that conditions be imposed to delete the works to the boat shed, inclusive of any additional works below the MHWM. This has been discussed with Council's Coast and Catchments Officer who is supportive of the conditions to delete these works.

Furthermore, the applicant submitted amended plans to include two 1.65m high privacy screens along the eastern and western elevations of the level 2 elevated deck, including additional amendments to address Council's concerns that pertained to parking and access. Furthermore, a revised Clause 4.6 written request was submitted to correctly stipulate the maximum building height.

The amended plans constituted a reduced environmental impact. 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and a revised Clause 4.6 written request.

Section 4.15 Matters for Consideration	Comments
	Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 31/08/2021 to 14/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	No objection if the proposed fireplace that is gas and recommendation of approval no conditions recommendation of refusal if the heater is a solid fuel heater due to lack of information. There does not appears to be details provided with regards to the make and model of the heater and any installation details that will determine if the appropriate Australian Standards will be met. If the applicant wants to install a Solid fuel heater the following information is require with a new Development Application or Section 68 Local Government Act application: 1. Provide evidence that the flue pipe will extend not less than 4.6m above the top of the floor protector. 2. If the flue is 3m or less in horizontal distance from the highest point of the roof, is the top of the flue at least 600mm above the highest point of the roof? 3. If the flue is over 3m metres in horizontal distance from the highest point of the roof, is the height of the flue at least 1000mm above the roof penetration? 4. Provide council evidence that the topography of the site or likely weather patterns or configuration of nearby dwelling/s indicate a potential to cause a smoke nuisance? (Include on site plan) 5. Provide evidence that there are not any significant trees or other environmental or structural factors in the immediate vicinity that may cause a smoke down draught? (Include on site plan) 6. The application must contain site, floor and elevation plans drawn to a scale of 1:100 or 1:200 clearly demonstrating the location of the proposed heater and the proposed flue in relation to the roof line of the dwelling and the closest neighbouring dwelling/building. 7. Provide detailed evidence to Council that the application contains specifications of the appliance to be installed indicating compliance with AS/NZS 2918:2001 and the Building Code of Australia? 8. Provide evidence that the proposed heater will meet the emission control requirements of AS 4013.1999/AS 4013.2014? 9. Provide evidence that the installation will meet the requirements of AS/NZS 2918.2001 **Recommendation** Refusal.

Internal Referral Body	Comments
	Planner Comment Council has received written correspondence from the applicant confirming that the fire place is a gas device. A condition is included with this consent to ensure the fire place is used as a gas device.
Landscape Officer	The development application is for alterations and additions to the existing house and a new carport at the front and reconfigured front access path and stairs down to the entry to the house, and additional landscape works. 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. • D10 Newport 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. A Landscape Plan and a Arboricultural Impact Statement are provided with the application. The landscape works include a new path and elevated stairs and landing within the front, around the two gum trees to an entry gate on the front boundary. The existing indoor swimming pool is to have the enclosing walls and roof removed and is to be reduced in size and landscaping is proposed on the low side in front of the pool wall. The existing Spotted Gum trees are retained by the proposed works including two within the front of the property and four at the rear of the property. Tree protection measures and arboricultural recommendations are provided in the Arboricultural Impact Statement, and conditions shall be imposed. The proposal maintains the intent of the E4 zone landscape outcome through the retention of existing canopy trees and additional landscape works. Any new landscape works are to be contained within the property boundaries and no physical encroachments are permitted beyond the property boundaries. Any new proposed works within the road reserve are the subject of a minor encroachment application to Council.
NECC (Bushland and Biodiversity)	Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls: • Pittwater LEP cl. 7.6 Biodiversity Protection.

Internal Referral Body	Comments
	• Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community. • Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area. The Development Application seeks consent for alterations and additions to an existing dwelling, including a new carport at the front and reconfigured front access path and stairs down to the entry to the house. An Arboricultural Impact Assessment (Jacksons Nature Works, June 2021) was submitted with the application which recommends the retention and protection of all native canopy trees within the site. As the proposal does not require the removal of native prescribed trees or vegetation, nor will it impact on nearby biodiversity values, Council's Biodiversity referrals team are satisfied that the development complies with the relevant biodiversity controls listed above.
NECC (Coast and Catchments)	The development proposal is for a new carport, alterations and additions to the existing dwelling and indoor swimming pool, alterations to the existing boatshed as well as associated landscaping at 106 Prince Alfred Parade, Newport. A preliminary assessment of the application has been made in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP. The development proposal, however, has not provided sufficient information to enable the assessment to be completed. **Pittwater LEP 2014 and Pittwater 21 DCP** <u>Estuarine Hazard Management</u> The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.68m AHD applies at the subject site. While the proposed new carport and alterations and additions to the dwelling and swimming pool are above the adopted EPL, the existing floor level for the boat shed (RL 2.22m AHD) is below the EPL. Proposed alterations to the boat shed trigger the provisions of B3.7 Estuarine Hazard controls in P21 DCP. Variations to the B3.7 Controls provides that consideration may be given on a merit basis to

Internal Referral Body	Comments
	a floor level of a boat shed at a level lower than the Estuarine Planning Level where it can be demonstrated through an Estuarine Risk Management Report that the proposed development of the boat shed is structurally designed to withstand periodic wave action and tidal inundation up to the Estuarine Planning Level. An Estuarine Risk Management Report must address the objectives and relevant requirements of the Estuarine Risk Management Policy for Development in Pittwater as well as those of the CM Act and CM SEPP. The report must be prepared by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and with coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance. <u>Development Seaward of Mean High Water Mark</u> Works located on Crown land below the Mean High Water Mark are proposed as a part of the subject DA including to repair/make good the existing seawall, repair/make good the existing stair to the foreshore and repair/make good the front of the boat shed. The nature and extent of the proposed repair/make good works have not been defined in the submitted plans and needs to be clarified and elaborated. Landowner's consent to lodge a DA will need to be provided from the Department of Planning, Industry and Environment – Crown Lands for the proposed work on Crown foreshore and waterway below the MHWM. The relevant requirements of Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP will also apply to the proposed development. The DA will be further assessed on receipt of the requested additional information including an Estuarine Risk Management Report. **<u>Planning Comment</u>** Conditions have been imposed to delete the works to the boat shed, inclusive of works below the MHWM, from the approved scope of works. Amended plans must be submitted to the Certifying Authority prior to the issue of the Construction Certificate to demonstrate compliance with these conditions.
NECC (Development Engineering)	**Updated response (26/11/2021)** The amended plans have been reviewed. A minor encroachment application shall be made for the landscape works and elevated walkway within the road reserve as conditioned in accordance with Council's Encroachment/Construction and Road Reserve Lease Policy. No objections to approval subject to conditions as recommended.

Internal Referral Body	Comments
	Original response (29/10/2021) The proposal is for alterations and additions to the existing dwelling including a new driveway and access stairs located on the road reserve. <u>Access</u> Insufficient information has been provided with regard to the proposed access driveway. the following additional information is required for assessment: • The current plans shows no dimension for the proposed driveway or carport. The applicant shall provide plans showing dimensions for the proposed driveway at both the kerb and boundary as well as the carport. • The Applicant shall provide engineering long-sections at both edges of the proposed access driveway to the proposed carport and demonstrate compliance with AS2890. The long sections are to include distances, existing levels and proposed levels. The driveway shall incorporate one of Council's standard vehicle crossing profiles. Additionally the Road Asset team have requested clarification on a number of issues which must be addressed in the amended plans. The plans must address the following as per Road Asset Comments: • *The proposed elevated walkway does not provide sufficient clearance from the road carriageway for safety requirements. A 2.5m road shoulder clearance from edge of carriageway to be maintained clear of obstructions.* • *Also of concern is the existing stairway and apparent drop from road level without any physical barrier. It is recommended that consideration will need to be given to resolving this safety concern.* • *The elevated walkway within the property boundary must not rely on support from within the public road reserve, that is, foundations are to be located within the property. The section of elevated walkway on the public road reserve is not to provide support for structures/walkway within the property.*
Parks, reserves, beaches, foreshore	The development application is for alterations and additions to the existing house and a new carport at the front and reconfigured front access path and stairs down to the entry to the house, and additional landscape works. The site adjoins Pittwater foreshore located downslope of the property, and all works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site

Internal Referral Body	Comments
	boundaries and prevented from entering the Pittwater foreshore, and is subject to conditions of consent.
Road Reserve	**Updated response (25/11/21)** No objection to amended plans. Development Engineering Team to require the submission of a consolidated s.138 Road Act Application and Engineering Design plans addressing the above. **Original response (26/09/2021)** There is limited impact on existing road infrastructure assets however the proposed pedestrian walkway encroaches excessively into the road shoulder area. Also of concern is the existing stairway and apparent drop from road level without any physical barrier. It is recommended that consideration will need to be given to resolving this safety concern The proposed elevated walkway does not provide sufficient clearance from the road carriageway and will need to be relocated to maintain clear zone safety requirements. A 2.5m road shoulder clearance from edge of carriageway to be maintained clear of obstructions. The elevated walkway within the property boundary must not rely on support from within the public road reserve, that is, foundations are to be located within the property. The section of elevated walkway on the public road reserve is not to provide support for structures/walkway within the property. Details will need to be submitted as part of s.138 Road Act application for structures and works within the road reserve. Landscaping proposal to be subject to an encroachment application or included as part of s138 Road Act application. Plant selections will need to comply with Former Pittwater Council Streetscape Management Guidelines Development Engineering Team to require the submission of a s138 Road Act Application for the redesigned elevated walkway in conjunction with suspended driveway and any other works within the public road reserve.

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

External Referral Body	Comments
	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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged with this application (see BASIX Certificate No. A416550, dated 6 July 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:

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

SEPP (Coastal Management) 2018

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

Comment:

The proposed development, as amended via conditions, does not include works below the MHWM. Furthermore, the proposal will not result in the removal of native canopy trees on the site. In this regard, the proposal is unlikely to have an adverse impact upon native flora and fauna within the coastal zone, including marine vegetation. Sediment and erosion control measures have been conditioned which will reduce the likeliness of siltation of the Pittwater waterway.

The existing access arrangements to the foreshore from the site will be largely maintained, whilst conditions have been included with this consent to exclude the works below the MHWM from the approved development. Therefore, the proposed development will not preclude access to or along the foreshore area, nor will the development impact the use of the surf zone.

The application has been referred to the Aboriginal Heritage Office, who have reviewed the application and noted that the site is subject to previous disturbance and thus, the works are unlikely to impact upon Aboriginal cultural heritage, practices or places.

For the reasons outlined above, it is concluded that the development is designed, sited and will be managed to avoid an adverse impact referred to in Clause 13.

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:

As noted above, the proposal will not impact Aboriginal Cultural Heritage, practices or places or preclude access to or along the foreshore.

Noting the north-south orientation of the allotment and that the foreshore area is located to the north

(rear) of the site, the proposal will not result in overshadowing of the foreshore area. Furthermore, the works are appropriately scaled and sited to prevent wind funnelling or significant view impacts to or from public places.

The site is not located within a heritage conservation area or within the vicinity of items identified with local or state heritage significance. Therefore, the proposal will not impact upon cultural and built environmental heritage

The Development Assessment Planner has taken into account the surrounding coastal and built and environment and concluded that the proposed development is appropriately scaled and sited, such it will maintain an appropriate visual relationship with the surrounding environment.

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 has been adequately designed to respond to the environmental constraints of the site, such that it can be stated that the proposed development is not likely to cause increased risk of coastal hazards within the locality.

Conclusion

Based off the above assessment, it is concluded that the proposed development demonstrates consistency with the relevant matters prescribed within the SEPP (Coastal Management) 2018.

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	10.16m	19.53%	**No**

Note: The maximum building height is taken from RL20.11.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

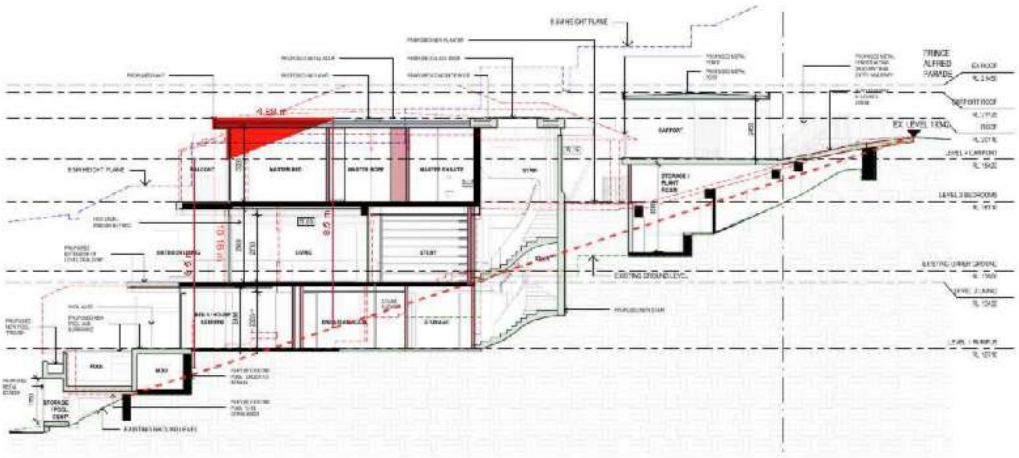
Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.16m
Percentage variation to requirement:	19.53%

The site is subject to an 8.5m maximum building height under the requirements of Clause 4.3 of Pittwater LEP 2014. The proposed development contains a maximum building height of 10.16m, which represents a 19.53% variation from the Development Standard. The extent of the non-compliance occurs for a horizontal length of 4.88m. The exemption provisions detailed within Clause 2D of Pittwater LEP 2014 are not applicable as the maximum building height is over 10m.

It is important to note that the hipped roofline of the existing dwelling house has a maximum building height of 9.97m and is sited at RL21.45. Whilst the new flat roofline is situated 1.34m below the ridge of the existing roofline, being sited at RL20.11, the maximum building height relative to the existing ground level is increased by 190mm.

Figure 1 below depicts the areas of the proposal that protrude above the 8.5m height plane.

Figure 1: *section plan highlighting the proposed 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 subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request argues, in part:

"The environmental planning grounds that are unique to the site and the proposal is the actual reduction in building height and scale.

Whilst the proposal involves a breach of the height of buildings standard on the north end of the building, the height of the building and the roof will actually be lower in height compared to the existing pitched tile roof that is to be replaced with a new low profile, low pitched metal roof.

The house will be lower in height compared to the existing higher pitched roof and will be reduced in bulk and scale by the new low profile roof and removal of the enclosure of the existing swimming pool as well.

In this regard, a variation to the height of buildings standard would be reasonable and appropriate because the proposal alterations do not involve any adverse visual impact when viewed from the bay or from adjoining properties, and the amenity of the adjoining properties will also be maintained to an acceptable degree.

The proposal will be consistent with the aims and objectives of the Pittwater LEP, the objectives of the height of buildings standard and the objectives of the E4 Environmental Living Zone.

The absence or lack of environmental harm in this case, with specific reference to the adjoining properties and more generally the locality, is also an appropriate environmental planning ground to justify contravening the development standard.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in Initial Action v Woollahra Council (2018) NSWLEC 118.

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in Randwick City Council v Micaul Holdings Pty Ltd at [34], in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

The underlying objectives of the height of buildings standard is to minimise adverse amenity impacts specifically in relation to solar access and views.

In relation to the subject proposal, there will be no adverse impacts on the amenity of the surrounding properties or the locality by virtue of the breach of the height of buildings standard on the north end of the roof. The proposal is also consistent with the objectives of the E4 Environmental Living Zone, as outlined in Part 4 of this statement.

The absence of any adverse amenity impacts from the elements of the proposed additions to the house that breach the height of building standard are also environmental planning grounds that justify the departure from the height of buildings standard.

In terms of the Objects of the EPA&Act, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

The proposal will be consistent with the objectives of the EP&AAct and the aims and objectives of the LEP, the objectives of the height of buildings standard and the objectives of the E4 Environmental Living Zone.

For these reasons, there are sufficient environmental planning grounds as outlined that are particular to the circumstances of the site and the proposed alterations and additions to the existing house, to justify the departure from the height of buildings standard".

Planner Comment:

Council's Development Assessment Planner generally concurs with the applicant's justification.

It is agreed that that despite the height breach the roofline of the proposed development will lowered by 1.34m, which assists in reducing the bulk and scale of the existing development on the site. This is achieved through employing a flat roof profile, whereas the existing dwelling house includes a hipped roofline.

It is accepted that the building height non-compliance will not adversely impact upon the amenity of adjoining properties, specifically with regards to solar access or views. Given the north-south orientation of the allotments, sloping topography that falls towards the north and lowering of the roofline, adjacent properties will retain adequate direct sunlight to private open space and north facing living room windows on June 21. Furthermore, the eastern and western adjacent sites (No's 108 and 104 respectively) will maintain the primary view lines over the rear (north) boundaries towards the Pittwater waterway, whilst any views from dwelling houses located to the south (upslope) will be unaffected by the height breach given the 1.34m reduction in building height (potential view impacts resulting from

carport are addressed under the section of this report relating to Clause C1.3 of the Pittwater 21 DCP).

It is also agreed that the proposed development will not result in any unreasonable visual impacts, notwithstanding the height breach. The proposed development incorporates façade articulation on all levels of the rear elevation and employs a terraced style built form that steps down in height with the slope of the land. These design treatments, coupled with the 1.34m reduction in roof height, assist in visually reducing the bulk and scale of the built form when viewed from the foreshore area and Pittwater waterway.

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 Clauses 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

> *a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
>
> Comment:
>
> The proposed development results in a 1.34m reduction in building height and does not increase the number of storeys of the existing dwelling house. The scale of the resulting development will remain consistent to that of adjacent and nearby dwellings, noting that Prince Alfred Parade accommodates numerous three storey dwelling houses. Furthermore, the proposed development is consistent with the intent of the Newport Desired Future Locality Statement. A detailed

discussion of this matter is provided in the section of this report relating to Clause A4.10 of the Pittwater 21 DCP.

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

Comment:

As noted above, the resulting dwelling house will be consistent with the height and scale of nearby development along Prince Alfred Parade.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Adjacent private open space and living room spaces are sited towards the rear of dwelling houses and are orientated towards the north to allow for the enjoyment of water views of the Pittwater waterway. Additionally, adjacent dwelling houses contain numerous glazing on northern elevations to ensure that water views are enjoyed from living rooms and various other internal areas within the dwelling houses. Given the north-south orientation of the allotments and the lowering of the roofline, the proposed development does not result in overshadowing of adjacent private open space or north facing living room windows. It is further noted that the proposal complies with the Pittwater 21 DCP solar access provision.

d) to allow for the reasonable sharing of views,

Comment:

The eastern and western adjacent sites (No's 108 and 104 respectively) will maintain the primary view lines over the rear (north) boundaries towards the Pittwater waterway, whilst any views from dwelling houses located to the south (upslope) will be unaffected by the height breach given the 1.34m reduction in building height.

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

Comment:

Whilst the existing side walls are retained, the proposed development incorporates changes to the northern (rear) façade to include terraced styled balconies, which allows the dwelling to have a 'stepped' appearance that descends in height with the slope of the land. In this regard, it is considered that the proposal is appropriately designed to respond to the natural topography that slopes from south to north.

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

Comment:

The site is does not contain a heritage item, is not located within a heritage conservation area and is not located in close proximity to heritage items. Therefore, the proposal will not have an adverse impact upon environmental and built heritage. Furthermore, the proposal does not require the removal of significant canopy trees.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposed development does not involve significant alterations to the site topography, with a large extent of any earthworks generally confined to the building footprint. Additionally, the existing Spotted Gum canopy trees on the site will be retained, whilst the proposal will result in a net increase of soft landscaping on the site. It is considered that proposed alterations and additions are appropriately sited and scaled, such that the works will not unreasonably detract from the visual qualities of the locality. Council's Landscape and Biodiversity Officers have reviewed the proposal and considered the development to be acceptable. Overall, the development is considered to have an acceptable impact upon the ecological, scientific or aesthetic values of the area.

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

Comment:

As demonstrated above, the proposed development does not have an adverse effect on the ecological, scientific or aesthetic values listed above.

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

Comment:

The building height steps down with the slope of the land, which visually reduces the built form and sensitively responds to the natural topography. Furthermore, the proposal results in an increased of soft landscaping on the site and retains the existing canopy trees on the site. The resulting development, which includes a 1.34m reduction in building height, is considered to be of a low density and scale integrated into the landform and landscape.

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

Comment:

The proposed development does not have an adverse impact upon riparian and foreshore vegetation or wildlife corridors.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.3 of Pittwater LEP 2014 and the objectives of the E4 Environmental Living zone.

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

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

Planning Circular 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 buildings Development Standard associated with a Class 1 or 10 building.

5.7 Development below mean high water mark

The proposed development encompasses works below the MHWM. These works are as follows:

- Reparation works below Mean High Water Mark to Jetty stairs, sea wall and boat shed.

The proposed works below the MHWM require a letter of consent from Transport for NSW, Crown Lands and the Department of Fisheries. This information has not been submitted with the Development Application. Accordingly, a suitable condition has been included with this consent requiring these works to be removed from the approved plans. Amended plans demonstrating compliance must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

7.8 Limited development on foreshore area

The site contains a foreshore building line (FBL) that traverses below the existing building footprint. The FBL intersects the eastern boundary 29.2m northward of the front boundary and intersects the western boundary 30.6m northward of the front boundary.

Clause 7.8 of Pittwater LEP 2014 permits the following types of development below the FBL:

(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes—

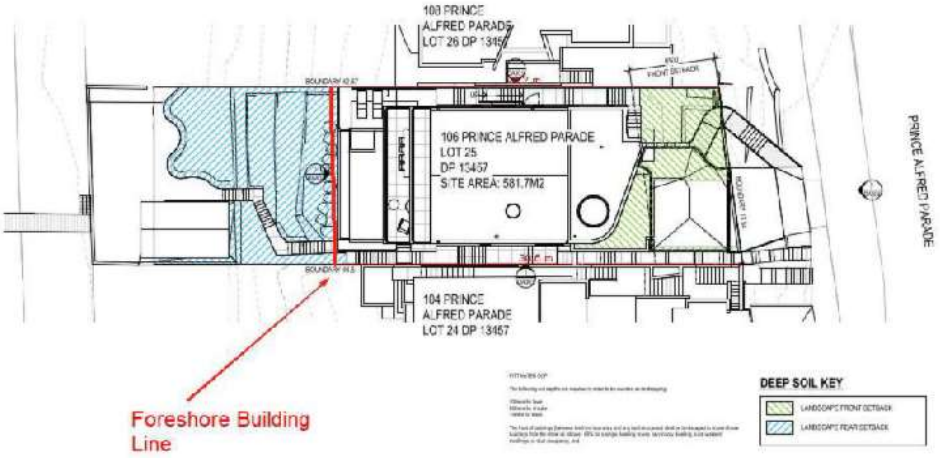
(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

An assessment of the application has confirmed that the proposed works to the dwelling house footprint do not encroach below the FBL. Figure 2 below has extrapolated the FBL on the applicant's site plan, which confirms compliance with this control.

Figure 2: *Site plan with FBL*



It is noted that the existing access stairs located below the FBL will be retained. Nevertheless, these works are permitted below the FBL as they constitute waterway access stairs.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	nil setback (carport) 6.8m (dwelling)	100% (carport)	Yes - variation applies - see discussion
Rear building line	Foreshore Building Line (FBL)	dwelling footprint above FBL	-	Yes
Side building line	2.5m (east)	1.5m (dwelling) - as existing	40%	No - however no further non-compliance
	1m (west)	0.95m (carport) 0.94m - 1.55m (dwelling) - as existing	5% (carport)	No (carport) No further non-compliance for dwelling
Building envelope	Merit Assessment as >30% slope (east)	Outside standard envelope	up to 113%	Acceptable on Merit
	Merit Assessment as >30% slope (west)	Outside standard envelope	up to 105.54%	Acceptable on Merit
Landscaped area	60% (349.02sqm)	33.28% (193.6sqm)	44.53%	No - however existing non-compliance reduced

***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

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	No	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	No	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	No	Yes
D10.4 Building colours and materials	No	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.10 Newport Locality

Clause A4.10 of the Pittwater 21 DCP provides guidance of the form and scale of development anticipated for the Newport locality. The Desired Character Statement reads as follows:

"The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community".

"Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport".

"Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards".

"A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors".

"Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved".

"Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities".

"Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements".

The proposed development involves alterations and additions to an existing three storey dwelling house. As outlined above, the Newport Desired Future Character Statement calls for two storey development within low density residential areas.

Whilst the Locality Statement calls for two storey development, the proposed development is considered to achieve the overall intention of the desired future character statement for the following

reasons:

- The proposed development does not increase the number of storeys to the existing dwelling and results in a 1.34m reduction in height;
- When viewed from the street the dwelling will continue to present as a single storey structure;
- The development steps down in height with the slope of the land to integrate with the landform and landscape;
- The proposed development results in a net increase of soft landscaping on the site and retains all existing canopy trees on the site;
- The proposal minimises site disturbance and has been designed to respond to the geotechnical hazards on the site;
- The western (rear) elevation incorporates numerous articulated elements, which will improve the dwelling's presentation to the foreshore and Pittwater waterway;
- The roofline of the resulting development remains well below the established tree canopy; and
- The dwelling will remain supported by adequate infrastructure.

B3.7 Estuarine Hazard - Low density residential

Council's Coast and Catchments Officer has raised concern of the works to the boat shed, noting that the alterations to the boat shed are located below the adopted estuarine flood planning level and an Estuarine Risk Management Report was not submitted with this application. Following discussions with the applicant, written correspondence was provided to Council by the applicant requesting that conditions be imposed to delete the works to the boat shed, inclusive of any additional works below the MHWM. This has been discussed with Council's Coast and Catchments Officer who is supportive of the conditions to delete these works.

Based on the above, the proposal, as amended via conditions, will be consistent with the requirements and outcomes of this control.

C1.1 Landscaping

The proposal is technically non-compliant with the landscaping requirements of this control, which require at least 60% of the front setback area to be landscaped. Only 44.81% of the front setback area is landscaped.

Despite this, the proposed development results in an increase of soft landscaping throughout the entire site. Additionally, the proposed development retains all existing canopy trees on the site.

Given the location of the existing dwelling and the topography of the site, there is limited opportunity for additional soft landscaping within the front setback. Given the slope of the land, falling away from the street, the bulk and scale of the proposal will continue appear as one storey and will not dominate the streetscape.

The application has been reviewed by Council's Landscape Officer and Bushland & Biodiversity Officer who raised no objection to the development, subject to conditions.

Under these circumstances, the non-compliance is supported in this instance.

C1.3 View Sharing

View Loss from the Public Domain

Consideration has been given to the potential for view loss from the public domain, noting that an existing view line towards the Pittwater Waterway and western foreshore is obtained from the Prince Alfred Parade roadway and road reserve.

In determining the extent of potential view loss from the public domain, the planning principles outlined within the NSW Land and Environment Court Case of *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046* are applied to the proposal.

1. The Nature and Scope of Existing Views

The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):

- *the nature and extent of any existing obstruction of the view;*
- *relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);*
- *is the change permanent or temporary; or*
- *what might be the curtilages of important elements within the view.*

Comment:

The existing views from the public domain, in this case being the Prince Alfred Parade roadway, consist of the Pittwater waterway and western foreshore land-water interface. The water views are partially obstructed by the existing dwelling house and canopy trees on the subject site, including canopy cover on adjacent properties. The existing dwelling house is a permanent obstruction, whilst the obstruction caused by the canopy cover is not permanent. The view in question is depicted in Figure 3 below.

Figure 3: *public domain views from the roadway*



2. Location of View Interruptions

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment:

The affected view is available from the Prince Alfred Parade roadway and road reserve.

3. Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location.

Comment:

The location where the views are obtained are limited to the roadway and road reserve. The water views can be obtained from a standing position from the road reserve, whilst the view could also be enjoyed from a sitting position within a car whilst travelling along Prince Alfred Parade.

As the roofline to the dwelling house is lowered by 1.34m, the view loss from the public domain would not arise from the alterations to the dwelling footprint. However the application also proposed a new carport on an elevated parking platform setback 0.95m from the front boundary. The roofline of the proposed carport is sited at RL21.125, which sits 325mm below the ridge line of the existing dwelling house and approximately 1.82m above the road edge on the northern side of Prince Alfred Parade. In this regard, the flat roof profile of the carport will obstruct the bushland on the western foreshore (not land water interface), whilst the semi enclosed masonry walls to the carport would obstruct areas of the Pittwater waterway when in standing and seated positions. It is noted that only the western masonry

wall within the carport creates the view impact. The rear elevation of the carport is largely open (excluding transparent balustrading) and will not significantly obstruct existing view lines towards the Pittwater waterway and western foreshore from standing positions within the road reserve and seated positions within a traveling car.

4. Intensity of the use of the relevant Public Space

The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.

Comment:

Prince Alfred Parade is a long windy road that traverses along the eastern foreshore of the Pittwater area, however is not classified as an arterial road. Prince Alfred Parade receives moderate volumes of vehicular movement.

However, the area of Prince Alfred Parade that accommodates the subject site is devoid of a formal level/paved pedestrian footpath within the road reserve. As such, the area is not particularly conducive for pedestrians to walk and enjoy the view.

5. Documentation of the View

The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed. This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views.

Comment:

Prince Alfred Parade is not identified on Council's scenic walkways list. Additionally, the view corridor does not capture any items or areas of local, state, national or international heritage significance. However, the view is highly regarded as it encapsulates the Pittwater waterway.

Clause C1.3 of the Pittwater 21 DCP aims to preserve views from roads and states as follows: *"Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials".* As stated above, the sides of the carport are semi enclosed with 2m high masonry walls, which partially obstruct the water views of Pittwater.

Given the existing views from the road reserve hold high value (water views), there is a need to ensure that the view is adequately retained. As the view impact is created by a front setback non-compliance and exacerbated by the 2m high masonry wall on the western elevation, it is considered appropriate to seek an alternative design treatment to the carport that would maximise visual access through the structure. As such, a condition has been included with this consent requiring the western wall of the carport to consist of transparent materials (i.e. transparent glazing). It is considered that this amended carport would allow for further view retention from the public domain and satisfy the requirements and objectives of this control.

View Loss from Private Property

The proposed alterations and additions to the dwelling house will not impact upon existing primary views from the eastern and western adjacent sites (No's 108 and 104 respectively), noting the views of the Pittwater waterway and western foreshore are obtained over the rear (north) boundaries.

When examining the potential view impacts from southern (upslope) properties, an examination of Council's records has revealed that primary living spaces on upslope properties are sited are levels of RL25 or higher and orientated towards the north to maximise the water views. Noting that the roofline of the proposed carport is sited at RL21.125 and that the roofline of the dwelling house is sited at RL20.11, it is reasonable to conclude that existing views of the Pittwater waterway will be maintained from the upslope properties when in standing and seated positions. It is important to note that the Development Assessment Planner has not undertaken site visits at the upslope properties for the purpose of view impact analysis as no objections to the development were received.

Conclusion for View Loss from Public and Private Property

Having regard to the above assessment, it is concluded that the proposal will achieve the requirements and outcomes of this control and satisfy the planning principles outlined within the NSW Land and Environment Court Case of *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor [2013] NSWLEC 1046,* subject to the recommended condition outline above.

C1.23 Eaves

The control requires dwellings to incorporate 450mm wide eaves on all elevations. The proposed dwelling does not incorporate 450mm wide eaves on all elevations, which fails to meet this requirement.

Despite this, the proposal is supported by a valid BASIX Certificate to demonstrate suitable energy efficiency. Additionally, the proposed development allows for compliant solar access to the subject site and adjacent properties, whilst also providing covered outdoor private open space to ensure appropriate shading.

For the reasons outlined above, it is concluded that the outcomes of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D10.1 Character as viewed from a public place

Clause D10.1 of the Pittwater 21 DCP stipulates that parking structures should be set beyond the prescribed building setback line and should not be of a width greater than 50% of the width of the site. The proposed carport is within the front setback area but measures lesser than half the width of the site (6.39m of 13.54m).

The proximity of the carport to the front boundary line is assessed below in this report under Clause D10.7 and a secondary assessment on this clause (which in essence requires the same thing) is not required.

D10.4 Building colours and materials

The proposal includes stone cladding and light coloured cement rendered walls, in addition to light coloured roofing. The stone cladding harmonises with the natural bushland setting, however the light coloured walls and roofing is inconsistent with the prescribed requirements within this control.

It is noted that the existing colour scheme of the dwelling house does not meet the prescribed dark and earthy tones required by this control and it would be unreasonable to request the entire dwelling to be revised to consist of dark and earthy tones. It is further noted that nearby dwellings within the visual catchment of the site (when standing at the foreshore area) do not contain dark and earthy tones. Accordingly, a variation for the external walls are supported.

However, in order to minimise solar reflectivity a condition has been included with this consent requiring the roofing to consist of medium to dark colours.

Subject to compliance with the conditions of consent, the proposal will achieve the outcomes of this control.

D10.7 Front building line (excluding Newport Commercial Centre)

The control requires development to be setback in line with an established building line or at least 6.5m where there is no established building line. In the absence of an established building line that is greater than 6.5m, the 6.5m front setback is applied for this assessment.

The proposed carport presents a nil front setback, which does not meet the prescribed requirement. It is noted that that the works to the dwelling house are setback 6.8m from the front boundary, which meets the numeric requirement.

Notwithstanding the variation to the carport, the control contains an exemption provision which reads as follows: *"Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable".*

The proposed development meets the exemption provision as the dwelling house is setback over 6.5m from the front boundary and site is constrained with a 33.7% slope that falls away from the street to the MHWM.

When considering the location of the carport on its merits, it is considered that the outcomes of the control are achieved. A detailed assessment against the outcomes is provided below as follows:

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

Comment:

As discussed within the section of this report relating to Clause A4.10 of the Pittwater 21 DCP, the proposed development is considered to align with the intent of the Newport Locality Desired Future Character Statement.

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

Comment:

As discussed within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP, it is concluded that the positioning of the carport will not unreasonably impeded view lines towards the Pittwater waterway from the public domain (road reserve), subject to a condition requiring the western wall of the carport to be amended to consist of transparent materials.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The residential development does not adjoin a main road. Therefore, this outcome is not relevant.

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

Comment:

The two existing canopy trees within the front setback will be retained, which will contribute to the natural amenity of the streetscape and soften the built form. Additional landscape treatment within the front setback area is also proposed.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposed carport does not allow vehicles to enter and exit the site in a forward manner. Nevertheless, vehicular access will be improved when compared to the current arrangement as the existing garage is accessed via a steep driveway. The proposed elevated carport is accessed via a suspended crossover with compliant grades. Council's Development Engineer's have reviewed the proposal with respect to off-street parking and vehicular access and raised no objections, subject to conditions.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The roofline of the carport is sited well below the established tree canopy.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposed carport, as amended via conditions, will present with open front, rear and western sides. Furthermore, the height of the carport is relatively modest. Therefore, the carport will not present with excessive bulk when viewed from the public domain.

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

Comment:

The carport responds to the spatial characteristics of the existing urban environment, noting that numerous surrounding properties within the visual catchment of the site contain parking structures within the front setback area.

Conclusion

As demonstrated above, the proposal satisfies the exemption provision within this control and meets the applicable outcomes of the control.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of non-compliance

The control requires development to be setback at least 2.5m from one side boundary and 1m from the opposing side boundary. For the purpose of this assessment, the 2.5m side building line is applied to the eastern boundary and the 1m side building line to the western boundary.

The proposal maintains the existing side walls of the dwelling house, which are setback 1.5m from the eastern side boundary and between 0.95m - 1.55m from the western side boundary.

Furthermore, the carport is setback 0.95m from the western side boundary, which does not meet the numeric requirement.

Merit Consideration

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

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

Comment:

As discussed within the section of this report relating to Clause A4.10 of the Pittwater 21 DCP, the proposed development is considered to align with the intent of the Newport Locality Desired Future Character Statement.

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

Comment:

Whilst the existing walls will be retained, which do not meet the numeric side setback requirements, the proposed alterations will visually reduce the bulk and scale of the built form as perceived from the foreshore area and Pittwater waterway. This is achieved through reducing the building by 1.34m in height and through employing numerous articulated elements on the rear (north) façade. The resulting development will present as a terraced style built form that steps down in height with the slope of the land. For these reasons, it is considered that the bulk and scale of the dwelling house is appropriately minimised given the circumstances of the case, which involves the retention of existing side walls.

In regards to the carport, the amended design will present with open front, rear and western sides. The bulk and scale of the carport is not considered to be excessive.

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

Comment:

As discussed earlier within this report, the proposal will allow equitable preservation of views and vistas to and from public and private places, subject to compliance with the conditions of consent.

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

Comment:

As noted above, reasonable view sharing will be achieved, subject to conditions.

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

Comment:

The proposal has been designed to ensure that a reasonable level of visual privacy is maintained between properties. This is achieved through the provision of fixed privacy screening on the upper floor side elevation windows, inclusive of the side elevations of the level 2 terrace located off the living, kitchen and dining rooms. Furthermore, lower level windows include high window sills on the side elevations, whilst larger glazed elements are orientated towards the rear (north). In respect to the carport, it is noted that the minor side setback non-compliance will not impact upon the acoustical amenity of adjacent properties due to the separation from habitable spaces. Furthermore, any overlooking that may occur from the carport is not unreasonable as the area is not a highly trafficable area.

Furthermore, noting the north-south orientation of the allotments, sloping topography that falls towards the north and lowering of the roofline, adjacent properties will retain adequate direct sunlight to private open space and north facing living room windows on June 21.

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

Comment:

The proposal results in a net increase of soft landscaping on the site. Furthermore, all existing canopy trees on the site will be maintained.

- *Flexibility in the siting of buildings and access.*

Comment:

The existing side walls will be maintained to the dwelling house. Flexibility is afforded with regards to the siting of the carport as no unreasonable amenity or streetscape impacts will occur as a consequence of the development, subject to conditions.

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

Comment:

The retention of the existing canopy trees on the site will assist in visually reducing the built form.

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

Comment:

The site does not adjoin commercial development.

Conclusion

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

D10.11 Building envelope (excluding Newport Commercial Centre)

As the slope of the land under the building footprint is greater than 30%, the proposed development is subject to a merit assessment when applying the envelope control.

The proposal involves variations to the standard envelope requirement on the eastern and western side elevations. It is noted that the variations to the envelope provision will remain generally consistent to the existing development on the site given the retention of the existing side boundary walls. Figures 4 and 5 depict the extent of the variations.

Figure 4: *eastern elevation envelope breach*

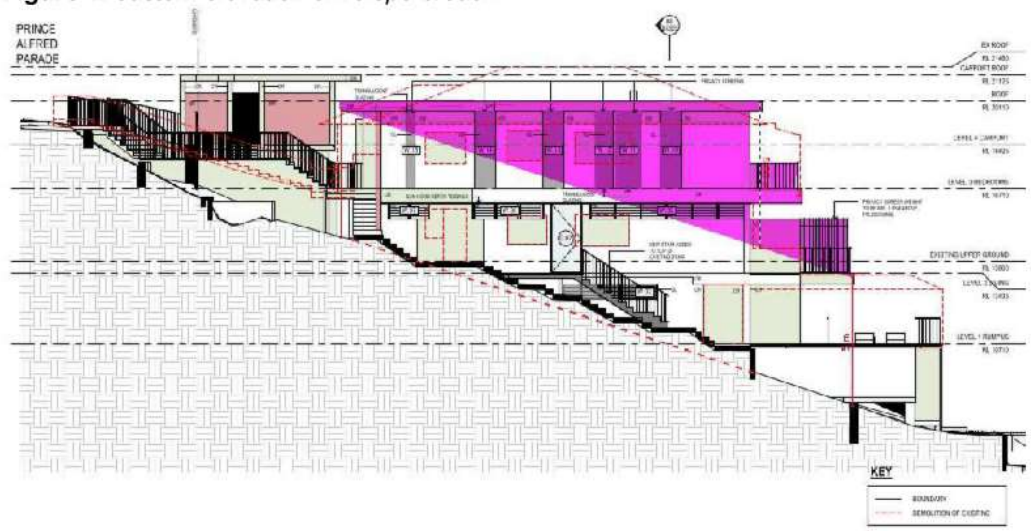


Figure 5: *western elevation envelope breach*



When considering the development on its merits, it is concluded that the outcomes of the control are achieved. A detailed assessment against the outcomes is provided below as follows:

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

Comment:

As discussed within the section of this report relating to Clause A4.10 of the Pittwater 21 DCP, the proposed development is considered to align with the intent of the Newport Locality Desired Future Character Statement.

- *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:

The dwelling presents as a three storey development from the foreshore area, which is consistent with the scale of established dwelling houses within the visual catchment of the site. It is further noted that the height of the roofline will be lowered by 1.34m and that the existing side boundary setbacks will be maintained. Furthermore, the height of the proposal will be below the remaining tree canopy on the site.

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

Comment:

The proposed development responds to the topographical conditions of the site through employing a terraced styled form that steps down in height with the slope of the land, which falls away from the road towards the foreshore area. Furthermore, the building envelope will remain generally consistent given the retention of the existing side walls.

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

Comment:

Whilst the existing walls will be retained, which do not meet the numeric side setback requirements or envelope requirements, the proposed alterations will visually reduce the bulk and scale of the built form as perceived from the foreshore area and Pittwater waterway. This is achieved through reducing the building by 1.34m in height and through employing numerous articulated elements on the rear (north) façade. The resulting development will present as a terraced style built form that steps down in height with the slope of the land. For these reasons, it is considered that the bulk and scale of the dwelling house is appropriately minimised given the circumstances of the case, which involves the retention of existing side walls.

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

Comment:

As discussed earlier within this report, the proposal will allow for reasonable view retention, subject to conditions.

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

Comment:

The proposal has been designed to ensure that a reasonable level of visual privacy is maintained between properties. This is achieved through the provision of fixed privacy screening on the upper floor side elevation windows, inclusive of the side elevations of the level 2 terrace located off the living rooms. Furthermore, lower level windows include high window sills on the side elevations, whilst larger glazed elements are orientated towards the rear (north). In respect to the carport, it is noted that the minor side setback non-compliance will not impact upon the acoustical amenity of adjacent properties due to the separation from habitable spaces. Furthermore, any overlooking that may occur from the carport is not unreasonable as the area is not a highly trafficable area.

Furthermore, noting the north-south orientation of the allotments, sloping topography that falls towards the north and lowering of the roofline, adjacent properties will retain adequate direct sunlight to private open space and north facing living room windows on June 21

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

Comment:

The retention of the existing canopy trees on the site will assist in visually reducing the built form.

Conclusion

As demonstrated above, the proposal is consistent with the outcomes of this control and therefore, is acceptable on merit.

D10.13 Landscaped Area - Environmentally Sensitive Land

The proposal is technically non-compliant with the landscaping requirements of this control, which require at least 60% of the site to be landscaped. Only 33.28% of the site is landscaped.

Despite this, the proposed development results in an increase of soft landscaping throughout the entire site, noting that the existing landscaping represents 30.86% of the site area. Additionally, the proposed development retains all existing canopy trees on the site.

The application has been reviewed by Council's Landscape Officer and Bushland & Biodiversity Officer who raised no objection to the development, subject to conditions.

Under these circumstances, the non-compliance is supported in this instance.

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 $9,850 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $985,000.

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 proposed development involves alterations and additions to a dwelling house, including a detached double carport and swimming pool at 106 Prince Alfred Parade, Newport.

The maximum height of the proposed development is 10.16m, which exceeds the 8.5m height limit. The applicant has provided sufficient justification for the departure from the development standard in that compliance with the standard is unreasonable in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Pittwater 21 DCP has found that the proposal does not comply with a number of controls (i.e. building envelope and boundary setbacks). Given the constraints on the development by virtue of the steep topography and the retention of existing side elevations of the dwelling house, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the Desired Future Character Statement of the Newport Locality.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Buildings development standard pursuant to clause 4.6 of the Pittwater LEP 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 DA2021/1448 for Alterations and additions to a dwelling house, including a detached double carport and swimming pool on land at Lot 25 DP 13457, 106 Prince Alfred Parade, NEWPORT, Lot PO 5606, 106 Prince Alfred Parade, NEWPORT, 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**
DA002 (Revision A) - Excavation	30/06/2021	Stafford Architecture
DA101 (Revision A) - Site Plan / Roof Plan	30/06/2021	Stafford Architecture
DA110 (Revision A) - Demolition Garage & Roof	21/11/2021	Stafford Architecture
DA120 (Revision A) - Driveway	30/06/2021	Stafford Architecture
DA200 (Revision A) - Level 4 Carport and Roof Plan	30/06/2021	Stafford Architecture
DA201 (Revision A) - Level 3 Bedrooms Plan	30/06/2021	Stafford Architecture
DA202 (Revision A) - Level 2 Living Plan	30/06/2021	Stafford Architecture
DA203 (Revision A) - Level 1 Rumpus Plan	30/06/2021	Stafford Architecture
DA301 (Revision A) - East Elevation	30/06/2021	Stafford Architecture
DA302 (Revision A) - North Elevation	30/06/2021	Stafford Architecture
DA303 (Revision A) - West Elevation	30/06/2021	Stafford Architecture
DA304 (Revision A) - South Elevation	30/06/2021	Stafford Architecture
DA321 (Revision A) - Section - AA - Proposed	30/06/2021	Stafford Architecture
DA322 (Revision A) - Section - BB - Proposed	30/06/2021	Stafford Architecture
DA121 (Revision A) - Material Board	30/06/2021	Stafford Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment Report	8/06/2021	Jacksons Nature Works

Report on Geotechnical Investigation Ref. 2021-092	26/05/2021	Crozier Geotechnical Consultants
BASIX Certificate No. A416550	06/07/2021	Delisle Hunt Wood Pty Ltd

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L100 C - Landscape DA Plan Sheet 1 of 1	22/06/2021	Spirit Level Designs Pty Ltd

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	07/07/2021	Stafford Architecture

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	not dated

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

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

3. **Prescribed Conditions**

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

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

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

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

(ii) showing the name of the principal contractor (if any) for any building work and

a telephone number on which that person may be contacted outside working hours, and

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

The person responsible for the development site is to erect or install on or around the

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

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

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

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

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

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

(i) Swimming Pools Act 1992
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

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

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

5. **Boundary Fencing not to encroach over Property Boundaries**
The boundary fencing nominated on the approved plans must be located wholly within the property boundaries. The boundary fencing must not encroach onto adjoining land.

Reason: To ensure that boundary fencing does not encroach onto adjoining land.

6. **No Consent for Solid Fuel Burning Fire Place**
No consent is granted for a solid fuel burning fire place.

Reason: The approved fire place is gas operated.

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $9,850.00 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 $985,000.00.

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.

8. **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

9. **Stormwater Disposal from Low Level Property**
The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Clause 5.5 Stormwater Drainage from Low Level Properties.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

10. **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 Crozier Geotechnical Consultants dated 26/5/2021 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.

11. **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.

12. **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.

13. **Minor Encroachment Application**

The applicant is to submit an Minor Encroachments/ Constructions With Road Reserve Application for the the landscape works and the elevated walkway for approval.

The applicant is to entre into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

A letter from Council indicating this conditions has been satisfied to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Identify the responsibility of the structures on Council road reserve.

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

- The works to the boat shed, sea wall and jetty, inclusive of any works seaward of the Mean High Water Mark, are not consented to and must be deleted from the plans in their entirety.
- The western wall of the carport must be amended to consist of transparent glazing.

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.

15. **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, elevated walkway and associated retaining structures 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. 6.3 meter wide driveway crossing in accordance with Northern Beaches Council Drawing No. A4-3330/5 EL.
2. Structural details for the elevated driveway and associated retaining structures.
3. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
4. A minimum 2.5m road shoulder clearance from the edge of the carriageway shall be maintained clear of obstruction for the proposed elevated walkway.
5. Structural details for the elevated walkway and associated retaining structures.
6. The elevated walkway within the property boundary must not rely on support from within the public road reserve, that is, foundations are to be located within the property.

7. Safety barrier to be provided, within the road reserve, for the existing walkway adjacent to the driveway.
8. Structural Engineer's certification of the design of all retaining walls, elevated walkway, elevated driveway and safety barriers.
9. A Geotechnical report assessing the existing retaining walls in the road reserve with recommendations to ensure their stability is maintained.
10. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided

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.

16. **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.

17. **Certification and Design of Elevated Parking Facility Work**
The Applicant shall submit a Structural Engineers' design and certificate certifying that the elevated parking facility is designed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Safety and Compliance with this consent.

18. **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.

19. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **Dead or Injured Wildlife**
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site,
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 mesaures shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in section 4 Recommendations, including:
a) retain the following trees on site: Tree 1, 2, 3, 4, 5 & 6,
b) trunk protection on trees 1, 2, 3, 4, 5 & 6,
c) temporary fence of chain wire panels 1.8 metres in height (or equivalent), to trees 1, 2, 3, 4, 5 & 6,
d) preparation of a Tree Management Plan be prepared as part of the Construction Certificate by a consulting AQF level 5 arborist,
e) a AQF Level 5 Project Arborist shall be engaged to supervise the building works and certify compliance with all tree protection measures.

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint 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.

24. **Condition of Trees**
During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

25. **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.

26. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002

(1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

27. **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.

28. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval 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.

29. **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.

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

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

Reason: Aboriginal Heritage Protection.

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 Plan, and inclusive of the following conditions:

i) New landscape works are to be contained within the property boundaries and no physical encroachments are permitted beyond the property boundaries. Any proposed works within the road reserve are the subject of a minor encroachment application to Council.

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. **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.

35. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans (Spirit

Level Designs, June 2021) and these conditions of consent.

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

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

36. **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.

37. **Certification Elevated Parking Facility Work**
The Applicant shall submit a Structural Engineers' certificate certifiying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

38. **Retaining wall and Suspended Crossing Certification**
The retaining wall, suspended driveway crossing and suspended walkway in the road reserve works 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.

39. **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.

40. **Minor Encroachment**

The applicant is to submit the agreement with Council to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Identify the responsibility of the structures on Council road reserve.

41. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(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 warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.
(c) All signage shall be located in a prominent position within the pool area.

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 a Interim / Final Occupation Certificate.

Reason: To protect human life.

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

42. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

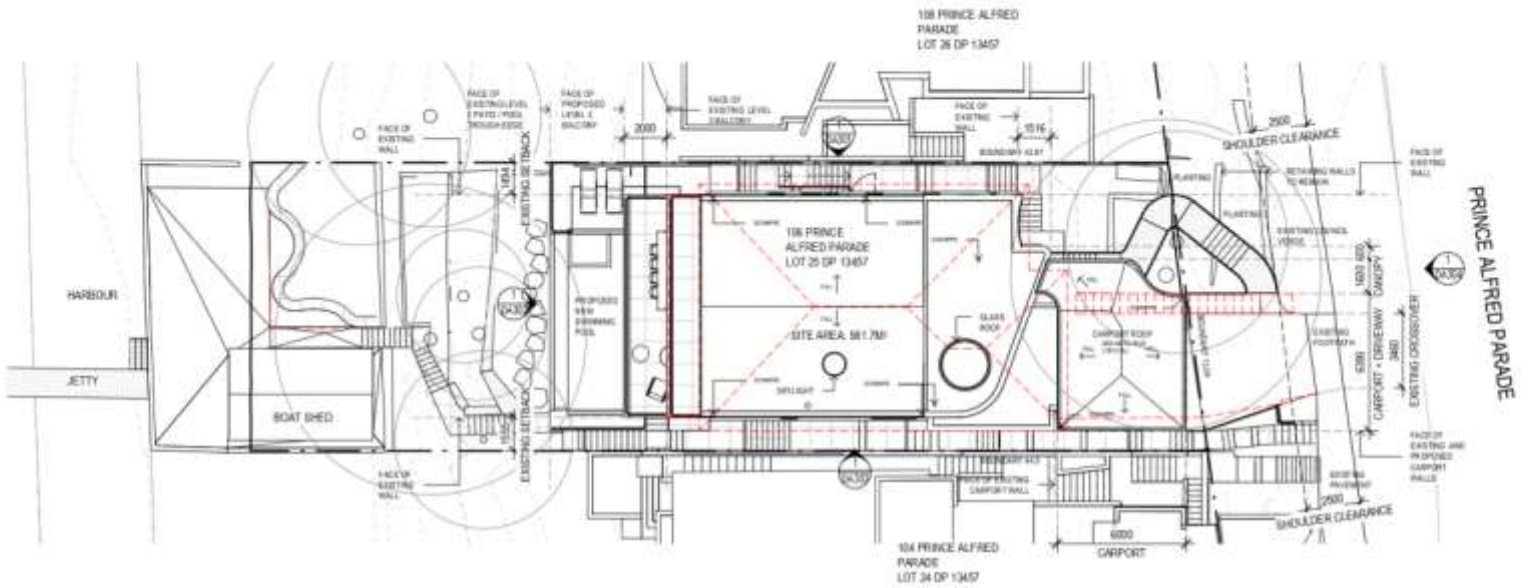
Reason: To ensure geotechnical risk is mitigated appropriately.

43. **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.

44. **Storage not to be used for Separate Occupancy**
The approved storage space under the carport is not permitted to be used, or adapted to be used, for separate occupancy.

Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house



BASIX

The applicant must install a rainwater tank of at least 1,000 litres on the site. The rainwater tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities.

The swimming pool must be outdoor.
The swimming pool must not have a capacity greater than 33 kilolitres.
The spa must not have a capacity greater than 2.3 kilolitres.
The applicant must install the following hot water system in the development: gas storage.

Insulation requirements
The applicant must construct the new or altered construction in accordance with the specification listed in, except that an additional insulation is not required where the area of new construction is less than 2m2, b) insulation specified is not required for parts of altered construction where insulation already exists.
Concrete slab on ground floor. – nil additional insulation required.
External wall: cavity brick – nil additional insulation required.
Flat ceiling, pitched roof – additional insulation ceiling R2.50 (up), roof: foil backed
(Other specifications: shaded (solar absorptance 0.475-0.70).
Flat ceiling, flat roof: concrete/plasterboard sheet/sheet internal – additional insulation ceiling: R 2.50 (up), roof: dame
(Other specifications: light (solar absorptance <0.475).

Windows and glazed doors glazing requirements
The applicant must install the windows, glazed doors and shading devices in accordance with the specifications listed in the table of page 6 of the BASIX report. Relevant overshadowing specifications must be satisfied for each window and glazed door.
For projections described as a ratio, the ratio of the projection from the wall to the height above the window or glazed door sill must be at least that shown in the table of page 6 of the BASIX report.
Overshadowing building or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.
All windows to be improved aluminium: single clear. (U value: 6.44, SHGC 0.70).
Skylight 1 - timber frame, glass type - double clear/air fill (U-value: 4.3, SHGC 0.5).
Glazed Roof 01 - glass type improved aluminium, single pyrolytic low-e, (U-value 6.48, SHGC 0.46)

KEY

- BOUNDARY
- DEMOLITION OF EXISTING

STAFFORD

DEVELOPMENT APPLICATION
SITE PLAN / ROOF PLAN

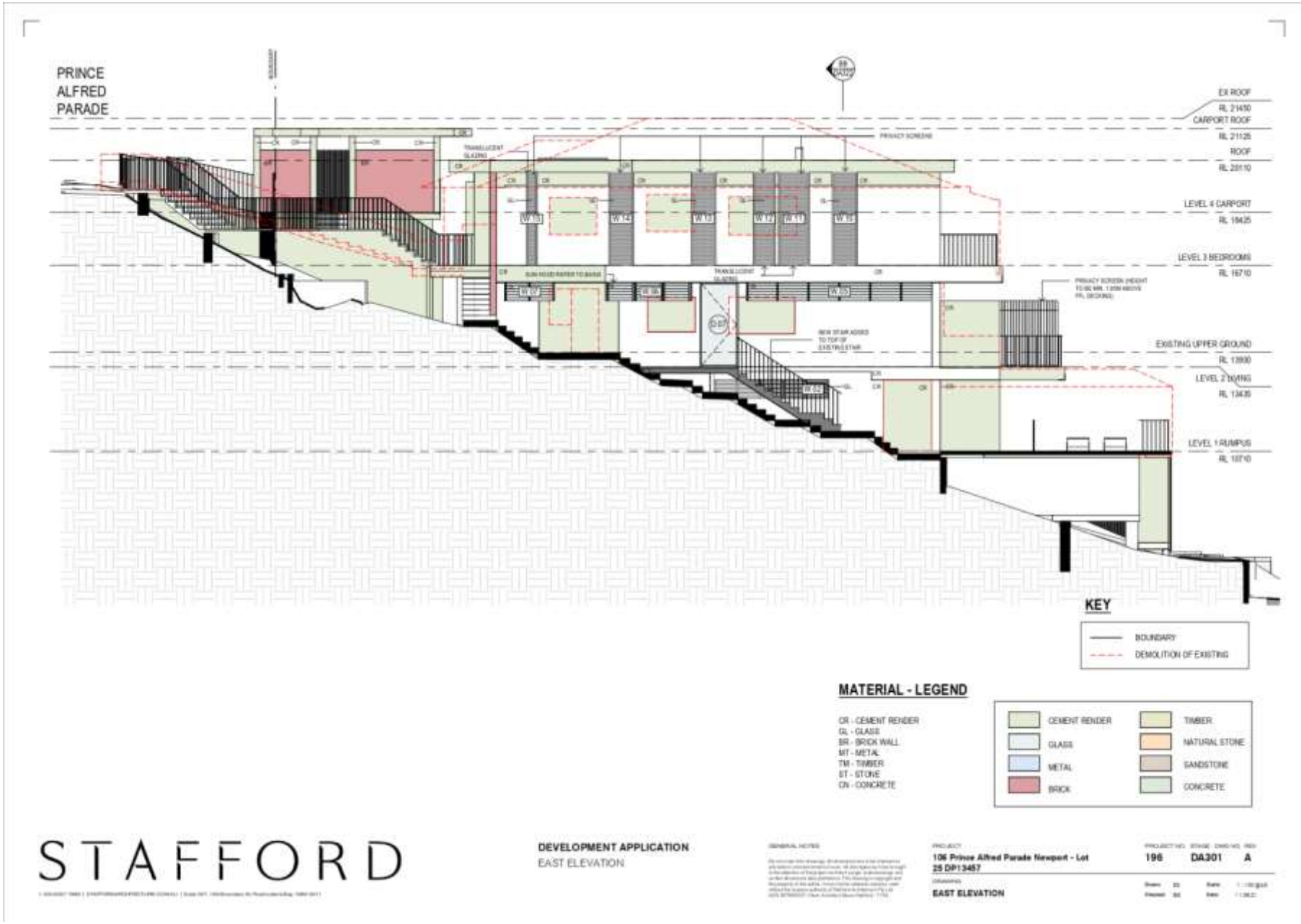
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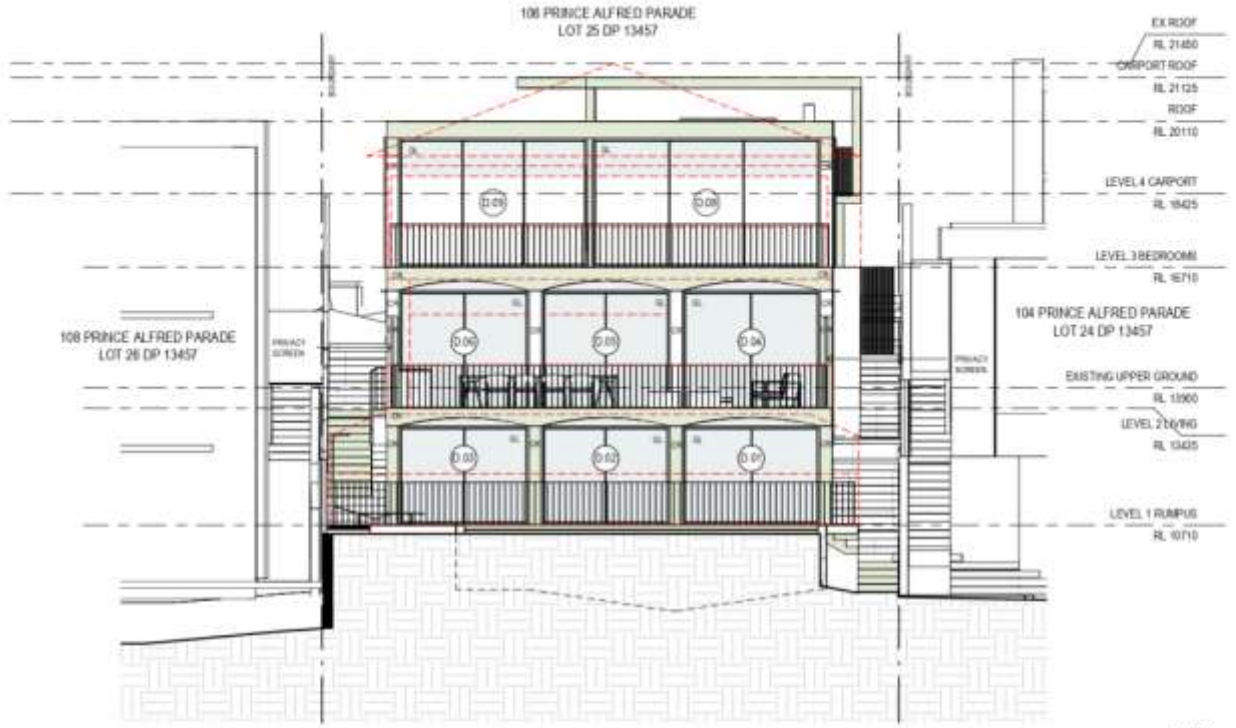
PROJECT
106 Prince Alfred Parade Newport - Lot 25 DP13457

PROJECT NO. 196 | STAGE DA101 | DWG NO. A | REV

DRAWING
SITE PLAN / ROOF PLAN

Drawn | Date | 1 : 200 @ A3
Checked | Date


PRINCE ALFRED PARADE
EX ROOF
RL 21450
CARPORT ROOF
RL 21125
ROOF
RL 20110
LEVEL 4 CARPORT
RL 19425
LEVEL 3 BEDROOMS
RL 16710
EXISTING UPPER GROUND
RL 13800
LEVEL 2 LIVING
RL 13435
LEVEL 1 RUMPUS
RL 10710
KEY
BOUNDARY
DEMOLITION OF EXISTING
MATERIAL - LEGEND
CR - CEMENT RENDER
GL - GLASS
BR - BRICK WALL
MT - METAL
TM - TIMBER
ST - STONE
CN - CONCRETE
CEMENT RENDER
GLASS
METAL
BRICK
TIMBER
NATURAL STONE
SANDSTONE
CONCRETE
STAFFORD
DEVELOPMENT APPLICATION
EAST ELEVATION
106 Prince Alfred Parade Newport - Lot 25 DP13457
196
DA301
A
EAST ELEVATION



KEY

BOUNDARY
DEMOLITION OF EXISTING

MATERIAL - LEGEND

CR - CEMENT RENDER
GL - GLASS
BR - BRICK WALL
MT - METAL
TM - TIMBER
ST - STONE
CN - CONCRETE

CEMENT RENDER
GLASS
METAL
BRICK
TIMBER
NATURAL STONE
SANDSTONE
CONCRETE

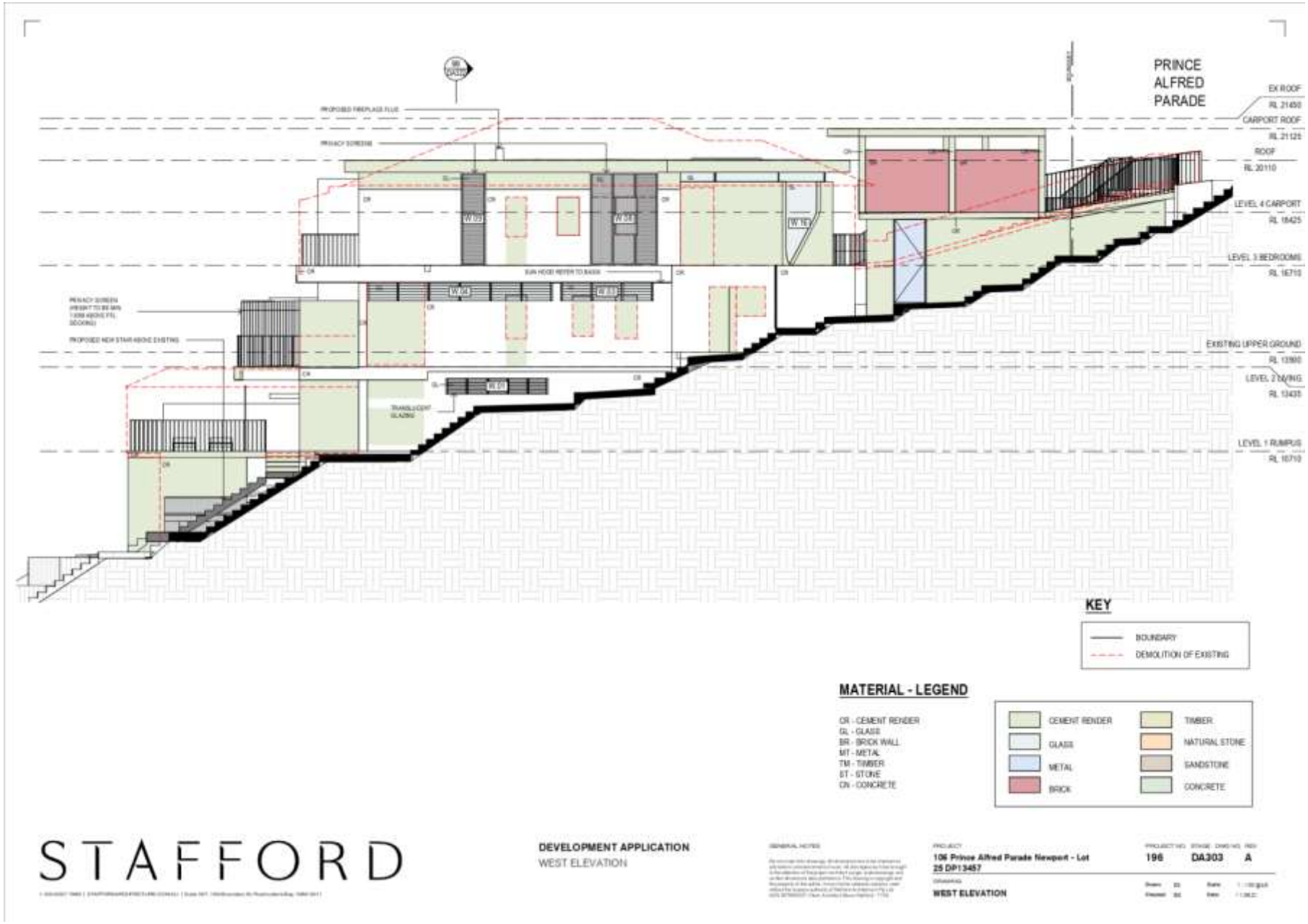
STAFFORD

DEVELOPMENT APPLICATION
NORTH ELEVATION

PROJECT
106 Prince Alfred Parade Newport - Lot 25 DP13457

PROJECT NO. 196 | STAGE DA302 | REV A

DRAWING
NORTH ELEVATION


PRINCE ALFRED PARADE
EX ROOF RL 21450
CARPORT ROOF RL 21125
ROOF RL 20110
LEVEL 4 CARPORT RL 18425
LEVEL 3 BEDROOMS RL 16710
EXISTING UPPER GROUND RL 13900
LEVEL 2 LIVING RL 13430
LEVEL 1 RUMPUS RL 10710
PROPOSED FIREPLACE FLUE
PRIVACY SCREENS
SUN HOOD REFER TO BASIX
PROPOSED NEW STAIR ABOVE EXISTING
TRANSLUCENT GLAZING
KEY
BOUNDARY
DEMOLITION OF EXISTING
MATERIAL - LEGEND
CR - CEMENT RENDER
GL - GLASS
BR - BRICK WALL
MT - METAL
TM - TIMBER
ST - STONE
CN - CONCRETE
CEMENT RENDER
GLASS
METAL
BRICK
TIMBER
NATURAL STONE
SANDSTONE
CONCRETE
STAFFORD
DEVELOPMENT APPLICATION
WEST ELEVATION
106 Prince Alfred Parade Newport - Lot 25 DP13457
196
DA303
A
WEST ELEVATION



1 SOUTH ELEVATION - STREET
1 : 100

KEY

BOUNDARY
DEMOLITION OF EXISTING

MATERIAL - LEGEND

CR - CEMENT RENDER
GL - GLASS
BR - BRICK WALL
MT - METAL
TM - TIMBER
ST - STONE
CN - CONCRETE

CEMENT RENDER
GLASS
METAL
BRICK
TIMBER
NATURAL STONE
SANDSTONE
CONCRETE

STAFFORD

DEVELOPMENT APPLICATION
SOUTH ELEVATION

PROJECT
106 Prince Alfred Parade Newport - Lot 25 DP13457

PROJECT NO. 196 | STAGE DA304 | REV A

DRAWING
SOUTH ELEVATION

Clause 4.6 – Exceptions to Development Standards in relation to Clause 4.3(2) - Height of buildings, of the Pittwater Local Environmental Plan 2014.

1. Introduction.

This written request is made pursuant to the provisions of Clause 4.6 of the Pittwater Local Environmental Plan 2014 (the LEP). A variation is sought in relation to the height of buildings standard of Clause 4.3(2), in relation to alterations and additions to the existing dwelling house, at 106 Prince Alfred Parade, Newport.

This exception statement has been prepared having regard to the Land and Environment Court judgments in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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, *Brigham v Canterbury Bankstown Council* [2018] NSWLEC 1406 and *Rebel MH 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.

(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 Planning Secretary has been obtained.

(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.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

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

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

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

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

Clause 4.6(1) provides:

(1) The objectives of this clause are:

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

The decision of the Chief Judge 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 *Rebel MH 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.

In *Initial Action* Justice Preston considered the proper interpretation of clause 4.6 and found that:

- Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial effect relative to a compliant development (at [87]);
- There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and
- One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]. That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

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) 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.

This clause applies to Clause 4.3(2) Height of buildings development standard of the Pittwater Local Environmental Plan (the LEP).

2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?

Clause 4.3 of the Pittwater LEP sits within Part 4, which is titled 'Principal Development Standards'. Clause 4.3(2) is a development standard in relation to the maximum height of buildings and the relevant standard is as follows:

Clause 4.3 – Height of Buildings

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

A maximum height of 8.5m applies in accordance with Clause 4.3(2) as shown on the Height of Buildings Map of the LEP.

Details of the non-compliance with the standard

The height of the building will actually be reduced by the removal of the existing pitched tile roof and replacement with a new low profile, low pitched metal clad roof.

Notwithstanding the reduction in overall building height, the height of the northern end of the new roof has been calculated to be 10.16m at RL20.11 above the interpolated ground level below the north end of the new roof at RL9.95 and therefore exceeds the 8.5m height of buildings standard.

3. What is the underlying purpose or objectives of the standard?

The objectives of the height of building standard is expressly set out in clause 4.3(1). This provides:

Clause 4.3 (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.*

Objectives of the standard

The proposed development will be in the public interest because it is consistent with the objectives of the height of buildings standard for the following reasons:

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

The height, form and scale of the building will remain consistent with the desired character of the locality that comprises dwelling houses of a similar height and two storey and three storey form and scale.

The existing lower ground level of the house is a function of the slope of the site from the front to the rear down to the foreshore. The design maintains this existing lower ground level, which is also the swimming pool level. In this way and height is responsive to the topographical constraints of the site and maintains the lower ground level under the house for the secondary living areas and utility areas at the back of this level in a basement, where it does not contribute to an increase in the bulk and scale of the building.

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

The alterations and additions to the house will not alter the stepped form and appearance of the building and its height, form and scale will remain compatible with the height and two storey to three storey form and scale of dwelling houses in the locality.

There is diversity in terms of the scale and character of the houses in the locality, but they are predominantly two storey and three storey houses with a variety of roof forms and wall finishes. The contemporary style of the additions and new low profile, low pitched roof will maintain compatibility with the diverse character of the houses in the vicinity.

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

The proposal maintains solar access to the adjoining dwelling houses in the morning and afternoon periods and will not affect any north facing windows of principal living areas or private open space areas of the adjoining dwellings.

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

The proposal, in particular the part of the roof of the building on the north end of the roof where the breach of the height of buildings standard occurs will not involve an impact on views from the adjoining and adjacent properties.

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

The stepped form and appearance of the house in response to the steeply sloping site will be maintained.

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

The house is not highly visible from the street and to the extent that it is, it will be lower in height by removing the pitched tile roof and replacing it with a low pitched, light coloured metal roof.

The visual impact from the bay will be largely unchanged but will on fact be enhanced as well by the new low pitched roof, by the removal of the swimming pool enclosure (walls and roof) and the supplementary landscaping proposed on the lower part of the site, between the swimming pool and the foreshore.

The site is not adjacent to any heritage conservation areas or heritage items.

A variation to the 8.5m height of buildings standard in this case would be in the public interest because the proposal achieves an acceptable outcome and an appropriate level of consistency with the objectives of the standard, particularly in relation to compatibility with the local area character, and landscape character and minimising the effects of bulk and scale, and maintaining local amenity in particular views, solar access and privacy.

Objectives of the zone

The objectives of the E4 Environmental Living Zone are as follows:

- *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.*

The individual objectives of the E4 Environmental Living Zone are addressed as follows:

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

The site is located in a foreshore area but is not identified as having special ecological, scientific, cultural or aesthetic values. The landscape quality of the site and the area will be maintained and the proposal does not involve the removal of any significant native trees or natural features on the site.

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

The proposed development for alterations and additions to the existing dwelling house is a low impact, low intensity use of the land that is consistent with the E4 Environmental Living Zone.

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

The stepped form and design of the house will be maintained and will actually be enhanced by the removal of the roof and walls enclosing the existing swimming pool on the lower ground level and the supplementary landscaping between the pool and the foreshore will also enhance the landscape of the site as viewed from the bay.

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

The proposed alterations and additions will not affect riparian and foreshore vegetation or wildlife corridors in this waterfront location.

No adverse impact

The proposal will be consistent with the objectives of the development standard and there will not be any adverse impacts or environmental harm due to the non-compliance on the north end of the roof.

Solar access is maintained in accordance with the criteria of the DCP and the visual and acoustic privacy of neighbours and views and vistas will also be unaffected by the proposal.

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

Of relevance is the judgment in the Land and Environment Court of NSW, *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009, NSWLEC 90, NSWLEC 248,* which raised the issue that the grounds should ideally relate to a site specific proposal, rather than generic reasons.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

In this context, the following environmental planning grounds are given to justify the minor breach of the height of buildings development standard, on this particular site and for this particular development.

Previous excavation for the lower ground floor under the existing house, demonstrates that the natural ground would have been higher than the existing ground level of the lower ground floor and therefore the breach of the standard would be less, relative to the previous natural ground level on the site. The following drawing shows the section through the building and the existing pitched roof of the house shown dotted in red, the new low profile roof and the lower ground floor level under the house.

The environmental planning grounds that are unique to the site and the proposal is the actual reduction in building height and scale.

Whilst the proposal involves a breach of the height of buildings standard on the north end of the building, the height of the building and the roof will actually be lower in height compared to the existing pitched tile roof that is to be replaced with a new low profile, low pitched metal roof.

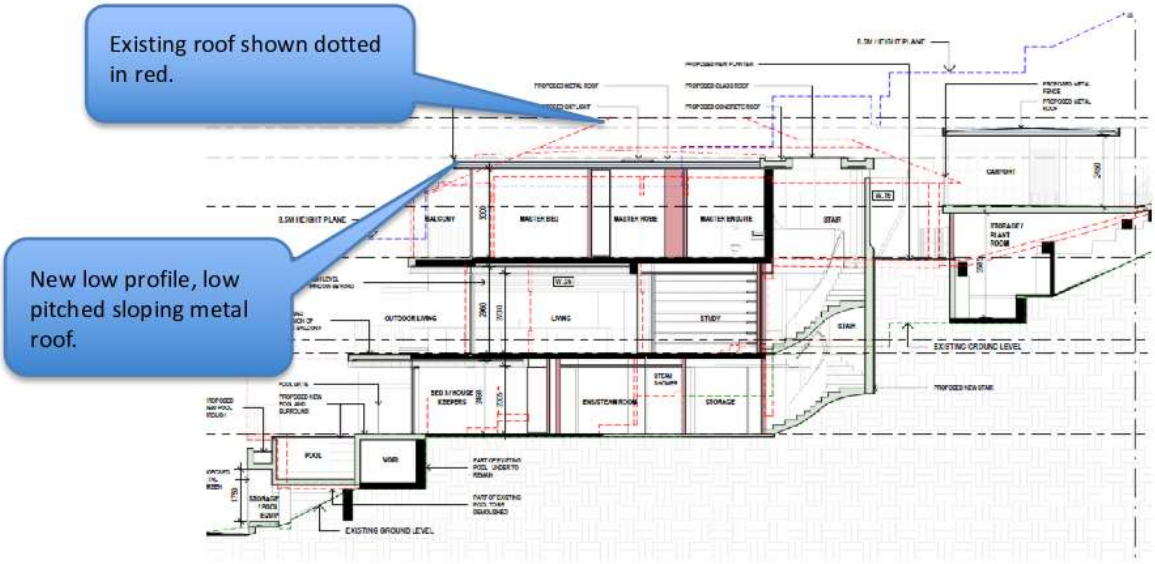


Figure 1: Extract from Drawing DA321 Section AA, showing the height of the existing roof and the new roof above the previously excavated lower ground floor level.

The house will be lower in height compared to the existing higher pitched roof and will be reduced in bulk and scale by the new low profile roof and removal of the enclosure of the existing swimming pool as well.

In this regard, a variation to the height of buildings standard would be reasonable and appropriate because the proposal alterations do not involve any adverse visual impact when viewed from the bay or from adjoining properties, and the amenity of the adjoining properties will also be maintained to an acceptable degree.

The proposal will be consistent with the aims and objectives of the Pittwater LEP, the objectives of the height of buildings standard and the objectives of the E4 Environmental Living Zone.

The absence or lack of environmental harm in this case, with specific reference to the adjoining properties and more generally the locality, is also an appropriate environmental planning ground to justify contravening the development standard.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in *Initial Action v Woollahra Council (2018) NSWLEC 118.*

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was

not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in *Randwick City Council v Micaul Holdings Pty Ltd at [34],* in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

The underlying objectives of the height of buildings standard is to minimise adverse amenity impacts specifically in relation to solar access and views.

In relation to the subject proposal, there will be no adverse impacts on the amenity of the surrounding properties or the locality by virtue of the breach of the height of buildings standard on the north end of the roof. The proposal is also consistent with the objectives of the E4 Environmental Living Zone, as outlined in Part 4 of this statement.

The absence of any adverse amenity impacts from the elements of the proposed additions to the house that breach the height of building standard are also environmental planning grounds that justify the departure from the height of buildings standard.

In terms of the Objects of the EPAAct, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

The proposal will be consistent with the objectives of the EP&AAct and the aims and objectives of the LEP, the objectives of the height of buildings standard and the objectives of the E4 Environmental Living Zone.

For these reasons, there are sufficient environmental planning grounds as outlined that are particular to the circumstances of the site and the proposed alterations and additions to the existing house, to justify the departure from the height of buildings standard.

4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?

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

Clause 4.6(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 Director-General has been obtained.

Clause 4.6(4)(a)(i) has been addressed in the previous section of this written request. The objectives of the standard (4.6(4)(a)(ii) as well as the objectives of the E4 Environmental Living Zone have been addressed previously and are adopted (rather than repeated) for the purposes of this section of the written request. The requirement in Clause 4.6(4)(b) is also met, as outlined as follows in relation to the concurrence of the Director-General.

Clause 4.6(4)(b) Concurrence of the Director-General

Under Clause 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 Clause 4.6, subject to the conditions in the table in the notice. In accordance with Clause 4.6(4)(b) the concurrence of the Director-General is assumed.

5. Conclusion

This exception to the height of buildings standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

This written request pursuant to Clause 4.6(3) of the Pittwater LEP 2014 is acceptable for the following reasons:

(a) The written request adequately addresses the matters required to be demonstrated by sub-clauses 4.6(3)(a) and (b);
(b) The proposal will be in the public interest because it is consistent with the objectives of the height of buildings development standard and the objectives for development within the E4 Environmental Living Zone; and
(c) The concurrence of the Director General is assumed.

Warren Long
MPIA Registered Planner
Longitude Planning Pty Ltd
6 July 2021 and amended 11 November 2021

ITEM 3.4	**DA2021/1423 - 6 BONA CRESCENT LOVETT BAY - CONSTRUCTION OF A BOAT SHED, BOAT RAMP AND ASSOCIATED DECKING**
REPORTING MANAGER	**TONY COLLIER**
TRIM FILE REF	**2021/864170**
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

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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 DA2021/1423 for Construction of a boat shed, boat ramp and associated decking on land at Lot 1 DP 554847, Lot 2 DP 554847 And Lot LIC 197918, 6 Bona Crescent, Lovett Bay subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1423

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 1 DP 554847, 6 Bona Crescent LOVETT BAY NSW 2105 Lot 2 DP 554847, 6 Bona Crescent LOVETT BAY NSW 2105 Lot LIC 197918, 6 Bona Crescent LOVETT BAY NSW 2105
Proposed Development:	Construction of a boat shed, boat ramp and associated decking
Zoning:	C3 Environmental Management
Development Permissible:	Yes - Zone C3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jill Elizabeth Baynes
Applicant:	Stephen Crosby & Associates

Application Lodged:	18/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/08/2021 to 08/09/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 27%
Recommendation:	Approval

Estimated Cost of Works:	$ 122,000.00

EXECUTIVE SUMMARY

The proposal is for the construction of a boat shed, associated decking and skid ramp. The application is referred to the Development Determination Panel for review and determination due to the contravention of the Height of Buildings development standard exceeding 10%.

The proposed works are permitted within the W1 Natural Waterways Zone by virtue of clause 2.5 (Additional Permitted Uses) of PLEP 2014.

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

The proposed variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) for the boat shed is 27% (5.08m).

Despite the building height numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP) with minor variation's to D15.12 Development seaward of mean high water mark, D15.13 Lateral limits to development seaward of mean high water mark and D15.15 Waterfront development.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to applied conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application is for a new boat shed and skid ramp on Crown Land at 6 Bona Crescent, Lovett Bay, with a public access walkway deck on Crown Land below the Mean High Water Mark.

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 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D8.3 Building colours and materials
Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 1 DP 554847 , 6 Bona Crescent LOVETT BAY NSW 2105 Lot 2 DP 554847 , 6 Bona Crescent LOVETT BAY NSW 2105 Lot LIC 197918 , 6 Bona Crescent LOVETT BAY NSW 2105
Detailed Site Description:	The subject site consists of an allotment located on the western foreshore of Pittwater at Lovett Bay. The site is an irregular in shape and has a site area of 2981m². The site which is associated with the jetty is located within the C3 Environmental Management and the proposed boat shed, associated decking and skid ramp is within the W1 Natural Waterways zone. The site contains a dwelling, along with an existing jetty structure and pontoon. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development with associated jetty structures. **Site Inspection** A site inspection was conducted 1 November 2021.

Map:



SITE HISTORY

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

Application 0623/87
JETTY RAMP & PONTOON
Approved -15/03/1988

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration	Comments
	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

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Planning for Bushfire Protection, dated 13/07/2021) 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 25/08/2021 to 08/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	The proposed works include construction of a new timber boat shed skid ramp and extension to the existing jetty deck area. Pittwater is classified as Class 1 for Acid Sulfate Soils (ASS) yet the Statement of Environmental Effects (SoEE) by Stephen Crosby & Associates (8 August 2021) and the Geotechnical Report by Hodgson Consulting Engineers Pty Ltd (29 July 2021) do not address ASS. Environmental Health acknowledge that the application proposes minimal excavation, however ASS must be still be considered in terms of potential pollution issues for Pittwater. The Waste Management Plan does not address excavation, treatment and disposal of ASS, which will need to be rectified prior to issue of a construction certificate. The SoEE states that there are no seagrasses in the vicinity of the development. Satellite images and vegetation mapping indicate that seagrasses are definitely present and must not be impacted by this development. Clause 7.1 of Pittwater LEP (taken from the standard instrument), provides exemptions to the requirement for an acid sulfate soil management plan (as stated in the SoEE) however, this clause was not formulated with significant consideration to aquatic developments. As such, if acid sulfate-related pollution issues are considered in the context of the LEP alone, construction-related activities may breach the Protection of the Environment Operations Act 1997 and/or the Fisheries Management Act 1994. Pittwater is known to contain an accumulation of harmful and persistent contaminants within its sediment profile including Tributyltin. Many of these contaminants, historically deposited as a result of marine-related industrial activities, became encapsulated by sediment deposited thereafter. ASS, known to be present in Pittwater, are also contained within waterlogged sediment layers. Dredging, driving and removal of jetty piles, barge movements etc., can cause resuspension of previously encapsulated sediments and contaminants. ASS released into surface waters can react with dissolved oxygen in a two-stop process to produce acid and facilitate the release of certain metals, metalloids (e.g. arsenic) and other contaminants of concern. It should be noted that monosulfides have been identified within Pittwater sediments and that certain areas of Pittwater are not well-flushed. Environmental Health are concerned that the cumulative effect of aquatic developments will significantly lower both the recreational value of Pittwater and cause ecological harm. As such, each development must be carefully considered and monitored.

Internal Referral Body	Comments
	Environmental Health recommends approval subject to conditions.
Environmental Health (unsewered lands)	No kitchen or toilet facilities are proposed.
Landscape Officer	The development application is for a new boat shed and skid ramp on Crown Land, with a public access walkway deck below the mean high water mark. Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan 2014 zone E3 Environmental Management, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D8 Lower Western Foreshores and Scotland Island Locality The site is within zone E3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of ecological communities and threatened species. The site contains existing Pittwater Spotted Gum Forest association trees and vegetation that are not impacted by the development works, and natural land and water rock outcrops are integrated as part of the development to maintain the landscape outcome objectives of the E3 zone. Landscape Referral raise no objections to the proposal.
NECC (Bushland and Biodiversity)	The application seeks approval for alterations and additions to an existing dwelling, including the construction of a new boat shed and skid ramp on Crown Land, with a public access walkway deck on Crown Land below the Mean High Water Mark. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **Biodiversity Conservation Regulation 2017** **State Environmental Planning Policy (Coastal Management)** • Coastal Environment Area

Internal Referral Body	Comments
	Pittwater Local Environmental Plan (PLEP) • 7.6 Biodiversity Protection **Pittwater Development Control Plan (PDCP)** • 4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community The front (southeast) of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values Mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS). The submitted Bushfire Report notes that the building class type is not subject to AS3959, or *Planning for Bushfire Protection 2019* therefore no Asset Protection Zones (APZ) are required for the proposal. Additionally, the Statement of Environmental Effects provided with the application notes that no trees or vegetation are proposed for removal which is supported by the Architectural Plans; therefore the BOS is not triggered. Biodiversity defer to the Coastal team for aquatic and marine impact assessment. The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	The development proposal is for a new boat shed, timber deck and skid ramp on Crown land below the MHWM at 6 Bona Crescent, Lovett Bay. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP. Assessment of the application has also considered: • Consent of landowner to lodge a DA from the Department of Planning, Industries & Environment - Crown Lands, dated 2 July 2021. • No navigational concerns as a result of the proposed development from Transport for NSW- Maritime Division dated 19 October 2020. • No objection to the proposed development from the Department of Primary Industries - Fisheries, dated 2 March 2018. **Coastal Management Act 2016**

Internal Referral Body	Comments
	The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016. **State Environmental Planning Policy (Coastal Management) 2018** The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby and Associates Pty. Ltd. dated 8 August 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of State Environmental Planning Policy (Coastal Management) 2018 subject to conditions. **Pittwater LEP 2014 and Pittwater 21 DCP** <u>Development on Foreshore Area</u> The subject property is affected by the foreshore building line and Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. Proposed development works are located seaward of the foreshore building line and the proposed boat shed is a permitted land use within the foreshore area. The proposed development is not contrary to the objectives of the zone, is unlikely to cause environmental harm or have an adverse impact on the amenity or appearance of the foreshore. Sea level rise has been considered and existing public access along the foreshore and to the waterway can be provided by the proposed development with appropriate design considerations. It is therefore considered that the development proposal satisfies the objectives and requirements of Clause 7.8 – Limited development on foreshore area of Pittwater LEP 2014 subject to conditions. <u>Estuarine Hazard Management</u> The subject property has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.77m AHD applies at the subject site. An Estuarine Risk Management Report prepared by Salients Pty

Internal Referral Body	Comments
	Limited, dated 11 August 2021 adopts the Council EPL and justifies a design life of 25 years for the proposed development. As the proposed floor level for the boat shed (RL 1.75m AHD) is below the EPL, the report recommends actions to address water and wave loadings as well as risks associated with the proposed foreshore facilities. The new boat shed is likely to be at an acceptably low level of risk of damage or destruction from estuarine inundation and wave action for a design life of 25 years as long as all the recommendations included in the submitted Estuarine Risk Management Report for 6 Bona Crescent, Lovett Bay are adopted. As such it is considered that the proposed development is able to satisfy the relevant requirements of the Estuarine Risk Management Policy and B3.7 Estuarine Hazard Controls subject to conditions. <u>Development Seaward of Mean High Water Mark</u> Proposed development works are located on Crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development. DPI Fisheries has raised no objections to the development proposal and does not consider the proposal to constitute integrated development. On internal assessment the proposed development is unlikely to adversely impact on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway and the DA is considered to be able to satisfy the requirements of the Section D15.12 Controls subject to conditions.
Parks, reserves, beaches, foreshore	The development application is for a new boat shed and skid ramp on Crown Land, with a public access walkway deck below the mean high water mark. The development site adjoins a Council controlled Reserve under care and management that includes the Halls Wharf. The development proposal does not impact upon public access to the Reserve and Halls Wharf, and as such no objections are raised.

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

External Referral Body	Comments
	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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

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

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

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

- *(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- *(b) coastal environmental values and natural coastal processes,*
- *(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- *(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- *(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- *(f) Aboriginal cultural heritage, practices and places,*
- *(g) the use of the surf zone.*

Comment:
The assessment undertaken by Council's Coast and Catchments Officer has determined that subject to conditions, the proposed development is unlikely to cause an adverse impact on the characteristics of the coastal environment area as listed above and therefore satisfies this requirement. Council planning officers agree that the proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

(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:
Council is satisfied the proposed works are designed, and can be managed, to avoid adverse

impacts based upon the matters identified in this clause.

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 assessment, including an assessment undertaken by Council referral bodies has determined that subject to conditions, the development is unlikely to have an adverse impact on that listed under (a) and Council is therefore satisfied the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a).

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The assessment has also taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. As discussed throughout this report, the development is considered to be considered with this and the desired future character of the locality.

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

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

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

Comment:
Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	
zone objectives of the LEP?	Zone C3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	E3 - 8.5m W1 Zone - 4m*	Complies 5.17m (above 1.17 AHD)	N/A 29.25%	Yes No

*Pittwater Local Environment Plan 2014, Clause 4.3 (2) Height Of Buildings states "The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map". The boatshed is to be constructed within the land area that dictates a maximum building height of 4.0m. As a result, the propose boatshed does not comply with the maximum building height requirements of the Pittwater Local Environment Plan 2014.

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
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes

Detailed Assessment

Zone W1 Natural Waterways

Development for the purposes of jetties and water recreation structures is prohibited within the Land Use Table of Pittwater Local Environmental Plan 2014 (PLEP 2014) in Zone W1 Natural Waterways, however, Clause 2.5 of PLEP 2014 allows for additional permitted uses on particular land, as described or outlined in Schedule 1 of PLEP 2014.

Schedule 1(23) of PLEP 2014 states that development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent in Zone W1 Natural Waterways for land identified as "Area 23" on the Additional Permitted Uses Map of PLEP 2014. The subject land is located within "Area 23" and as such, the proposed development is permitted with consent.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4m
Proposed:	5.08m (above 1.17 AHD)*
Percentage variation to requirement:	27%

***Note** 1.17 refers to the Highest Astronomical Tide which is assessed as being the most relevant reference point for measuring the height of development within the waterway.

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).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of

native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15.
- The ridge level similar to many of these structures built over that last 20 years in Pittwater.
- The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed over water, and well clear of neighbouring residential sites.
- Due to the location of the boat shed being close to water level and well clear of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.
- There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

It is agreed that the development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit (located towards to the south-east and south-west portion of the boatshed) will not result in any unreasonable impacts to neighbouring 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 W1 Natural Waterways 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 proposal seeks a maximum height of 5.08m resulting in a variation of 27% (1.08m) as shown in Figure 1 and Figure 2 below.

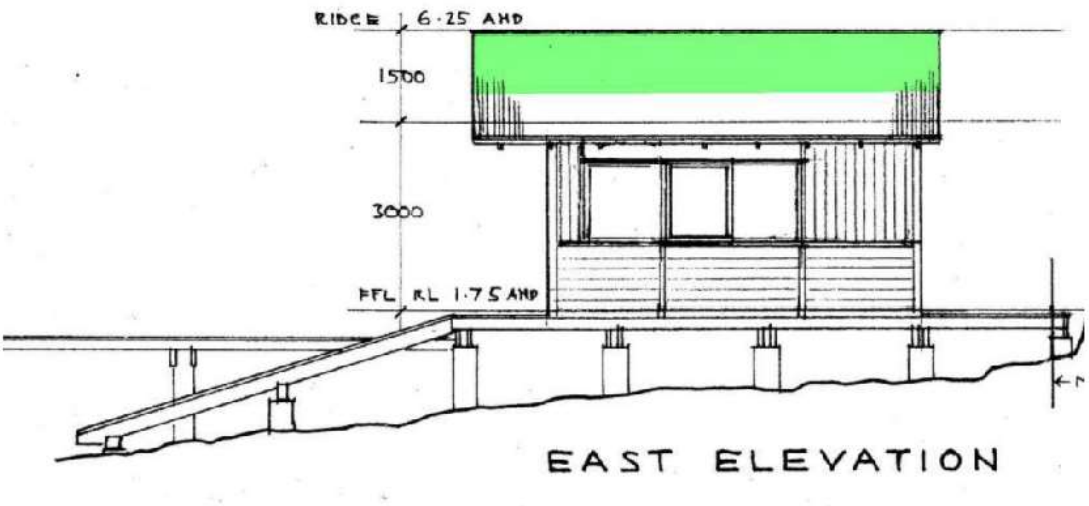


Figure 1: *Building height variation shown in green.*

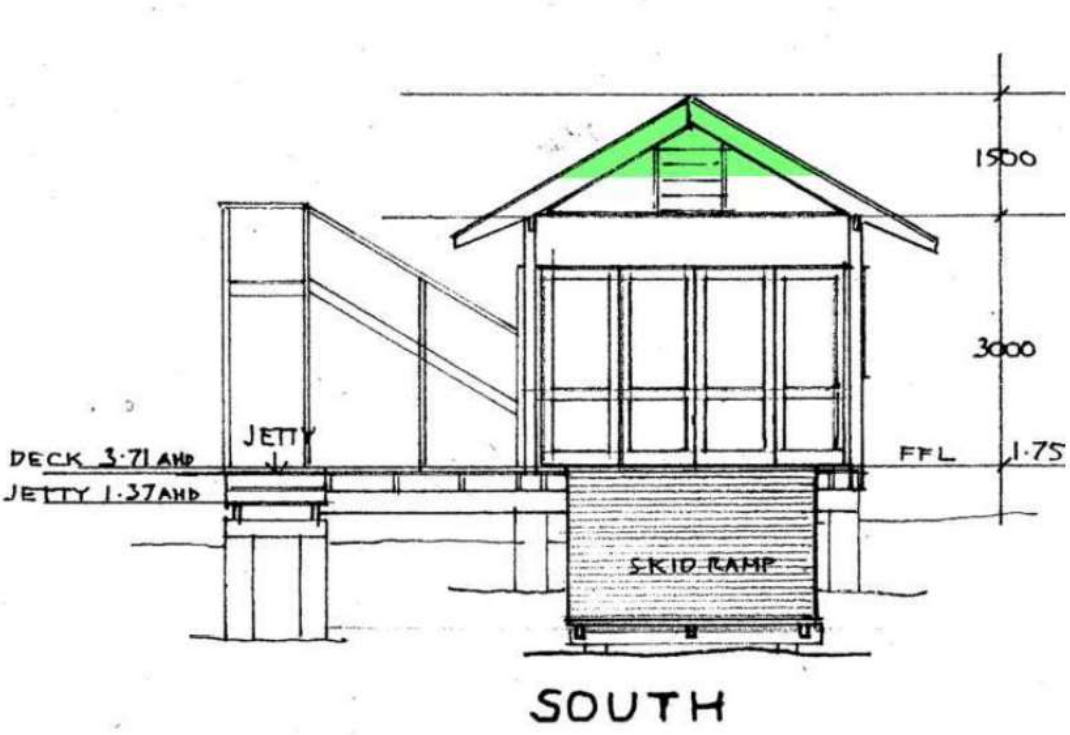


Figure 2: *Building Height variation shown in green.*

The variation will not contribute to an adverse bulk and scale. Boat sheds are common development within the Lower Western Foreshores and Scotland Island locality and proposed height and scale is satisfies with the outcomes within clause D15.15 of P21DCP. In turn, the proposed development is considered to be 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,

Comment:
The encroachment of the height of buildings development standard will not be discernible when viewed from the Pittwater Waterway. The boat shed is to be constructed at a finished floor level of 1.75 AHD which is consistent with the surrounding examples of boatsheds at nos. 18, 19, 20 Portions, Lovett Bay. The proposed height and scale of the boat shed satisfies with the outcomes within clause within clause D15.15 of P21DCP.

c) to minimise any overshadowing of neighbouring properties,

Comment:
The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed partly over water, and the rising slope of the adjoining sites where dwellings are located.

d) to allow for the reasonable sharing of views,

Comment:
An inspection of the subject site and foreshore area has determined that the location of the development allows for the reasonable sharing of views and it is not considered the height exceedance would contributes to any impact.

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

Comment:
The assessment has determined the development will not adversely impact coastal processes or natural topography of the land. The proposed colours and materials will ensure compatibility with the natural environment is achieved.

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

Comment:
The proposal does not include the removal of any canopy trees, with the proposed colours and materials complimenting and enhancing the visual character and its location within the natural landscapes of Pittwater. There are no identified heritage items in the vicinity. To ensure the retention of any items that are found during construction a condition of consent will be imposed for potential items be referred to the Aboriginal Heritage Office.

Zone objectives
The underlying objectives of the W1 Natural Waterways zone:

- *To protect the ecological and scenic values of natural waterways.*

  Comment:
  Given that outlined above and within the assessment of the report, it is considered that the development has been designed and sited to achieve compatibility with existing and recently approved boat shed development within the Waterway while also achieving he desired future character of the locality. The assessment has determined the development will not compromise the ecological or scenic values of natural waterways.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

  Comment:
  DPI (Fisheries) and relevant Council Referral Bodies including Council's Natural Environment Unit and Environmental Health - Acid Sulfate Soils have reviewed the application in relation to the natural values of the waterways zone. Their assessment has raised no concerns to the proposal, therefore recommending approval, subject to conditions.

- *To provide for sustainable fishing industries and recreational fishing.*

  Comment:
  The development facilitates recreational fishing and will have no adverse impact on this or on sustainable sustainable fishing industries.

- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*
  Comment:
  The proposal has been reviewed by DPI Fisheries and the RMS who have issued written

support and raised no issues regarding navigational concerns. Furthermore, the application has been referred to the relevant Council Referral bodies who raise no concerns regarding impacts on the natural environment or obstruction of navigation within the waterway.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*
  Comment:
  The proposed development provides improved and satisfactory private access to the waterway as well as continuous path of travel along the foreshore area.

Conclusion:
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways 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).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Side building line **D15.13 Lateral limits to development seaward of the mean high water mark applies*	West Lateral limit line 2m	Boat Shed - 0.9m Decking - 0m Skid ramp - 1.3m	No
	East Lateral Limit line 2m	Approximately 29m	Yes
Building envelope	West - 3.5m	Within envelope	Yes
	East - 3.5m	Within envelope	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
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
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.8 Building envelope	Yes	Yes
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	No	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

D8.3 Building colours and materials

To ensure the built form is of low reflectivity, and compatible with the surrounding natural environment a condition has been applied requiring external colours and materials for the boat shed, including the roof materials to be of dark and earthy tones, consistent with Clause D8.3.

D15.12 Development seaward of mean high water mark

The proposal includes the construction of various waterway structures located seaward of the mean high water mark which are permitted with consent within the W1 Natural Waterways Zone.

The proposed works do not extend further seaward than the existing jetty and pontoon structure. Where new structures are proposed including the boat shed and skid ramp, the encroachment of these structures into the waterway has been minimised through siting, and design and remain consistent with the location of adjoining and surrounding development of this type. The proposed development has also been designed to facilitate satisfactory public access along the foreshore.

The application has been reviewed by Council's Natural Environment Team who subject conditions, are satisfied that the structures will not harm marine vegetation. A referral response by the DPI (Fisheries) has also been provided with the application, raising no objections subject to conditions.

It is therefore considered the outcomes and controls of this clause are achieved.

D15.13 Lateral limits to development seaward of mean high water mark

Description of non-compliance
The Control stipulates that waterfront development shall be setback a minimum of 2.0 metres along the full length of the lateral limit lines to minimise conflict and to maximise equitable access to the waterway.

The existing jetty and pontoon are located outside of the western lateral limit lines.The proposed boat shed, associated decking and skid ramp are located outside of and within the 2m setback to the western lateral limit.

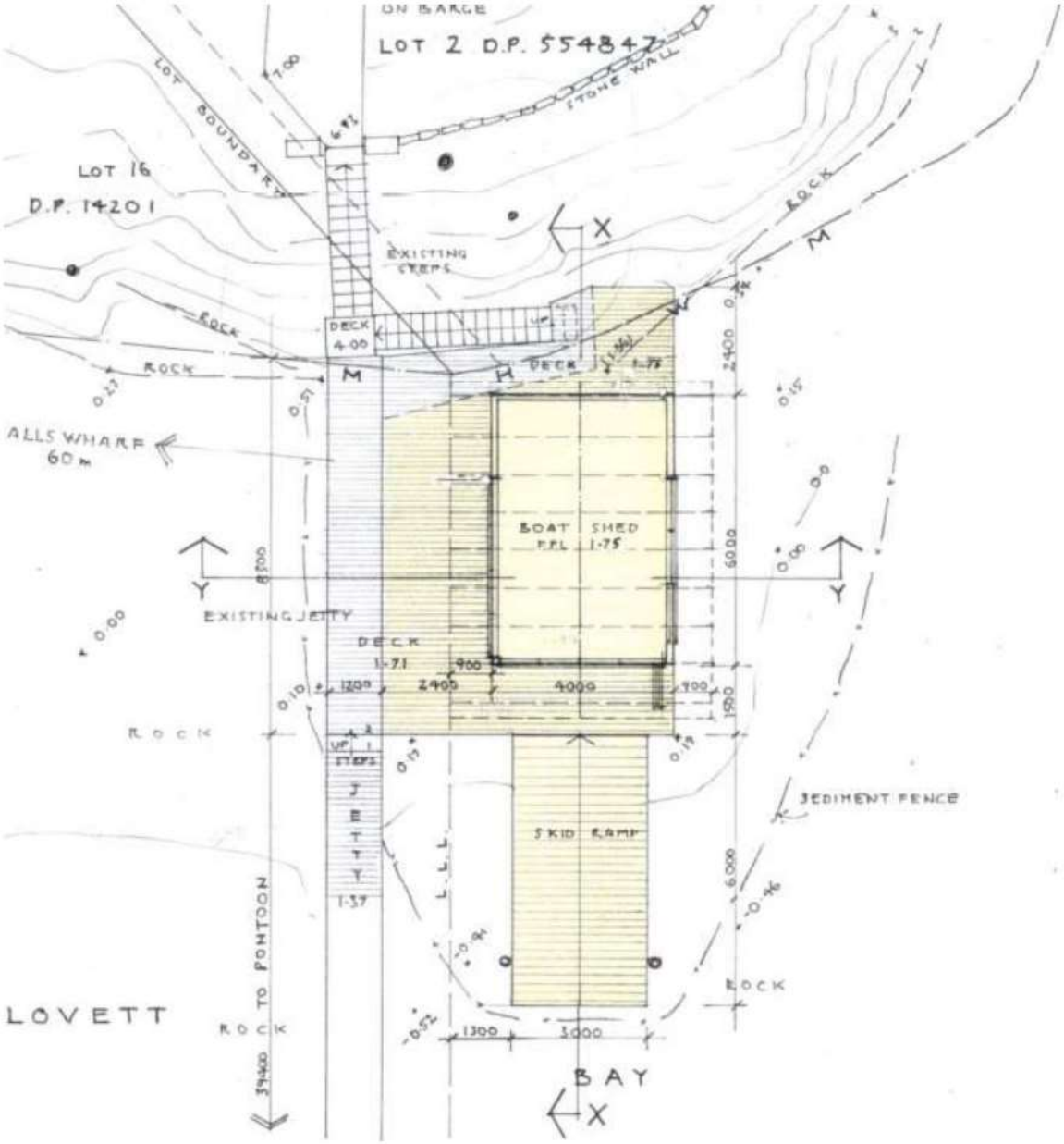


Image 3: *Location of works to the lateral limit line. Lateral limit line shown as L.L.L on plan.*

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

- ***To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.***

  Comment:

The proposed boat shed, deck, and skid ramp will continue to allow for the fair and equitable enjoyment of the waterway. The existing location of the jetty and pontoon located outside of the lateral limit line contributes to the non-compliance to the western lateral limit. The boat shed, deck and skid ramp are located on the eastern side of the existing jetty and will not further encroach into the waterfront of the adjoining property.

The application is accompanied by a letter of correspondence from Transport for NSW, dated 19 October 2020, which states that the proposed development will not cause any navigational issues.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D15.15 Waterfront development

Description of non-compliance
The proposal presents the following non-compliances with the design criteria outlined within this clause:

c) Boatsheds
i. Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark.

Comment:
The proposed boatshed and associated works are located entirely seaward of the MHWM. However, the development is permitted with consent below the mean high water mark as Area 23 of the Additional Permitted Uses Map under the PLEP 2014 applies.

Full compliance is also considered unreasonable in this instance, due to the significant excavation that would be required due to the steep slope of the site immediately above the mean high water mark.

d) Slipways and launching ramps
Slipways and Launching Ramps are generally not favoured.

Comment:
The application proposes the construction of a skid ramp adjoining the southern elevation of the proposed boat shed. While skid ramps are generally not favored, the clause allows for a variation to this requirement, stating that Council may consider skid ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access. In such instances, the following criteria shall apply:

- ***Innovative design which incorporates slipping facilities with other existing or proposed structures is encouraged (Diagram 5).***

Comment:
The proposal is generally consistent with diagram 5 and public foreshore access continues to be facilitated around the structure by a new timber deck around the proposed boat shed.

- ***Structures, the storage of lightweight boats, and any winch equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.***

Comment:
All structures are located entirely seaward of the MHWM and therefore not within private freehold land. However, it is important to note that these structures are permitted with consent as the land is subject to Area 23 of the Additional Permitted Uses Map under the PLEP 2014. It is also considered that the design of the structures ensure that the storage of any equipment will not obstruct public foreshore access.

- ***Structures shall be at ground level, where possible. Slipways from boatsheds, or reclamation must be recessed into the subject structure or work to minimise the height of the sliprails or boat ramp above the bed of the Pittwater Waterway. (Diagram 6).***

Comment:
The proposed skid ramp is not recessed into the subject structure. Despite this, the skid ramp has a maximum height of 1.6m above existing ground level and is therefore not considered to have an adverse or unreasonable visual impact when viewed from the Pittwater Waterway. The skid ramp is consistent with adjoining and surrounding skid ramp development, and the character of the locality, despite not being recessed into the subject structure.

- ***Sliprails are to be in the form of two parallel rails, no more than 2 metres width apart, with either locking spreaders between the rails or bolted directly to the surface of the concrete without the use of spreaders or embedded in concrete to facilitate free access. (Diagram 7).***

Comment:
No sliprails are proposed.

- ***Timber construction is preferred for proposed boat ramps. Concrete ramps may be considered at bed level in certain locations such as at Crystal Bay, Winji Jimmi Bay, Palm Beach and Careel Bay or where it can be shown, to the satisfaction of Council, that the aims of this clause are not compromised. Other materials such as steel with bonded rust proof coating will also be considered.***

Comment:
As indicated on the architectural plans, the proposed construction material for the skid ramp is timber, providing satisfaction with the clause.

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

- ***Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater.***

  Comment:
  The development application was referred to Department of Primary Industries (Fisheries) with no objection raised subject to conditions. The application provided an Estuarine Risk

Management Report, and a Geotechnical Assessment Report and which supported the proposed works. An Estuarine Risk Management Report prepared for the site was assessed against the Pittwater LEP 2014 and Pittwater 21 DCP and was supported by Council's Natural Environment - Coastal Section subject to conditions.

Council's Bushland and Biodiversity, and Coast and Catchments Officers have also reviewed the proposal having regard to water quality and habitat and have raised no objections subject to conditions included in the recommendation of the report. In turn, it is considered the proposal will not have an adverse impact on the water quality or estuarine habitat of Pittwater.

As a result, the proposal (subject to conditions) has been designed and sited to avoid an unreasonable or adverse impact on this and the development therefore achieves this outcome.

- ***Public access along the foreshore is not restricted.***

  Comment:
  Notwithstanding the location and dimensions of the boat shed, public access along the foreshore will not be restricted as the development incorporates a decking area around the structure, providing safe and level public access along the foreshore.

- ***Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.***

  Comment:
  Correspondence submitted with application from Roads and Maritime Services, dated 19 October 2020, advises that an inspection/ assessment has been conducted by the local Boasting Safety Officer and that there are no navigational concerns regarding the designated proposal.

- ***Structures blend with the natural environment.***

  Comment:
  The proposed waterfront structures will blend with the surrounding natural environment as a result of the site specific design and the conditioned use of dark and earthy external finishes.

- ***Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.***

  Comment:
  The proposed development will be visually consistent and comparable with existing, adjoining and surrounding waterfront development. It is considered the proposed development will not be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendation of this report.

- ***To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development.***

  Comment:

The proposal is not a commercial waterfront development. This outcome is therefore not applicable.

- ***Waterfront development which does not comply with the outcomes of this clause are removed.***

  Comment:
  As demonstrated above, the proposed waterfront development complies with the outcomes of this clause and is considered to be both appropriate and acceptable.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $ 610 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 122,000.

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 includes a non-compliance in relation to Building Height. The proposed height breach has been considered in relation to the provisions of Clause 4.6 of the Pittwater LEP 2014 and the context of the site and surrounding locale, which includes a number of approvals inclusive of variations to the Height of Buildings development standard. While it is acknowledged that the proposed height contravention represents a moderate breach, the resulting impacts of the development on the amenity of the adjoining properties and the Pittwater Waterway has been assessed as reasonable.

The proposal includes non-compliances with the following P21DCP Clauses:

- D15.12 - Development seaward of mean high water mark;
- D15.13 Lateral limits to development seaward of mean high water mark; and
- D15.15 - Waterfront development.

The aforementioned non-compliances are considered to result in minimal material impact to adjoining properties and the surrounding Pittwater Waterway, and are considered reasonable when assessed against the relevant objectives of each control.
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 DA2021/1423 for Construction of a boat shed, boat ramp and associated decking on land at Lot 1 DP 554847, 6 Bona Crescent, LOVETT BAY, Lot 2 DP 554847, 6 Bona Crescent, LOVETT BAY, Lot LIC 197918, 6 Bona Crescent, LOVETT BAY, 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**
2180 - DA 01 - SITE PLAN FLOOR PLAN	September 2020	Stephen Crosby & Assoc. Pty Ltd
2180 - DA 02 - SECTIONS & ELEVATIONS	September 2020	Stephen Crosby & Assoc. Pty Ltd
Schedule of Exterior Finishes	7 August 2021	Not Included

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical letter for proposed boat shed and skid ramp Job Number: QP 00254A	28 July, 2021	Hodgson Consulting Engineers
Bushfire Risk Assessment Reference: 1446	13/07/2021	Planning for Bushfire Protection
Estuarine Risk Management Report	11/08/2021	Salients
Waste Management Plan	28/07/2021	Stephen Crosby & Associates P/L

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.

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	Date
Ausgrid	Ausgrid Referral Response	25 August 2021

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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

change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by

Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $610.00 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 $122,000.00.

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

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

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

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

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

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

7. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

8. **Working and Access on Reserves Permit**
Any proposed works or access (undertaken by principal contractors working without Council supervision) on land owned or managed by Council require a “Working on Reserves” permit prior to commencement. Applications can be obtained from Council’s website or the Parks and Recreation business unit.

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

Reason: Public safety and the protection of Council infrastructure.

9. **Updated Waste Management Plan Required**
Prior to the issue of any Construction Certificate, an updated Waste Management Plan is to be prepared to the satisfaction of Council's Environmental Health Team.

The plan shall include detail to manage the excavation, onsite treatment and disposal of potential acid sulfate soils.

Reason: To protect the environment.

10. **Estuarine Hazard Design Requirements**
All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

11. **Estuarine Planning Level Requirements**
An Estuarine Planning Level (EPL) of RL 2.77m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below RL 2.77m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above RL 2.77m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below RL 2.77m AHD.
- All electrical fixtures must be installed above RL 2.77m AHD. If situated below the EPL fixtures must be of submersible grade. Any power outlets located below the maximum wave runup height (4.55m AHD) must also be of submersible grade.

Reason: To ensure aspects of the development are built at the appropriate level

12. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty Limited, dated 11 August 2021 and these recommendations are to be incorporated into construction plans and specifications. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

13. **Structural Engineering for Estuarine Risk**
Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Salients Pty Limited dated 11 August 2021.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

14. **Engineers Certification of Plans**
The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

15. **Public Foreshore Access to be Provided and Maintained**
Public access provisions along the foreshore of the development, including steps and ramps as necessary to provide unobstructed pedestrian access, shall be incorporated into construction

drawings and shall be maintained for the life of the development. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To meet the relevant objectives of State Environmental Planning Policy (Coastal Management) 2018.

16. **Lawful Authority to Use and Occupy Crown Land or Waterway**
An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land is required to be obtained prior to the issue of a construction certificate.

Reason: To ensure that lawful authority under the Crown Land Management Act 2016 to use and occupy Crown land or waterway is obtained before construction commences.

17. **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.

18. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

19. **Waste Management Plan**
A Waste Management Plan must be prepared for this development. The plan must comply with the Northern Beaches Council Waste Management guidelines. Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the issue of any
Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **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.

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

Reason: To protect wildlife habitat.

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

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

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

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

23. **Environmental Health Notification and Inspection Before/During Works (Aquatic Developments)**

Notification must be received by Northern Beaches Council Team Leader Environmental Health, no later than seven (7) business days prior to the date of commencement of works. No disturbance of sediment is to occur, and no works relating to the removal or installation of any structures within the area classified as Class 1 for acid sulfate soils are to commence, until Council's Environmental Health Officer is onsite and has obtained water and/or sediment samples for analysis at a NATA-accredited laboratory, or has provided written confirmation that works may commence.

In addition, Council's Environmental Health Officer must be granted access to the construction site upon verbal or written request at any time prior to the issue of the final occupation certificate, for the purposes of obtaining water and/or soil samples for analysis at a NATA-accredited laboratory. Depending upon the level of environmental risk identified by any soil and/or water sample analyses obtained by Council, Council's Environmental Health Team may require the development of an Acid Sulfate Soil Management Plan by a suitably qualified soil expert, or adjustments be made to an existing Acid Sulfate Soil Management Plan.

Any such plans or amendments must be approved by Council's Environmental Health Team prior to further commencement of works.

Reason: Environmental monitoring for the purpose of environmental protection.

24. **Installation and Maintenance of Sediment and Erosion Control**
Sediment and erosion controls such as silt curtains or booms are to be used during construction, to ensure that there is no escape of turbid plumes into the aquatic environment,

and shall remain in proper operation until all development activities have been completed. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. **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.

26. **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,

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.

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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **Requirement to Notify about New Acid Sulfate Soils Evidence**
Any new information revealed during works that has the potential to alter previous conclusions about Acid Sulfate Soils, shall be immediately notified to the Council and the Principal Certifying Authority. Any works that have the potential to disturb Acid Sulfate Soils must then cease until approval for further commencement is received in writing from Council's Environmental Health Team.

Reason: Protection of the Environment.

32. **Barge and Vessel Movements Not to Disturb Sediment or Seagrasses**
Any works undertaken with the use of a barge or any other vessel, along with barge and vessel movements to, from and within the approved development envelope, must be timed and performed appropriately with respect to tides, weather conditions and bed-morphology of the waterbody so as to not disturb sediment, or cause any damage to aquatic flora or fauna. Piling with the use of barge must only be conducted on high tide and the barge must demobilise on the falling tide. Barges must maintain a minimum clearance of 0.5m to the seabed at all times in order to prevent damage to marina flora and fauna and the seabed in general.

Anchoring of barges is limited to areas void of seagrass such as bare sand.

Reason: Protection of the Environment

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

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

Reason: Aboriginal Heritage Protection. (DACAHE01)

34. **Waste Management During Works**
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

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

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

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

37. **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.

38. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

39. **Waste Management**
All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully in accordance with NSW Environment Protection Agency (EPA) Waste Classification Guidelines.

Reason: Protection of the Environment.

40. **Sediment/Turbidity Management**
All reasonable control steps must be taken to prevent and contain turbidity plumes generated by construction activities in the Pittwater estuary. Sediment must be prevented from migrating to areas inhabited by seagrasses, so as to prevent smothering of seagrasses.

Reason: Protection of environment / key fish habitat.

41. **Boatshed Not for Habitation**
At no time shall the boatshed be utilised or converted to provide for residential habitation. The

boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.

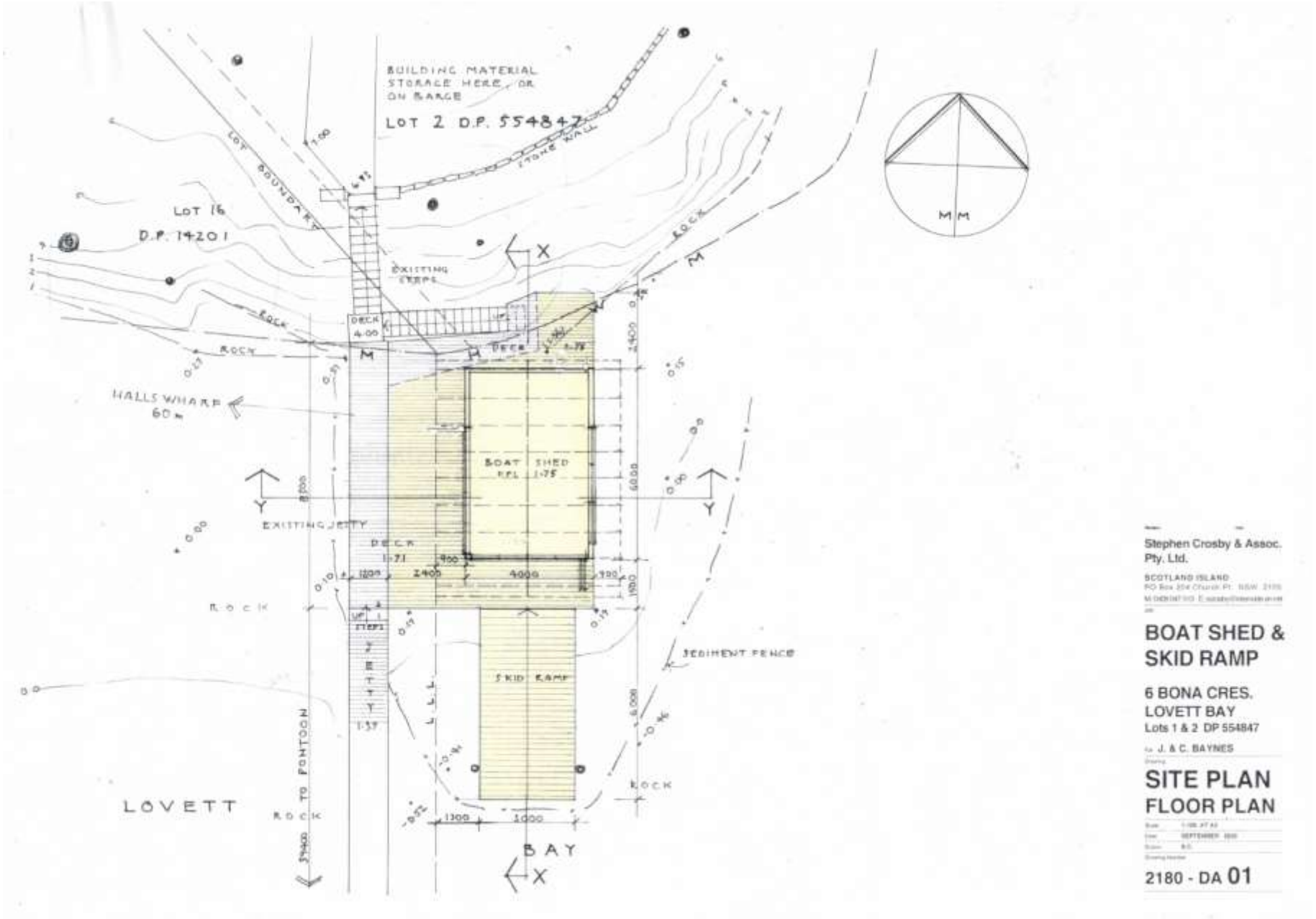
Reason: To ensure compliance with Estuarine Risk Management Policy and Protection of the Environment.

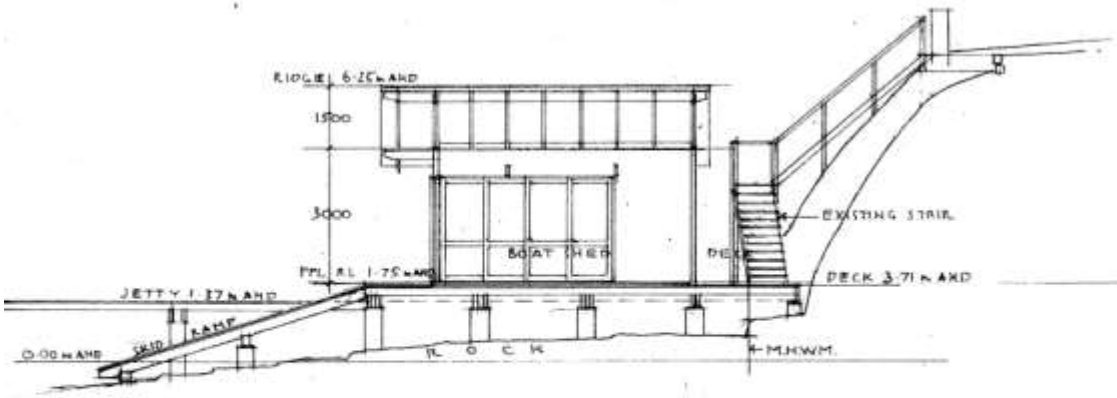
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Reason: To ensure compliance with Estuarine Risk Management Policy.

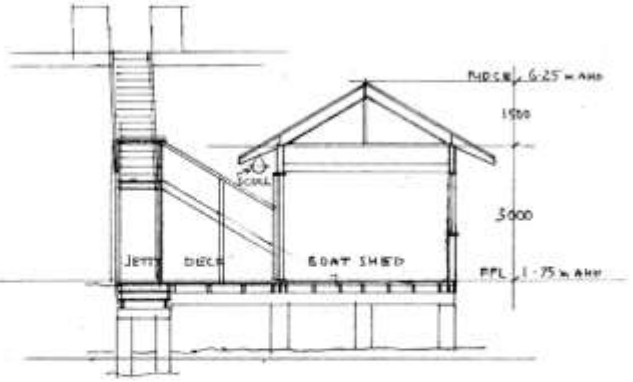
43. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty Limited, dated 11 August 2021 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment

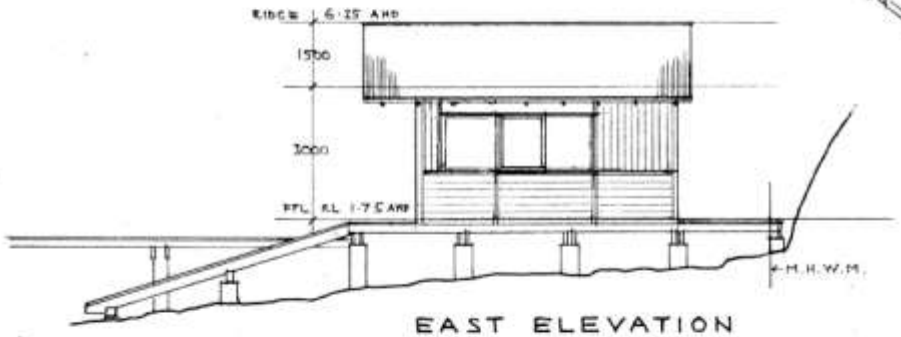

BUILDING MATERIAL STORAGE HERE OR ON BARGE
LOT 2 D.P. 554847
STONE WALL
LOT BOUNDARY
LOT 16
D.P. 14201
EXISTING STEPS
ROCK
DECK 4.00
DECK
HALLS WHARF 60m
BOAT SHED R.F.L. 1.75
EXISTING JETTY
DECK 1.71
STEPS
SKID RAMP
SEDIMENT FENCE
ROCK TO PONTOON
LOVETT
BAY
M M
Stephen Crosby & Assoc. Pty. Ltd.
SCOTLAND ISLAND
BOAT SHED & SKID RAMP
6 BONA CRES.
LOVETT BAY
Lots 1 & 2 DP 554847
for J. & C. BAYNES
SITE PLAN
FLOOR PLAN
2180 - DA 01



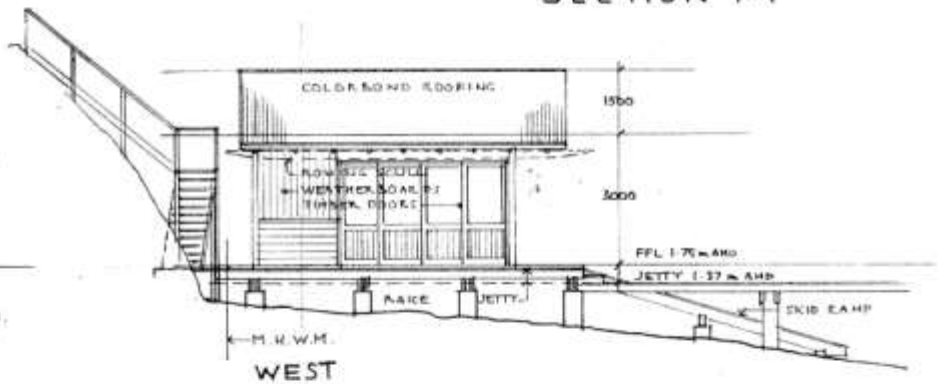
SECTION X-X



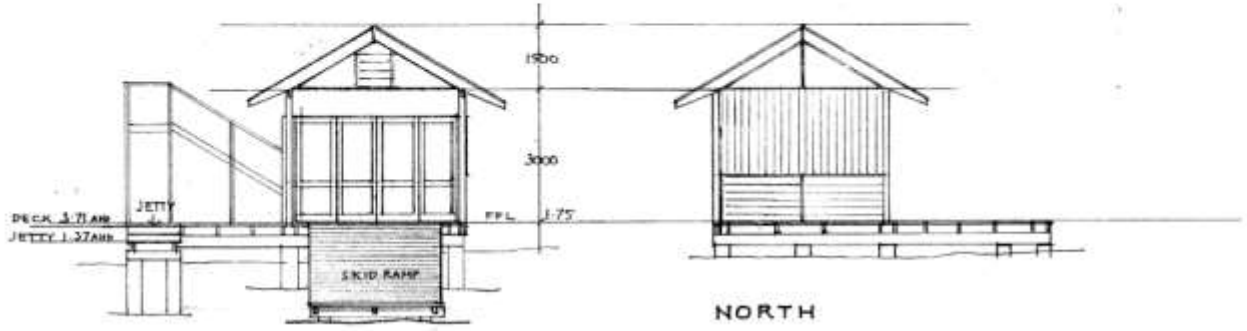
SECTION Y-Y



EAST ELEVATION



WEST



SOUTH

NORTH

Stephen Crosby & Assoc. Pty. Ltd.

SCOTLAND ISLAND
P.O. Box 204 Church Pt. NSW 2105
M.0409 067 513. E.

SECTIONS & ELEVATIONS

Scale 1:100 AT A3
Date SEPTEMBER 2021
Drawn S.C.
Drawing Number
2180 - DA 02

BOAT SHED & SKID RAMP

6 BONA CRES.
LOVETT BAY
Lots 1 & 2 DP 554847

for J. & C. BAYNES

Clause 4.6 Variation Request
Clause 4.3 Height of Buildings

6 BONA CRESCENT, LOVETT BAY 2105
Lots 1 & 2 DP 554847

Date: **28th July 2021**

Prepared By: Stephen Crosby & Associates Pty. Ltd.
PO Box 204, Church Point, NSW 2105

For: J & C Baynes

Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 4.3– Height of buildings** regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 4.3 Height of buildings** with regard to the proposed boat shed to supplement the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the boat shed contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:
- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

> The finished floor level of the proposed boat shed is nominated at 1.75m AHD and the ridge is 6.25m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 1.08m.
>
> The location of the boat shed is in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part i. "Boat sheds shall be located above the MHWM on freehold land, **where practicable**." The form of the

land with the steep embankment behind the Mean High Water Mark makes it impracticable to locate the boat shed on freehold land.

The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part ii. "Boat sheds shall be no greater than 4.5m in building height above the platform on which it is built..." In regard to height limits the DCP makes no distinction as to the location of the boat shed.

The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. This Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

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

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard. 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,

(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.

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

The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 20 years in Pittwater.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for boat sheds on the Western Foreshore of Pittwater, and remains consistent with the desired character of the Pittwater waterway.

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

Many of the boat sheds in Elvina and Lovett Bays, as well as on Scotland Island, are similar in height and scale.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed over water, and well clear of neighbouring residential sites.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of the boat shed being close to water level and well clear of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

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

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply up from the Mean High Water Mark.

The building sits lightly on the existing terrain with no bulk excavation of the existing natural environment..

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

There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

Pittwater LEP 2014 cl. 4.6 Exceptions to development standards sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

(3) (a) as demonstrated above compliance with the development standard cl.4.3 is unreasonable or unnecessary in this case, and,
(b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.

(4) (a) (i) the proposed development is modest in scale and typical of boat sheds for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the W1 Waterways zone. The primary driver of the variation is the result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the boat shed will not affect public access along the waterfront.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Boat sheds are a specifically permissible use of the site and consistent with the character of the Lovett Bay locality.
- Boat sheds of this traditional form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.
- The proposal makes minimal impact on the natural terrain with no bulk excavation.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the W1 Waterways zone under the PLEP 2014.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:
- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

STEPHEN CROSBY

ITEM 3.5	**DA2021/1785 - 23 KING STREET NEWPORT - ALTERATIONS AND ADDITIONS TO DWELLING HOUSE INCLUDING A CARPORT AND SECONDARY DWELLING**
REPORTING MANAGER	**TONY COLLIER**
TRIM FILE REF	**2021/864958**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council as the consent authority **approves** Development Consent to DA2021/1785 for alterations and additions to dwelling House including a carport and secondary dwelling on land at Lot 4 DP 331934, 23 King Street, Newport, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1785

Responsible Officer:	DM Planning (external planning consultant)
Land to be developed (Address):	Lot 4 DP 331934, 23 King Street NEWPORT
Proposed Development:	Alterations and additions to dwelling House including a carport and secondary dwelling
Zoning:	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:	Nadia Heers Julian Heers
Applicant:	Nadia Heers C/- Walsh Architects

Application Lodged:	28 September 2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – New secondary occupancy
Notified:	10 November 2021 to 29 November 2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$539, 838.35

EXECUTIVE SUMMARY

The application includes alterations and additions to a dwelling house, including a carport and secondary dwelling.

The application is referred to the Development Determination Panel (DDP) as the previous development application (for the same proposal), DA2021/1010, did not include an assessment of the neighbour's submission.

Based on the detailed assessment contained in this report, it is recommended that development application DA2021/1785 be approved subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing dwelling, and the construction of a new secondary dwelling. In detail, the proposal comprises of:

northern beaches council

Ground Floor

- Internal reconfiguration.
- Addition comprising of a walk-in-robe to master bedroom.
- Ensuite to master bedroom.
- New kitchen and laundry.
- New entry.
- Window, wall and door changes.
- Outdoor covered deck.

Secondary Dwelling

- Two bedrooms.
- Living/Kitchen/Dining.
- Bathroom.
- Ground level deck.

External

- Carport.
- 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

- Pittwater 21 Development Control Plan – C1.3 Views
- Pittwater 21 Development Control Plan – C1.4 Solar Access
- Pittwater 21 Development Control Plan – C1.5 Visual Privacy
- Pittwater 21 Development Control Plan – C.11 Secondary Dwelling and Rural Workers
- Pittwater 21 Development Control Plan - D10.7 Front building line
- Pittwater 21 Development Control Plan - D10.8 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 4 DP 331934, 23 King Street NEWPORT NSW 2106

Detailed Site Description:	The subject site consists of a corner allotment located on the southern side of Irrubel Road and eastern side of King Street. The site is regular in shape with a frontage of 15.24m along King Street and 51.45m along Irrubel Road. The site has a surveyed area of 787m². The site is located within the R2 Low density Residential zone and accommodates a dwelling house on site. The site has a slope from the east to the west and contains vegetation to the east and west of the existing dwelling. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development. A secondary dwelling is located to the south of the site at 21 King Street.



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:

On 23 February 2021, Pre-lodgement Meeting PLM2021/0036 was held to discuss the proposal - alterations and additions to a dwelling house and new secondary dwelling. The following comments were provided in regard to amended plans provided for this PLM:

"The proposal, in its originally submitted form was not supported, however, the revised scheme can be supported. The variations to the P21DCP provisions are noted as being the 2 storey nature of the secondary dwelling and the lack of a parking space for the new dwelling. For the reasons given in these notes, these variations are satisfactory."

Subject Application



On 28 September 2021, Development Application DA2021/1785 for alterations and additions to a dwelling house and construction of a carport and secondary dwelling was lodged with Council.

On 9 November 2021, the Applicant submitted amended plans, with the primary change being the addition of a walk-in-robe to connect the principal dwelling to the secondary dwelling.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council received 1 submission from:

Name:	Address:
Mr Allen Janssens	21 King Street, Newport

Assessment of issues raised

The matters raised within the submission have been considered and are addressed as follows:

- ***The development causes unacceptable impacts on existing views***.

  Comment:
  The secondary dwelling at 21 King Street enjoys an outlook over the subject site, in a northerly direction, from the adjoining deck and inside the dwelling. The proposed development will block some of this view.

  An earlier submission from the 21 King Street owner included a request for height poles. However, height poles are not considered necessary to understand the extent of view impact on this property.

  The view impacts on 21 King Street have been assessed in accordance with the principles of *Tenacity Consulting v Warringah Council 2004*, in the Pittwater 21 Development Control Plan (PDCP) section of this report.

  In summary, the assessment finds that, subject to conditions, reasonable view sharing is achieved.

- ***Solar Access: Shadow over primary private open space in the middle of the day in winter.***

  Comment:
  This issue is discussed in detail in the PDCP section of this report.

  In summary, the assessment finds that the overshadowing impacts are not unreasonable.

- ***Visual Privacy - Window on southern side of secondary dwelling overlooks private primary open space and living room***

  Comment:
  This issue is discussed in the PDCP section of this report.

  In summary, the Bedroom 2 window will result in privacy impacts and therefore, a condition of consent is recommended to increase the sill height of this window to minimise the potential for overlooking.

- ***The proposal does not comply with the following DCP controls:***

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- ***C1.3 View Sharing***
- ***C1.4 Solar Access***
- ***C1.5 Visual Privacy***
- ***C1.11 Secondary Dwellings and Rural Workers Dwellings***
- ***D10.8 (Newport) Side and Rear building line***
- ***D10.11 (Newport) Building Envelope***

Comment:
These matters are addressed in detail in the PDCP section of this report

- ***In the event of an approval the following amendments are requested:***

  - ***Roof Profile: Change to a skillion roof rising from south the north, this will reduce the impact on our views, solar access as well as the bulk of the building.***
  - ***Location of secondary dwelling: Move the secondary dwelling north so that it aligns with the northern side of the existing dwelling, this will reduce impact on views, and solar***
  - ***Location of second storey: Move the second storey north, this will reduce impact on views and eliminate solar access issue.***
  - ***Stairs: Move the staircase to the northern end of the building to reduce bulk and impact on views***
  - ***Screening plants: Ensure appropriate plants are used on the southern side of the building to screen the second storey without further restricting views and solar access.***

  Comment:
  Recommended conditions of consent will require a lowering of the roof pitch, an increase in the sill height of the Bedroom 2 south-facing window and additional screen planting along the southern side of the secondary dwelling.

  Subject to the recommended conditions of consent, the proposal is assessed as satisfactory.

- ***The proposed secondary dwelling does not achieve the outcome of DCP control C1.11 to "limit the visual bulk and scale of the development.***

  Comment:
  This issue is discussed in detail in the PDCP section of this report.

  In summary, the proposal is assessed as satisfying the outcomes of this control. The proposal has a bulk and scale which is consistent with the streetscape and the character of the area.

REFERRALS

Internal Referral Body	Comments
Building Assessment – Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	No Landscape Plan or Arboricultural Impact Statement submitted with the application, and Landscape Referral

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Internal Referral Body	Comments
	shall impose conditions to ensure the development achieves an appropriate landscape outcome. The plans submitted indicate that all existing trees and vegetation are to remain with the exception of three exempt species palms as shown on the demolition plans and additionally existing garden area to accommodate the proposed carport fronting King Street and the proposed secondary dwelling. The exempt palm species, lawn and garden removal do not require Council consent for removal.
NECC (Bushland and Biodiversity)	The application seeks approval for the construction of alterations and additions to an existing dwelling and construction of a new secondary dwelling, including landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: • Biodiversity Conservation Act 2016 (BC Act) • State Environmental Planning Policy (Coastal Management) - Proximity to Littoral Rainforest • Pittwater Local Environmental Plan (PLEP) - 7.6 Biodiversity Protection • Pittwater Development Control Plan (PDCP) - B4.6 Wildlife Corridors No Arboricultural Assessment is provided with the application, however the SEE (BBF 2021) states that no existing significant trees are proposed to be removed by the proposal. In contrast, the submitted Demolition Plan (Walsh Architects 2021) depicts three trees to be removed, including two exempt palms, and one prescribed tree (*Livistona australis*) noted as 16m in height on the property survey. To compensate for the removal of this tree, two new *Livistona australis* must be planted elsewhere within the property to meet the objectives of B4.6 of the PDCP. Subject to 2:1 tree replacement, Council's NEU-Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Development Engineering)	No objections to approval subject to conditions as recommended. The proposal is therefore supported.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. As this site drains into the Pittwater waterway, the development must not significantly impact on the biophysical, hydrological or ecological integrity of these

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Internal Referral Body	Comments
	waters, or on the quantity and quality of surface and ground water flows to the creek or lagoon. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of the Pittwater waterway if conditions are adhered to. The proposal is therefore supported.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development generally complies with the flood requirements of the PDCP and PLEP.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 regulations	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.

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Section 4.15 'Matters for Consideration'	Comments
	Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. 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 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.

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

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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 as the above.

Clause 20: Land to which this Division applies:

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

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposal would result in a dwelling and a secondary dwelling on the site.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	The Secondary dwelling does not provide a floor area of more than $60m^2$.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (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 proposal is not recommended for refusal on either of these grounds.

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.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates have been submitted with the application (see Certificate Nos. 1192714S_02 and A412597).

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

SEPP (Infrastructure) 2007

Ausgrid



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

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

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

SEPP (Coastal Management) 2018

An assessment is made in relation to SEPP (Coastal Management) 2018 as follows:

11 Development on land in proximity to coastal wetlands or littoral rainforest

1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
   a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
   b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:
The proposed works are well separated from coastal wetlands or rainforest, and do not introduce building bulk or land change that is likely to cause an unreasonable impact.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
b) the proposed development:
   (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
   (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
   (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:
The proposal will not have a detrimental impact on the above and is not likely to alter coastal processes. This is a result of the lack of additional bulk proposed and the physical separation of the site from the beach and coastal area (over 100m).

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13 Development on land within the coastal environment area

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

Comment:
The proposal will not have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment, which could cause an unreasonable impact on the coastal environment area.

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

Comment:
The proposal generally retains the siting of the existing dwelling which is over 100m from the coast. This physical separation from the coastline along with the proposed works being maintained within the existing siting, provides a circumstance in which potential impact is sufficiently minimised.

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

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

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes

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Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes

PITTWATER DEVELOPMENT CONTROL PLAN

Built Form Controls

Built Form	Requirement	Proposed	% variation*	Complies
Front building line (King Street)	6.5m	7.5m	N/A	Yes
Secondary Front building line (Irrubel Road)	6.5m (exception for secondary frontage 3.5m)	1.3m (Deck) 3.1m (Secondary Dwelling)	52%-80%	No (see comments)
Rear building line	N/A	N/A	N/A	N/A
Side building line	2.5m (E)	2.6m (secondary dwelling)	N/A	Yes
	1m (S)	0.4m (carport)	60%	No (see comments)
Building envelope	3.5m (E)	Within envelope	N/A	Yes
	3.5m (S)	Within envelope	N/A	Yes
Landscape area	50% (393.5m^2)	53.5% (421m^2)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 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
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.12 Landscaped Area - General	Yes	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

Clause C1.3 View Sharing

Merit consideration

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The PDCP requires that all new development be designed to achieve a reasonable sharing of views from surrounding and nearby properties. View sharing is assessed by the application of the Land and Environment Court's planning principles for view sharing.

The main objection to the proposal, cited by the owners of 21 King Street, is the impact on views from the living area and private open space of the secondary dwelling.

In determining the extent of potential view loss to the secondary dwelling at 21 King Street, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:
The available views from the secondary dwelling at 21 King Street include views over the rear yard of 23 King Street toward the opposite side of Irrubel Road. The view comprises a sloping and vegetated residential area with trees interspersed with dwellings. The views are not water views, water/land interface views or iconic views, therefore they are not as highly valued as these views.

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

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

Comment to Principle 2:
The views are obtained in a northerly direction, across a side boundary, from the living areas and deck of the secondary dwelling. The views are attained from a sitting or standing position and are shown in Figure 1 below.

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Figure 1. Available view from the secondary dwelling at 21 King Street

3. Extent of impact

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

Comment to Principle 3:
The proposed secondary dwelling will block a significant proportion of the available district view, directly to the north. However, views to the northeast and northwest will remain open. Based on the lower value attributed to non-water and non-iconic views, the extent of the impact is assessed as moderate.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

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The proposed secondary dwelling complies with the relevant built form controls with the exception of a minor breach to the Irrubel Road setback. The setback breach is of minimal relevance to the view loss impacts of the development. As the view loss is a result of compliant elements of the secondary dwelling, consideration must be given to whether a more skilful design could achieve the same development potential while reducing the impact on views.

In response to the more skilful design question, a lower profile roof will marginally improve view impacts to 21 King Street without compromising the amenity of the proposed development. Consequently, a recommended condition of consent will require lowering the roof pitch.

Given the overall compliance of the development and noting the views are not water or iconic views, the view impacts are considered acceptable, and the proposal is supported.

Clause C1.4 Solar Access

Merit consideration

The PDCP requires that the main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on 21 June.

Objections have been received from the adjoining secondary dwelling to the south regarding additional overshadowing to their large timber deck located on the common boundary. It is noted that this deck is not shown on the approved Complying Development Certificate (CDC) plans, which indicates that the primary open space area for this secondary dwelling is located to the northeast of the dwelling (see Figure 2 below). The timber deck of concern is not shown on the approved CDC plans.

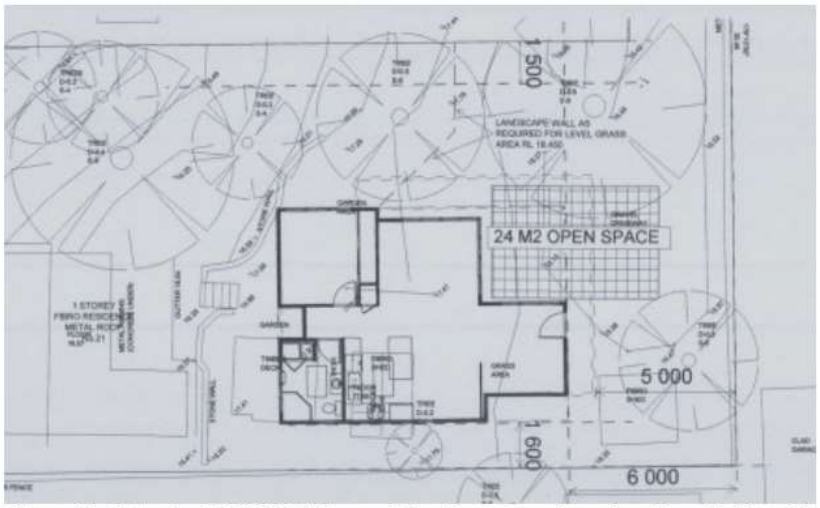


Figure 2. Extract of CDC67/12 issued for the secondary dwelling 21 King Street

The shadow diagrams submitted with the application show that there will be some minor additional shadowing to the rear of 21 King Street at 9am, 12 noon and 3pm.

The Applicant has also provided 'view from the sun' diagrams that demonstrate that appropriate levels of sunlight will be maintained to the windows of the secondary dwelling, its adjoining decks, and garden areas.

In summary, the sunlight available to the private open space of adjoining the dwellings will not be impacted by more than 3 hours between 9am and 3pm on 22 June.

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For these reasons, it is concluded that the proposal will not significantly or unreasonably reduce the available sunlight to the adjoining properties, and the outcomes of the control have been satisfied.

Clause C1.5 Visual Privacy

The PDCP requires that private open space and living rooms of proposed and any existing adjoining dwellings be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices, or greater spatial separation.

The proposed south-facing bedroom 2 window creates unacceptable privacy impacts on the secondary dwelling at 21 King Street. A recommended condition of consent will require that the sill height of this window be increased to 1.7m.

Clause C1.11 Secondary Dwellings and Rural Worker's Dwellings

The PDCP requires that only one storey be allowed where a secondary dwelling is separate from the principal dwelling.

As originally submitted, the two-storey secondary dwelling did not satisfy this requirement as it was separate from the principal dwelling. However, the amended proposal includes an addition to the principal dwelling (comprising of a walk-in-robe) that connects the principal dwelling to the secondary dwelling. Consequently, the one-storey requirement does not technically apply.

Nevertheless, an assessment of the proposed secondary dwelling against the control outcomes is undertaken below.

Consideration of the outcomes of the control:

- ***Limitation of the visual bulk and scale of development.***

Comment
Subject to a recommended condition of consent lowering the roof pitch, the bulk and scale of the proposed development fits with the surrounding environment and is assessed as appropriate. It is noted that the overall height (after the lowering of the roof pitch) will be comparable to the secondary dwelling at 21 King Street.

- ***Provision of design flexibility for second storey development.***

Comment
Given the street frontage to Irrubel Road, the site is suited to a two-storey development.

- ***Restriction of the footprint of development site.***

Comment
The two-storey design reduces the building footprint, thus minimising impacts on existing vegetation.

- ***Retention of natural vegetation and facilitation planting of additional landscaping.***

Comment
The proposal will have minimal impact on existing vegetation and provides greater opportunity for additional landscaping compared to a single-storey secondary dwelling.

- ***Provision of rental accommodation.***

Comment
Opportunities for additional rental accommodation in the surrounding area will be improved by the proposed secondary dwelling.

In conclusion, the proposed secondary dwelling will achieve the control outcomes.

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Clause D10.7 Front building line (excluding Newport Commercial Centre)

Description of non-compliance

The proposal involves a new dwelling with a compliant front setback to the primary boundary (7.5m). However, the proposal does not comply with the numerical exception for the front building line (3.25m) for the secondary frontage to Irrubel Road. In this regard, the proposal provides a setback of 3.1m (to the secondary dwelling).

Merit Assessment

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

Comment
The site has an existing two storey dwelling on the site, and the proposal involves a new secondary dwelling with a compliant landscaped area and compliant building height. The proposal provides sufficient articulation and stepping of the building form to ensure the presentation of the dwelling will achieve the desired future character.

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

Comment:
The proposal maintains suitable viewing corridors through the site through the compliance with controls for building envelope and building height.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment:
The proposed landscaped area to the front of the site and the buffer of vegetation surrounding the site, assists in maintaining amenity for the residential development in relation to the road.

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

Comment:
The proposal maintains vegetation to surround the property, and conditions have been provided by Council's for tree and vegetation protection. This is a positive outcome which maintains vegetation to reduce the presentation of built form visually.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:
The proposal provides a driveway and carport with reasonable ability for vehicle maneouvering.

- ***To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.***

Comment:
The proposed dwelling and secondary dwelling are generally located below the level of the surrounding vegetation. This ensures a positive visual presentation of the site from the streetscape is maintained.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:
The existing vegetation on the road reserve along with the landscaped area provided to the front of the site will ensure that an attractive street frontage with pedestrian amenity is maintained.

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

Comment:
The proposal provides suitable stepping, articulation, and physical separation from neighbouring properties. Along with the compliant landscaped area, this is an appropriate response to the spatial characteristics of the existing urban environment.

The proposal is consistent with the underlying outcomes of the clause and as such, is reasonable in this instance.

Clause D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of non-compliance

The proposal does not comply with the control for side building line (2.5m & 1m). In this regard, the proposal involves a varied side building line which involves a 0.4m setback to the proposed carport.

Merit consideration

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 site has an existing two-storey dwelling and the proposal involves a new two-storey secondary dwelling with a compliant landscaped area and compliant building height. The proposal provides sufficient articulation and steeping of the building form to ensure the presentation of the dwelling will achieve the desired future character.

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

Comment:
The proposed dwelling and secondary dwelling involve a compliant building envelope and compliant building height. Along with the open nature of the deck area, the landscaping across the site and the reasonable stepping of the built form, this provides a bulk and scale in built form that is adequately minimised.

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

Comment:
The proposal involves a new dwelling which maintains viewing corridors by providing articulation as well as a compliant building height.

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

Comment:
The proposal maintains landscaping to the surround site. This open space is positioned to ensure reasonable access to views through the site.

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

Comment:

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The proposal involves a design that includes adequate articulation of building bulk and physical separation to ensure that there would be no unreasonable impact on amenity. Additionally, the design of openings at the side boundaries is adequately minimised to prevent loss of privacy.

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

Comment:
The proposal provides landscaping across the site which is compliant with the control for landscaped area. Along with the retention of the vegetation to surround the property, this ensures an attractive streetscape.

- ***Flexibility in the siting of buildings and access.***

Comment:
In this circumstance, flexibility is warranted for the new dwelling and secondary dwelling (to not strictly comply with the numerical controls). This is a result of the reasonable presentation of bulk within the area and the lack of amenity impact on neighbouring properties.

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

Comment:
Vegetation is provided throughout the site to surround the dwelling. This results in an appropriate minimisation in the presentation of built form.

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

Comment:
Not applicable.

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

7.12 CONTRIBUTIONS

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

A monetary contribution of $5,398.38 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $539,838.35.

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.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1010 for Alterations and additions to Dwelling House including a carport and secondary dwelling on land at Lot 4 DP 331934, 23 King Street, NEWPORT, subject to the conditions printed below:

CONDITIONS

1. **APPROVED PLANS AND SUPPORTING DOCUMENTS**
   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**
DA112 - Rev B - Demolition - Ground Floor Plan	8.11.21	Walsh Architects
DA113 - Rev A - Demolition -Level 1 Plan	3.05.21	Walsh Architects
DA120 - Rev A - Proposed Site Plan	3.05.21	Walsh Architects
DA121 - Rev B - Proposed Ground Floor Plan	8.11.21	Walsh Architects
DA122 - Rev B - Proposed Level 1 Plan	8.11.21	Walsh Architects
DA123 - Rev B -Proposed Roof Plan	8.11.21	Walsh Architects
DA200 - Rev B - Sections	8.11.21	Walsh Architects
DA201 - Rev B -Sections	8.11.21	Walsh Architects
DA202 - Rev B -Sections	8.11.21	Walsh Architects
DA300- Rev B - Elevations	8.11.21	Walsh Architects
DA301- Rev B - Elevations	8.11.21	Walsh Architects
DA302- Rev B - Elevations	8.11.21	Walsh Architects
DA800 - Rev B - External Finishes	8.11.21	Walsh Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Flood Risk Management Report	April 2021	Taylor Consulting

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

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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**
Waste Management Plan	2 July 2021	applicant

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. Amendments to the approved plans

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

- The south-facing bedroom 3 window is to have a minimum sill height of 1.7m measured from finished floor level.
- The secondary dwelling roof profile, above bedroom 1 and bedroom 2, is to be lowered by reducing the pitch to 10 degrees.

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.

3. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	22/10/2021

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

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

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.

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(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;

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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.

5. Prescribed Conditions

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

(b) BASIX affected development must comply with the schedule of BASIX commitmentsspecified 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 CertifyingAuthority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work anda 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 beencompleted.

(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 thework 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 ofthat 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 underthat Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is inprogress 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

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to whichthe 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 ofthe 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 theexcavation, and

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

(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 intentionto do so to the owner of the adjoining allotment of land and furnish particularsof 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 costof work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

FEES/CHARGES/CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of **$5,398.38** 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 $539,838.35.

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.

7. 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.

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

The Applicant is to lodge a bond of **$6,500** 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

9. Surrender of Development Consent

The applicant shall surrender to Council Development Consent No: DA2021/1010 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg).

10. Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Water Management for Development Policy. Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to Council for approval. Council's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

11. On-site Stormwater Detention Details

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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 Taylor Consulting Engineers, drawing number Sheet 1, dated 28/4/2021. 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.

The drainage plans must address the following:

(i) OSD shall be provided in accordance with Clause 9.3.1 of Council's Water Management for Development Policy.
(ii) Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

12. 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 connection to the council pipeline traversing the site 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 at:

www.northernbeaches.nsw.gov.au > Council Forms>Stormwater Drainage Application Form.

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.

13. Pre-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a pre-construction/demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The pre-construction/demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

14. Laundry Facilities

A laundry facility is to be provided to incorporate clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine and is required to

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comply with Part 3.8.3 of the Building Code of Australia –'Facilities'. A kitchen sink or washbasin must not be counted as a laundry washtub. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity.

15. Erosion and Sediment Control Plan

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

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

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

Reason: Protection of the receiving environment.

16. Flooding

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – B1
The new car port shall be designed and constructed with flood compatible materials.

Building Components and Structural Soundness – B2
The new car port shall be designed to ensure structural integrity up to the Flood Planning Level of 14.1m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
For the new car port, all new electrical equipment, power points and wiring must be waterproofed and/or located above the Flood Planning Level of 14.1m AHD.

Floor Levels – C3
The underfloor area of the new deck (attached to the house) is to be designed to allow clear passage of floodwaters from the natural ground level up to the 1% AEP flood level. This level varies with the slope of the land, but may be taken as 0.3m above natural ground level. At least 50% of the perimeter under the new decking area must be of an open design for the lowest 0.3m.

Car parking – D3
The car port is to be designed to allow flood waters to pass through and is to have a minimum of 50% of the perimeter open from the natural ground level up to the 1% AEP flood level of 13.6m AHD

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Car parking – D4
Vehicle barriers or restraints are to be installed along the southern boundary of the car port or along the fence so as to prevent vehicles leaving the site in the 1% AEP flood event. They are to be designed to allow flood waters to pass through and are to have a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. Perimeter walls/louvres installed as vehicle barriers or restraints are to be designed to allow flood waters to pass through and are to have a minimum of 50% open area from the natural ground level up to the 1% AEP flood level.

Fencing – F1
Any new fencing within the 1% AEP flood extent shall be open to allow for the unimpeded movement of flood waters, with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. Openings should be a minimum of 75mm x 75mm.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. Road Reserve

The Applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

19. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 68 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.

20. 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 in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites, including:

(i) the provision of temporary fencing to protect existing trees within 5 metres of development,

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(ii) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Any required 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.

21. 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,
   (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.

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.

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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.

22. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

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

23. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

24. Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/generalinformation/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

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

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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 onsite 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.

26. Easement for Drainage

An easement for drainage 3 meters wide and located centrally over the stormwater pipeline is to be created on the title in favor of Northern Beaches Council in accordance with Council's Water Management for Development Policy.

The easement is to be created to ensure all drainage infrastructure is located within the easement and include a minimum 1 meter horizontal clearance to the edge of any pipeline and pit structure. The easement plan is to be prepared to Council's requirements at the Applicant's expense and be endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services.

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

Reason: To create encumbrances on the land

27. Positive Covenant for the access to Council's drainage line

Creation of a Positive Covenant on the title, requiring any costs relating to the dismantling, removal, and subsequent re-assembling, re-installation, re-instatement of the carport and associated concrete slab over Council's Easement for drainage to be borne by the property owner.

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The Positive Covenant is to be prepared by the Applicant using terms acceptable to Northern Beaches Council at the Applicant's expense. The Positive Covenant is to be endorsed by Council prior to its lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure the future access to Council's drainage infrastructure within the site is maintained.

28. Certification of the Structural Stability of the Building

A suitably qualified structural engineer is to certify the structural stability of the new car port considering lateral flood flow, buoyancy, suction effects, wave action and debris load impact up to the Flood Planning Level of 14.1m AHD.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

29. Certification of Services

A suitably qualified electrical engineer or contractor is to certify that for the car port, any electrical equipment, power points or wiring are located above or waterproofed to the Flood Planning Level of 14.1m AHD.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

30. Landscape Completion

Landscaping is to be implemented in accordance with drawing number DA121 and DA122, and inclusive of the following conditions:

(i) the shrub screen planting shown on drawing DA121 in part shall be continued for the full length of the rear boundary and shall also be provided along the southern boundary for the length of the secondary dwelling,
(ii) the planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
(iii) all other existing trees and vegetation shall be retained.

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

Reason: Environmental amenity.

31. New Vegetation Planting

Landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants in accordance with B4.6 of the PDCP. Locally native species are

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to be consistent with the relevant section of the Native Gardening Booklet available on Council's website.

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

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

32. Replacement of Canopy Trees

At least 2 Livistona australis (Cabbage Palm) are to be planted on site to replace protected trees approved for removal.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another Livistona australis.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

33. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

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

34. Flood Management

Storage of Goods (G1)
Hazardous or potentially polluting materials shall not be stored in the car port below the Flood Planning Level of 14.1m AHD.

Flood Effects Caused by Development (A2)
There shall be no filling of the land below the 1% AEP flood level, or obstruction of flow paths through the property. This includes the blocking of areas required by DA consent to be left open.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

35. 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.

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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.

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.

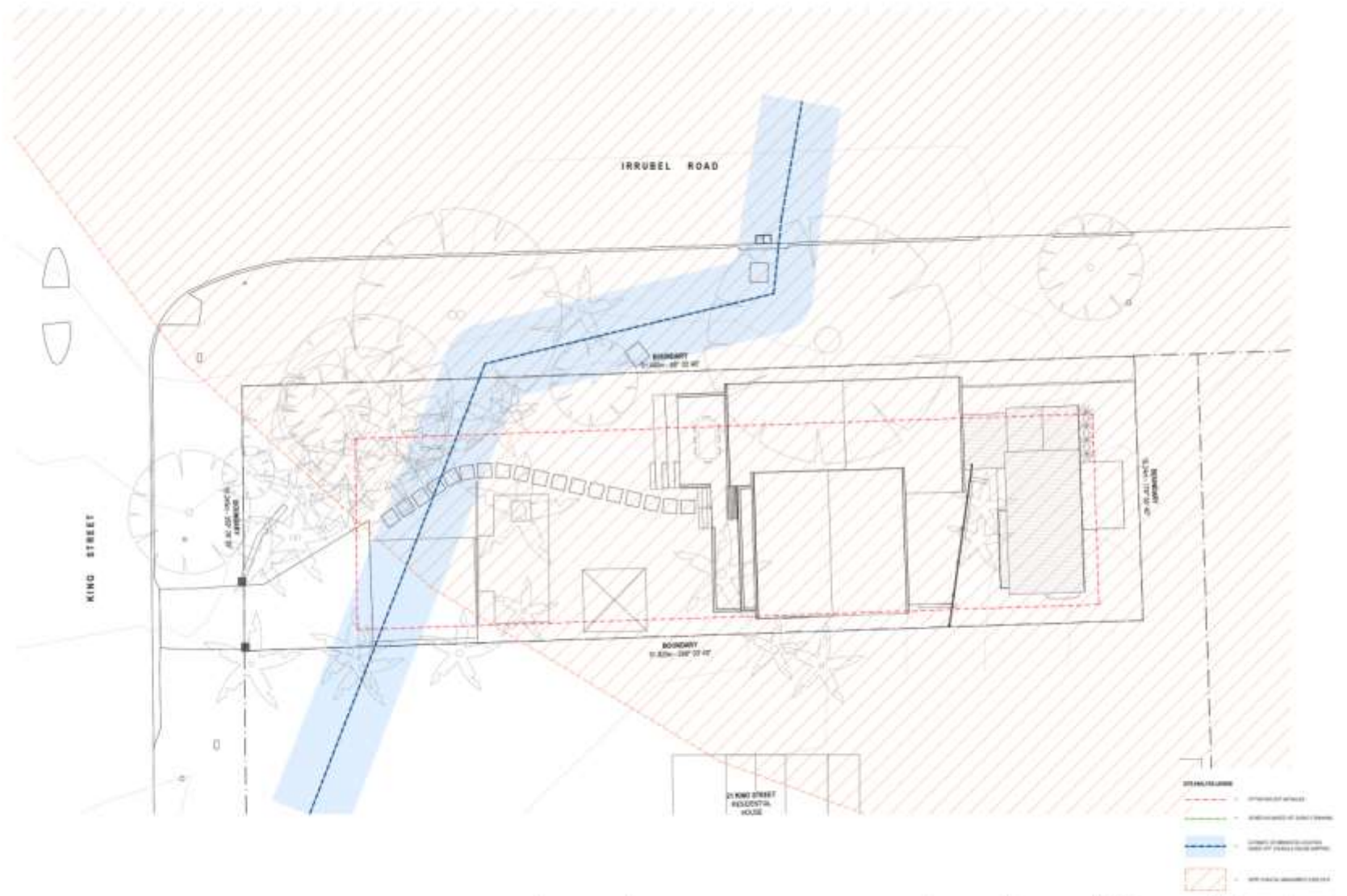
Reason: To protect wildlife habitat.

37. Replacement of Canopy Trees

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

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

Reason: To replace locally native trees.



Project: ALTERATIONS AND ADDITIONS
23 KING STREET NEWPORT
Client: NADIA HEERS

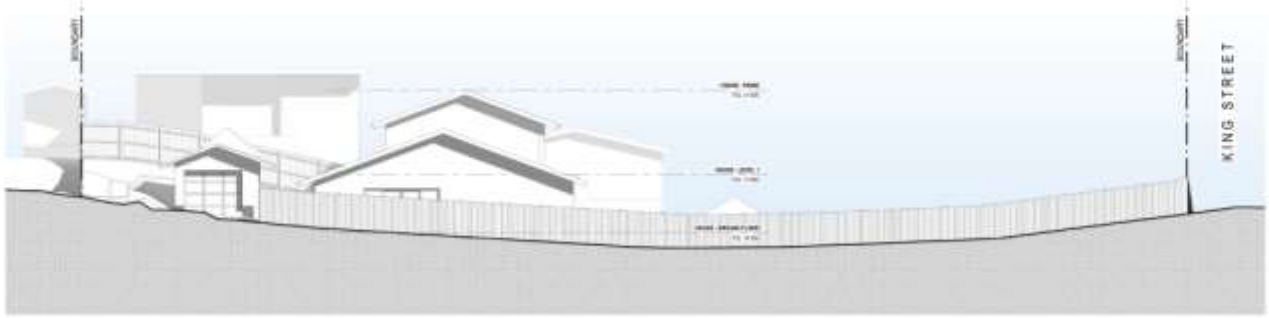
Walsh Architects

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Sheet Name: PROPOSED SITE PLAN

Number: DA120

No.	Description	Date	Rev.
A	FOR DA APPROVAL	03.05.21	A

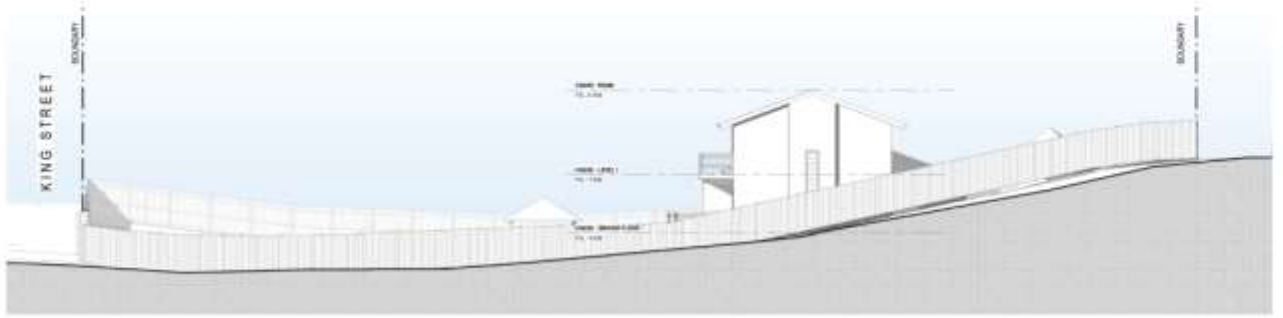


1 NORTH ELEVATION - EXISTING



1 NORTH ELEVATION - PROPOSED

Project: ALTERATIONS AND ADDITIONS 23 KING STREET NEWPORT Client: NADIA HEERS	Walsh Architects	Registered Architect ACT 2824 NSW 10366	Scale 1 : 100 @ A1	Sheet Name ELEVATIONS	Number DA300	No. B	Description UPDATES FOR DA APPROVAL	Date 08.11.21	Rev. B

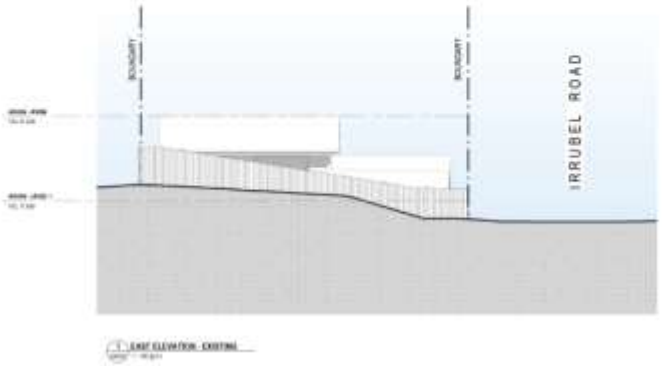


1 SOUTH ELEVATION - EXISTING

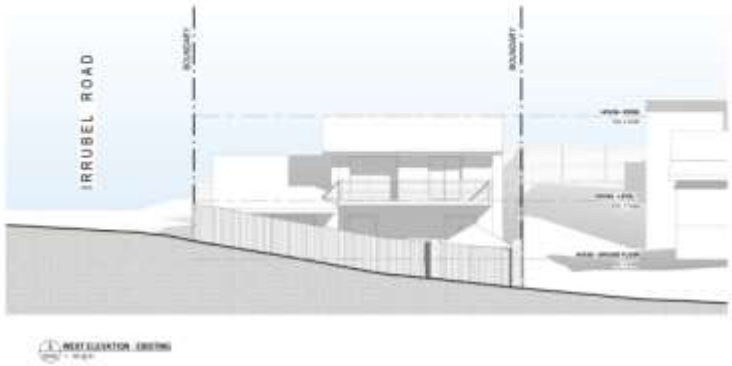


1 SOUTH ELEVATION - PROPOSED

Project: ALTERATIONS AND ADDITIONS 23 KING STREET NEWPORT Client: NADIA HEERS	Walsh Architects	Registered Architect ACT 2824 NSW 10366 0466 540 850	Scale 1 : 100 @ A1	Sheet Name ELEVATIONS	Number DA301	No. Description Date B UPDATES FOR DA APPROVAL 08.11.21	Rev. B



1 EAST ELEVATION - EXISTING



1 WEST ELEVATION - EXISTING



1 EAST ELEVATION - PROPOSED



1 WEST ELEVATION - PROPOSED

Project: ALTERATIONS AND ADDITIONS 23 KING STREET NEWPORT Client: NADIA HEERS	Walsh Architects	Registered Architect ACT 2824 NSW 10366 0488 040 892	Scale 1 : 100 @ A1	Sheet Name ELEVATIONS	Number DA302	No. / Description / Date A FOR DA APPROVAL 03.05.21	Rev. A

ITEM 3.6	**DA2021/0656 - 87 GURNEY CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**REBECCA ENGLUND**
TRIM FILE REF	**2021/868593**
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 and floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council as the consent authority **refuses** Development Consent to DA2021/0656 for alterations and additions to a dwelling house on land at Lot 1 DP 1271044, 87 Gurney Crescent, Seaforth, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0656

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 1271044, 87 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	SREP(Sydney Harbour Catchment)2005 - Land Zoned W2 Environmental Protection Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Chris John Elliott Samantha Kate Elliott
Applicant:	Chris John Elliott

Application Lodged:	28/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/06/2021 to 18/06/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 45.1% 4.4 Floor space ratio: 42.8%
Recommendation:	Refusal

Estimated Cost of Works:	$ 1,366,495.22

EXECUTIVE SUMMARY

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal does not suitably respond to the subject site. The proposal is referred to the Development Determination Panel as the proposal seeks considerable variations to both the building height and floor space ratio development standards, well in excess of 10%. Two (2) submissions of objection were received principally relating to residential amenity of privacy, views, overshadowing. The NSW RFS and internal referrals support the proposal subject to conditions.

The critical assessment issues for the proposal relate to privacy (visual and acoustic), building height and bulk, separation and site related issues (slope, lot shape and bushfire safety). The applicant has sought to respond to the issues raised with some minor amendments the plans to reduce building bulk and height. In doing so, minor changes were made to selected elements of the roof, balconies, setbacks and windows to address submission issues.

While conditions have been considered to assist with addressing privacy and overshadowing issues, conditions cannot be imposed in relation to the fundamental concerns relating to height and FSR.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations), relevant Environmental Planning Instruments (EPIs) and Council policies. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused for the reasons provided.

PROPOSED DEVELOPMENT IN DETAIL

The subject application seeks consent for demolition works and alterations and additions to a dwelling house.

The details of the proposal are outlined as follows:

Lower Ground Floor Level RL14.52:

- Elevated open space / terrace area.
- Two (2) bedrooms, a bathroom, an internal hallway with external access to terrace / side access and an internal stairway to connect to levels above.

Ground Floor Level RL17.32 to RL17.87:

- The existing layout of this level is to remain largely unchanged, apart from a new internal stairway connecting to the lower ground floor.
- New bathroom / linen / laundry storage area.
- Planter box on rear deck and selected window changes.

First Floor Level RL20.38:

- Kitchen / living / dining / family room area remains essentially unchanged except for minor internal wall, doorway and selected window replacement.

Second Floor Level RL23.43 and Garage Level RL24.97:

- The existing entryway is to be retained.
- New floor additions for a bedroom, bathroom and combined living area consisting of a rumpus / living area with "wet bar".
- Deck with awning and a minor side balcony.
- The existing carport is to be lengthened and partly enclosed to become a garage style parking structure. The existing pedestrian access pathway is to be lengthened to provide external

access off the side of the driveway area.

Ancillary site works

- Custom privacy screens for selected windows and balconies as shown on the plans
- Drainage, civil works and excavation
- Part demolition of the existing house
- Roof extension and changes to each level
- Landscaping, steps, paths and selected tree removal.

Note: Amended plans were provided to assist in addressing concerns raised with submissions. Minor amendments include increasing the side setback to deck and terrace areas, privacy screens and landscape screening and roof line changes. Further amended plans were made in response to height, overshadowing and FSR assessment considerations. The changes relate to the upper rumpus room, Deck 3 and the garage setback. (See plans dated 23.11.2021 which include notations of minor DA amendments made during the assessment period) Amended external materials schedule is provided as drawing No.DA16 dated 29.11.2021)

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 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
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 - 3.7 Stormwater Management
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)
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 - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot 1 DP 1271044 , 87 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site is identified as No.87 Gurney Crescent, Seaforth and consists of a single irregularly-shaped allotment that is located on the western side of Gurney Crescent. The front boundary adjoins Gurney Crescent, the rear boundary adjoins Middle Harbour and both side boundaries adjoin residential allotments. The site has a area of 524.9m² (survey); it has a frontage of 13.475 metres, a rear boundary width of 13.54 metres and a maximum depth of 44.155 metres. The site is steeply sloped, with a front-to-rear fall of approximately 24.3 metres. Most of the site is located within an E3 Environmental Management zone (now known as "C3"); the rearmost section of the site (i.e. at the land/water interface) is unzoned; both side boundaries adjoin E3-zoned allotments, while the front boundary adjoins an R2 zone. The site is mapped as being affected by a geotechnical/landslip hazard (Area G1), is bushfire prone, is affected by class 5 acid sulphate soils and biodiversity considerations, is within the Manly Foreshore Scenic Protection Area and is affected by the foreshore building line. Rearmost parts of the site contain a mapped heritage item (I1, 'Harbour foreshores'), which also bisects other surrounding sites that back onto Middle Harbour. The site is not within a heritage conservation area, and no other mapped heritage items are located within the surrounding area. Residential properties enjoy westerly views of toward Middle Harbour. Development on the site consists of a three-level dwelling house (including an access area and carport on the top split-level); an established in-ground swimming pool and terraced areas located within the rear (foreshore) setback area. **Detailed Description of Adjoining/Surrounding Development** Surrounding residential allotments within the surrounding area consists principally of low-density residential development uses (i.e. detached dwelling houses and associated development such as swimming pools and some foreshore structures). Nearby RE1-zoned land is situated in the area (principally to the north and south) are undeveloped and consist of mostly vegetated areas.

Map:



SITE HISTORY

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

- **Development application No.253/11** for alterations and additions to existing dwelling including rear lower ground floor addition and ground floor balcony was approved by Council on 24 April 2012.
- **Pre-lodgement Meeting No.PLM2020/0240** was held with Council on 15 October 2020 for a future proposal, consisting of alterations and additions to a dwelling house including, a garage, an outbuilding (boatshed) and site works. The current proposal received is consistent with this advice.

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) –	Draft State Environmental Planning Policy (Remediation of Land) seeks

Section 4.15 Matters for Consideration'	Comments
Provisions of any draft environmental planning instrument	to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Following the completion of the notification period some minor additional information was sought to be clarified in relation to considerations regarding the solar access, stormwater, FSR / height considerations, landscaping, setbacks and amenity considerations. The information is of a routine nature for assessment considerations and involves minor changes to the plans. The changes have not resolved fundamental issue of excessive height and bulk in the the proposal which therefore has been recommended for refusal. In consideration of this re-notification of the plans is therefore not required by the Community Participation Plan. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	(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.

Section 4.15 Matters for Consideration'	Comments
environment and social and economic impacts in the locality	(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 alterations and additions to the dwelling as the site has been used for residential purposes for a long period of time and the site contains a carparking structure, landscape gardens, pool and a multi-storey house already. The physical hazards of the site relating to geotechnical risk, site access, foreshore area and environmental / landscape amenity factors acceptable, and may be subject to conditions to manage these site suitability issues.
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	The proposal is recommended for refusal in the public interest of ensuring variations to the maximum building height and associated DCP controls for building bulk and amenity impacts are minimised in response to the applicable planning controls.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Blackash Bushfire Consulting, dated 14 May 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 04/06/2021 to 18/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mark Prechelt	78 Merton Street ALBERT PARK NSW 3206
Mrs Debra Anne Close	89 Gurney Crescent SEAFORTH NSW 2092

The matters raised within the submissions are addressed as follows:

- *Concern that the height is above the 8.5m control height for the LEP and the height impacts of the roof / top level create overshadowing.*

  Comment:
  Height is measured from an extrapolated existing ground line which is consistent with the practical approach used in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*. The amended plans (dated 30.9.2021) have reduced roof areas and therefore overshadowing along the side setback area and side elevation with No.85 Gurney Crescent is also reduced. The properties have an east to west alignment therefore overshadowing is cast across the southern side boundary. The variation to the height of building control has been considered under the detailed "Clause 4.6" merit assessment provided within this report which has had regard to overshadowing impacts, bulk and solar amenity. Detailed assessment of the objectives for solar access are also provided under the heading "3.4.1 Sunlight Access and Overshadowing" within this report.

  In summary, this issue has been considered under the MLEP and MDCP and while condition could be applied to reduce overshadowing impacts cast by the second floor level deck and awning element the excessive height and bulk of the upper rumpus area warrants refusal of the application.

- *Concern that the wall height and building bulk*

  Comment:
  Due to the sloping nature of the site, a wall height of 8.0m is applied in accordance with the Manly DCP. The existing approved dwelling already has a wall height of 9.6m and the maximum wall height is increasing to 11.7m for the building. Wall height has been considered under the detailed merit assessment provided within this report.

  In summary, this issue has been considered under the MDCP the wall height is excessive and warrants refusal of the application.

- *Concern regarding consideration for acoustic, noise and light (including nuisance noise and nuisance lighting), visual privacy.*

  Comment:
  Overall the proposed alteration and additions will maintain similar external landscaped open space buffers to adjacent land. The dwelling is situated within a low density residential zone and the expected acoustic, noise, light and visual privacy impacts are not unreasonable for the surrounding pattern of housing development. Conditions may be applied to ensure noise from plant (air conditioner or the like) meets standard requirements. In summary, the alteration and additions to the dwelling proposed will not create unreasonable impacts in terms of visual privacy, lighting and noise as these issue are manageable by conditions.

In summary, this issue has been considered under the MDCP and does not have determining weight to warrant refusal of the application.

- *Concern regarding overshadowing, loss of sunlight and solar access to No.85 Gurney Crescent*

  Comment:
  Overshadowing will remain generally consistent with the existing approved dwelling shadows for outdoor private open space. However, as the proposal seeks to increase the height of the existing dwelling, there is some additional overshadowing between 9am and midday on 21 June as demonstrated in the amended shadow diagrams dated 30.9.2021. Amended plans were provided to reduce the roof span to the upper living level and in summary solar access, sunlight and overshadowing details have been provided to detail the impact on adjacent land.

  In summary, this issue has been considered under the MDCP and the proposal create unnecessary overshadowing to adjacent land which warrants reason for refusal of the application.

- *Concern regarding privacy impacts toward No.85 and No.89 Gurney Crescent*

  Comment:
  The sites along the low side of Gurney Crescent fall steeply toward the foreshore therefore properties have elevated decks and multiple floor levels at different heights due to the slope and to capitalise on harbour views. For the alterations and additions privacy screening and translucent glass will be used on selected windows and balcony areas to ensure no unreasonable loss of privacy to adjacent land. The steepness of the surrounding natural terrain creates a degree of overlooking between properties in the surrounding area and views of the harbour are also highly sought which includes view over adjacent dwelling houses roofs from higher up. The applicant has provided supplementary details of privacy screening and conditions are recommended to ensure appropriate screening and glazing treatment is used on selected windows to ensure no unreasonable privacy impacts to either No 85 or No.89 Gurney Crescent. Therefore this issue is manageable by conditions pursuant to the MDCP.

  This issue has been considered under the MDCP and does not have determining weight to warrant refusal of the application.

- *Concern that the proposal will impact public views along Gurney Crescent toward the harbour.*

  Comment:
  The site is situated near the cul-de-sac end of narrow street with no through access to other recreational trails or parkland. Therefore, the alterations and additions that include the changes and expansion to the carparking structure carport will reduce the existing view through the carport thus allowing views through and ensures the carparking structure is unsuitable as a habitable space style enclosed store area. As this is not a through road and not in a location that is readily accessible the view change from the public street is minor and has limited effect on the wider community. The setback of the garage has been amended to be a minimum of 2.28m and include a timber panel door with sandstone facing which provides a suitable aesthetic appearance to the street. The use of an open grille / or see though panels (such as perspex) for the style "roll-a-door / tilt-door" will maintain views through structure and a sense of openness which could be addressed by condition.

This issue has been considered under the MDCP and does not have determining weight to 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 dwelling. Council's Landscape Referral section have assessed the application against the *Manly Local Environment Plan - Zone E3 Environmental Management*, 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 3.3.1 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 development application is accompanied by a *Landscape Plan* and an *Arboricultural Impact Assessment*. It is noted that the *Statement of Environmental Effects* and the *Arboricultural Impact Assessment* report on a *Angophora costata* that has been removed subsequent to the issue of the development application documents for assessment. No other vegetation is reported in the Arboricultural Impact Assessment. A replacement *Angophora costata* shall be required under conditions in the vicinity of the existing *Angophora costata* removed. The *Landscape Plan* includes documentation on the retention of existing landscape elements within the frontage of the site and includes proposals for new landscape works to the rear of the site in association with the proposed building works and includes retention of the existing landscape elements in the rear not impacted by development works. Additionally the *Landscape Plan* provides an indication of existing Exempt Species vegetation to be removed to accommodate the proposed works. These include exempt Banana trees as shown on the plans, and Council consent is not required for removal. Landscape Referral raise no objection to the development proposal subject to the completion of landscape works as required under the conditions.
NECC (Bushland and Biodiversity)	**Supported with conditions.** Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

Internal Referral Body	Comments
	Biodiversity Conservation Act 2016 (BC Act) **Manly Local Environmental Plan (MLEP)** • Clause 6.5 (Terrestrial Biodiversity) **Manly Development Control Plan (MDCP)** • Clause 3.3.1. a) iv) Landscaping Design • Clause 5.4.2 (Threatened Species and Critical Habitat Lands) The proposal involves alterations and additions to the existing dwelling house and establish an Asset Protection Zone (APZ) over the property in perpetuity. Vegetation within the site is already considered compliant with the standards of the APZ, and the application does not require the removal of prescribed trees or vegetation for construction, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	**Supported with conditions.** The application has been assessed in consideration of the *Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005* and *Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005*. It has also been assessed against requirements of the Manly LEP and MDCP. The proposed development meets Clauses 12 and 15 of the *Coastal Management SEPP* (13 and 14 do not apply) and meets the requirements of the *Sydney Harbour REP* and DCP, and relevant clauses of the Manly LEP and MDCP. The impacts on the coastal environment have been assessed as acceptable subject to conditions.
NECC (Development Engineering)	**Supported with conditions.** Development Engineering has no objection to the application subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	**Supported with conditions.** This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. This site is close to Middle Harbour and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Middle Harbour, or on the quantity and quality of surface and ground water flows to Middle Harbour. Sediment and erosion controls must be installed prior to any disturbance of soil on site and

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>maintained until all work is complete and groundcover reestablished.

This application, subject to conditions, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Middle Harbour if conditions are adhered to.</td></tr>
<tr><td>Parks, reserves, beaches, foreshore</td><td>Supported with conditions.

The development application is for alterations and additions to an existing dwelling.

The property adjoins Middle Harbour foreshore downslope of the site. All works adjoining foreshore land must ensure that sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from entering the foreshore.

Parks Referral raises no objections to the proposal subject to conditions.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>Supported without conditions.
<table>
<tr><td>HERITAGE COMMENTS</td></tr>
<tr><td>Discussion of reason for referral</td></tr>
<tr><td>The proposal has been referred to Heritage as the subject site contains a heritage listed item, being Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour, listed in Schedule 5 of Manly Local Environmental Plan 2013. It is also located within the Manly Foreshore Scenic Protection Area.</td></tr>
<tr><td>Details of heritage items affected</td></tr>
<tr><td>Details of this heritage item, as contained within the Northern Beaches Heritage Inventory, are:

Item I1 - Harbour foreshores

<u>Statement of significance:</u>
Natural landscape type - Aesthetic.

<u>Physical description:</u>
Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</td></tr>
<tr><td>Other relevant heritage listings</td></tr>
<tr><td>
<table>
<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></td><td></td><td></td></tr>
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</td></tr>
</table>

Internal Referral Body	Comments
	NSW State Heritage Register: No National Trust of Aust (NSW) Register: No RAIA Register of 20th Century Buildings of Significance: No Other: No Consideration of Application The application seeks consent for alterations and additions to the existing dwelling, including the substantial extension and enclosure of the existing carport at the street level. The proposed extension to the raised terrace at the lower level cantilevers to the foreshore building line approximately 2.2m. The subject site contains the heritage item - Harbour Foreshores along the the western (rear) boundary of the lot. Given the steep topography of the subject site and the separation between the heritage item and the proposed works, it is considered that the proposal will not have a significant adverse impact upon the heritage item or its significance. Therefore, no objections are raised on heritage grounds, and no conditions required. Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Has a Heritage Impact Statement been provided?

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**Supported with conditions.** The proposal was referred to *Ausgrid*; an undated referral was received on 15 June 2021, which stated that the proposal is acceptable subject to compliance with the relevant *Ausgrid Network Standards* and *SafeWork NSW Codes of Practice*. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	**Supported with conditions.** Reference is made to the proposed development at the above area and Aboriginal heritage. There are known Aboriginal sites in the area (shell middens) although no sites are recorded in the current lot and much of the area has been subject to previous disturbance reducing the likelihood of unrecorded Aboriginal sites

External Referral Body	Comments
	Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW *Office of Environment and Heritage (OEH)* and the Metropolitan Local Aboriginal Land Council should be contacted. 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.

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. A408994, dated 16 March 2021).

In the event of approval, a condition is to be included 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; an undated referral was received on 15 June 2021, which stated 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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment 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.

An assessment of the proposal includes regard for:

- the position of the dwelling behind the wide foreshore reserve;
- high topography of the surrounding land;
- style of roofing colours / building form of the proposal;
- bushfire protection consideration and landscaping (replanting) works to be provided;
- erosion and sediment controls; and
- conditions of consent recommended to ensure the proposal is consistent with the established low density residential area and will not have an unreasonable impact on the Sydney Harbour catchment area.

Given the scale of the proposed works for alterations and additions in the established low density urban area of the *E3 Environmental Living zone*, referral to the *Foreshores and Waterways Planning and Development Advisory Committee* is not considered necessary. The proposal is considered to be consistent with the above provisions and relevant assessment Clauses of the SREP.

SEPP (Coastal Management) 2018

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

14 Development on land within the coastal use area

(1)

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

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

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

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

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

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

Comment: The hillside position of the house is sufficiently setback from the coastal hazard area to comply with the objectives and requirements of the SEPP to ensure no increased risk.The site is subject to SEPP Coastal Management (2018) as the boundary extends along the Middle Harbour Foreshore area. The site is readily visible from the harbour area due to the steep land and shoreline area below the site. The proposal is in close proximity to similar density development and various buildings in the vicinity that have a westerly outlook (to the water). The proposal has been considered in the context of the SEPP requirements.

In summary, the proposal is consistent with Clause 14 and 15 of SEPP Coastal Management (2108) including the "Coastal Use Area" and "Development in the Coastal Zone Generally" areas with no unreasonable impact, subject to conditions, with regard to SEPP coastal / harbour area considerations, including sea level rise, slope hazard, landscaping, foreshore quality, site management and drainage control.

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	8.50m	12.34m	45.1%	No
Floor Space Ratio	209.9sqm	299.98sqm	42.8%	No

See heading under "Clause 6.10" for details on Foreshore Building Line setback assessment.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
5.7 Development below mean high water mark	N/A
5.8 Conversion of fire alarms	N/A
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
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

HEIGHT OF BUILDINGS - Clause 4.6 Variation

Description of Non-compliance:

Development standard:	**Building Height**
Requirement:	8.5m

Proposed:	First Floor :11.84m Second Floor : 12.34m Garage: 10.51m
Percentage variation to requirement:	First Floor : 39% (3.3m) Second Floor:45.1% (3.8m) Garage: 33.3% (2.8m)

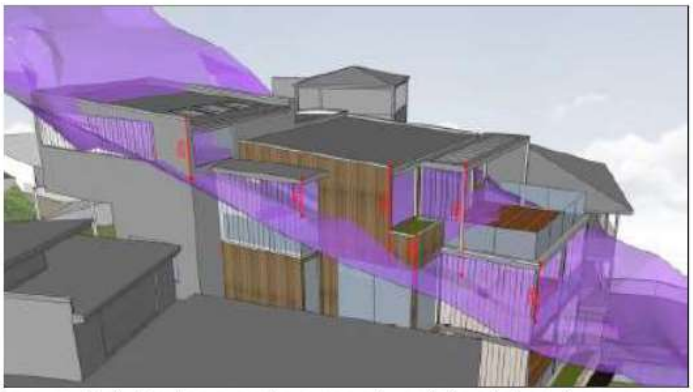


Image: Height plane and proposed variation taken from a northern side view.



Image: Height plane and proposed variation taken from a southern side view.

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 been provided seeking an exception under Clause 4.6.

In summary, the Applicant's written request is considered below within this report, however the applicant has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *"The steep topography results in a multi-storey built form as it steps down the site in response to topography.*
- *The non-compliant building heights and roof forms associated with the dwelling are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality given that the breaching building height elements associated with the dwelling house sit predominantly below the level of the road and to that extent will not be readily discernible in a streetscape context.*
- *The proposal displays a complimentary and compatible bulk and scale compared to that development located on the low side of Gurney Crescent and consistent with the bulk and scale of development along the foreshore in this locality generally. Many of the dwellings along the escarpment are multi-storey and step down the steep topography.*
- *The development is compliant with the [DCP exceptions] FSR allowance which is implemented to ensure development is of an appropriate bulk and scale."*

Consideration and Comment:

The applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, in that the additions and alterations to not respond sufficiently the Manly DCP control that allow for appropriate design responses to be achieved in managing variations to building height and floor space ratio. This includes exceptions and objectives for steep sites, particular lot size areas and controls for roof top additions. The upper level of the dwelling additions to the structure structure is of an unacceptable design that will impact the amenity of the surrounding urban or natural environment, therefore does not satisfy cls 1.3 (c) and (g) of the EPA Act.

The distribution of building height, high wall planes and ancillary elements above the height plane (terraces / awnings) raises concerns regarding visual privacy and solar access impact associated with the distribution of the additions to the building in response to the height plane.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Furthermore, in considering the proposal, it is noted that a reduction in the bulk, height, setbacks and selected elements of the proposal have been substantively amended in response to submission issues and further detailed assessment considerations made with regard to the Manly DCP and LEP. While the subject land is a steeply sloping foreshore site (including existing excavation) conditions could be used to assist with influences on the design response such awnings, screens, and balcony width to assist amenity considerations and parking access. Overall however the building height is inconsistent with the planning controls.

Therefore, Council is not 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 E3 Environmental Management Zone. An assessment against these objectives is provided below.

Objectives of development standards

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the MLEP 2013 are:

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

> *a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The proposed variation to the building height (including the maximum wall height) is partly visible when viewed from the Gurney Crescent frontage due to the downslope position of the building. Therefore, the building height is not acceptable with regard to the streetscape when viewed in context with adjacent dwellings in Gurney Crescent as it presents the garage / carport style entry area with side landscape elements across the driveway platform from road level. The land has an average gradient of 1:4 and therefore the building steps down the site with the resultant breach of the building height materialised on the low (leeward) side of each 'pavillion style section" with the stepped roof elements. The wall height to does not sufficiently respond to corresponding to height plane is strongly influenced by the existing floor levels as the building transitions between RL24.97 down to RL14.52 (across a distance of 20.8m) . The actual highest point however is the front edge of the narrow awning extending above "Deck 3".

b) to control the bulk and scale of buildings,

Comment: The proposal does not comply with LEP floor space requirements (and relies on DCP exception / allowance) for the residential zone to maximise building bulk. The maximization of the FSR therefore contributes to excess height at the back the garage area and the floor plate of the upper rumpus / living room above the height plane

It is considered that the proposal is not consistent with this objective.

c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment: Detailed view considerations have been made with the assessment of the proposal, including consideration made by the applicant to future reduce potential view impacts with selected minor changes made to address concerns raised with regard to views from nearby residential development across the site toward any harbour, foreshore or district views and the like. The site is not in a location where significant principal public views lines are gained across the site from public waterways / local park areas or similar. It is considered that the proposed building height variation maintains consistency with this objective of views.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment: Detailed solar access diagrams are provided to demonstrate that the proposed height variation creates unnecessary impacts of overshadowing in terms of solar access to adjacent land. (See shadow diagrams drawn by Hobbs Jamieson Architects - DA13 to DA22). It is considered that the proposed building height variation does not maintain consistency with this objective, particularly with regard to the upper rumpus area and Deck 3 in responding to the applicable planning controls for sunlight access.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: The dwelling is adjacent a bushland reserve and views of the site from the harbour area and National Park on the opposite shore are not unreasonably impacted by the non-compliance with the building height. It is considered that the proposed height variation maintains

consistency with this objective. The non-compliance with the building height not readily discernible in the broader view of the pattern and density of surrounding development when viewed from the foreshore or Middle Harbour areas toward Gurney Crescent.

Zone Objectives

The underlying objectives of the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values*

  Comment: With regard to this objective several exempt smaller species trees are proposed to be removed and replaced with native species. A landscape plan has been prepared which provides for replacement landscaping for disturbed areas of the site during work including appropriate native trees and plants. The additional height and bulk does not impact the ecological values of the foreshore. It is considered that the development satisfies this objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

  Comment: The proposed height variation does not offend this objective of the zone for protecting or restoring ecological, scientific, cultural values in that the use of the remains (for detached housing) and is provided within a landscape setting that is compatible with the height, density and pattern of surrounding development. No other (non-residential services or facilities) are proposed.

  It is considered that the development satisfies this objective.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

  Comment: Some smaller exempt species trees are to be removed and replaced with native trees. Suitable landscape planting is to be provided along the side setback area in selected spaces to screen the side wall elements and maintain a landscape setting. It is considered that the development satisfies this objective.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

  Comment: The proposal requires minimal works within the foreshore area and minimal excavation as the additions are generally confined to the existing building structure and footprint. The height variation does not raise any inconsistency with this objective.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

  Comment: The alterations and additions are generally confined to the main structure of the existing house with no long term adverse impact on vegetation along the foreshore or natural rock area. Replacement landscape planting will be provided for the new landscape works. The elements that are in breach of the building height do not not have any unreasonable impact on

water quality of the natural runoff to surrounding land.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

  Comment The proposed elements that are in breach of the height plane for the alterations and additions maintain a dwelling house do not not impact on the existing vegetation of the foreshore area. The additional height and bulk however does not impact on adjacent land use by way of overshadowing and increased opportunities for overlooking from Deck 3 that is above the height plane.

For the reasons detailed above, the non-compliant component of the development, as it relates to building height, does not demonstrate consistency with objectives of the E3 Environmental Management zone and therefore the proposed variation is not supported.

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.

In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the **Height of buildings** Development Standard is not supported.

FLOOR SPACE RATIO - Clause 4.6 Variation

Description of non-compliance:

Development standard:	**Floor space ratio**
Requirement:	0.4:1 (209.9sqm)
Proposed:	299.98 sqm (0.399:1)
Percentage variation to requirement:	42.8% (90.02sqm)

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 not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The distribution of building building bulk and FSR above the height plane raises concerns regarding the scale of the dwelling and associated concerns for managing visual privacy and avoiding unnecessary overshadowing impacts associated with the distribution of the additions to the building in response to the topography and established pattern of adjacent development.

In doing so, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

standard.

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

- *"Section 4.1.3.1 of the Manly DCP 2013, there are exceptions that states an extent of FSR Variation for Undersized Lot which the calculation of FSR for the subject site within the subzone "U" on the LEP LSZ map is based on 750m2 lot size and consequently allows for a maximum GFA of 300sqm which the proposal has been amended to comply with by increased side setbacks and reducing the mass of the building.*
- *The proposed FSR is compatible with the site and context of the locality whilst the proposed built form is considered to be reasonable when compared with substantially larger homes, including those opposite the subject site.*
- *Council has endorsed similar FSR under the same planning regime for other sites along Gurney Crescent, within the same subzone identified as "U" on the LEP LSZ map, and similar site constraints.*
- *The additional FSR does not create a building that dominates the site or the foreshore area with the wide public reserve to the west (foreshore reserve) and east (road reserve) and deep soils*

zones are kept around the lower slopes of the building.

- *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.*
- *The FSR is associated with an architectural solution that is cohesive and responsive to the substantial gradient of the site whilst being consistent with surrounding properties and correspondent to the corner nature of the site.*
- *The proposed FSR variation is not responsible for any unreasonable adverse impacts to surrounding properties in regard to overshadowing, privacy and view loss.*
- *The proposal has reduced the gross floor area since the Pre-DA stage, particularly on the upper storey whilst also reducing the open terraces and non trafficable roofs in all levels.*"

Consideration of the applicant's reasons provided above is made below. In summary, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Consideration and comment:

- The proposal have been amended in response to submission issues and further detailed assessment considerations made with regard to the Manly DCP and LEP.

- The non-compliance with the FSR does not have a material impact on tree clearing or bushfire protection due to the bushfire (BAL) category and Planning for Bushfire Protection requirements applied to the site. These are addressed in context with the landscape amenity of the Sydney Harbour Foreshore area.

- Pursuant to Clause 4.1.3.1 of the DCP the proposal complies with the FSR numerical exception allowed for area "U" based on a 750sqm lot size category being 0:4:1 ratio that allows 300sqm floor area however this takes the development to the maximum area and the elements of the building above the height plane create impacts of overshadowing, privacy and scale towards adjacent land that with an alternative lower profile design would be avoided.

- The revised design contributes to the associated impacts of building bulk toward adjacent dwellings in terms of continuity with the height plane and impacts of privacy and overshadowing in terms of spatial separation and wall height.

Therefore, Council is not 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 E3 Environmental Management zone. In addressing the public interest the submissions received have been considered including the initial submission and later submission from No.85 Gurney Crescent.

Submission issues raised concerning FSR including associated concerns regarding height, setbacks, privacy, sunlight, building bulk are addressed with the report and assessment details under the relevant Manly DCP headings.

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 proposed façade of the carport / garage has a single storey appearance which is well below the permissible height limit of 8.5m, since the road alignment is similar to the garage level of the building. Whilst occupying approximately 6.2m width of the front boundary the location of garages and entry points above living areas toward the road is a common feature for properties on the low side due to the very steep land. The appearance of views through the carparking structure (similar to the existing structure) may be addressed by conditions for an open 'grille' garage door that maintains a sense of openness to the streetscape and prevents the garage becoming fully walled out to the street.

- *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 proposed FSR does not preclude the development to be sympathetic with the existing bushland and harbour scenic area within the locality. The proposed density and bulk does not remove any important landscape features or obstruct townscape features.

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

  Comment: The development generally relies on floor space within the existing building footprint and some ground level landscaping for private open space. These ground level areas are consistent with the existing character and landscape of the foreshore area.

  External materials and landscaping selections are responsive to the bushfire protection requirements and therefore the building relies on internal amenity and balcony space more than other properties where flatter urban land exists.

  The natural site levels and landscape zones will be restored within disturbed areas from construction and with new native planting and ground covers to replace invasive plants where

practicable as per the landscape plan.

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

  Comment: The FSR 0:4:1 variation to the actual site area will not be responsible for any unreasonable loss of privacy, loss of water views or depreciation of amenities and it is noted it complies with the FSR variation allowance prescribed by the DCP for "Area U".

  The proposed dwelling will affect the level of solar access to the southern neighbour. Details of solar access and natural light consideration have been made in direct consideration under the Manly DCP and while conditions may be applied to reduce the side awning on the second floor level this would have not impact on the FSR compliance.

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

  Comment: This objective is not applicable to the dwelling house as the land is not in a business zone.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

  Comment: The FSR variation does not offend this objective of the zone as the habitable floor area does not encroach into the foreshore building line and is set well back from the water edge. A landscape setting will be maintained that is compatible with the height, density, and site constraints that influence the pattern of surrounding development.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

  Comment: The current use of the site for a family home will remain and the proposal does not seek to introduce other forms of land use development in terms of ecological, scientific or cultural change.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

  Comment: The FSR variation does not offend this objective of the zone in that the use of the remains, for detached housing in a low density environment, and is provided within a landscape setting is maintained that is compatible with adjacent land and the foreshore environment. The proposal is consistent with surrounding development in being consistent with this objective in that elements along the foreshore and in front of the existing swimming pool remain consistent to they way they currently are.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

  Comment: The alterations and additions are situated well back from the foreshore area and have minimal excavation works. The FSR variation does not evoke any negative impacts on geological features, the foreshore quality and surrounding bushland. No major trees are required to be removed.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

  Comment: The proposal includes some ground level works along the setback areas and the line of the foreshore setback (elevated deck RL14.52) and landscaping is provided to retain the natural values of the foreshore area, rock features of the lower foreshore and suitable drainage to minimise sedimentation and maintain water quality of the harbour.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

  Comment: The alterations and additions are generally confined to the main structure of the existing house with no adverse impact on foreshore natural rock area. Replacement landscape planting will be provide for the new landscape works. The building bulk associated with the rumpus area at the upper level creates additional impacts privacy, sunlight and spatial separation to surrounding land.

For the reasons detailed above, the proposal is considered to be not consistent with the objectives of the *E3 Environmental Management* 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.

In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the **Floor Space Ratio** Development Standard is not supported.

6.10 Limited development on foreshore area

The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

Merit Assessment
The proposal has a minor encroachment of 2.0m to 2.4m along the foreshore setback building line which affects the lower elevated terrace at RL14.52m. The dwelling house walls do not encroach the foreshore setback, however there is also a section of reconstructed side stairs proposed to link to the

swimming pool as shown in the image below. The "grassed" terrace has an open undercroft and 1.4m to 3.3m above natural ground level.

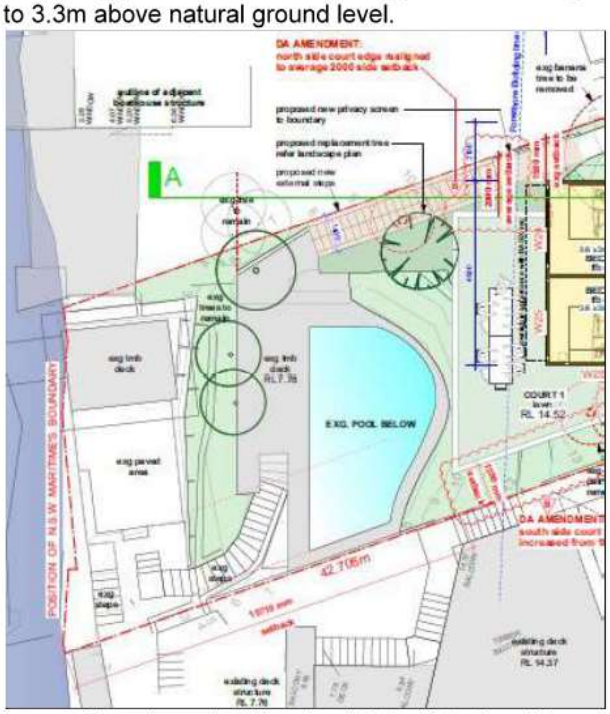


Image: Foreshore building line (dotted blue) and lower deck and side stairs (reconstructed) encroach within foreshore setback.
Note: There is an existing swimming pool below and adjacent structures, previously approved.

Clause 6.10 (2) of the LEP permits that the following works may be permitted for the following purposes

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,

(b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,

(c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment

- The lower deck and reconstructed side stairs are part of the overall works for alteration and additions to the main dwelling house which is situated on a very steep foreshore site. The encroachment is ground level steps and an elevated open sided deck structure . the deck is similar to the style of other deck areas along the foreshore area and serve to provide an appropriate (usable) space on the steep slope above the existing pool structure on the site. The underside of the deck is to be landscaped and the terrace shape has been adjusted (by conditions) to address privacy and spatial separation to adjacent land. The deck is partly screened from the harbour, foreshore area by existing trees and will not have an unreasonable impact on the overall scenic impression of the foreshore along Gurney Crescent.

Clause 6.10 (3) of the LEP requires the consent authority to consider potential impacts of any structure in foreshore area with regard to the objective of the zone, aesthetic appearance, compatibility of structures, pollution risk / sediment & drainage, waterway areas, cultural heritage and sea level change.

Comment:

- The proposed variation to the foreshore setback for the side stairs and the deck does not raise any unreasonable inconsistency with the pattern of surrounding development or the objectives of the E3 Environmental Management Zone. The deck is within a disturbed area of the site and landscaping around the deck will be reinstated. The alterations and additions to the site do not raise any impacts with regard to cultural heritage, water quality or potential sea level changes.

Clause 6.10 (4) of the LEP requires the consent authority to consider public access and the foreshore character with respect to the existing surroundings.
Comment

- The proposed variation to the foreshore with the side stairs and the deck structure at RL14.52 is not close to or within any publicly accessible land along the foreshore. The deck structure is consistent with the pattern of surrounding development when observing the broad foreshore area when viewed from the harbour area west of the site toward Gurney Crescent. The open landscaped undercroft area of the deck and landscaping beside the deck will assist to provide a landscape setting and natural screening in the long term.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development, subject to conditions, is consistent with the Manly LEP 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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.1.1 Residential Density and Dwelling Size	**Density:** 1 dwelling per 524.9sqm (Note: DCP groups this into a 750sqm zone for FSR) DCP 1:4 FSR = 300sqm (See LEP FSR assessment under Clause 4.6)	Residential Area Dwelling - proposed Habitable floor area 299.9sqm	N/A	Yes (DCP)
	Dwelling Size: Minimum 140sqm (incl. additional rooms)	Dwelling 297sqm	N/A	Yes
4.1.2.1 Wall Height* (Note: the existing dwelling height is 10.1m and the existing maximum wall height is 9.4m)	North Elevation: 8.0m (based on site gradient >1:4)	5.5m to 11.7m	46%	No*
	South Elevation: 8.0m	6.1m to 11.7m	46%	No*

	(based on site gradient >1:4)			
	East Elevation: 8.0m (Road frontage)	4.3m.	N/A	Yes
	West Elevation: 8.0m (Foreshore)	11.7m	46%	No*
4.1.2.2 Number of Storeys	2	4 Stepped up over 5 levels	200%	No*
4.1.2.3 Roof Height	Height: 2.5m	1.0m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
	Pitch: maximum 35 degrees	1 to 5 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line is 0.0m to 4.2m (Gurney Crescent)	2.28m Garage, entry path. (Safety rail / screen 0.0m)	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Windows: 3.0m	1.5m to 3.3m North 1.5m to 3.6m	50% 50%	No* No*
	North (Note: Staggered wall shape) Side setback 1/3 of wall height (at 11.7m = 3.8m)	1.0m to 4.1m **Garage** 1.2m to 3.3m **Second Floor** 1.2m to 2.4m **First Floor** 1.2m to 2.4m **Ground Floor** 1.4m to 3.1m **Lower Ground Floor** (Lawn terrace 1.5m)	N/A N/A N/A (Existing) N/A (Existing) N/A	Yes No* No* Yes (No change) Yes

		Refubished paths and side access steps 0.0m	N/A	Yes
	South (Note: Staggered wall shape)	2.8m to 4.8m **Garage / carport** (Entry stair 0.9m)	N/A	Yes
	Side setback 1/3 of wall height (at 11.7m = 3.8m)	1.5m to 3.6m **Second Floor**	N/A	No*
		0.9m to 2.5m **First Floor**	N/A (Existing)	No* (No change)
		0.9m to 2.5m **Ground Floor**	N/A (Existing)	Yes (No change)
		2.5m to 4.1m **Lower Ground Floor** (Lawn terrace 1.5m)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Total Open Space (60%) area (Total site area req. 314.9sqm)	389.4sqm TLOS (74%)	N/A	Yes
	Open space above ground <40% of total open space	121sqm AGLOS 31%	N/A	Yes
4.1.5.2 Landscaped Area (500sqm to 800sqm site area)	Landscaped area 40% of open space	162sqm 41.6% of TLOS	N/A	Yes
	3 native trees	3 native trees (Replacement planting as per landscape plan)	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	198sqm (3x terrace areas and existing pool area / foreshore area)	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	6.2m carport 10.9m road frontage	N/A (Existing)	No* (As approved width)
Schedule 3 Parking and Access	2 spaces per dwelling	2 spaces per dwelling	N/A	Yes

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

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)	No	No
3.4.1 Sunlight Access and Overshadowing	No	No
3.4.2 Privacy and Security	No	No
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
3.5.7 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)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
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	No	No
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

General Amenity considerations pursuant to *Clause 3.4 Designing for Amenity* are considered as follows:

Merit Assessment Comments:

- The alterations and additions in terms of the the visual pattern of bulk and design of a development is not consistent with adjacent and nearby dwellings and has been considered from surrounding public and private viewpoints. In this regard, the applicant has not adequately responded to submissions made and reduced the extent of various elements of height, roof span, bulk, including the pool position away from the nearest neighbour.

- Adequate space on site is retained for open space to provide a landscape setting and meet the recreational needs of the occupier for the proposed open space areas and for the additions and terrace 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, natural materials and colours are appropriate for the residential nature of the building and do not detract from the existing streetscape and surrounding amenity.

- Design considerations have not been satisfied to minimise loss of sunlight or privacy for neighbouring properties and also to the proposed alterations and additions. The additional upper bulk and scale as well additional impacts of visual privacy and solar access impact associated with the distribution building mass is raised as a concern with respect to the DCP. Relevant issues associated with the building height plane, wall height, distribution of floor space, privacy and solar access have been not been adequately accommodated in the design, including balcony shape, using room orientation, window alignments, wall setbacks and the like. While conditions may be used to improve setback widths, reduce bulk, improve privacy and address related concerns the applicant has not provided sufficient design response to address DCP assessment issues.

- In summary, the proposal has not been designed to ensure no unreasonable amenity of existing and future residents and including privacy, and solar access and general amenity of adjoining properties. The principal concern being the distribution of building height, high wall planes and ancillary elements above the height plane (terraces / awnings) raises amenity concerns associated with the distribution of the additions for the building, in response to the height plane.

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

3.4.1 Sunlight Access and Overshadowing

The proposal has been considered in detail with regard to *Clause 3.4.1 Sunlight Access and Overshadowing* as follows:

- Details provided by the applicant including additional solar access diagrams dated 30.9.2021 demonstrate overshadowing impacts in terms of the roof area and private open space to improve direct solar access to No.85 Gurney Crescent (which is on the southern side of the site). Due to the site and adjacent properties having and broad westerly aspect they receive afternoon solar access / natural light to western facing private open space / living areas which with a lower height and less upper bulk could be avoided as required by the MDCP. In summary, the distribution of building height, high wall planes and ancillary elements above the height plane (terraces / awnings) raises concerns regarding solar access impacts associated with the distribution of the additions that are much higher than parts of the adjacent houses and therefore have a greater impact toward the southern side of the site.

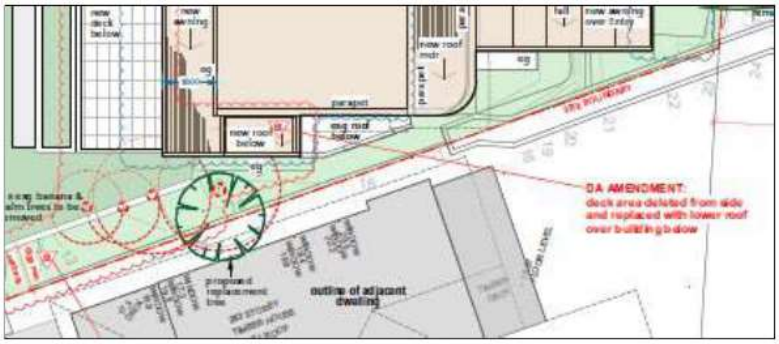


Image: Upper roof area has been amended as per plans Issue C dated 23.11.2011. "Deck 3" awning however still protrudes to south side envelope and creating unnecessary shadow to living area side windows for No.85 Gurney Crescent.

- The shadow diagrams demonstrate 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 as measured (and by comparison with the existing dwelling shadow) on the 21 June. Following site inspection, submission considerations and close assessment of the amended plans a reduction in the deck width at RL23.43 (due to shadow from balustrades or any items near them) and the awning above setback to the alignment of the southern side wall (W5 / W6). While it has been acknowledged that the solar access complies due to the western afternoon full sun access to No.85 Gurney Crescent the side windows provide important solar amenity in the morning period and the over-extension of the front awning for the balcony level (RL23.43) is an unnecessary additional impact.

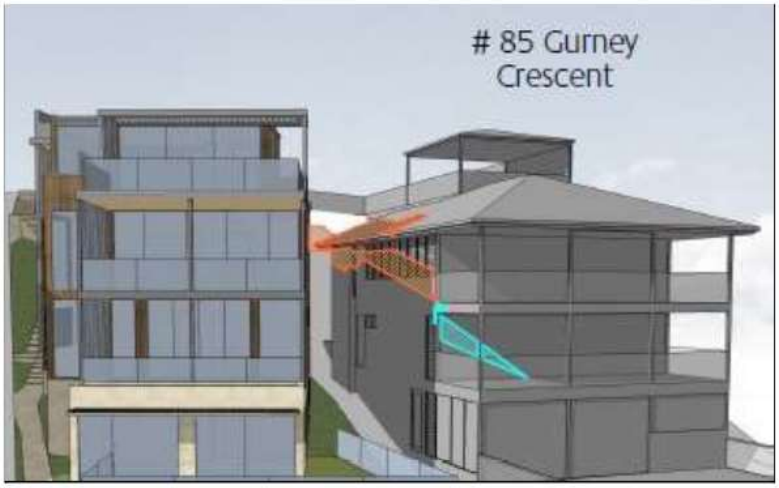




Image: Shadow cast at midday (mid winter and march equinox) against north facing upper living area window of No.85 Gurney Crescent by non-complying roof / wall element.

- The penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas is unnecessarily impacted by the high wall lines of the building and minimal change to sunlight penetration to maintain reasonable natural solar amenity. While conditions may address this issue to an extent the overall breach of the building height issue and FSR concerns would remain unchanged.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development, is inconsistent 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 not 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 assessed with regard to privacy impacts between adjacent and nearby development and consideration of the design responses including window size and placement of privacy screens, use of translucent glass and window design (width, position and heights (including supplementary details dated 30.9.2021) to address privacy for the urban environment, including by the configuration of rooms / spaces and potential conditions to address submissions received.

- Where walls are close to the adjacent boundaries of adjacent land and in particular No.89 and No.85 Gurney Crescent the proposal has sought the use of screens, window shape, glazing and landscaping. However the proposal further adds to these area by large elevated deck areas at the upper and lower levels which contributes to increased privacy impacts and overlooking concerns, particularly at the upper level associated with Deck 3 and the upper rumpus area floor level being situated much higher than any adjacent principal living areas on adjacent land.

- The alterations and additions create impacts on privacy (both acoustical and visual) including the positioning of building bulk in the floor plan elements (bathrooms, bedrooms, living area, fencing, landscaping and the like). This increases direct viewing within the surrounding residential environment. Generally, the orientation of the dwelling is toward the foreshore area however increased impact are created due to the upper level living / rumpus area and narrow side setbacks in relation to non-compliant wall height.

- Landscaping and privacy screening devices have been incorporated to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings. Overall however the proposal does not provide reasonable level of privacy in the context of the surrounding residential living environment by the additional large elevated deck areas and height of those elements close to the side boundaries and potential overlooking concerns.

- In summary, the reconfiguration of the dwelling has included measure to ensure no unreasonable viewing of habitable rooms, including private open space and with appropriate residential security consideration, subject to conditions.

Having regard to the above assessment, and site inspection made to assess the privacy context in the local surroundings, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) 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).
Objective 3) 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.

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

- *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.*



Image: Westerly views from sitting and standing position available from No.85 and No.89 Gurney Crescent
(parts of view interrupted by trees and landscaping elements and different levels).

Comment:
The views are gained from living and kitchen areas but the whole of the view is expansive (westerly toward the Middle Harbour water area and associated bushland foreshores). There are various elements of tree canopies, moorings, boating activity and the like that form part of the views from various positions / vantage points. The side setbacks are generally compatible and the open foreshore area allow views to provide high quality views rather than side views toward the side wall of the adjacent house.

- *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:
Views are enjoyed from deck areas facing the harbour water, kitchen living areas and bedrooms at all levels where open / glazed facades and open balconies are used for the westerly aspect. The westerly views are not affected by sitting or standing positions. Side views are generally restricted and limited aspect with the close existing wall alignments between adjacent houses to No. 85 and No.89 Gurney Crescent.

- *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:
The alterations and additions will reduce the upper bulk and overall view lines are less impacts in that all adjacent properties look have westerly outlook over water views to harbour area. Side views are gained however these are secondary and across balconies into the side setback position of the adjacent house. Therefore, the view impact is considered minor. Further details are provided in the applicant's view assessment details submitted with the application. The view impact to the west (water view) is negligible. Existing views over side boundaries are generally limited already and the view impacts is minor as the westerly view remains part of the wholistic view.

- *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:
View impacts have been considered in the assessment of the proposal and the applicant has provided information to identify the visual appearance of the existing dwelling and the alterations and additions with have a minimal impact on views from both private properties at No.85 Gurney Crescent, No.89 Gurney Crescent, overlooking private land on higher terrain to the east and public views from the street level of Gurney Crescent.

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.

3.5.5 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 / rocky conditions, available solar patterns, slope, proximity to existing vegetation, building services and to provide amenity to the occupants.

- Landscape referral assessment comments are provided under the heading "internal referrals" within this report. In summary, the landscaping is to be maintain generally in accordance with the existing appearance and area of the site, including the occurrence of natural surface rock. The application will retain continuity with the existing landscaped open space within the

Foreshore setback area of the site. In this regard the lower terrace will have an open undecroft to allow shade plants / ferns and the like (See Landscape Plan Dwg L-02 - North elevation)

- Existing landscape planting will assist to maintain screening and complement the ground level privacy for the building by using a mix of small, medium and larger planting. Wide tree spacing has been used to at the front ensure and open / spaced canopy that does not unreasonably impact surrounding views or outlook over the long term. The landscape planting has been considered by Council's landscape architect and conditions provided to address relevant issues identified.

- 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. The site is within a bushfire prone area and therefore revisions are required at Construction Certificate stage and prior to Occupation to ensure planting is consistent with the bushfire requirements and recommendations provided within the Bushfire Assessment Report (to comply with NSW RFS *Planning for Bushfire Protection*).

- 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 elements toward the Foreshore area

Having regard to the above assessment and the context in the local surroundings, 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 for landscaped open space provisions.

3.7 Stormwater Management

Merit Assessment Comments

Relevant objectives to satisfy relation to this part include the following:

- The proposed alterations and additions are satisfactory to be able to manage urban stormwater within its natural catchment and within the development site without unreasonable adverse impact on existing water quality of the catchments, foreshores or adverse erosion and sedimentation.
- Construction work is manageable to prevent unreasonable environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.
- Maintaining reasonable ground infiltration of stormwater to there will be no unreasonable negative (environmental) impacts and supporting on-site stormwater detention, collection and recycling options.
- Ensure that stormwater is able to maintained for stormwater facilities on an ongoing manner.

Council's development engineers have assessed the stormwater management proposed for the alterations and additions and discharge to the foreshore. Natural overflow occurs from natural runoff within the property by virtue of exposed natural rock and shallow soil / garden areas, including landscaped hard surfaces. Stormwater concept management information provided with the application is satisfactory to identify the general layout and management as per Councils *Water Management Policy* including no unreasonable environmental impacts or adverse geotechnical risk. The applicant has provided stormwater management information to ensure appropriate detailed design inclusions at

construction certificate stage by *Northern Beaches Consulting Engineers*.

Detailed engineering design is appropriately managed at Construction Certificate stage and in this regard conditions are included to ensure the final civil detailed design is adequate to meet Council Policy and ensure no unreasonable impact on adjacent land in context with the foreshore topography and normal rainfall conditions to accommodate stormwater from development work (roofs, artificial surfaces and the like).

Therefore, the proposal is satisfaction with regard to objective considerations of this clause subject, to engineering conditions.

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.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The DCP height requirements and objectives, pursuant to *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)*, are addressed as follows:

Merit Assessment Comments:

- The property has a very steep gradient and the floor to ceiling heights being maintained are not unreasonable in terms of covering the difference in levels between the upper new level of the house and the lower ground level additions, such that they do not create any unreasonable impact on view, amenity, overshadowing. The building bulk and scale is generally much higher than the existing dwelling shape. This is issue is not adequately address addressed by stepping back the appearance of the upper rumpus and deck element, to reduce overlooking / privacy impacts and reduce overshadowing to adjacent land.

- The covers 5 levels and generally retains 3 or 4 storeys along the main elements using the outer side wall line in matching the alterations and additions to the existing house. The steepness of the site influences the high wall height however, the principal usable private open space for the terraces width / balcony area are located toward the west elevation with minimal expansion of deck elements into the side boundary setbacks. The maximum wall height of 11.7m (measured to ceiling level) is located where the building is 4 storeys associated with the upper Rumpus room (second floor level) and creates excessive wall height.

- The requirements of this clause permits roof parapets to extend / merge with the actual wall height elements of the wall height and the roof shape for the garage has been marginally lowered to respond to this clause and streetscape considerations. The proposal satisfies the objectives of this clause under the DCP with minimal parapet and does not cause unreasonable view sharing impact as detailed under Clause 3.4.3 as detailed within this report.

- In summary, the proposal is considered to be of a satisfactory architectural design and built form with regard to wall height considerations pursuant to the Manly DCP. The non-compliance to the wall height controls does not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.
  Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is in 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 not supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a). In summary, the FSR proposed is not supported for reasons of excessive bulk and scale as well as visual privacy and solar access impact associated with the distribution of FSR for the additions.

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3)

For the purposes of this clause the proposal complies with the MDCP requirement using the Area "U" (750sqm) of 0.4:1. Under the DCP exceptions the proposal has an FSR of 0.399 and has taken the FSR to the maximum but the distribution of the FSR raises amenity concerns as detailed in this report. FSR is considered in detail under the terms of the Manly LEP and Clause 4.6.

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 the core areas of the dwelling centrally located on the site with compliant side setback adjacent existing ground level for the side wall. The proposal does not comply with the front setback to Gurney Crescent due to the carport structure having been extended forward. The carport has maintain a BCA / NCC minimum of 0.9m to the front boundary with storage space behind. This is achieves an off street parking area for 2 cars over the existing elevated platform of the driveway as the existing site drops away steeply from the road. This is a similar arrangement to other properties along in the vicinity of the site Gurney Crescent. The change to extend the front wall and have a solid door facing the street reduces the sense of openness from the existing carport that currently is fully open style. In order to address this streetscape consideration an open grille style door for the carparking area is recommended. The parking area has maintained a 6.8m open timber screen (1m to 0.8 sill height) along the north wall and glass window on the western wall. The use of an open style grille to the parking area will allow views through the parking area and maintain an carport style secure parking area. The parking structure has adequate internal dimensions and area to enable 2 cars to park on flat existing floor area clear of the door ramp. The use of an open grille for the style "roll-a-door / tilt-door" for the vehicle door will maintain views through structure and a sense of openness.

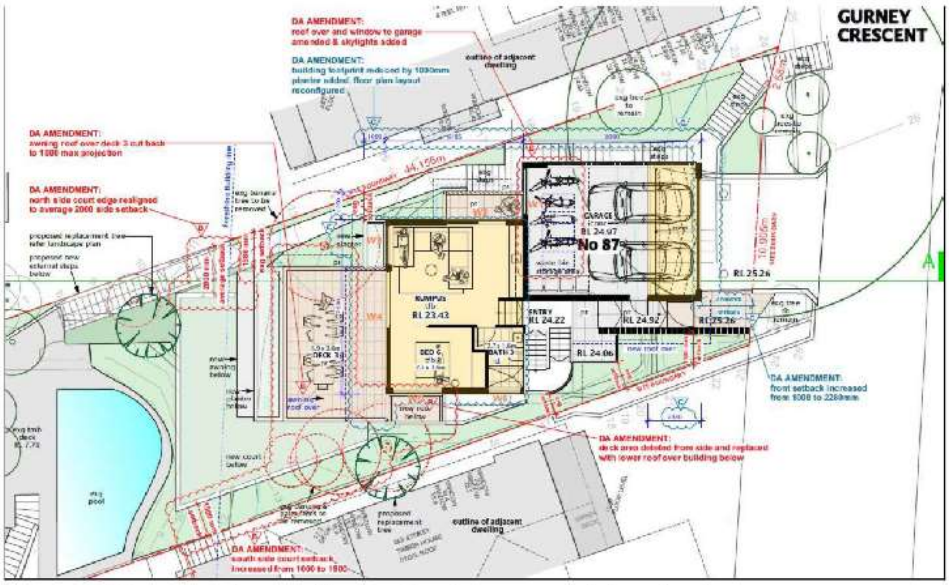


Image 4: Plan view showing front setback zone and side setback

- 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 allow for compliance with the *Building Code of Australia* for maintenance, access, RFS bushfire requirements, drainage work and emergency requirements (fire safety). 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 commonly with forward balcony positions.

- For the properties along the lower sections of Gurney Crescent multi-storey character is dominant with subfloor elements and garages close to the road where access is constrained by the topography. The location of the site is also within a bushfire area due to the proximity of the adjacent bushland reserve and therefore landscaped open space is subject to the *Bushfire Assessment Report* provided to ensure appropriate planting as per NSW RFS *Planning for Bushfire Protection*.

- The proposal is not consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy to adjacent dwelling windows and balcony positions. The proposal creates overshadowing impacts due to the narrow upper setback that could otherwise avoid much of the overshadowing impact to adjacent land and improve or maintain natural light, or direct sunlight on 21 June. The existing house has not sufficiently staggered wall alignment along the side elevations which is maintained and pockets of landscape buffer are provided along both side boundaries with minimal pathway elements (existing and new) to allow for landscape screening.

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

4.1.7 First Floor and Roof Additions

Merit Assessment
The Manly DCP states that *where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building.*

Clause 4.1.7.1 permits that "*Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues."*

However, this clause also provides that "*alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure".*

Clause 4.1.7.2 seeks that "*Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard."*

Comment

- The applicant has not chosen to adopt a "loft" form for the upper level habitable room additions where the building already exceeds the building height plane. The height of building is addressed in detail under the MLEP section of this report and conditions have been recommended to address potential impacts of overshadowing and privacy to adjacent land. Part 4.1.7 of MDCP seeks to encourage a loft style architectural response where alterations and additions would add a full storey level and wall height to existing dwellings. In this case conditions are included to reduce protruding element associated with Deck 3 awning that protrude beyond the height plans and would create additional shadow and extend beyond the side boundary envelope setback as can be seen in the image below. A condition is included to align the awning frame with the narrower / smaller bulk behind ("Bed 6") to address this consideration. The building bulk and scale therefore has substantial breaches of the building height plane and takes the FSR the DCP maximum. While some elements could be addressed by conditions for the upper deck and awning the substantial roof top additions create bulk and FSR that is situated above the building height plane. The proposal has not provided a suitable design response to this part of the MDCP for treatment of first floor and roof additions.



Image: Additions to upper and lower elements of the building on west elevation.

- In this case the applicant has followed the structure of the main wall lines and lower building "compartments" to position additional floor space. Principle considerations of overshadowing, and privacy issues have been considered during the assessment period and the proposal will exacerbate those impacts by the design response made. While some changes have been made to the plans ameliorate shadow and privacy impacts as addressed in the relevant sections of this report under the MDCP these are insufficient to be consistent with this part of the MDCP.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $13,665 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,366,495.

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, 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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and 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 not 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 building height and FSR variations proposed are not supported pursuant to merit assessment under Clause 4.6 of the Manly LEP. The request to vary the development standards are not supported under the circumstances. While conditions may be applied to address amenity impact considerations on surrounding land, including overshadowing and privacy, the overall building bulk is excessive by comparison to pattern of surrounding development. On balance the proposal has not appropriately utilized the Manly DCP controls to provide a suitable design response to the site constraints and slope.

Building alterations and additions maintain consistent setbacks with the existing house and issues regarding amenity impacts of have been addressed with minor changes to plans made during the assessment and issues raised in the submissions received pursuant to Manly DCP /LEP.

While the proposal maintains compliant access for overshadowing the amended plans do not adequately reduce the building bulk at the upper level in consideration to the building height, wall height and FSR. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused for the reasons provided.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/0656 for the Alterations and additions to a dwelling house on land at Lot 1 DP 1271044,87 Gurney Crescent, SEAFORTH, for the reasons outlined as follows:

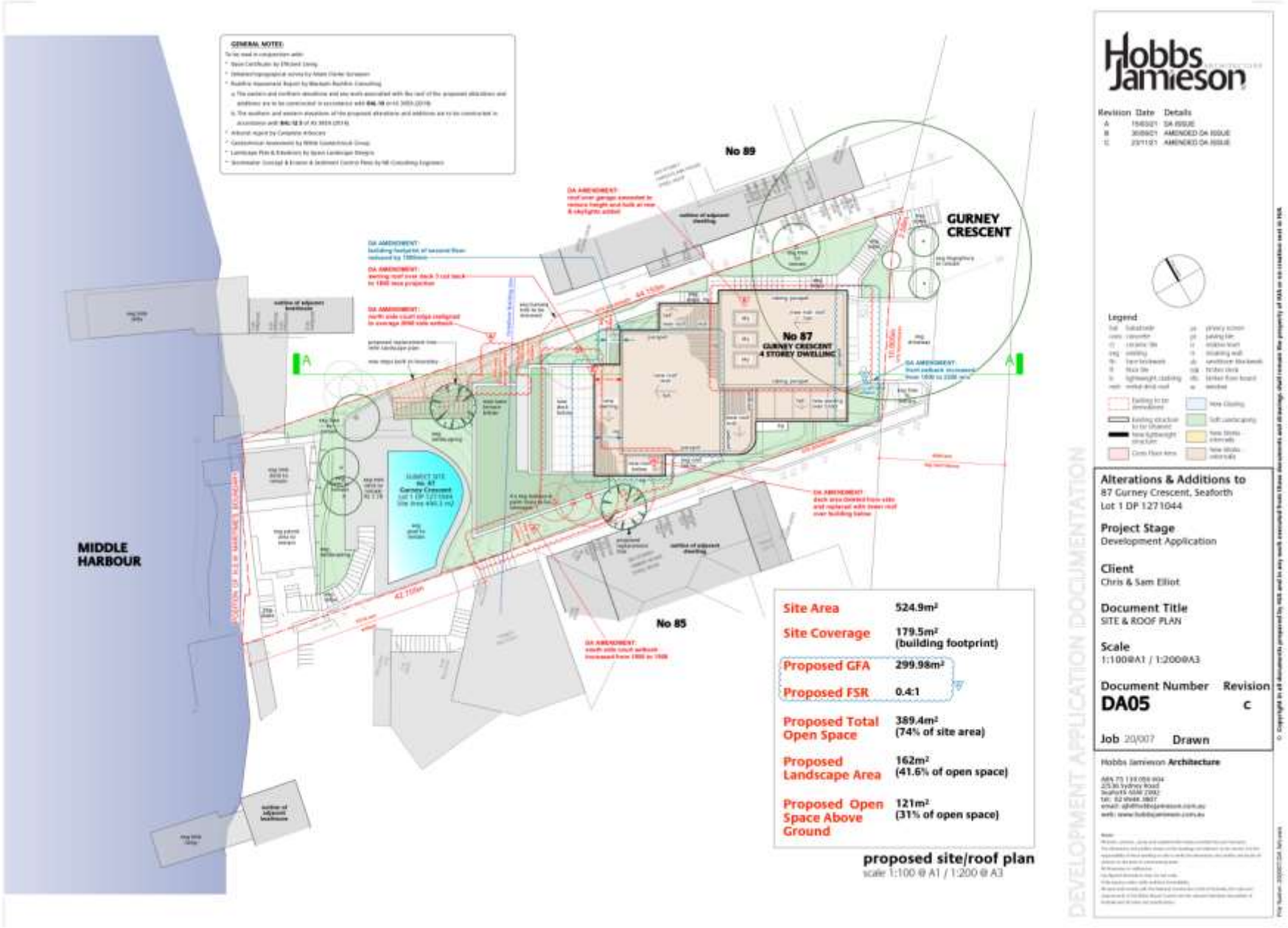
1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

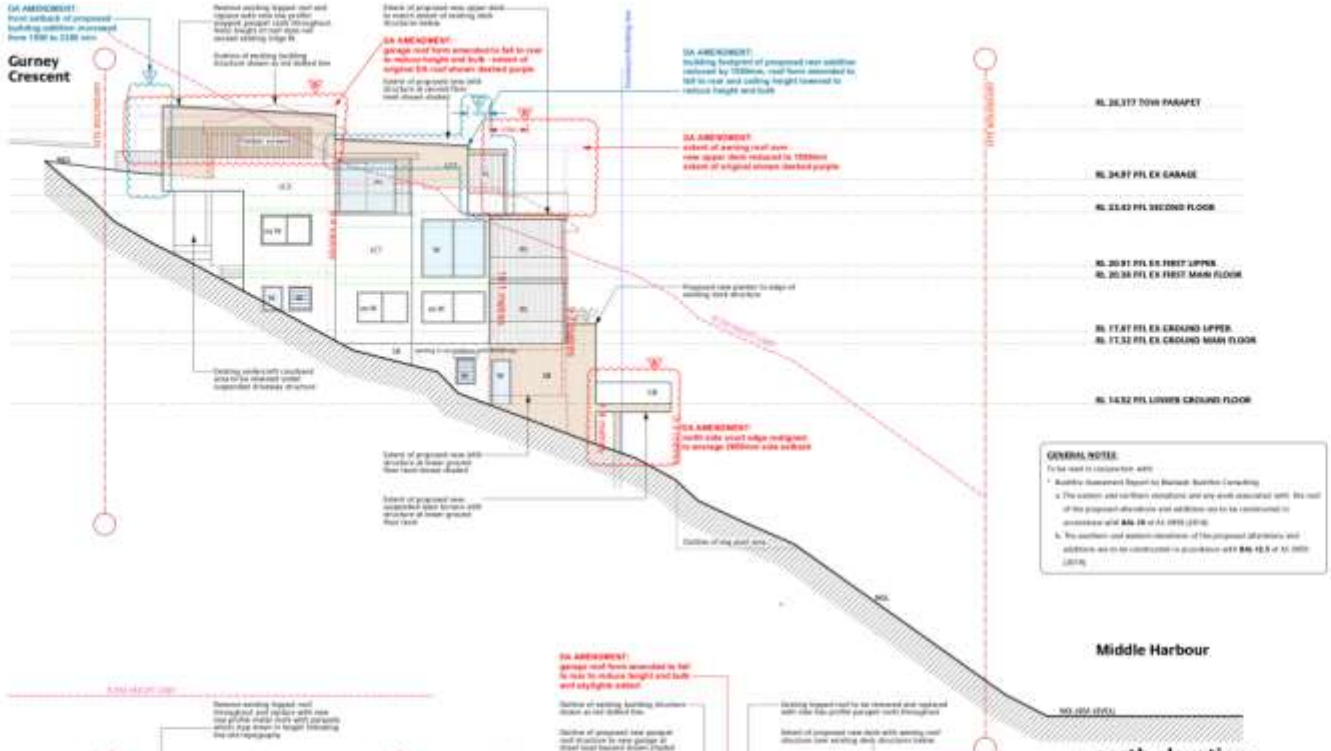
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.

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 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013 with regard to considerations of building bulk and amenity impacts with height of building non-compliance and floor space ratio non-compliance.

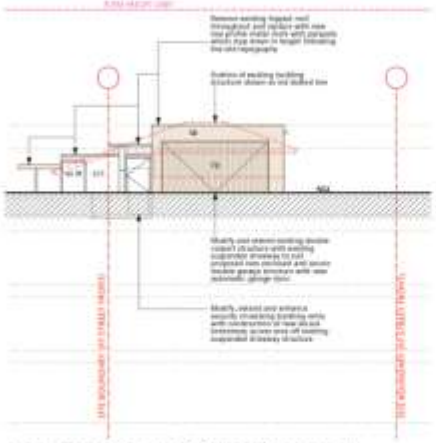
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4 Amenity. In this regard the proposal does not meet the objectives of Clause 3.4.1 Sunlight Access and Overshadowing, and Clause 3.4.2 Privacy of the Manly 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 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.4.2 Alterations and Additions and Clause 4.1.4 Setbacks (front, rear and side) and Building Separation of the Manly Development Control Plan, with excessive bulk presenting to the public domain.

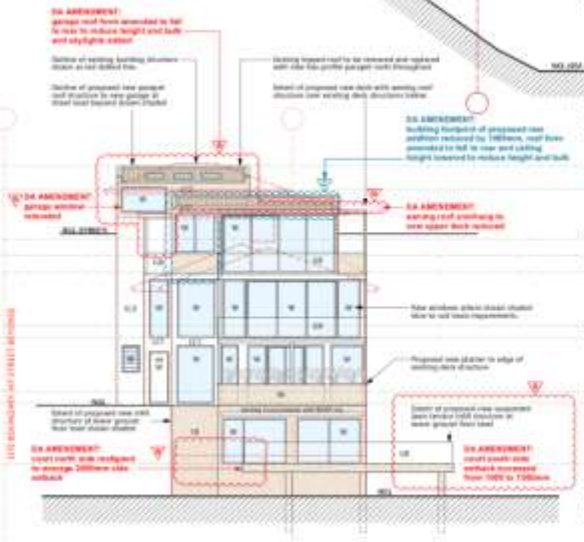

GENERAL NOTE:
No 89
GURNEY CRESCENT
No 87
GURNEY CRESCENT
4 STOREY DWELLING
No 85
MIDDLE HARBOUR
Site Area 524.9m²
Site Coverage 179.5m² (building footprint)
Proposed GFA 299.98m²
Proposed FSR 0.4:1
Proposed Total Open Space 389.4m² (74% of site area)
Proposed Landscape Area 162m² (41.6% of open space)
Proposed Open Space Above Ground 121m² (31% of open space)
proposed site/roof plan
scale 1:100 @ A1 / 1:200 @ A3
Hobbs Jamieson
Revision Date Details
A 15/03/21 DA ISSUE
B 30/09/21 AMENDED DA ISSUE
C 23/11/21 AMENDED DA ISSUE
Legend
Alterations & Additions to
87 Gurney Crescent, Seaforth
Lot 1 DP 1271044
Project Stage
Development Application
Client
Chris & Sam Elliot
Document Title
SITE & ROOF PLAN
Scale
1:100@A1 / 1:200@A3
Document Number
DA05
Revision
C
Job 20/007
Drawn
Hobbs Jamieson Architecture
DEVELOPMENT APPLICATION DOCUMENTATION



north elevation
scale 1:100 @ A1 / 1:200 @ A3



east elevation - to Gurney Crescent
scale 1:100 @ A1 / 1:200 @ A3



west elevation
scale 1:100 @ A1 / 1:200 @ A3

Hobbs Jamieson

Revision	Date	Details
A	15/03/21	DA ISSUE
B	30/09/21	AMENDED DA ISSUE
C	23/11/21	AMENDED DA ISSUE

Legend

Alterations & Additions to
87 Gurney Crescent, Seaforth
Lot 1 DP 1271044

Project Stage
Development Application

Client
Chris & Sam Elliot

Document Title
NORTH, EAST & WEST ELEVATIONS

Scale
1:100@A1 / 1:200@A3

Document Number **DA10**

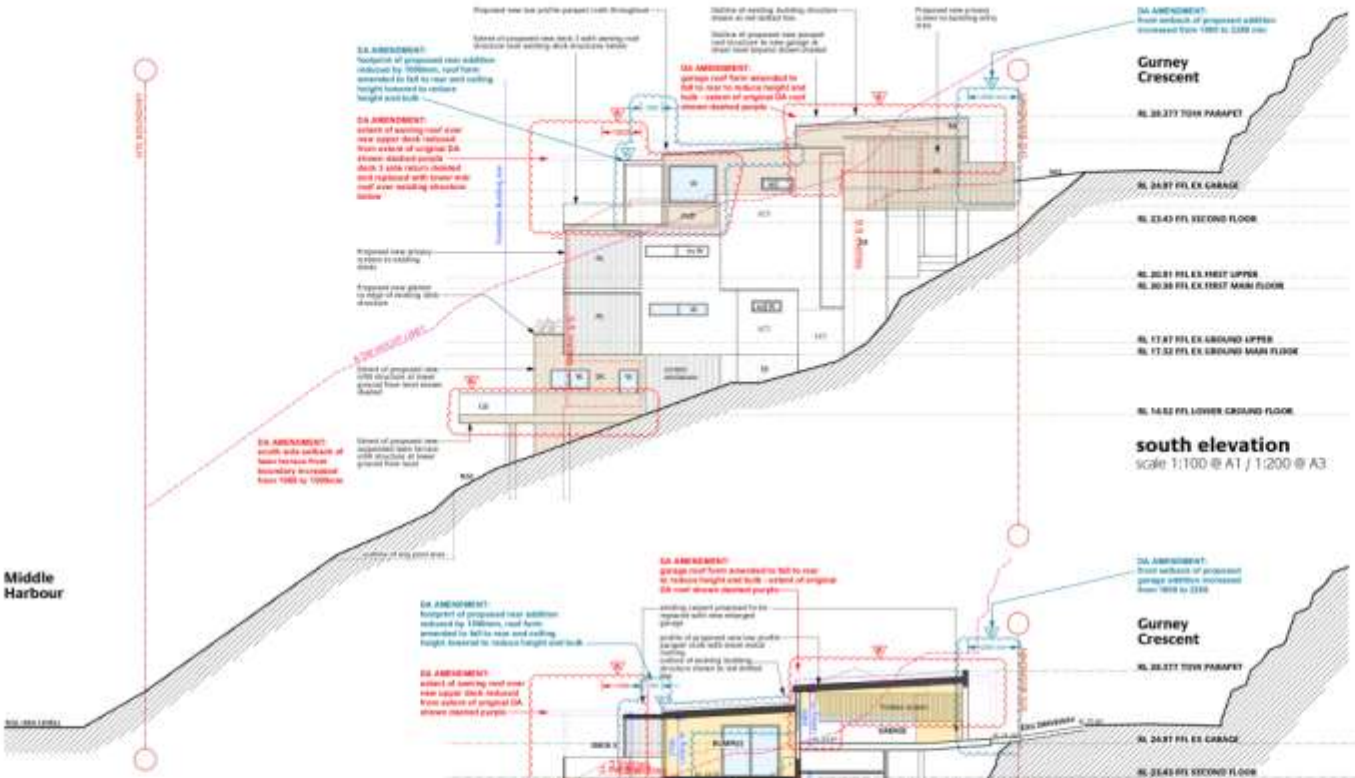
Revision C

Job 20/007 Drawn

Hobbs Jamieson **Architecture**

DEVELOPMENT APPLICATION DOCUMENTATION

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Revision	Date	Details
A	15/03/21	DA ISSUE
B	30/09/21	AMENDED DA ISSUE
C	23/11/21	AMENDED DA ISSUE

Legend

Alterations & Additions to
87 Gurney Crescent, Seaforth
Lot 1 DP 1271044

Project Stage
Development Application

Client
Chris & Sam Elliot

Document Title
SOUTH ELEVATION AND SECTION

Scale
1:100@A1 / 1:200@A3

Document Number **DA11**
Revision C

Job 20/007 Drawn

Hobbs Jamieson **Architecture**

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Boston Blyth Fleming
Town Planners

7th December 2021

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Development application DA 2021/0656
Amended Clause 4.6 variation request – Height of buildings
Clause 4.6 variation request - FSR
Alterations and additions to an existing dwelling
87 Gurney Crescent, Seaforth

Amended Clause 4.6 variation request - Height of buildings

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height.

The objectives of this control are as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

(b) to control the bulk and scale of buildings,

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Building height is defined as follows:

> ***building height*** *(or* ***height of building****) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

Ground level existing is defined as follows:

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

The proposed additions result in a variable breaches of the height standard at first and second/ garage floor levels as depicted in the 8.5 metre building height blanket diagrams at Figure 1 over page. The extent of building height breach can be summarised as follows:

First floor plan

This floor plate is existing with the western edge of the proposed balcony roof/ second floor balcony floor and balustrade above breaching the heights standard by 3.345 metres (39%) in its north-western corner and 2.160 metres (25.4%) in its south-western corner

Second floor plan

The western edge of the proposed awning over the balcony at this level breaches the height standard by 3.840 metres (45.1%) in its north-western corner and 3.130 metres (36.8%) in its south-western corner. The western edge of the rumpus room and Bed 6 roof form breach the height standard by 3 metres (35.2%) in its north-western corner and 2.410 metres (28.3%) in its south-western corner.

Garage roof

The western edge of the garage roof form exceeds the height standard by 2.015 metres (23.7%) at its north-western corner and 2.835 metres (33.3%) in its south-west corner and is fully compliant at its eastern street facing edge.



NORTH SIDE



SOUTH SIDE

Figure 1 – Height blanket diagram showing portions of the development exceeding the 8.5 metre height standard

Whilst it is acknowledged that such variations are not insignificant, the heights proposed are consistent with many existing and recently approved and constructed dwelling houses, associated car parking and access structures located on the low side of Gurney Crescent and steeply sloping foreshore sites throughout the LGA. The image below is taken from the Harbour and shows the context of existing development along this coastal escarpment.



Figure 2 - Existing Development on the low side of Gurney Crescent

The extent of variation is also consistent with that recently approved at No. 95 Gurney Crescent involving alterations and additions to an existing dwelling (DA2020/1670) as depicted in Figure 3 over page.

Accordingly, it is evident that the building height standard has historically been applied with a significant degree of flexibility on steeply sloping sites along this section of Gurney Crescent.

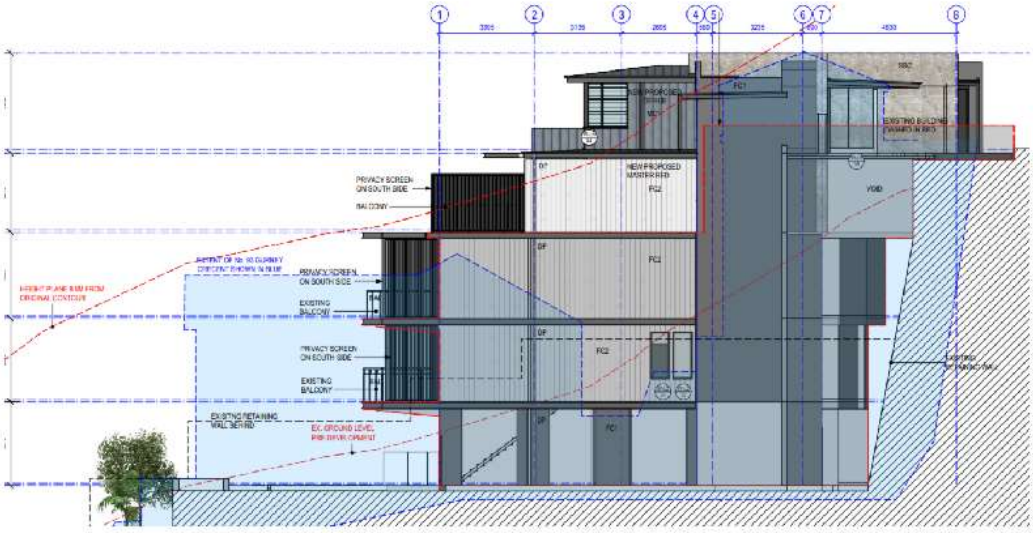


Figure 3 - Plan extract showing extent of variation is also consistent with that recently approved at No. 95 Gurney Crescent involving alterations and additions to an existing dwelling (DA2020/1670)

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

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

(b) the concurrence of the Director-General has been obtained.

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

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 MLEP 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 standard and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

Claim for Variation

Is clause 4.3 of MLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clauses 4.3 contains provisions that seeks to limit the height of development and accordingly is considered to be a development standard to which clause 4.6 MLEP applies.

Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the building height objectives

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The proposed development is consistent with the prevailing height of development located on the low side of this section of Gurney Crescent and along this escarpment as viewed from the harbour in a broader context. The steep topography results in a single story presentation to the street with development stepping down over a series of levels in response to topography. Figure 2 depicts an image of the existing development along this escarpment and demonstrates that the proposal is consistent with the prevailing building height of dwellings in the vicinity.

I note that in relation to desired future character that the objective relates to streetscape character and to that extent the development will present as a single storey building as viewed from Gurney Crescent with the non-compliant portions of the development not giving rise to inappropriate or jarring streetscape consequences.

The non-compliant building heights and roof forms associated with the dwelling are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality given that the breaching building height elements associated with the dwelling house sit predominantly below the level of the road and to that extent will not be readily discernible in a streetscape context.

The non-compliance associated with the proposed garage is directly associated with the topography of the site and to a large extent anticipated for any proposed car parking and access structures located on the low side of the street.

This objective is satisfied notwithstanding the building height breaching elements.

b) to control the bulk and scale of buildings,

Comment: The proposal displays a complimentary and compatible bulk and scale compared to existing development located on the low side of Gurney Crescent and consistent with the bulk and scale of development along the foreshore in this locality in a broader context. Many of the dwellings along the escarpment are multi-storey and step down the steep topography. I also note that the development is compliant with the clause 4.1.3.1 exemptions to FSR for undersized Lots provisions contained within Manly DCP with compliance with such provision demonstrating an appropriate bulk and scale, as reflected by FSR, on this undersized allotment. In this regard, I rely on the clause 4.6 variation request in relation to FSR contained within this same word document.

The resultant bulk and scale, as it relates to the non-compliant portions of the development, will not give rise to inappropriate or jarring streetscape consequences or visual amenity impacts on the adjoining properties being noted that the adjoining properties have their principal living and open space areas orientated to the west to take advantage of harbour and district views adverse view impacts.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context, or as viewed from the harbour, having regard to the built form characteristics of development within the site's visual catchment as depicted in Figure 2.

I have formed the considered opinion that the building, notwithstanding the height variation, satisfies the objective through the contextually appropriate distributional of floor space and building height on this particular site which reflects skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

This objective is satisfied notwithstanding the building height breaching elements.

c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment: I note that the primary views from all surrounding properties are in a westerly direction across Middle Harbour towards Sugarloaf Bay. The proposal, notwithstanding the building height breaching elements, will have no impact on existing views from the west facing living room windows and adjacent private open space areas of any adjoining property and therefore maintains a view sharing scenario in accordance with the Tenacity Consulting v Warringah Council view sharing principle established by the Land and Environment Court of NSW.

Further, I am satisfied that the building height breaching elements will not unreasonably impact views to nearby residential development from public spaces or views between public spaces. View impacts have been minimised and accordingly this objective is achieved notwithstanding the building height breaching elements.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment: The accompanying shadow diagrams (Attachment 1) demonstrate that the building height breaching elements will not give rise to any unacceptable or unreasonable shadowing impact to the north facing upper level living room windows of No. 85 Gurney Crescent with 3 hours of solar access maintained to a significant amount of north facing glazing between 12 noon and 3pm on 21st June.

I note that this exceeds the 2 hours of solar access required to be maintained to windows to living rooms between 9am and 3pm on 21st of June for adjacent buildings with an east-west orientation as required by clause 3.4.1.2 of Manly DCP. I consider that the sunlight access maintained to this adjoining property satisfies the objectives associated with this control being to provide equitable access to light and sunshine given the extent of solar access maintained to a majority of the north facing glazing for the required 2 hour period on 21st of June.

The objective is achieved notwithstanding the building height breaching elements proposed.

e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment: Notwithstanding the building height breaching elements, the proposed height and bulk of the dwelling will not significantly impact on the existing vegetation and topography of the site. Excavation is minimised with the development responding appropriately to the steep slope. This objective is achieved withstanding the non-compliant building height elements proposed.

Having regard to the above considerations, the non-compliant portions of the development will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The site is located within the E3 Environmental Management Zone. The objectives of the zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment: The proposal is consistent with the protection and management of the local environment and biodiversity. An arborist report has been provided detailing the recommended tree protection measures for the large Angophora tree located on the site. Several exempt smaller species trees are proposed to be removed and replaced with native species. A landscape plan has been prepared which provides for an enhancement of site with native trees and plants proposed. In this regard, the development is considered to improve the biodiversity of the site with the inclusion of more native landscaping treatments. The proposal is consistent with this objective notwithstanding the height of buildings non-compliance proposed.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment: The development is for alterations and additions to an existing dwelling house which is permissible in the zone. The proposal is consistent with this objective notwithstanding the height of buildings non-compliance proposed.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment: A large Angophora has been assessed within the arborist report and will be retained with the development. Some smaller exempt species trees are to be removed and replace with native trees. The proposal is consistent with this objective notwithstanding the height of buildings non-compliance proposed.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment: The development will not result in any loss of natural vegetation and will be enhanced with the proposed landscaping regime. The significant Angophora is to be retained and protected during development. We note that advice given by Council at the pre-lodgement meeting stated that this application did not require an ecological study. The proposal is consistent with this objective notwithstanding the height of buildings non-compliance proposed.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment: It is anticipated that a weed management plan be implemented prior to the issuing of construction certificate. Any potential impact of the local environment with regard to the use of herbicide will be managed and detailed in the weed management plan.

Stormwater management plans, including an erosion and sediment control plan, have been prepared and accompany this application. The proposal is consistent with this objective notwithstanding the height of buildings non-compliance proposed.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment: The proposed bulk and scale of the dwelling is consistent with other development along the foreshore and does not impact on the existing vegetation and topography of the area as depicted in Figure 1, the retention of the large Angophora and the developments compliance with the total open space and landscaped area provisions of Manly DCP. The proposal is consistent with this objective notwithstanding the height of buildings non-compliance proposed.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with the objectives of the E3 Environmental Management zone and the height of buildings standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

Sufficient Environmental Planning Grounds

Ground 1 Topographical characteristics of the land

The subject site is extremely steep falling approximately 26 metres across its surface from Gurney Crescent towards the harbour. The topography of the site coupled with the requirement to provide off-street carparking generally at street level and the desirability to provide internalised pedestrian access to the dwelling from street level makes strict compliance with the building height standard difficult to achieve whilst providing for a contextually appropriate built form of good design displaying a complimentary and compatible building height and affording appropriate levels of amenity for future occupants.

Ground 2 The contextually appropriate distribution of a quantum of floor space consistent with the FSR exemption provisions contained at clause 4.1.3.1 of Manly DCP applicable to undersized allotments

The variation to the building height standard proposed provides for a dwelling house exhibiting a complimentary and compatible building height, bulk and scale compared to the built form characteristics established by adjoining development and development generally within the site's visual catchment.

To insist upon strict compliance with the height of buildings standard would necessitate the provision of an uncovered parking platform for 2 vehicles at street level and the deletion of approximately 55 square metres of floor space (GFA) representing the entirety of the second floor plan.

Such outcome would not represent the orderly and economic use and development of this harbourside allotment and would give the clause 4.1.3.1 exemptions to FSR for undersized Lots provisions contained within Manly DCP no work to do and result in a quantum of floor space which is substantially less than that established by adjoining development and development generally within the sites visual catchment.

Ground 3 Legitimate alterations and additions

The subject application represents legitimate alterations and additions to an existing dwelling house. In this regard, the car parking platform and first floor structural roof levels are established with such levels dictating, to a significant extent, the levels of the car parking and second floor alterations and additions proposed. That is, it is these established levels which contribute to the height of buildings breach in relation to the second-floor additions and car parking alterations proposed.

Ground 4 Objectives of the Act

The development distributes an appropriate quantum of floor space across the site in a contextually appropriate manner resulting in good design and residential amenity with the height of buildings variation facilitating a contextually compatible built form outcome which is of good design, which provides good levels of amenity to future occupants and which provides for the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

The application represents legitimate alterations and additions to an existing dwelling house with the extent of building height breach provides for the proper construction of the second floor addition including appropriate floor-to-ceiling heights and structural thicknesses to ensure the works comply with the BCA, are appropriately weather protected and structurally sound. Approval of the height of buildings variation to facilitate the alterations and additions proposed achieves such outcome which is consistent with objectives 1.3(b) and 1.3(h) of the Act which seek to facilitate ecological sustainable development (alterations and additions rather than demolition and construction of a new dwelling) and the promotion of the proper construction and maintenance of buildings.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E3 Environmental Management zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.
Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it 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. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development in the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

(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.

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

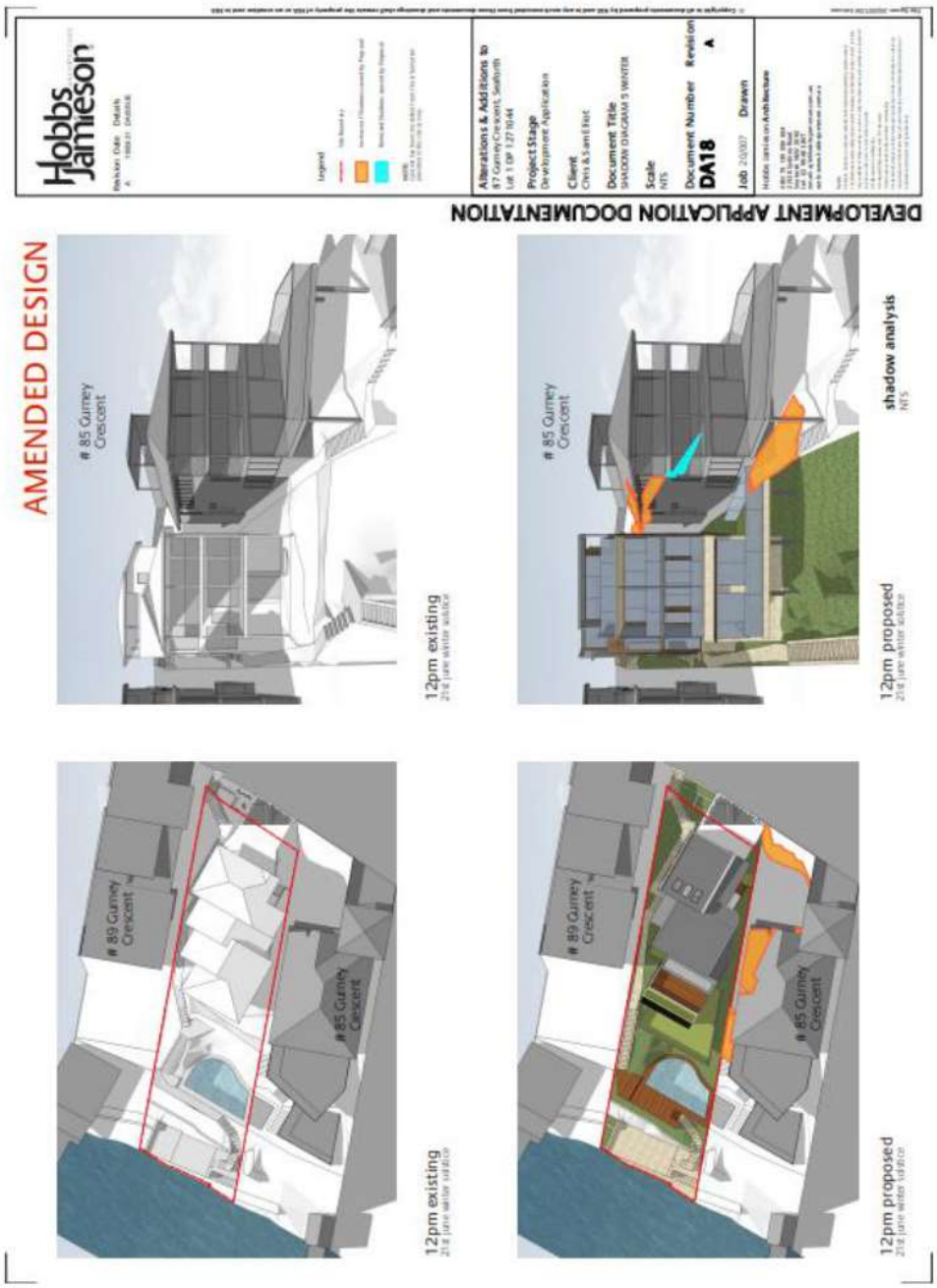
Boston Blyth Fleming Pty Limited

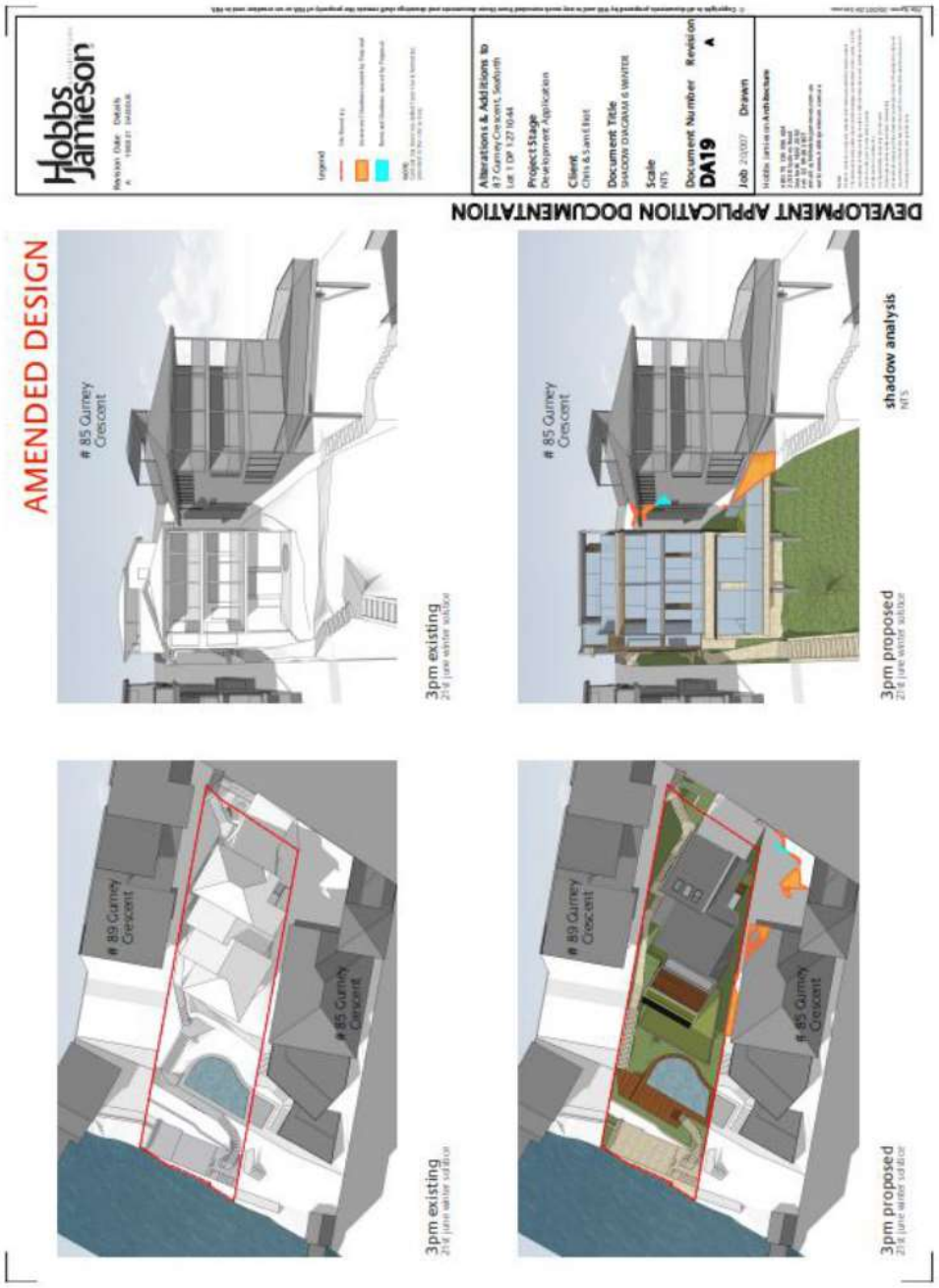


Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1 Shadow diagrams




AMENDED DESIGN
DEVELOPMENT APPLICATION DOCUMENTATION
Hobbs Jameson
Alterations & Additions to
87 Gurney Crescent, Seaforth
Lot 1 DP 127044
Project Stage
Development Application
Client
Chris & Sarah Hart
Document Title
SHADOW DIAGRAM 5 WINTER
Scale
NTS
Document Number
DA18
Revision
A
Job 20007
Drawn
85 Gurney Crescent
12pm existing
21st June winter solstice
12pm proposed
21st June winter solstice
shadow analysis
NTS
89 Gurney Crescent


DEVELOPMENT APPLICATION DOCUMENTATION
Hobbs Jamieson
Alterations & Additions to
87 Gurney Crescent, Seaforth
Lot 1 DP 127 9044
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Document Title
SHADOW DIAGRAM 6 WINTER
Scale
NTS
Document Number
DA19
Revision
A
Drawn
AMENDED DESIGN
85 Gurney Crescent
3pm existing
21st June winter solstice
85 Gurney Crescent
shadow analysis
NTS
3pm proposed
21st June winter solstice
89 Gurney Crescent
85 Gurney Crescent
3pm existing
21st June winter solstice
89 Gurney Crescent
85 Gurney Crescent
3pm proposed
21st June winter solstice

Clause 4.6 variation request - Floor Space Ratio

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

2.0 Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 209.96 square metres. The stated objectives of this clause 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.

It has been determined that the proposal, as amended, result in a total gross floor area on the site of 299.98 square metres. This represents a floor space ratio of 0.57:1 and therefore non-compliant with the FSR standard by 90.02 square metres or 42.8%.

I note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone "U" in which a minimum Lot area of 1150m² is required. The site having an area of only 524.9m² is well below, in fact less than half, the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 299.98m² of gross floor area proposed, representing an FSR of 0.399:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision. We note that such provision contains the following note:

> *Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:*
>
> *Objective 1) To ensure the scale of development does not obscure important landscape features.*
>
> *Objective 2) To minimise disruption to views to adjacent and nearby development.*
>
> *Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also "deemed to comply" with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area*.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) The objectives of this clause are:

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

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

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 MLEP 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.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the floor space ratio provision at 4.4 of MLEP which specifies a maximum FSR however 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 MLEP 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 Director-General has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, 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 MLEP provides:

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

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court 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), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still 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 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP 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 4.4 and the objectives for development for in the 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 4.4 of MLEP?

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes:

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

Clause 4.3 MLEP prescribes a floor space/density provision that relates to certain development. Accordingly, clause 4.4 MLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: This objective relates to streetscape character and in this regard the proposed building presents a compliant 1 storey building form and height to Gurney Crescent before stepping down the site in response to the topographic landscape. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the bulk and scale (FSR) of the proposed development, as viewed from Gurney Crescent, to be offensive, jarring or unsympathetic in a streetscape context.

In this regard, I note that the vast majority of floor space is located below the level of Gurney Crescent and therefore does not contribute, to any significantly extent, to bulk and scale in a streetscape context. The 1 storey streetscape presentation is entirely consistent with that established by adjoining development and development generally located on the low side of Gurney Crescent.

This objective is satisfied as 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,

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 299.98m² of gross floor area proposed, representing an FSR of 0.399:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments.

I note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

Objective 1) To ensure the scale of development does not obscure important landscape features.

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

> *Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:*
>
> *Objective 1) To ensure the scale of development does not obscure important landscape features.*
>
> *Objective 2) To minimise disruption to views to adjacent and nearby development.*
>
> *Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area*.

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application proposes the implementation of an enhanced site landscape regime and provides for a building footprint which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site.
An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains 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,

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

Views

Having inspected the site to identify potential view lines from surrounding residential properties and the adjacent public domain I am satisfied that, notwithstanding the FSR non-compliance, that view impacts have been minimised through skilful, contextually responsive design which appropriately distributes floorspace across the site to achieve a view sharing outcome between properties in accordance with the clause 3.4.3 MDCP control and the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

Having identified scenic views available from Gurney Crescent, I have also formed the opinion that the contextually responsive and compatible single storey presentation to Gurney Crescent, which sits comfortably below the 8.5 metre height of buildings standard at the front property boundary, minimises adverse environmental impacts, including impacts on public views available from Gurney Crescent.

The proposal achieves the objective of minimising adverse environmental impacts in terms of both public and private views.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 299.98m² of gross floor area proposed, representing an FSR of 0.399:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

> *See also objectives for privacy at paragraph 3.4.2 of this plan.*
>
> *3.4.2 Privacy and Security*
>
> *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;*
> - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

As previously indicated, the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development.*

Notwithstanding, we note that all surrounding properties are orientated to the south to take advantage of views towards the harbour with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views. Given the spatial separation maintained between surrounding properties, and the primary orientation of living areas to the south towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams (Attachment 1) demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the north facing upper level living room windows of No. 85 Gurney Crescent with 3 hours of solar access maintained to a significant amount of north facing glazing between 12 noon and 3pm on 21st June.

I note that this exceeds the 2 hours of solar access required to be maintained to windows to living rooms between 9am and 3pm on 21st of June for adjacent buildings with an east-west orientation as required by clause 3.4.1.2 of Manly DCP. I consider that the sunlight access maintained to this adjoining property satisfies the objectives associated with this control being to provide equitable access to light and sunshine given the extent of solar access maintained to a majority of the north facing glazing for the required 2 hour period on 21st of June.

The objective is achieved notwithstanding the non-compliant FSR proposed.

Visual amenity/ building bulk and scale

As indicated in response to objective (a) I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment as depicted in Figure 1 over page.

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.



Figure 1 - Photograph of existing development on the low side of Gurney Crescent either side of the subject development which is depicted with the orange tag

(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.

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The site is located within the E3 Environmental Management Zone. The objectives of the zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment: The proposal is consistent with the protection and management of the local environment and biodiversity. An arborist report has been provided detailing the recommended tree protection measures for the large Angophora tree located on the site. Several exempt smaller species trees are proposed to be removed and replaced with native species. A landscape plan has been prepared which provides for an enhancement of site with native trees and plants proposed. In this regard, the development is considered to improve the biodiversity of the site with the inclusion of more native landscaping treatments. The proposal is consistent with this objective notwithstanding the FSR non-compliance proposed.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment: The development is for alterations and additions to an existing dwelling house which is permissible in the zone. The proposal is consistent with this objective notwithstanding the FSR non-compliance proposed.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment: A large Angophora has been assessed within the arborist report and will be retained with the development. Some smaller exempt species trees are to be removed and replace with native trees. The proposal is consistent with this objective notwithstanding the FSR non-compliance proposed.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment: The development will not result in any loss of natural vegetation and will be enhanced with the proposed landscaping regime. The significant Angophora is to be retained and protected during development. We note that advice given by Council at the pre-lodgement meeting stated that this application did not require an ecological study. The proposal is consistent with this objective notwithstanding the FSR non-compliance proposed.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment: It is anticipated that a weed management plan be implemented prior to the issuing of construction certificate. Any potential impact of the local environment with regard to the use of herbicide will be managed and detailed in the weed management plan.

Stormwater management plans, including an erosion and sediment control plan, have been prepared and accompany this application. The proposal is consistent with this objective notwithstanding the FSR non-compliance proposed.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment: The proposed bulk and scale of the dwelling is consistent with other development along the foreshore and does not impact on the existing vegetation and topography of the area as depicted in Figure 1, the retention of the large Angophora and the developments compliance with the total open space and landscaped area provisions of Manly DCP. The proposal is consistent with this objective notwithstanding the FSR non-compliance proposed.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to FSR, demonstrates consistency with objectives of the E3 Environmental Management zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – 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].

Sufficient environmental planning grounds

Ground 1 Provision of a contextually appropriate quantum of floor space consistent with the FSR exemption provisions contained at clause 4.1.3.1 of Manly DCP applicable to undersized allotments

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

In this regard, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion is tantamount to an abandonment of the FSR standard on undersized allotments.

To insist upon strict compliance with the FSR standard would necessitate the deletion of 90.02 square metres of floor space (GFA) representing the entirety of the second floor plan and approximately 35% of the proposed first floor plan. Such outcome would not represent the orderly and economic use and development of this harbourside allotment and would give the clause 4.1.3.1 exemptions to FSR for undersized Lots provisions contained within Manly DCP no work to do and result in a quantum of floor space which is substantially less than that established by adjoining development and development generally within the sites visual catchment.

Ground 2 The FSR standard has effectively been abandoned for development on undersized Lots pursuant to clause 4.1.3.1 of Manly DCP

The variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion is tantamount to an abandonment of the FSR standard on undersized allotments.

In circumstances where it can be demonstrated that the FSR proposed satisfies the objectives of the standard, the objectives of the zone and the applicable FSR exemption provisions of Manly DCP applicable to undersized lots, strict compliance with the numerical standard is unreasonable and unnecessary.

Ground 3 Objectives of the Act

The development distributes an appropriate quantum of floor space across the site in a contextually appropriate manner resulting in good design and residential amenity with the FSR variation facilitating a contextually compatible built form outcome which provides for the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

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.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E3 Environmental Management zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it 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. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development in the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

(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.

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance.

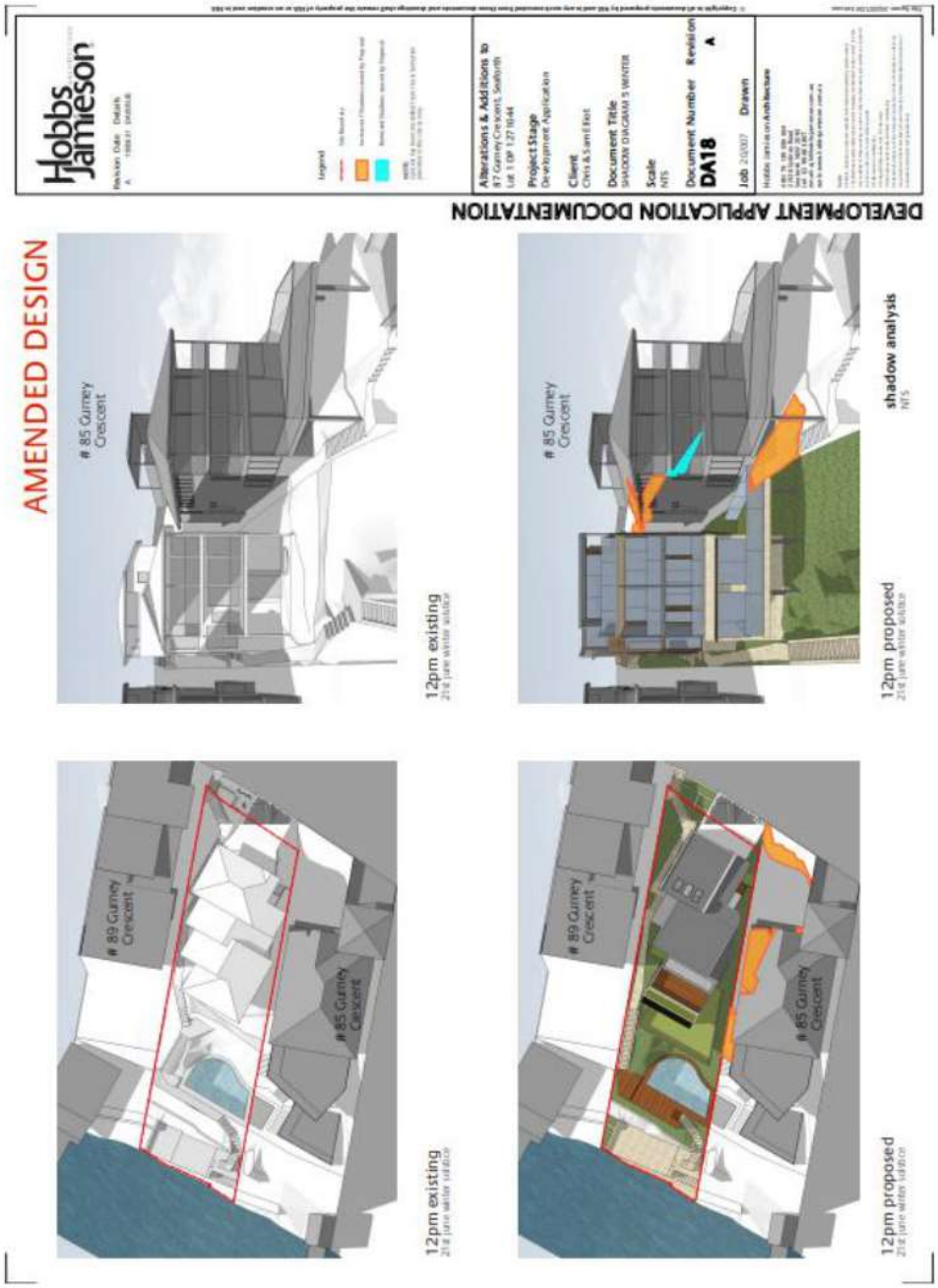
Boston Blyth Fleming Pty Limited

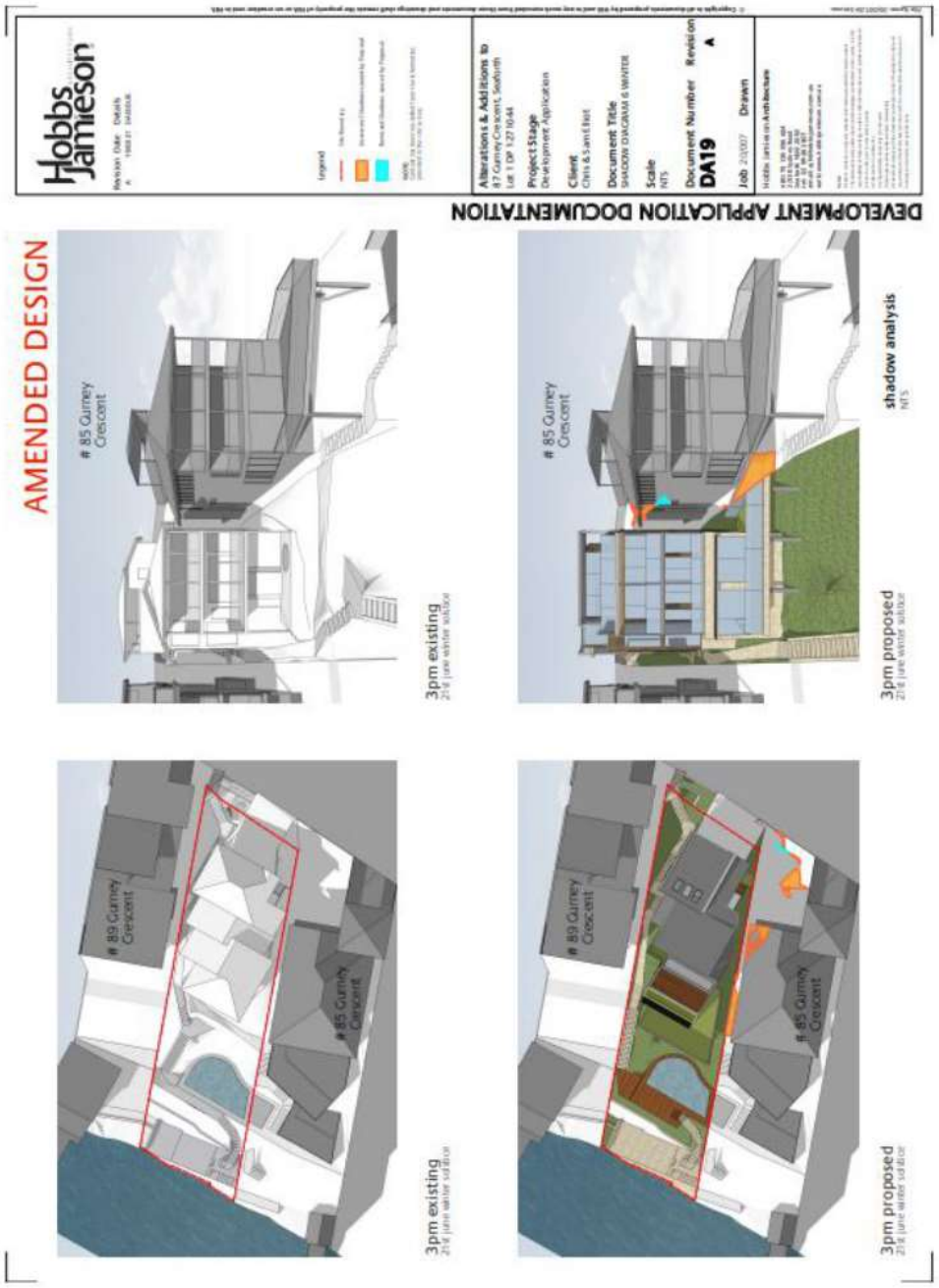


Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1 Shadow diagrams




DEVELOPMENT APPLICATION DOCUMENTATION
Hobbs Jamieson
Alterations & Additions to
87 Gurney Crescent, Seaforth
Lot 1 DP 127 8044
Project Stage
Development Application
Client
Chris & Sam Elliot
Document Title
SHADOW DIAGRAMS WINTER
Scale
NTS
Document Number
DA18
Revision
A
Job 20007
Drawn
AMENDED DESIGN
85 Gurney Crescent
12pm existing
21st June winter solstice
85 Gurney Crescent
shadow analysis
NTS
12pm proposed
21st June winter solstice
89 Gurney Crescent
85 Gurney Crescent
12pm existing
21st June winter solstice
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NTS
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DA19
Revision
A
Drawn
AMENDED DESIGN
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89 Gurney Crescent
85 Gurney Crescent
3pm existing
21st June winter solstice
89 Gurney Crescent
85 Gurney Crescent
3pm proposed
21st June winter solstice

ITEM 3.7	**REV2021/0030 - 55 BOWER STREET MANLY - REVIEW OF DETERMINATION OF APPLICATION DA2020/1338 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**TONY COLLIER**
TRIM FILE REF	**2021/864289**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 REV2021/0030 for Review of Determination of Application DA2020/1338 for alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0030

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 63 DP 8075, 55 Bower Street MANLY NSW 2095
Proposed Development:	Review of Determination of Application DA2020/1338 for alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Scott James Luckett Amanda Dagmar Luckett
Applicant:	Amanda Dagmar Luckett Gabrielle Pelletier

Application Lodged:	26/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/09/2021 to 22/09/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 11.7%
Recommendation:	Approval

Estimated Cost of Works:	$ 2,504,117.00

EXECUTIVE SUMMARY

Review application (REV2021/0030) proposes alterations and additions to the existing dwelling. The application is referred to the Development Determination Panel (DDP) as the previous application (DA2020/1338) was referred to the equivalent panel (DDP) and more than 3 submissions have been received.

The application involves changes aimed at resolving the reasons of refusal provided by the DDP. Specifically, these reasons of refusal related to the breach in the building height development standard and view loss impacts. The application response changes the roof form of the upper floor. The

changes including a a reduction in the floor to ceiling height of the upper ground floor, a reduction in the height of the pergola above balcony 3 and a change in the slope from 3 degrees to 1 degree. The combined changes result in a 685mm reduction in the overall height to the rear (southern) portion of the upper floor with a 60mm increase in the height to the eaves above balcony 4. The proposal as amended has a maximum height of 9.4m (reduced from 9.8m) which represents a 945mm or 11.1% breach of the height limit (reduced from 1300mm or 15.3%).

Five submissions have been received from residents of Montpelier Place raising concerns with regards to continued height non-compliance and view loss.

The application is supported with an amended Clause 4.6 submission requesting a variation to the maximum building height. The submission demonstrates that compliance with the height plane is unreasonable and unnecessary in the circumstances of this application with the building height development standard.

The amended design, specifically the proposed upper floor, will not result in unreasonable amenity impacts, including view sharing and the objectives of the relevant standards and controls are achieved. As such, the application is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks a review of the determination of DA2020/1338 pursuant to Section 8.2(1) (a) of Environmental Planning and Assessment Act, 1979.

The original application sought consent for alterations and additions to the existing dwelling to accommodate:

- enlargement of the existing garage and relocation of the driveway and driveway crossing (no change),
- enlargement of the existing living area and entrance, alterations to the bathroom and laundry, and the construction of new front balconies on the lower ground floor (no change).
- upper ground floor - enlargement of the existing living, kitchen and dining area, alterations and expansion of the front and rear balconies, removal of master bedroom and ensuite to be replace by a guest bedroom (the balconies have been modified, see below).
- construction of a new upper floor comprising a master suite, study and front balcony.

The amendments to the subject review application are:

- upper ground floor- maintenance of the existing upper ground floor ceiling height of 2700mm (the original DA proposed a floor to ceiling height of 2800mm).
- upper ground floor - a reduction in the height of the upper ground floor pergola from 3m (RL37,740) to 2.9m (RL37,640) (reduced by 100mm).
- a change to the finished floor level (FFL) of the first floor master bedroom ensuite FFL +37,940 to FFL + +37,840 (reduced by 100mm).
- a change to the finished floor level (FFL) of the balcony to the first floor master bedroom ensuite FFL +38,400 to FFL +37,840 (reduced by 560mm).
- a reduction in the roof pitch from 3 degrees to 1 degree with the top of the ridge reduced from RL41,225 to RL40,7115 (reduced by 501mm).

The applicant notes that combined the amendments result in the southern edge of the roof being lowered by 685mm with a 70mm increase in the roof height to the northern edge.

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 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 63 DP 8075 , 55 Bower Street MANLY NSW 2095
Detailed Site Description:	The site is slightly irregular in shape, with a 11.675m wide frontage to Bower Street to the north, a 15.275m wide frontage to Montpelier Place to the south, a maximum depth of 45.875m and a total area of 698.8m². A three storey dwelling is located centrally and a swimming pool located in the south-west corner of the site. Vehicular access is gained via Bower Street, with pedestrian access to both Bower Street and Montpelier Place. The site experiences a fall of approximately 8.8m and a slope of approximately 19%. The site is surrounded by low density residential development, with significant and expansive views obtained from the site and over the site by properties up slope.

Map:



SITE HISTORY

PLM2019/0187

On 17 September 2019, a pre-lodgement meeting was held to discuss alteration and additions to the dwelling when it was concluded that the

The proposal is not acceptable and will require redesign prior to submission. The proposal represents significant non-compliances with the following controls / standards of Council, including:

- *Height of Buildings development standard;*
- *Floor Space Ratio development standard;*
- *Number of Storeys control;*
- *Wall height control;*
- *Front setback control; and*
- *Side setback control.*

To summarise, Council's advice in regard to the design of the proposal, the following measures need to be undertaken:

- *Deletion of the upper level – this is important to address all of the non-compliances – relocation of extra floor space closer to the ground;*
- *Re-design of the north elevation (increasing the setback of all structures) to ensure an adequate front building line and relationship with the existing streetscape.*

DA2020/1338

On the 24 March 2021, DA2020/1338 was presented to the DDP who concurred with the Planning Officers assessment report and recommendation to refuse the application. The reasons for refusal are as follows:

The consent authority is not satisfied that:

1. The applicant's written request under clause 4.6 of Manly Local Environmental Plan 2013 (MLEP 2013) seeking to justify a contravention of clause 4.3 (Height of buildings) development standard has adequately addressed and demonstrated that:

(a). compliance with the standard is unreasonable or unnecessary in the circumstances of this application; 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 building height development standard and the objectives for development within the E3 Environmental Management zone.

2. The proposed development is inconsistent with the maximum building height prescribed by clause 4.3 (Height of buildings) of MLEP 2013 and the maximum wall height and two storey height limit prescribed by clause 4.1.2 of Manly Development Control Plan (MDCP 2013). The non-compliant portions of the development, specifically those at the upper floor of the proposal, result in unreasonable impacts upon views currently enjoyed by nearby properties, inconsistent with the objectives of these standards/controls and the provisions of clause 3.4.3 (Maintenance of views) of MDCP 2013.

History of subject application

On 22 November 2011, the applicant was invited to consider a redesign in the upper floor slide to reposition (slide) it back 1.5m to the south and to reduce the length of the overhanging eave above the balcony to the master bedroom in order to reduce the non-compliance with the height development standard and minimise impacts on view sharing.

On 30 November 2011, the applicant provide a response to the suggested amendment which provided details on the amenity impacts of the suggested modification on the neighbouring property to the immediate north at No. 57 Bower Street. In addition, the letter noted that the expected changes would have minimal change to view impacts to the Montpellier Place properties and a 2m setback would be required to ensure compliance with the height development standard.

The response included details of the visual impact of the additional bulk and scale to No. 57 Bower Street and additional shadow impact to the pool and private rear garden. In addition, the applicant noted that it will further impact on access to natural light to the proposed upper ground floor kitchen, dining and living area and increase the level of structural support required.

As a compromise the applicant has suggested a change instead to the design of the BASIX eaves requirement to the balcony to the master bedroom on the upper floor. It is proposed to install a different eaves structure at 300mm less than the existing proposed design which will reduce the extent of the breach in the long section from a maximum of 942 at the end of the eaves to 642 (reducing the breach from 11.1% to 7.6%). The breech at the end of the roof line (B) measures approximately 600mm breach or equates to 7.1%.

The applicants justification is supported and a condition is recommended require a change to the design of the eaves over balcony 4.

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 24 March 2021 and the notice of determination was issued on 21 March 2021. The review was lodged on 13 August 2021 and is to be considered by 24 March 2022, which is within 12 months of the date of determination.

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

The amendments to the proposal are outlined in the 'Detailed Description of Works" section of this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/09/2021 to 22/09/2021 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 5 submission/s from:

Name:	Address:
Mr Fraser Mackenzie Mrs Sylvia Smart Mackenzie	17 Montpelier Place MANLY NSW 2095
Mrs Christine Margaret Drake	42 Bower Street MANLY NSW 2095
Mr Steven John Macdonald	18 Montpelier Place MANLY NSW 2095
Mr Linden Rex Brown Mrs Marie-Noelle Brown	16 Montpelier Place MANLY NSW 2095
Mr David Joseph Allman	15 Montpelier Place MANLY NSW 2095

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

- **View loss.**
- **Building height.**
- **Precedent.**
- **Visual amenity.**

The matters raised within the submissions are addressed as follows:

- **View loss**

  Concern is raised regarding impact on existing north facing views to the ocean and the northern beaches including Freshwater Beach and Headland from our top floor / main living / dining area and balcony and from family rooms (study bedroom and patio) on the lower level at the main entry level to the house. Previous objections remain as the revision made do not reduce the view loss impacts.

  Comment:
  The amended proposal will result in the loss of a small portion of the ocean view from the primary living area and balcony on the first floor of the properties along Montpellier Place. The amended proposal addressed impacts of view loss from the family rooms located at the lower entrance level and will reduce the impact on the distant view of Freshwater Beach and Headland along Montpellier Place. Refer to the detailed discussion under Clause 3.4.3 of the Manly DCP.

- **Building height**

  Concern is raised that the proposed building height fails to comply with the Manly LEP height controls. The top floor of the proposed development will be significantly higher than the apex of the current pitched roof as shown by the height poles. It appears that the roof height as per the revised DA has almost been lined up with the height of the roof of the adjacent house at 57 Bower. The natural ground level of this section of Bower Street slopes from west to east and from south to north. Using the roof height of No. 57 as a benchmark would be inappropriate as the ground level of No. 55 is lower than that of No. 57.

  Comment:
  The amended proposal reduces the extent of the height breach by 685mm reduction along the southern portion of the roof so that it sits 2.5m below the 8.5m height limit. It is noted that it is the southern compliant section of the roof form that contributes to the view loss experienced from the ground floor family rooms in the Montpellier properties. While the proposal to replace the existing pitched roof with a flat roof will result in a higher roof form overall it will also allow for an additional portion of the ocean view to be observed from the rear. The proposal will sit approximately 550mm lower than the height of the dwelling to the immediate west and it setback 6.6m from the eastern boundary. As such, the siting of the development respects the natural topography of the land which slopes from west to east across the site. Refer to detailed discussion under Clause 4.6 of this report.

- **Precedent**

  Concern is raised that an approval of the breach in height will cause a poor precedent.

  Comment:

The amended design results in a development which respects the character of the area, the upper floor addition is setback from the street frontage and the eastern boundary and the lightweight design will ensure that there are no visual impacts on the scenic quality of the area. The amended design will not result in unreasonable impacts on neighbouring amenity, in particular with respect of view sharing. Approval of the amended development is not expected to create a poor precedent.

- **Visual amenity**

  Concern is raised that the development does not sit within the envelope of the existing roof line and increases the bulk and height of the existing building outline.

  Comment:
  As noted above, the significant setback of the upper floor to the street, the rear and eastern boundary combined with the lightweight design of the addition will ensure that there are no unreasonable visual impacts on the scenic quality of the area. The bulk, height and massing of the development is assessed as being appropriate and the density of the development is fully compliant with the FSR controls.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**SUPPORTED** The subject review relates exclusively to changes in the design of the upper floor. There are no changes to the proposed landscaping and the referral comments (see below) from the original DA and conditions therefore remain valid. The Landscape Plans submitted with the application are noted. The Proposal incorporates removal of 3 small trees/shrubs in the front yard to accommodate the proposed works. The landscape plans indicate replanting to the front yard capable of replacing the removed vegetation. No objections are raised to approval subject to conditions as recommended. The proposal is therefore supported
NECC (Bushland and Biodiversity)	**SUPPORTED** The subject review relates exclusively to changes in the design of the upper floor. There are no changes to the proposed landscaping and the referral comments (see below) from the original DA and conditions therefore remain valid. The proposal has been assessed against the following provisions: • NSW Biodiversity Conservation Act 2016 (BC Act)

Internal Referral Body	Comments
	• Manly LEP Clause 6.5 (Terrestrial Biodiversity) • Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) • Manly DCP Clause Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat). The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, the development is to be accompanied by a 'test of significance' prepared in accordance with Section 7.3 of the BC Act. An ecological impact assessment with test of significance for the endangered bandicoot population has been submitted with the DA and concludes that the proposal will not have a significant impact on the population. Given that the proposal is generally within the existing footprint, Council's Biodiversity referral body concur with this conclusion, subject to recommended conditions to maintain bandicoot access and mitigate construction-related impacts.
NECC (Development Engineering)	**SUPPORTED** The subject review relates exclusively to changes in the design of the upper floor. There are no changes to the proposed landscaping and the referral comments (see below) from the original DA and conditions therefore remain valid. Development Engineering has no objection to the application subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

55 and the land is considered to be suitable for the proposed continuation of the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No 1241032M dated 23 September 2021). Should the application be approved, a condition can be included 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 original application was referred to Ausgrid who offered no objections to the development.

SEPP (Coastal Management) 2018

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

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

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

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	Max height 9.4m reduced from 9.8m *Note the variation changes over the upper floor refer to details in the C4.6 discussion	945mm or 11.1%	No
Floor Space Ratio	FSR: 0.45:1	FSR: 0.445:1	N/A	Yes

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.7m (pergola to upper ground level) 9.44m (along the northern edge for the first floor) (reduced from 9.8m)
Percentage variation to requirement:	2.3% (pergola to upper ground level) 11.08% or 945mm (along the northern edge of the first floor)

	The amended design reduces the variation from 15.3% or 1.3m

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 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 applicant notes that the levels of the site have been artificially modified as a result of the construction of the existing dwelling house and associated landscaping. The applicant has used interpolated unmodified levels for the parts of the house that can not be accessed using spot levels contained on the survey and has submitted a 8.5 metre height blanket, see below, to illustrate the height breach.



Height blanket showing breaching elements (source BBF Planners)

The areas of non-compliance with the height limit as calculated by the applicant is demonstrated in the plan below. The Assessing Officers calculation of the height breach in these areas is detailed below.



Plan showing the roof locations under which survey spot levels were identified and building height

breaching roof elements shown shaded green (source BBF Planners). Note spots 4 and 5 are where the most significant breach occurs.

1. The south-eastern corner of the upper floor roof reaches a compliant height of 6m (amended from 6.685m). The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL41.540 (amended roof) - RL 34.54 (ground level deck area as surveyed) = 6m). 685mm lower than the previous design.

2. The north-eastern corner of the upper floor roof reaches a compliant height of 6m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.540 roof (amended from RL41.075) - RL34.54 (ground level deck area as per survey).

3. The north-western corner of the upper floor roof over the bedroom reaches a height of **9.07m (570mm or 6.7% variation)**. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.590 (amended roof) - RL 31.52 (ground level deck area as per survey). 485mm lower than the previous design.

4. The north-eastern corner of the eaves over the balcony to the master bedroom where it reaches a height of **9.445m (945mm or 11.1% variation).** The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.715 (amended roof) RL31.27 (interpolated level) 70mm higher than the previous design.

5. The north-western corner of the eaves over the balcony to the master bedroom where it reaches a **9.385m (885mm or 10.41% variation)**. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.715 (amended roof) RL31.33 (ground level) 70mm higher than the previous design.

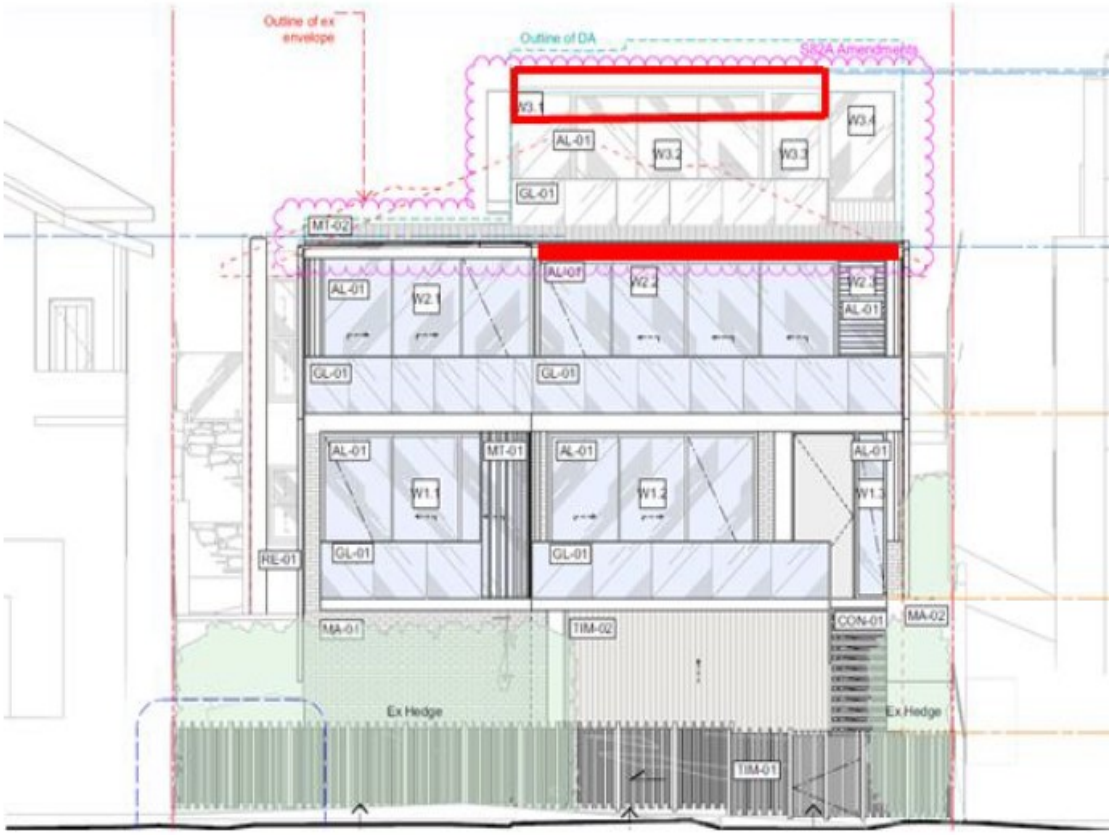
6. Midpoint in the roof of the upper floor where it reaches a height of **9.17m (670mm or 7.88% variation)**. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.659 (amended roof) RL31.48 (ground level) 240mm lower than the previous design.

7. The north-eastern corner of the corner of the upper floor above the ensuite where it reaches a height of **8.6m (100mm or 1.1% variation)**. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.650 (amended roof) RL32.05 (ground level) 455mm less than the previous design.

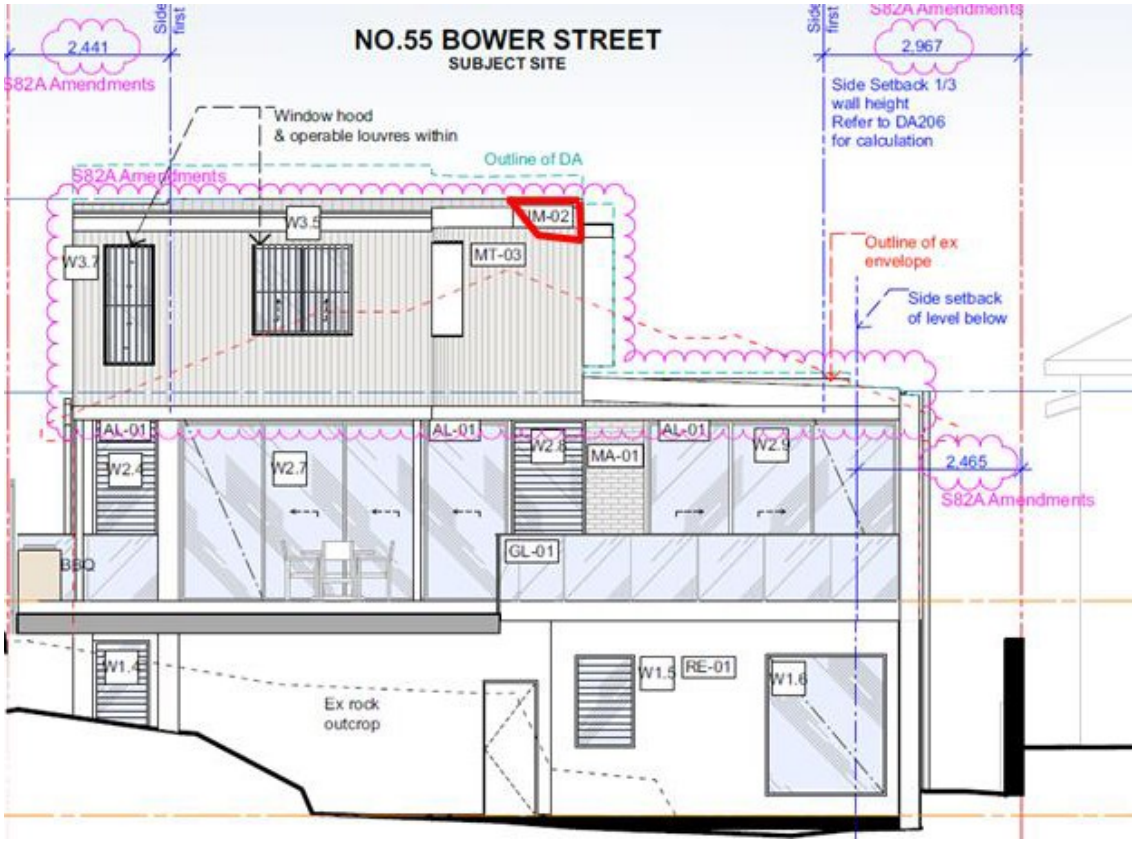
8. The north-eastern most corner of balcony 2 on the upper ground floor where is reaches a compliant height of 8m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL37.640(amended roof) RL29.60 (ground level) 100mm less than the previous design.

9. The north-eastern corner of the pergola above balcony 3 on the upper ground floor where it reaches a height of **8.77m (270mm or 3.17% variation)**. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL37.640(amended roof) RL28.87 (ground level) 100mm less than the previous design. *Note this breach has no view loss impact being located at the upper ground level.

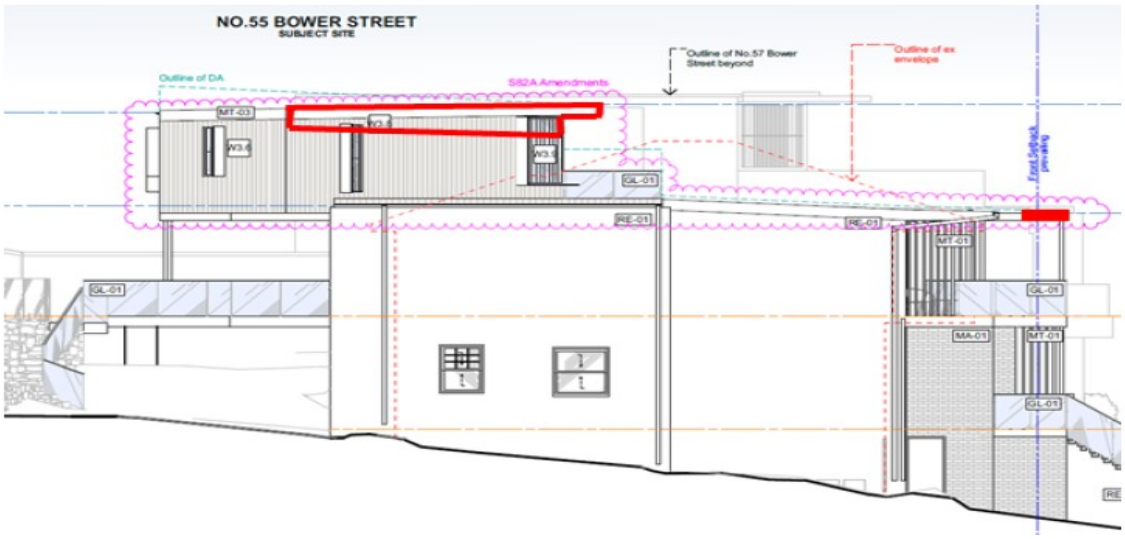
10. The north-western corner of the pergola above balcony 3 on the upper ground floor where it reaches a height of **8.71m (210mm or 2.4% variation).** The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL37.640(amended roof) RL28.93 (ground level) 100mm less than the previous design. *Note this breach has no view loss impact being located at the upper ground level.



North elevation with building height breaching elements (as determined form surveyed spot levels) shown in red (source BBF Planners)



Western elevation with building height breaching elements (as determined form surveyed spot levels) shown in red (source BBF Planners)



Eastern elevation with building height breaching elements (as determined form surveyed spot levels) shown in red (source BBF Planners)

The applicants written request argues, in part:

Notwithstanding the building height breaching elements, the height and roof form of the proposed additions result in a building form which is consistent with that established by surrounding dwelling houses and consistent with the prevailing height of residential development generally within the site's visual catchment.

With the exception of the upper ground level pergola, the building presents a compliant building height to Bower Street with the proposed upper level setback over 20 metres from the Bower Street frontage where it will not be readily discernible in a streetscape context. Similarly, the building presents as a compliant 2 storey building element as viewed from Montpelier Place with the non-compliant roof and building elements setback over 15 metres from this frontage. Given the topography of the land a significant number of properties in the locality display a 3 storey stepped building form as depicted in the images below:



View of subject property (with arches) and 3 storey development to the west at No. 57 Bower Street

(source BBF Planners).



View of 3 storey development to the south with a frontage to Montpelier Place (source BBF Planners)

The non-compliant areas of the proposed first floor building elements are setback over 20 metre from the Bower Street property frontage, setback over 15 metres form the Montpellier Place frontage and are screened to a significant extent by the compliant areas of the development located adjacent to both frontages

The proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment, including from public spaces.

The bulk and scale of the building is contextually appropriate with the compliant floor space (FSR) appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes including a view sharing scenario. In this regard, a substantial view corridor has been maintained down the eastern boundary of the property.

The areas of non-compliance are limited to sections of roof form and areas of building façade of variable dimension with the breaching elements reflecting the disturbed nature of the land and its topography rather than an opportunistic increase in floor space given the developments compliance with the prescribed FSR standard

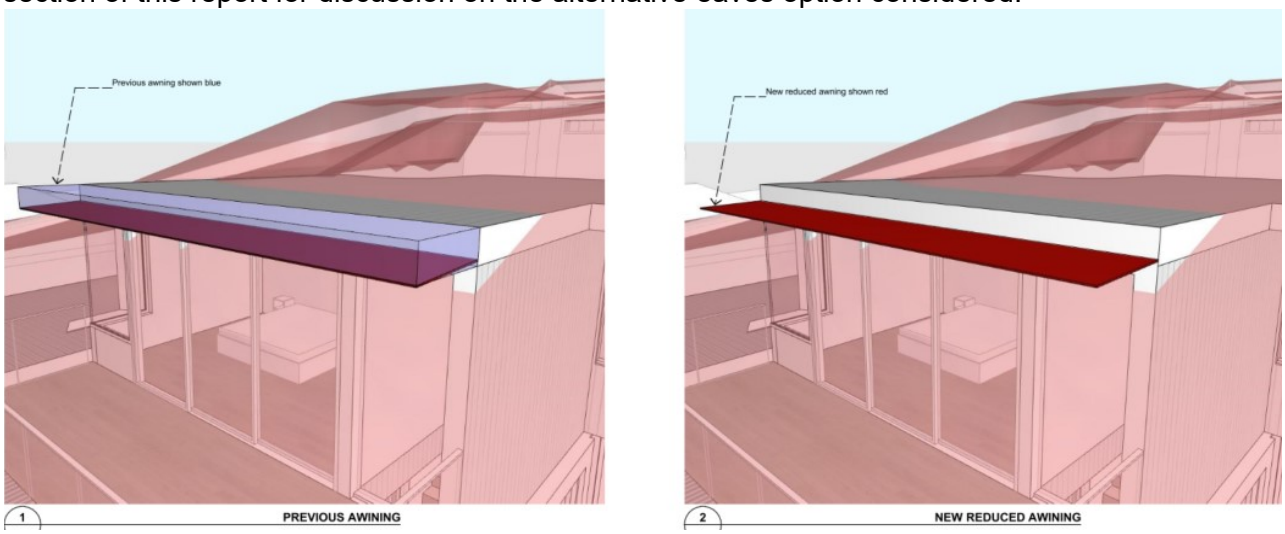
Response:

The applicants justification is supported. The breaching elements are set back a significant distance from both the front, rear and eastern boundary and given the lightweight design of the upper floor addition and the existing built form in the surrounding area the proposal will not appears out of character in the streetscape.

The bulk and scale of the addition is appropriate noting it achieves compliance with the FSR controls.

The amended design reduces the height of the upper floor by 685mm to the south (rear) with a 70mm increase in the height of the eaves above balcony 4 to the north (front). The primary breaching elements in the amended design relates to the eves over balcony 4 to the master bedroom (roof location 4 and 5 in the plan provided above). These corner present a 10.4% - 11.1% breach of the height limit. All other elements that breach the height limit are noted to represent less than 10% breach of the standard. The elements that breach the height development standard will not in isolation give rise to any visual impacts on the streetscape especially given the significant setback to the primary frontage and the lightweight glazed design of the upper level addition.

Further, it is noted that the applicant has agreed to amend the design of the eaves above balcony 4 to a more lightweight form that it will reduce the extent of the breach to 7%, refer to image below. Should the application be supported this can be addressed via a condition of consent, refer to the history section of this report for discussion on the alternative eaves option considered.



Montage of lightweight awning / eaves to balcony 4.

The amended design helps to reduce impacts to neighbours in terms of view loss. Refer to detailed discussion under Cl 3.4 Manly DCP within this report. The proposal will not have unreasonable impacts on solar access and any potential privacy impacts can be addressed by condition. The proposal complies with the objectives of the height development standard and the zone objectives as discussed below.

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 E3 Environmental Management Zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

Despite the building height breach the height and roof form, as amended, is generally consistent with the established building heights and roof forms in the locality, particularly those to the west. While it is noted that the subject site sits at a lower level than the properties to the west the amended design respond to the topographical landscape of the site reducing the overall height by 685mm. Further it is noted that the dwelling to the immediate west sits 550mm higher than the proposed development thus a step down effect will be created along the street to respect the topography.

Furthermore, the breaching elements are not readily discernible in the streetscape particularly given that these elements are setback 20m from the Bower Street frontage. The upper floor presents a lightweight design to the northern facade and a condition requires a further refinement of the eaves over the balcony which gives rise to the most significant height breach.

The upper floor addition is setback to 15m from Montpellier Place frontage and the existing landscape planting along the northern edge of Montpellier Place combined with topography provides a screens to the rear elevation when looking at the subject site from ground level or even the entrance level to the properties along Montpellier Place.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale is contextually appropriate and compliant with the FSR for the site. Collectively the various amendments to the subject review design reduces the height, bulk and scale of the upper level addition. These changes include a reduction in the roof pitch and the floor to ceiling height of the upper ground level which reduced the overall height by 685mm compared to the earlier design.

c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:

(i) The breaching elements are not anticipated to have unreasonable impacts on views to nearby residential development from public spaces.
(ii) A detailed assessment of view sharing is provided within Cl3.4 of the MDCP. In summary, the breaching elements are assessed as having moderate impacts on view loss from the upper ground level bedroom and areas of private open space at No. 16 Montpellier Place.
(iii) The breaching elements are not anticipated to have unreasonable impacts on views between public spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal will not result in unreasonable impacts on solar access to public and private open spaces and maintains adequate sunlight access to private open space and habitable adjacent dwellings in compliance with the MDCP solar access provisions.

During the assessment of the review application the applicant was invited to consider amending the design to setback the upper level an addition a further 1.5m to the south to reduce the breach of the height limit. The applicant's response was that the additional setback would result in increased shadow impact to the swimming pool within the rear garden of No. 57 Bower Street and impacts on solar access to the proposed open plan kitchen living and dinning area. Given the limited overall benefits of the additional setback the applicants justification has been accepted. Refer to history section of this report.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The height and bulk of the proposal will not have unreasonable environmental impacts in respect of vegetation, topography and bushland.

Zone objectives

The underlying objectives of the C3 Environmental Management Zone zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment: The proposed development does not result in any adverse impacts upon the ecological, scientific, cultural or aesthetic values of the C3 zone.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment: As noted above, the proposed development does not result in any adverse impacts upon the ecological, scientific, cultural or aesthetic values of the C3 zone.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore*

Comment: The proposal will not result in an adverse impact upon tree canopy, and the proposed dwelling is a low impact residential use that is anticipated within the zone.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment: The proposal does not negatively impact upon nearby foreshores, significant geological features or bushland.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment: The subject site is not located immediately adjacent to the foreshore, and as such, rehabilitation is not reasonably requested or required. The impact of stormwater run-off is appropriately ameliorated by the existing stormwater system.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses*.

Comment: The amended design reduces the overall height of the development by 685mm. The amended design response to the topography of the site which steps down in level from south towards the north and from west towards the east. It is noted that the amended design is approximately 550mm lower than the height of the dwelling to the west. Given the reduction in height and the lightweight design of the upper floor the bulk and scale of the proposal is assessed as being consistent with surrounding land uses, particularly to the properties to the west.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management Zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the

Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 698.8m²	**Requirement**	**Proposed**	**Review**	**Variation**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1		-	Yes
	Dwelling Size: 129m²	311m²		-	Yes
4.1.2.1 Wall Height	East: 7.3m	7.8m (front balcony) (0.5m variation) 8.9m (upper floor) (1.6m variation)	Unchanged Unchanged	0.5m 1.6m	No No
	West: 7.2m	7m (front balcony) 8.9m (upper floor) (1.7m variation)	**6.8m** **8.8m**	- 1.7m	Yes No
4.1.2.2 Number of Storeys	2	3 (1 storey variation)	flat roof	1	No
4.1.2.3 Roof Height	Height: 2.5m	0.7m	Flat	-	Yes
	Pitch: maximum 35 degrees	3 degrees	**1 degree**	-	Yes
4.1.4.1 Street Front Setbacks	Bower Street: 6m Montpelier: 16m (prevailing)	9.5m 14.9m (1.1m variation)	Unchanged	- 1.1m	Yes No
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 2.3m (front ground floor balcony) 2.4m - 2.95m (upper floor addition)	1m (1.3m variation) 1m - 2.4m (1.95m variation)	Unchanged	1.3m 1.95m	No No
	East: 2.7m (front ground floor balcony) 2.1m (rear ground floor extension) 3.2m (upper floor addition)	2.6m (0.1m variation) 1.5m (0.6m variation) 6.6m	Unchanged	0.1m 0.6m -	No No Yes
	Windows: 3m	2.2m (0.8m variation)	Unchanged	0.8m	No
	Secondary street frontage: approximately 17m (prevailing setback)	15m, inconsistent with prevailing setback (2m variation)	Unchanged	2m	No
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area	67%		-	Yes
	Open space above	11%	Unchanged		

Residential Open Space Area: OS3	ground <25% of total open space			-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	47%	Unchanged	-	Yes
	3 native trees	3 trees (conditioned)	Unchanged	-	Yes
4.1.5.3 Private Open Space	18m²	>18m²	Unchanged	-	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	5.5m	Unchanged	-	Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	Unchanged	-	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
3.3.3 Footpath Tree Planting	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
3.5.7 Building Construction and Design	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
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
4.4.1 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
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

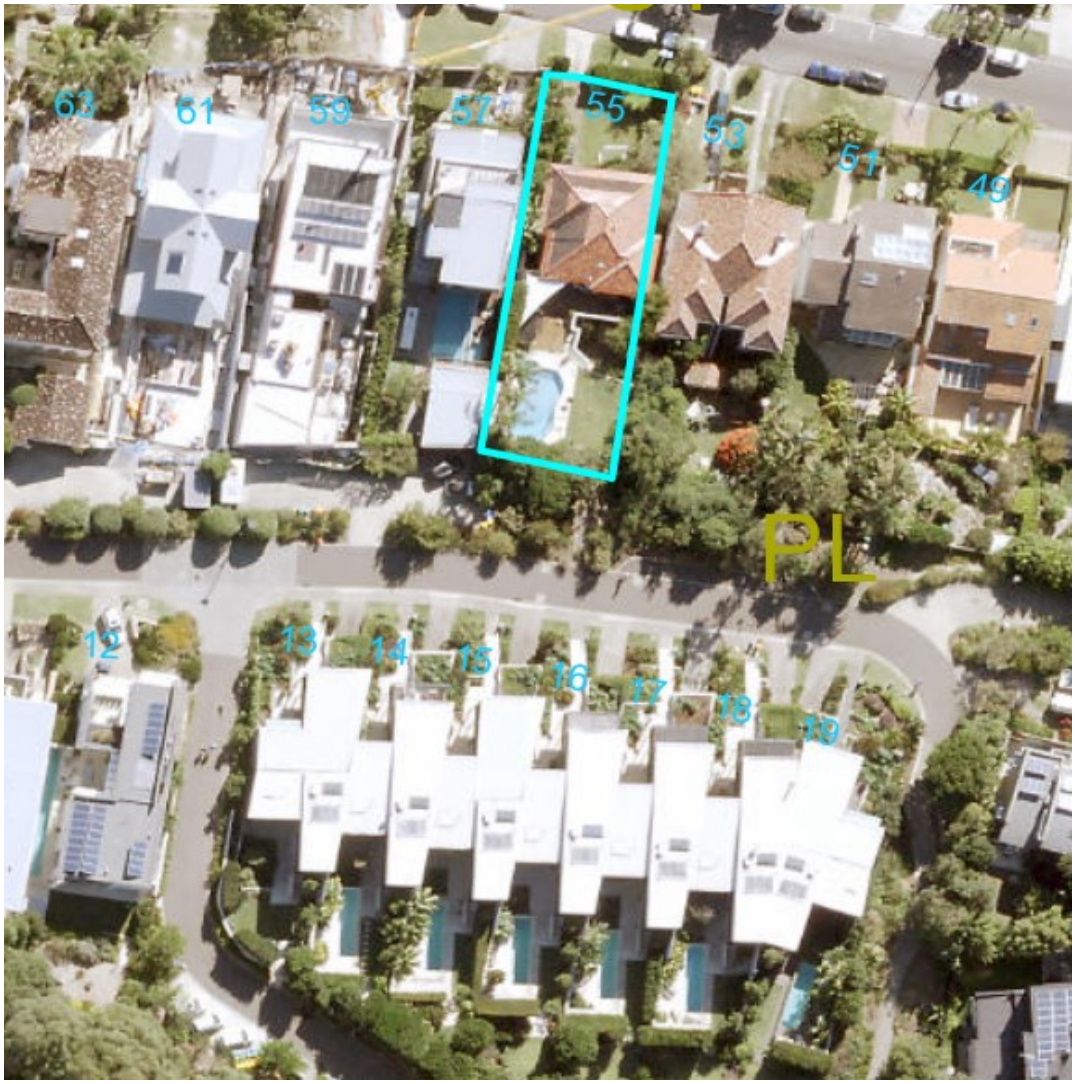
3.4.3 Maintenance of Views

Detailed Assessment

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

A number of properties along Montpelier Place currently enjoy views of the ocean and the coastline in a north-easterly to north-westerly direction which sit at an elevated positioned above Bower Street. The amended design reduces the height of the development by 685mm to the rear of the roof and increases the height 60mm to the north (the eaves over balcony 4).

Height poles have been adjusted to reflect the revised height of the development and four submissions have been received from the owners of No. 15, 16, 17 and 18 Montpelier Place in response to the notification. See aerial photo below which shows the location of Montpellier Place which sit an elevated position above Bower Street. The views from Montpellier Place are obtained over the down slope properties along Bower Street, including the roof of the dwelling at the subject site.



Aerial photo showing Montpelier Place in relation to the subject site.

The following assessment of the potential impact upon nearby properties has been undertaken with regard to the four-step View Sharing planning principle developed in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140.*

Step One
Nature of the views affected

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

Occupants of the dwellings at 15 to 18* Montpelier Pace currently enjoy significant views of the northern coastline. Whilst not containing a particular 'icon', the views encompass Manly Beach through to Long Reef (and beyond) and are appropriately described as being highly valued and significant.

*Note: The assessment is made in relation to those properties who lodged submissions in objection to the development.

Step Two

What part of the affected property are the views obtained

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

The views are obtained from all areas facing north, including the master bedroom, primary living room and terrace on the upper level, and a second bedroom / study, living room, entrance lobby and terraces on the lower level. Due to the elevation of the property, the views from the upper level primary living spaces are more wide ranging than those enjoyed on the lower level which are noted to be currently obscured in part by existing vegetation. The views are obtained over the front boundaries of each respective site and are gained in both the standing and seated position from each respective area.

Step Three
Extent of impact

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

The extent of impact varies between the properties, as follows:

<u>15 Montpelier</u>

The photo below demonstrates the impact of the development as seen from the upper level primary living room and terrace. The proposed upper floor will obstruct a portion of the ocean, without impacting upon the coastline views above. As the proposal also proposes to replace the existing pitched roof to the east (right) of the proposed upper floor with a flat roof, the proposal will open up a portion of the ocean view from this angle. It is noted that the view impact from the primary upper floor living areas and balconies is similar for all 4 properties examined as part of the view loss assessment along Montpelier Place.



Siting view from open plan living room adjoining the north facing balcony.
Note: The subject property has the red tiled roof and the western height pole can be seen to the left of the roof adjacent to the roof of No. 57 Bower Street.

The impact from the development on view loss will have a greater impact from the lower level of the property, however, the existing vegetation along the northern side of the Montpellier Place road generally obscures the northern views. The photo below demonstrates the impact of the development as seen from the upper ground level bedroom and terrace. It is noted that the residents of Montpelier Street advised that the vegetation is located on land owned by St Patrick's Estate and that the vegetation is regularly pruned to maintain this views from the lower level of this dwelling. While it is appreciated that the pruning will improve views from the upper ground level it is not possible to control the growth of the vegetation, including the large palm tree located within the rear garden of No. 57 Bower Street that can be observed in the photo below and which blocks views.



Siting view from terrace adjoining the ground level guest bedroom.

The collective impact upon views obtained throughout 15 Montpelier Place is therefore considered to be minor.

16 Montpelier

As noted above, the proposed upper floor will obstruct a portion of the ocean, without impacting upon the coastline views from the upper floor primary living area and balcony. As the proposal also proposes to replace the existing pitched roof to the east (right) of the proposed upper floor with a flat roof, the proposal will open up a portion of the ocean view from this angle.



Siting view from upper floor balcony adjoining the primary open plan living and dining area.
Note: The subject property has the red tiled roof and the western height pole can be seen to the left of the roof adjacent to the roof of No. 57 Bower Street.

The photo above demonstrates the impact of the development as seen from a siting position from the upper floor balcony which adjoins the primary living area. As seen from the photo the proposal will obscure a small portion of the ocean.



Standing view from ground level secondary living room.

The photo above is taken from the open plan secondary living area located at the upper ground level looking out towards the adjoining terrace and entrance steps. The upper floor of the proposal will generally be obscured below the existing line of vegetation.

The collective impact upon views obtained throughout 16 Montpelier Place is therefore considered to be minor.

17 Montpelier

As noted above, the proposed upper floor will obstruct a portion of the ocean, without impacting upon the coastline views from the upper floor primary living area and balcony. As the proposal also proposes to replace the existing pitched roof to the east (right) of the proposed upper floor with a flat roof, the proposal will open up a portion of the ocean view from this angle.



Standing View from the terrace adjoining the ground level guest bedroom.



Siting view from the terrace adjoining the ground level guest bedroom.

Concern has been raised in the submission that the proposed upper floor will block views of Freshwater Beach from this location. The photo above demonstrates the impact of the development as seen from the ground level guest bedroom and terrace which will largely be obscured below the existing line of vegetation. The applicant has also submitted a view loss photomontage which demonstrates the impact on the distant view to Freshwater Beach, refer below. It is noted that the photomontage was prepared when the vegetation along Montpelier Place was not as dense as at the time the assessing officer conducted the view loss inspections.



Photomontage of view loss from ground level of No. 17 Montpellier Place (source Sam Crawford Architects)
Note: The red line shows the outline of the previous design which would have resulted in a loss of the Freshwater Headland and beach from this level.

The amended design will result in a loss of some ocean views, however, it will retain the distant filtered view of the land / water interface of Freshwater Beach (depending on the tide) and Freshwater / Queenscliff Headland from the upper ground level terrace and bedroom from a standing position. The proposal is likely to result in a view loss of Freshwater Beach from a sitting position at ground level, however, it is noted that the ground level bedroom is not a primary bedroom or a habitable room that is occupied frequently compared to the upper floor primary living space.

The collective impact upon views obtained throughout 17 Montpelier Place is therefore considered to be minor/moderate.

<u>18 Montpelier</u>

The proposed development will obstruct a portion of the water view from the upper level primary living room and terrace without impacting upon the coastline view beyond.

The proposal will have minimal impacts on views from the lower ground level guest room and secondary living room due to the angle of the view and the existing vegetation that screens the subject site.



Standing view from ground level terrace to guest bedroom.

The photo above demonstrates the impact of the development as seen from the upper ground level terrace adjacent to the front bedroom / office. The upper floor of the proposal will have limited impacts on the (currently) filtered distant views of Freshwater Beach due to the angle of the view and the existing vegetation that screens the subject site.

The collective impact upon views obtained throughout 18 Montpelier Place is considered to be minor.

Step Four
Reasonableness of the proposal that is causing the impact

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

The applicant has explored design options to minimise the height of the upper floor master bedroom suite and the associated view sharing impacts particularly on the lower levels of No. 16 and 17 Montpellier Place. The design modification includes a reduction in the floor to ceiling heights and the roof pitch with the amended roof now presenting a generally flat profile with only a 1 degree pitch to accommodate construction clearances and water management. The modifications include a 685mm reduction in the height of the roof to the southern portion and a minor 60mm increase in the height to the north which relates to the eaves over balcony 4.

The most significant view loss impact will be experienced from the secondary living accommodation located on the upper ground level to No. 16 and 17 Montpellier Place. The impact is a result of the

compliant southern portion of the proposed first floor roof form and not the non-compliant northern edge of the roof. It is noted that the southern portion of the roof is 2.5m below the maximum 8.5m height limit. In addition, the applicant has agreed to reduce the extent of the northern breaching element, namely the eaves over balcony 4, so that the breach is reduced to 7%.

As a direct result of the design to reverse the pitch of the roof so that the lower point is located to the southern edge the impact on distant filter view of Freshwater Beach and Headland from the upper ground level secondary accommodation of No 16 and 17 Montpellier Place is assessed as minor to moderate. The significant views from the primary first floor level open plan living and dining area and balcony is retained.

In summary, the overall collective amendments to address the view loss issue with the original application represents a more skilful design and the potential impact upon views currently enjoyed from properties along Montpelier Place is considered to be acceptable.

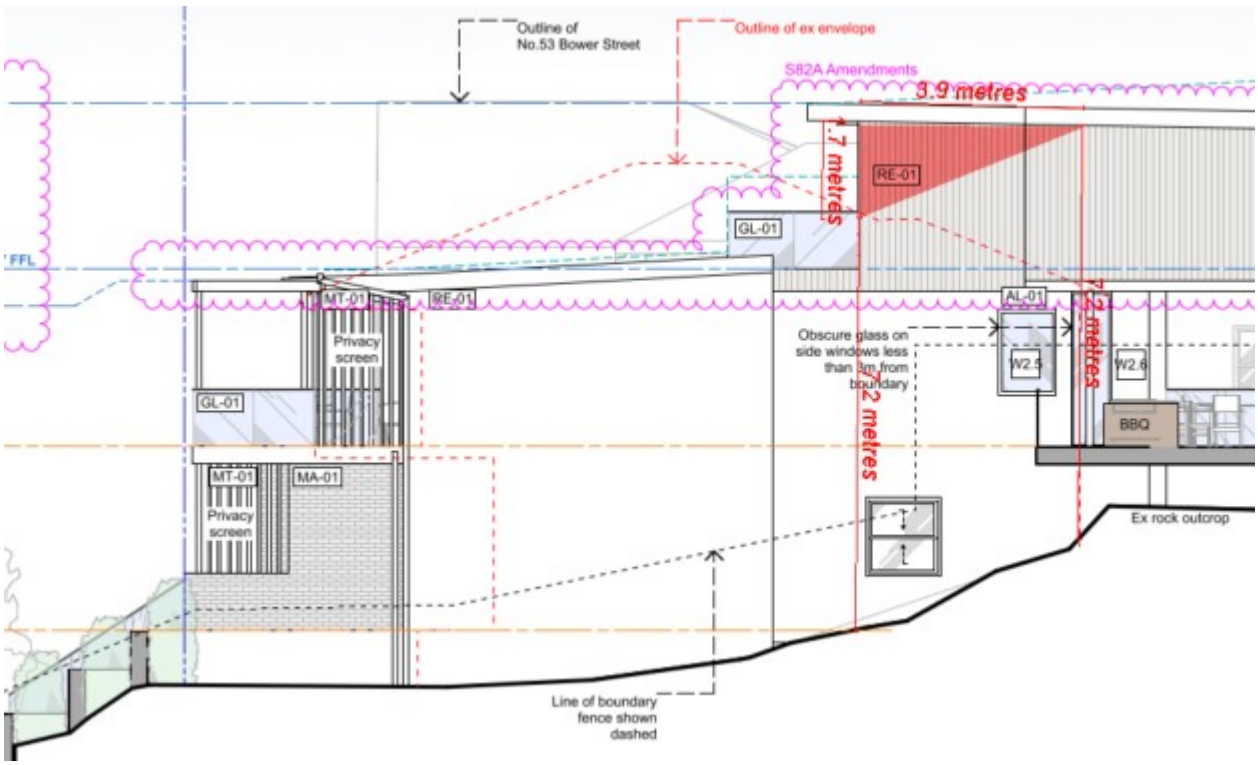
The proposal is also considered to be generally consistent with the requirements of this control in addition to those objectives that seeks to provide for view sharing between properties and to minimise disruption and loss of views.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Wall Height

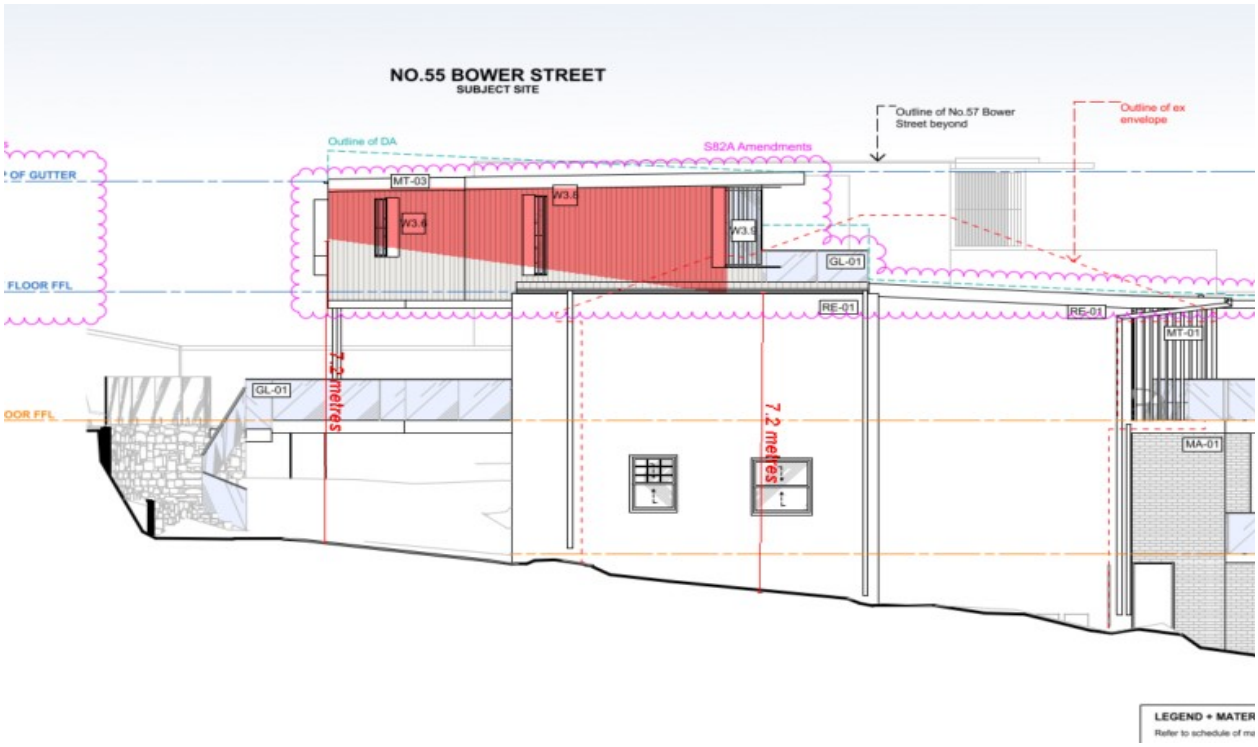
In consideration of the slope of the site, the proposal is subject to a maximum wall height of 7.3m on the eastern elevation and 7.2m on the western elevation. Portions of both elevations of the proposed development protrude beyond the maximum wall height to varying degrees, as follows:

- The proposal breaches the 7.2m wall height along the western elevation for a height of 1.7m - 0m for a length of 3.9m, refer to image below.



Western elevation showing the breach of the wall height

- The upper floor addition breaches the wall height for a height of height of 2.4m - 1.1m x a length of 8.6m, see below, which reflect the drop in the levels of the site west to east. Given that the upper floor (level 1) is setback 5.2m from the existing western wall of the dwelling it will not read as a continuous wall from the public street and a view corridor is retained to the east of the addition. The new balcony along the frontage of the ground floor extends beyond the maximum wall height by 600mm. The balcony replace an existing balcony in the same location, and the proposed privacy screens will alleviate any direct lines of sight to the adjoining property. No concern was raised with regard to this particular area of non-compliance with the original DA and no concern is raised with the subject review application.



Eastern elevation showing the breach of the wall height.

Number of Storeys

The proposed 2 and 3 storey dwelling is inconsistent with the 2 storey height limit prescribed by this control. Due to the slope of the site, the proposal comprises two different three storey elements; with three overlapping floors at the Bower Street frontage and three overlapping floors centrally on the site, where the upper floor master suite overlaps with two existing levels below. The three storey frontage is not inconsistent with the scale of surrounding built form and does not result in any unreasonable impacts upon adjoining or nearby development. It is also noted that the design of the upper floor has been amended to reduce the view loss impacts to the properties up slope.

Both the wall height and number of storeys controls refer to the objectives of the maximum building height of clause 4.3 of MLEP 2013. As discussed in detail with regard to that clause, the proposal is considered to achieve consistency with the objectives of the maximum building height, and as such, variations to these controls is supported.

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

Front Setbacks

The subject site presents to both Bower Street to the north and Montpelier Place to the south.

The setbacks of properties to Bower Street vary as a result of the skew in the alignment of the road. However, the setback of the proposal is generally consistent with the prevailing building line.

Whilst detached garages are located with limited setbacks to Montpelier Place, the dwelling houses along this stretch of Bower Street have a generally consistent alignment, with a generous setback of approximately 16m between each dwelling and Montpelier Place. It is acknowledged that the dwelling at 59 Bower Street also features habitable space within the rear setback, however this appears to be the exception, as opposed to the rule.

The proposed upper floor addition is located within the setback area, with a reduced front setback to Montpelier Place of 14.9m. The reduced setback does not give rise to unreasonable impacts upon the character of the streetscape and the 1.1m portion of the development the breaches the prevailing 16m setback will not have any unreasonable impacts upon views currently enjoyed by residents of Montpelier Place.

Side Setbacks

The proposed development seeks consent for new and intensified areas of side setback non-compliance, which are considered individually, as follows:

- The eastern side of Bedroom 5 and the associated deck is sited 1.5m from the eastern boundary, inconsistent with the 2.1m minimum setback prescribed. The non-compliance is an extension of the existing building alignment, and does not attribute to any unreasonable impacts upon adjoining properties.
- The western side of the front ground floor balcony is sited 1m from the western boundary, inconsistent with the 2.3m minimum setback prescribed. The proposed balcony has been designed to align with the western facade of the existing dwelling and is an open structure that does not attribute to excessive bulk and scale or unreasonable impacts upon the adjoining property to the west.
- The western elevation of the proposed upper floor, which is sited at 1m - 2.4m from the western side boundary, is inconsistent with the 2.4m - 2.95m side setbacks prescribed. The development was pushed further towards the western boundary in response to the concerns regarding views from properties up slope to the south-east. The non-compliant elements are setback from the Bower Street facade and do not adversely impact upon the scale of the building as seen from down slope. Given the change in the design of the roof the previous concerns raised in relation to the spatial separation between the proposal and the adjoining dwelling to the west, and any existing view corridors currently enjoyed through this space has been addressed.

In summary, the non-compliant side setbacks are not considered to result in any unreasonable impacts upon the streetscape, the amenity of adjoining or nearby properties, or inconsistency with the objectives of the control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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 $25,041 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,504,117.

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

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The changes to the design of the upper floor resolve the reasons of refusal in the original DA.

The amended design reduces the extent of the height breach. The proposal, as amended, has a maximum height of 9.4m (reduced from 9.8m) which represents a 945mm or 11.1% breach of the height limit (reduced from 1300mm or 15.3%). In addition, a condition requires a change in the eaves above balcony 4 which will further reduce the extent of the breach to 7%. The breaching elements do not in isolation contribute to unreasonable amenity impacts and the distant filter view to Freshwater Beach and Headland will be preserved from a standing position from the Montpellier Place properties. The height non-compliance is supported by a clause 4.6 submission which demonstrates that compliance with the 8.5m height standard is unreasonable or unnecessary in the circumstances of

this application.

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to REV2021/0030 for Review of Determination of Application DA2020/1338 for alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower 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**
Drawing 001 Rev A Specifications	14/07/2021	Sam Crawford Architect
Drawing 011 Rev A Demolition - Site Plan	14/07/2021	Sam Crawford Architect
Drawing 012 Rev A Demolition - Garage	14/07/2021	Sam Crawford Architect
Drawing 013 Rev A Demolition - LG Floor	14/07/2021	Sam Crawford Architect
Drawing 014 Rev A Demolition - Site Plan	14/07/2021	Sam Crawford Architect
Drawing 101 Rev C Site Analysis	14/07/2021	Sam Crawford Architect
Drawing 102 Rev C Proposed Site Plan	14/07/2021	Sam Crawford Architect
Drawing 111 Rev C Proposed Garage Floor Plan	14/07/2021	Sam Crawford Architect
Drawing 112 Rev B Proposed LG Floor Plan	14/07/2021	Sam Crawford Architect
Drawing 113 Rev C Proposed UG Plan	14/07/2021	Sam Crawford Architect
Drawing 114 Rev C Proposed 1st Floor Plan	14/07/2021	Sam Crawford Architect
Drawing 115 Rev C Proposed Roof Plan	14/07/2021	Sam Crawford Architect
Drawing 201 Rev C North Elevation	14/07/2021	Sam Crawford Architect
Drawing 202 Rev C West Elevation	14/07/2021	Sam Crawford Architect
Drawing 203 Rev C South Elevation	14/07/2021	Sam Crawford Architect
Drawing 204 Rev C East Elevation	14/07/2021	Sam Crawford Architect
Drawing 301 Rev C Long Section	14/07/2021	Sam Crawford Architect
Drawing 302 Rev C Cross Section 01	14/07/2021	Sam Crawford Architect
Drawing 303 Rev C Cross Section 02	14/07/2021	Sam Crawford Architect

Engineering Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Drawing HDA01/P3 Site Plan and Legend	15/06/2020	In Line Hydraulic Services
Drawing HDA02/P3 Garage Floor Plan	15/06/2020	In Line Hydraulic Services
Drawing HDA03/P3 LG Floor Plan	15/06/2020	In Line Hydraulic Services
Drawing HDA04/P3 UG Floor Plan	15/06/2020	In Line Hydraulic Services
Drawing HDA05/P3 1st Floor Plan	15/06/2020	In Line Hydraulic Services
Drawing HDA06/P3 Roof Plan	15/06/2020	In Line Hydraulic Services
Drawing HD07/P3 Sediment & Erosion Control Plan	15/06/2020	In Line Hydraulic Services
Drawing HDA08/P3 Detail Sheet	15/06/2020	In Line Hydraulic Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Report	17/02/2021	White Geotechnical Group
Terrestrial Biodiversity Report Ref BS44TBR01	18/08/2021	GIS Environmental Consultants
BASIX Certificate number A381760_02	15/02/2021	Damian O'Toole Town Planning

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Landscape Plans 1 - 4	No date	Planted Projects

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Report	28/08/2020	Sam Crawford

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 $25,041.17 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 $2,504,117.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

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

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

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

- The first floor northern eave above balcony 4 is to be deleted such that the roof finishes in line with the northern building façade. A 900mm deep shade structure having a maximum RL of 40.515 can replace this deleted eave along the northern façade of Bedroom 1.
- A fixed angle privacy screen shall be installed along the western edge of balcony 4.

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.

8. **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.

9. **Pool Exclusion Fencing – Bandicoot Habitat**
Long-nosed Bandicoots are to be excluded from swimming pools and spas while maintaining access to any surrounding soft landscaping. Pool fencing must have no gaps large enough to allow bandicoots access.

Plans are to be amended and provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent Long-nosed Bandicoots from drowning in swimming pools and spas.

10. **Access Spaces – Bandicoot Habitat**
Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300m wide. This condition does not apply to pool fencing.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Site Induction Required - Bandicoot Habitat**
All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence Long-nosed Bandicoots through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

12. **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.

13. **Tree and vegetation protection**
a) Existing trees and vegetation shall be retained and protected, including:

i) all trees and vegetation within the site not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) The Certifying Authority must ensure that :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. Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: tree and vegetation protection.

14. **Protection of existing street trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages. Existing tree guards shall be maintained in place.

Existing street trees within the frontage of the development site shall be protected by tree protection fencing to the extent and alignment as determined by an Arborist with minimum AQF Level 5 in arboriculture, and 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.

Unless identified by the development consent, no tree roots at or >25mm (Ø) diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, Council's Public Trees section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Tree and Vegetation Protection**

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

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

ii) all trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

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

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

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

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

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

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

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

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

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

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

c) The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

16. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

i) a general decline in health and vigour,

ii) damaged, crushed or dying roots due to poor pruning techniques,

iii) more than 10% loss or dieback of roots, branches and foliage,

iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

v) yellowing of foliage or a thinning of the canopy untypical of its species,

vi) an increase in the amount of deadwood not associated with normal growth,

vii) an increase in kino or gum exudation,

viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,

ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

17. **Road Reserve**
The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

18. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

19. **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.

20. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH 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.

21. **Tree Condition**
During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

(a) A general decline in health and vigour.
(b) Damaged, crushed or dying roots due to poor pruning techniques.
(c) More than 10% loss or dieback of roots, branches and foliage.

(d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
(e) Yellowing of foliage or a thinning of the canopy untypical of its species.
(f) An increase in the amount of deadwood not associated with normal growth.
(g) An increase in kino or gum exudation.
(h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
(i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

22. **Protection of rock and sites of significance**
a) All rock outcrops outside of and below the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

23. **Pre-clearance Survey Required – Bandicoot Habitat**
A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

24. **Protect Grassed Foraging Areas – Bandicoot Habitat**
There is to be no off-loading or storage of construction materials or debris on the grassed lawn or grassed road verge adjacent to the property. The integrity of the grass must be preserved at all times.

Reason: To prevent direct physical injury to Long-nosed Bandicoots and allow for foraging activity. This area is likely to be used by bandicoots for foraging.

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

25. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to

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

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

26. **Required Planting**
Trees shall be planted in accordance with the following schedule:

Three (3) trees capable of attaining a minimum height of 5 metres ar maturity within the grounds of the property with a minimum pot size of 200mm. The location of the trees shall ensure that there will be no future view loss to surrounding properties.

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

Reason: To maintain environmental amenity.

27. **Bright Lighting**
No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity

28. **Environmental Reports Certification**
Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Geotechnical Report dated 17/02/2021 prepared by White Geotechnical Group, and
(b) Terrestrial Biodiversity Report Ref BS44TBR01 dated 18/08/2021 prepared by GIS Environmental Consultants
(c) BASIX Certificate number A381760_02 15/02/2021 Damian O'Toole Town Planning

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

Reason: To ensure compliance with standards.

29. **Landscape completion certification**
a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape planting works have been completed in accordance with the approved landscape plan and inclusive of
any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

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

30. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

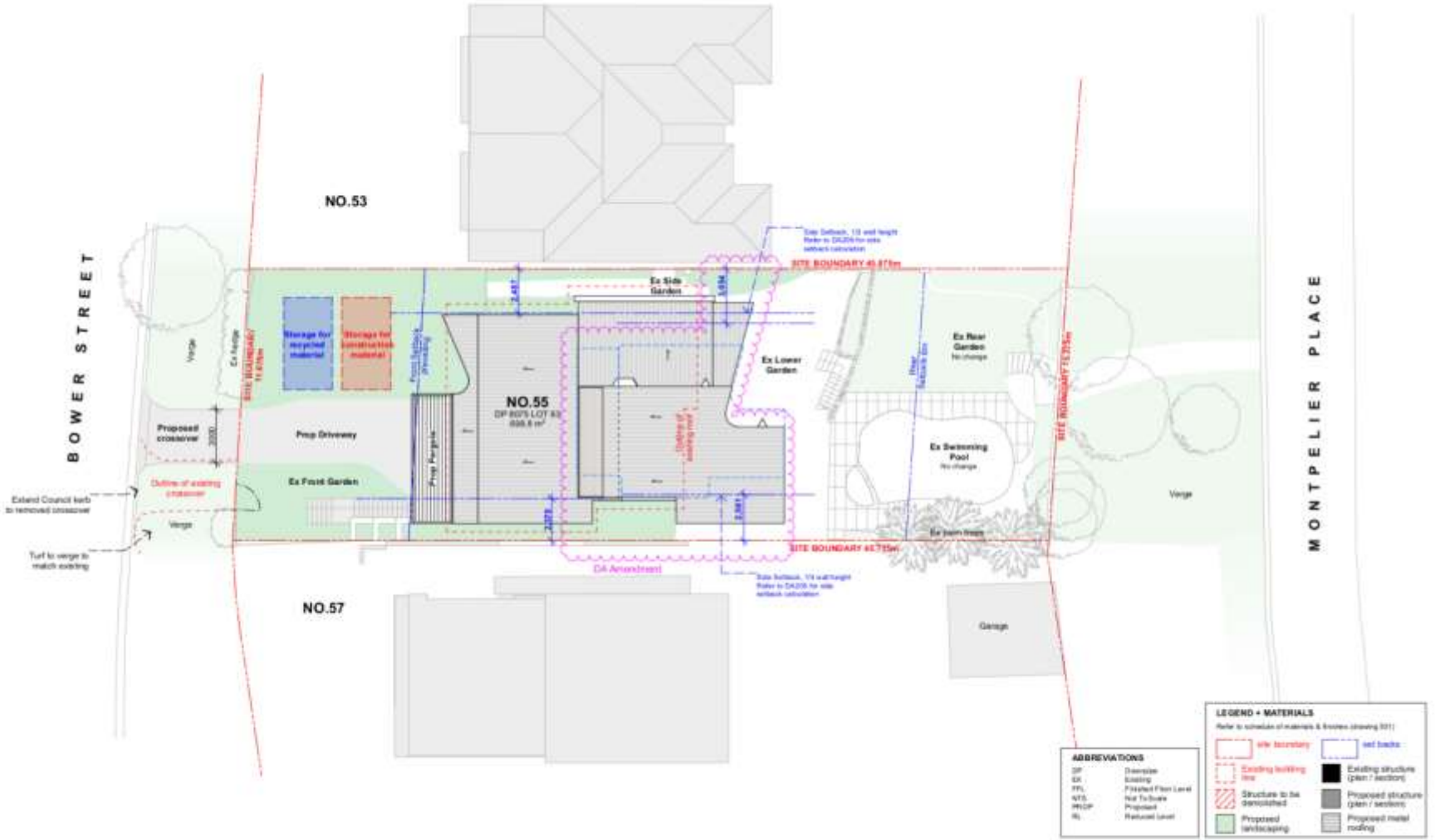
31. **Control of Domestic Dogs/Cats**
Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

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.

32. **No Planting Environmental Weeds**
No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (http://weeds.dpi.nsw.gov.au/).

Reason: Weed management.



DEVELOPMENT APPLICATION

DESCRIPTION	REV	BY	DATE
For Coordination	P4	SC	18/07/2020
For DA Submission	A	SC	18/08/2020
DA Amendment	B	SC	11/02/2021

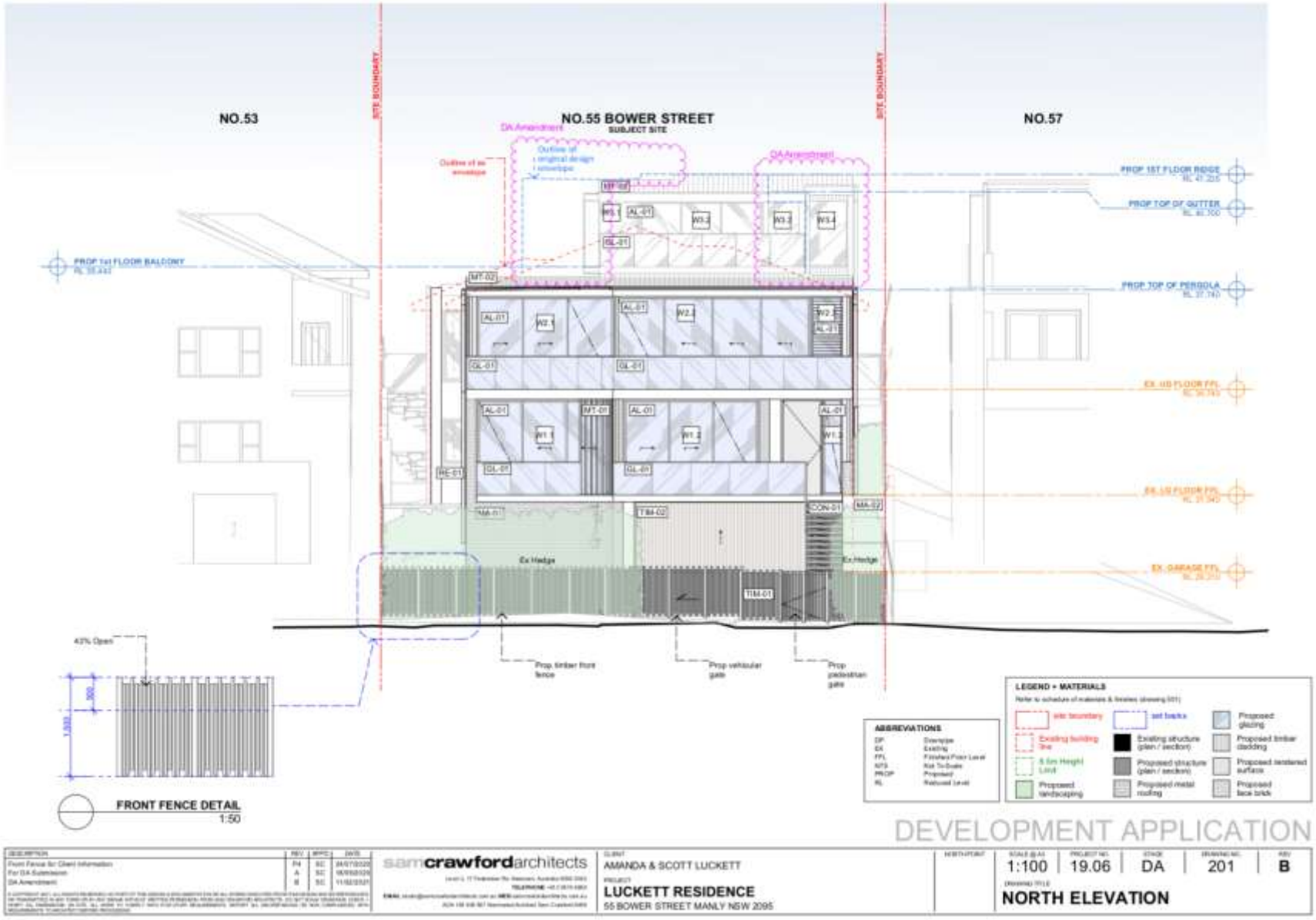
samcrawfordarchitects

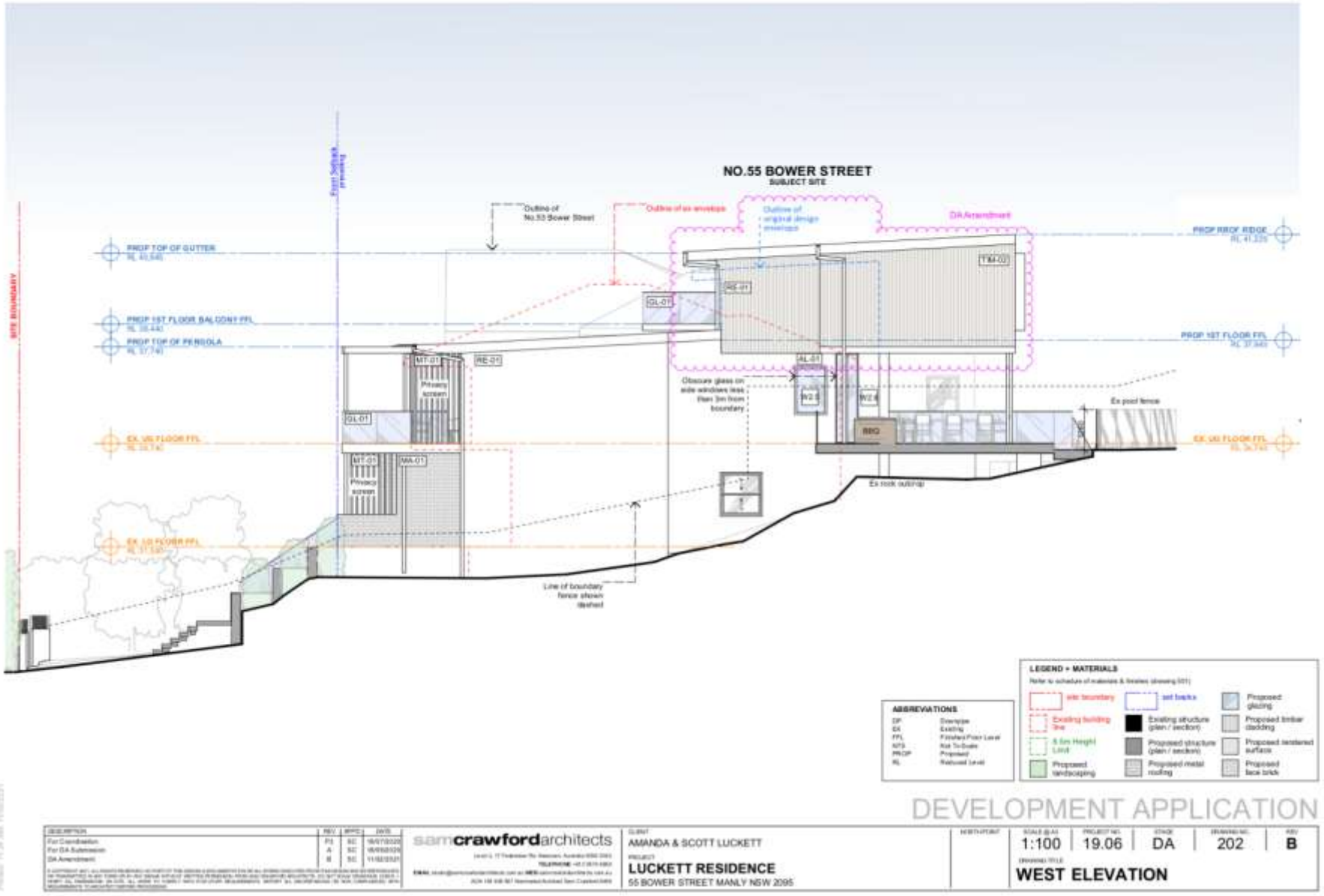
CLIENT: AMANDA & SCOTT LUCKETT

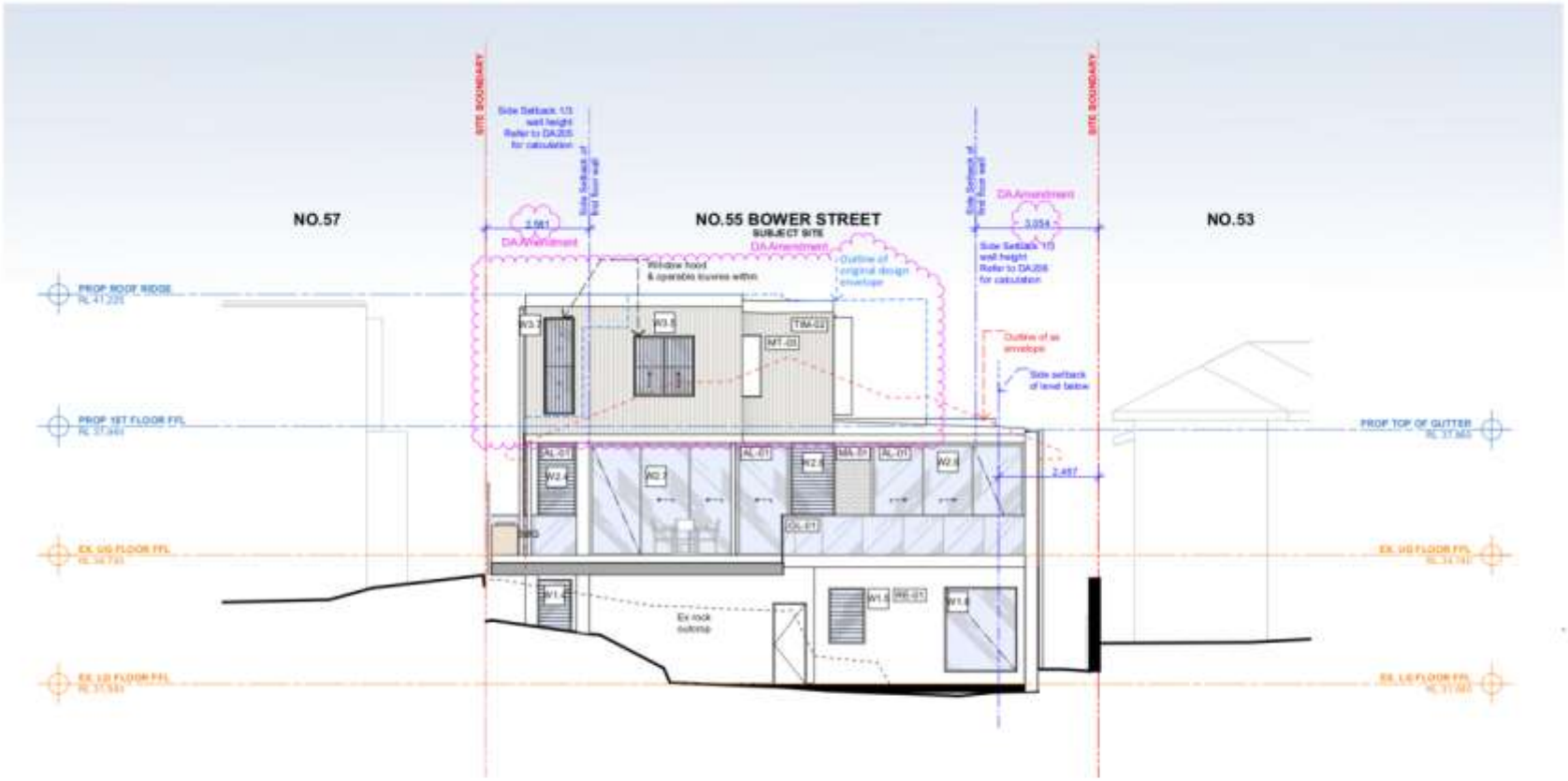
PROJECT: **LUCKETT RESIDENCE**
55 BOWER STREET MANLY NSW 2095

SCALE @ A1	PROJECT NO.	STAGE	DRAWING NO.	REV
1:200	19.06	DA	102	B

(Revision) TITLE: **PROPOSED SITE PLAN**


NO.53
SITE BOUNDARY
NO.55 BOWER STREET
SUBJECT SITE
SITE BOUNDARY
NO.57
DA Amendment
DA Amendment
Outline of original design / envelope
PROP 1st FLOOR BALCONY
PROP 1ST FLOOR RIDGE
PROP TOP OF GUTTER
PROP TOP OF PERGOLA
EX. UG FLOOR FFL
EX. LG FLOOR FFL
EX. GARAGE FFL
Ex Hedge
Ex Hedge
Prop. timber front fence
Prop vehicular gate
Prop pedestrian gate
43% Open
900
1,830
FRONT FENCE DETAIL
1:50
ABBREVIATIONS
LEGEND + MATERIALS
DEVELOPMENT APPLICATION
Front Fence for Client Information
For DA Submission
DA Amendment
samcrawfordarchitects
AMANDA & SCOTT LUCKETT
LUCKETT RESIDENCE
55 BOWER STREET MANLY NSW 2095
1:100
19.06
DA
201
B
NORTH ELEVATION


NO.55 BOWER STREET
SUBJECT SITE
Outline of No.53 Bower Street
Outline of envelope
Outline of original design envelope
DA Amendment
PROP TOP OF GUTTER
PROP 1ST FLOOR BALCONY FFL
PROP TOP OF PERGOLA
PROP RIDGE
PROP 1ST FLOOR FFL
SITE BOUNDARY
Front Setback
MT-01
Privacy screen
RE-01
GL-01
TM-01
AL-01
W2.5
W2.6
BBQ
Obscure glass on side windows min. 1m from boundary
Ex pool fence
Ex rock outcrop
Line of boundary fence shown dashed
ABBREVIATIONS
LEGEND + MATERIALS
Proposed glazing
Proposed timber cladding
Proposed rendered surface
Proposed face brick
Existing structure (plan / section)
Proposed structure (plan / section)
Proposed metal roofing
Proposed landscaping
DEVELOPMENT APPLICATION
samcrawfordarchitects
AMANDA & SCOTT LUCKETT
LUCKETT RESIDENCE
55 BOWER STREET MANLY NSW 2095
1:100
19.06
DA
202
B
WEST ELEVATION



ABBREVIATIONS

DP	Downpipe
EX	Existing
FFL	Finished Floor Level
NTS	Not To Scale
PROP	Proposed
RL	Reduced Level

LEGEND + MATERIALS

Refer to schedule of materials & finishes (drawing 501)

- site boundary
- set backs
- Proposed glazing
- Existing building line
- Existing structure (plan / section)
- Proposed timber cladding
- 8.5m Height Limit
- Proposed structure (plan / section)
- Proposed rendered surface
- Proposed landscaping
- Proposed metal roofing
- Proposed face brick

DEVELOPMENT APPLICATION

DESCRIPTION	REV	BY	DATE
For Coordination	P1	SC	18/07/2020
For DA Submission	A	SC	08/09/2020
DA Amendment	B	SC	11/02/2021

samcrawfordarchitects

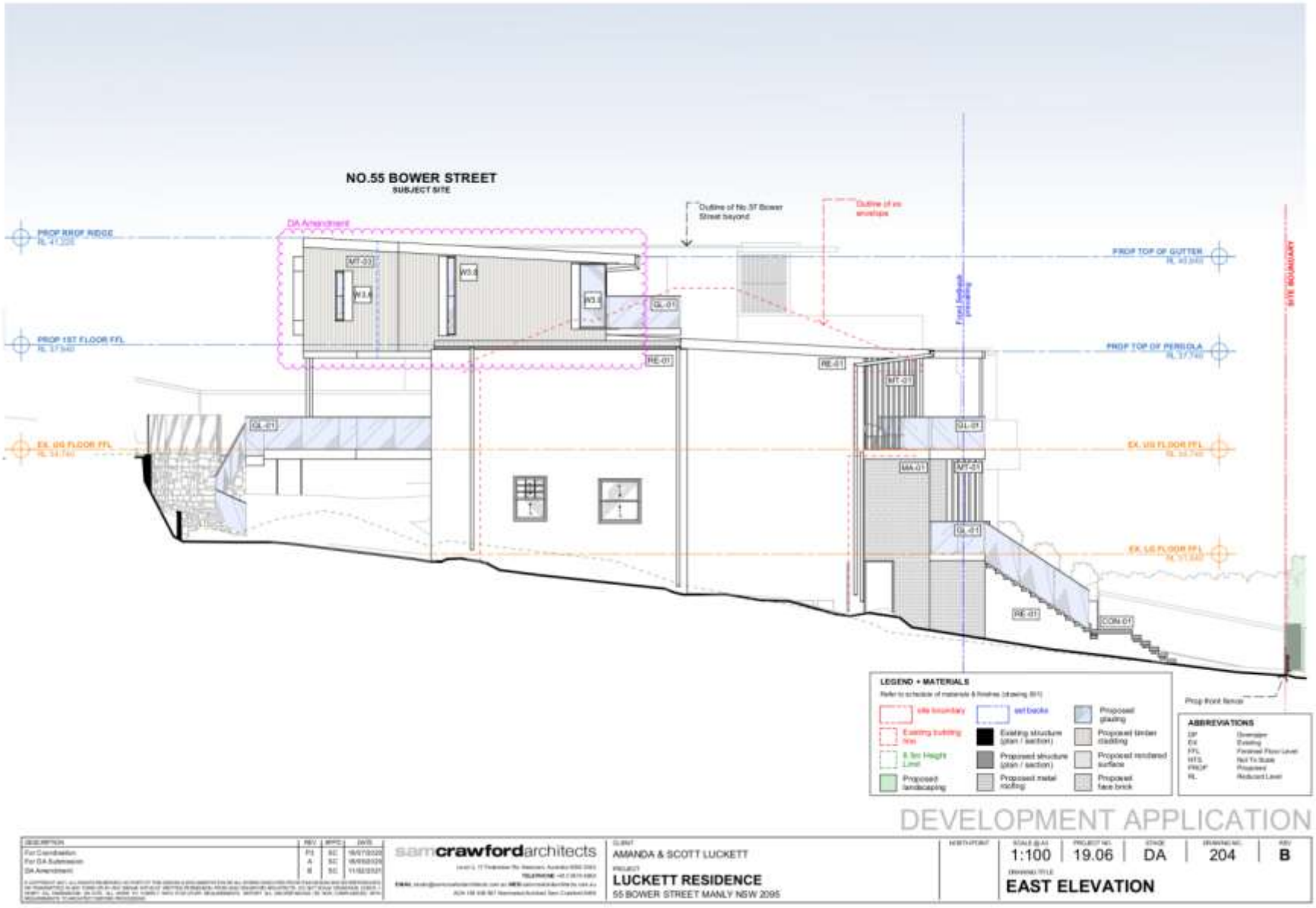
CLIENT: AMANDA & SCOTT LUCKETT

PROJECT: **LUCKETT RESIDENCE**
55 BOWER STREET MANLY NSW 2095

NORTH POINT

SCALE @ A1	PROJECT NO.	STAGE	DRAWING NO.	REV
1:100	19.06	DA	203	B

(Revision) TITLE: **SOUTH ELEVATION**


NO.55 BOWER STREET
SUBJECT SITE
DA Amendment
PROP RROF RIDGE
PROP 1ST FLOOR FFL
EX. GG FLOOR FFL
PROP TOP OF GUTTER
PROP TOP OF PERGOLA
EX. UG FLOOR FFL
EX. LG FLOOR FFL
SITE BOUNDARY
LEGEND + MATERIALS
ABBREVIATIONS
DEVELOPMENT APPLICATION
samcrawfordarchitects
AMANDA & SCOTT LUCKETT
LUCKETT RESIDENCE
55 BOWER STREET MANLY NSW 2095
1:100
19.06
DA
204
B
EAST ELEVATION

Annexure 1 Clause 4.6 variation request – Height of buildings

Development Application DA2020/1338
Updated clause 4.6 variation request – Height of buildings
Alterations and additions to an existing dwelling
55 Bower Street, Manly

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to amended architectural plans Revision C, dated 14th July 2021, prepared by Sam Crawford Architects.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

2.0 Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

(b) to control the bulk and scale of buildings,

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Building height is defined as follows:

> ***building height*** *(or* ***height of building****) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

Ground level existing is defined as follows:

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

The leading case authority which considers the definition of "ground level (existing)" is *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 which was followed in the recent decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

In *Stamford Property Services*, the Court followed the reasoning adopted in *Bettar* and confirmed that "ground level (existing)" must relate to the levels of the site, and not to the artificially modified levels of the site as reflected by the building presently located on the land. In this regard the Court preferred the Council's method to determining the "ground floor (existing)" from which building height should be measured. Council's approach required that the proposed height be measured from the natural ground levels of the site where known, such as undisturbed levels at the boundary, and from adjacent undisturbed levels such as the level of the footpath at the front boundary of the site. These levels could then be extrapolated across the site reflecting the pre-development sloping topography of the land, consistent with the approach adopted in *Bettar*.

In these proceedings the Court was satisfied that even though there was limited survey information available for the site, there was enough information to determine the "ground level (existing)" for the site based on unmodified surveyed levels in the public domain (footpaths) which could be extrapolated across the site. In summary, the Court has confirmed that the definition of "ground level (existing)" from which building height should be measured:

- is not to be based on the artificially modified levels of the site such as the floor levels of an existing building. This includes the entrance steps of an existing building.
- is not to include the basement floor or the soil beneath the basement following construction of the building.

- is to be based on the existing undisturbed surveyed surface of the ground. For sites where access to the ground surface is restricted by an existing building, natural ground levels should be determined with regard to known boundary levels based on actual and surveyed levels on adjoining properties including within the public domain (footpaths).

The levels of the site have been artificially modified as a result of the construction of the existing dwelling house and associated landscaping which has seen some areas excavated into rock and other excavated areas supported with rough rock and stone retaining walls. This makes an accurate assessment as to the height of the proposed development above unmodified levels across the site challenging. The diagram at Figure 1 shows an 8.5 metre height blanket projected above interpolated unmodified levels. The interpolation of levels is generated by the computer software based on the spot levels contained on the survey with such methodology normally adopted when generating height blanket diagrams.

This diagram shows the northern edge of the street facing upper ground level pergola and northern portion of the first floor addition breaching the 8.5 metre height standard with the breaching elements shown projecting above the pink computer generated height blanket. This diagram, together with the dimensions contained on the architectural plans, depict a height breach to the street facing upper ground level pergola of approximately 200mm (2.3%) and a maximum height breach along the north edge of the proposed first floor roof form of 942mm (11.08%).

That said, the more conservative approach adopted by Council in its original assessment of this development application was to identify the spot levels located immediately below the proposed roof elements based on available survey information. Whilst I disagree that this is a fair and reasonable assessment approach given that it significantly disadvantages proponents seeking approval for works on sites containing highly modified landforms, with such approach often leading to a disparate height relationship between surrounding development, for abundant caution, I have also undertaken an assessment using this methodology.



Figure 1 – Plan extract showing height non-compliance based on interpolated ground level (existing)

The following table and diagrams collectively depict the proposed building heights having regard to the spot levels contained on the survey plan below the nominated roof locations.

The proposed building heights measured at roof locations 1 – 10 as depicted in Figure 2, and based on available survey information in relation to the existing ground levels immediately below these points, are summarised as follows:

Roof location	Original roof level (RL) Refused	Proposed roof level (RL) S8.2	Difference (mm)	Spot level below (RL)	Building height (m)	Compliance
1	41.225	40.540	- 685	34.54	6	Yes
2	41.225	40.540	- 685	34.54	6	Yes
3	41.075	40.590	- 485	31.52	9.07	No 570mm (6.7%) variation
4	40.645	40.715	+70mm	Not available as within building footprint (interpolate) 31.27	9.445	No 945mm (11.1%) variation
5	40.645	40.715	+ 70mm	31.33	9.385	No 885mm (10.41%) variation
6	40.895	40.650	- 245	31.48	9.17	No 670mm (7.88%) variation
7	40.895	40.650	- 245	32.05	8.6	No 100mm (1.1%) variation
8	37.740	37.640	- 100	29.60	8.04	Yes
9	37.740	37.640	- 100	28.87	8.77	No 270mm (3.17%) variation
10	37.740	37.640	- 100	28.93	8.71	No 210mm (2.4%) variation

Table 1 – Height of proposed development above surveyed spot levels at nominated roof locations

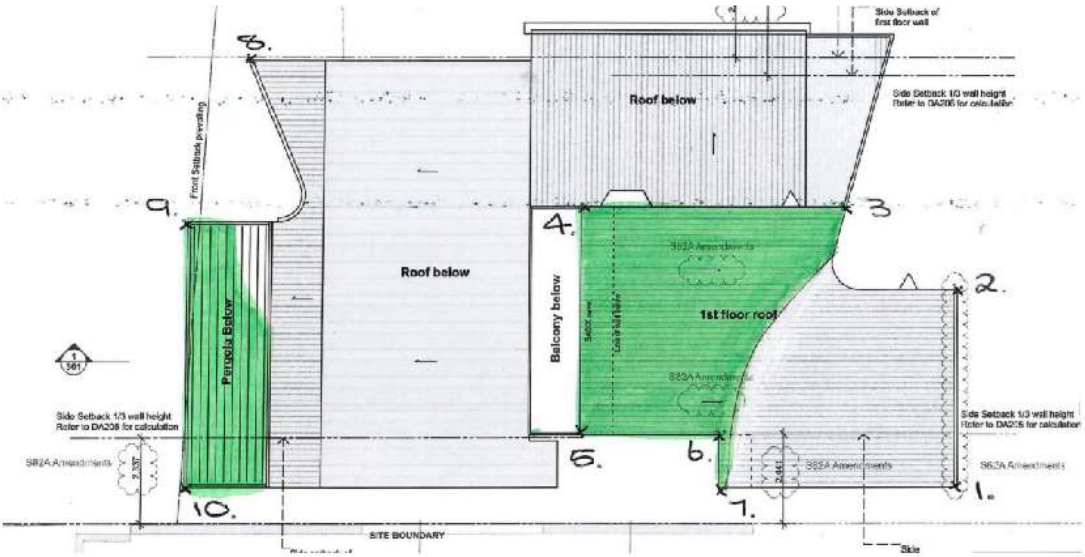


Figure 2 – Plan showing roof locations under which survey spot levels were identified and building height breaching roof elements shown shaded green

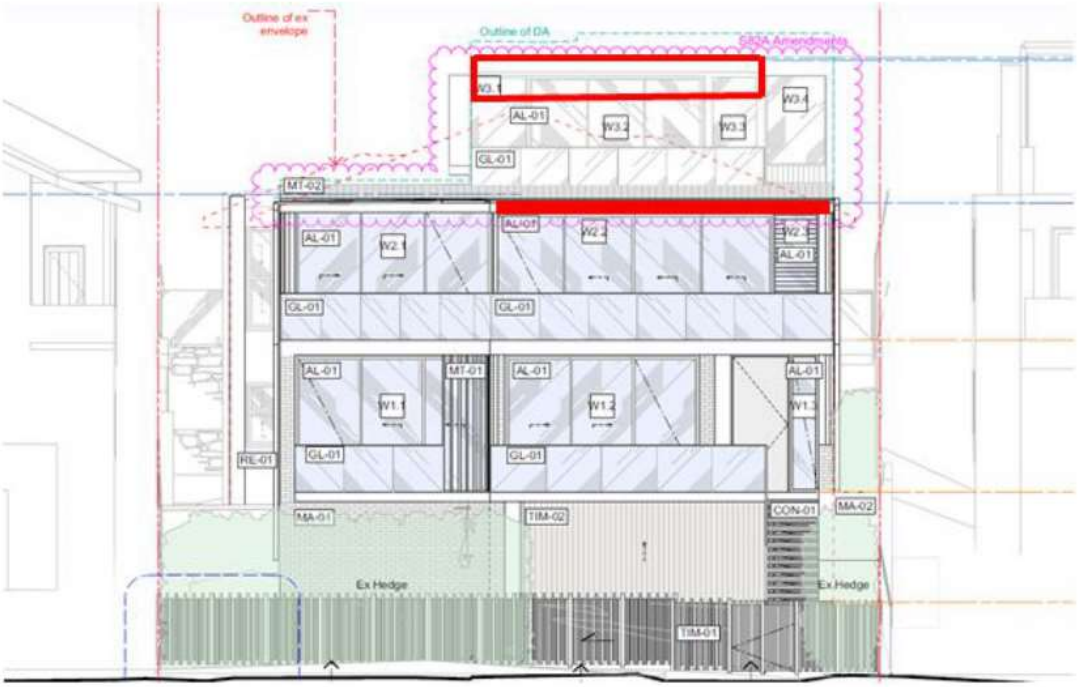


Figure 3 – North elevation with building height breaching elements (as determined form surveyed spot levels) shown in red

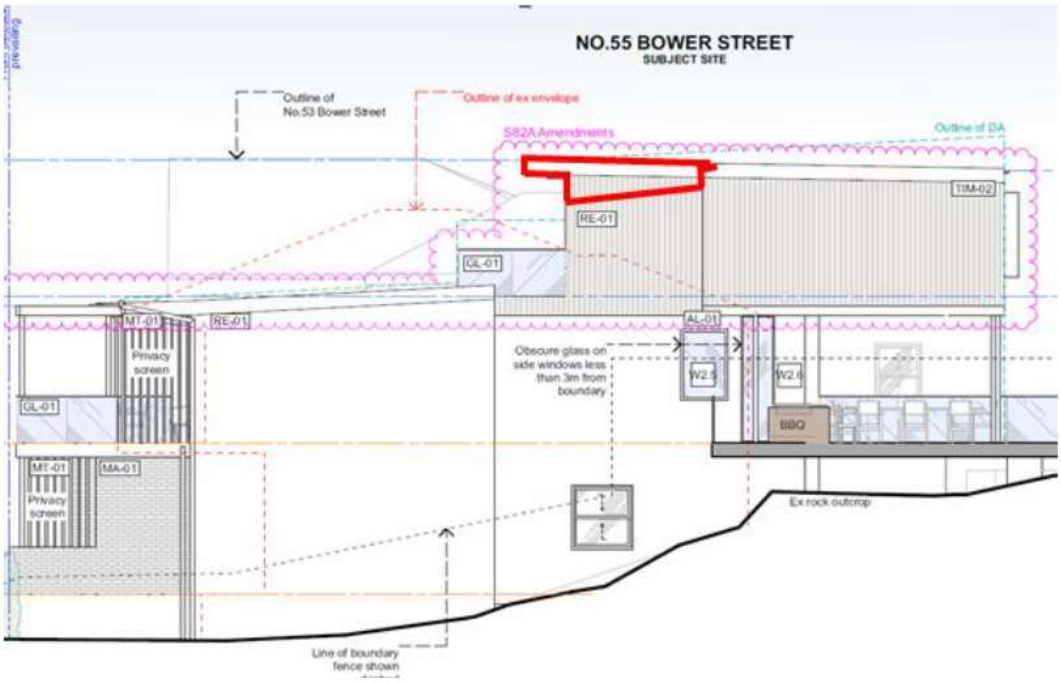


Figure 4 – Western elevation with building height breaching elements (as determined form surveyed spot levels) shown in red

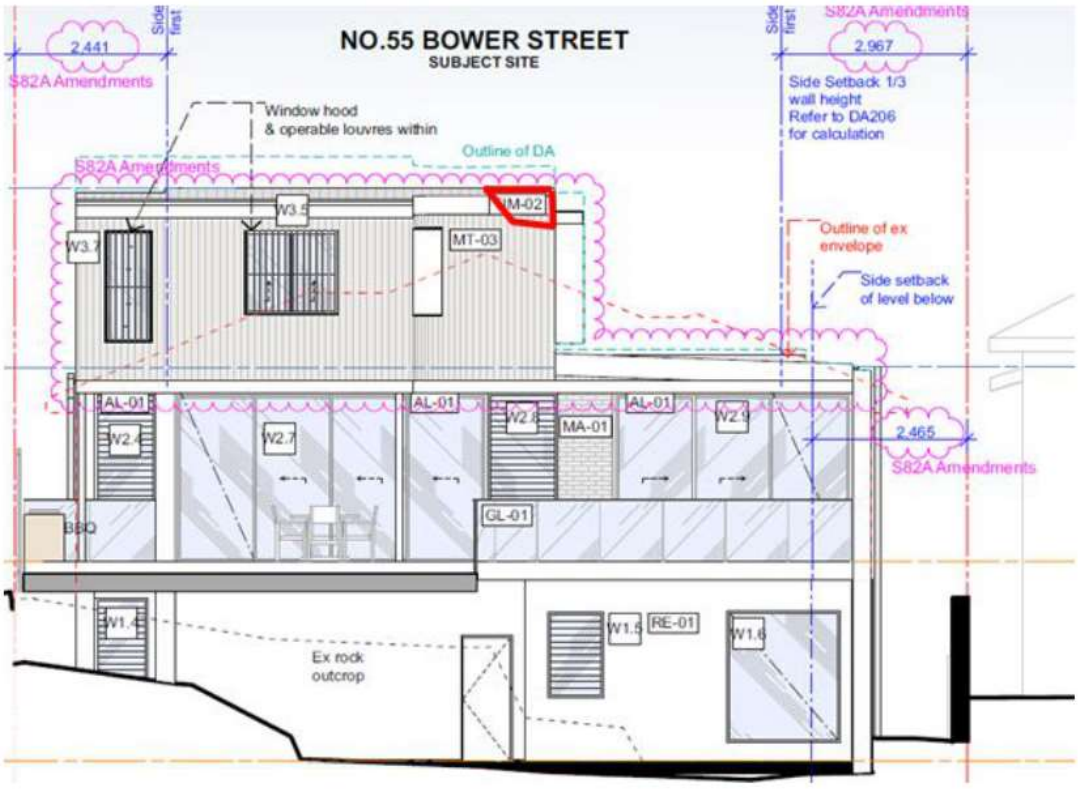


Figure 5 – Southern elevation with building height breaching elements (as determined form surveyed spot levels) shown in red

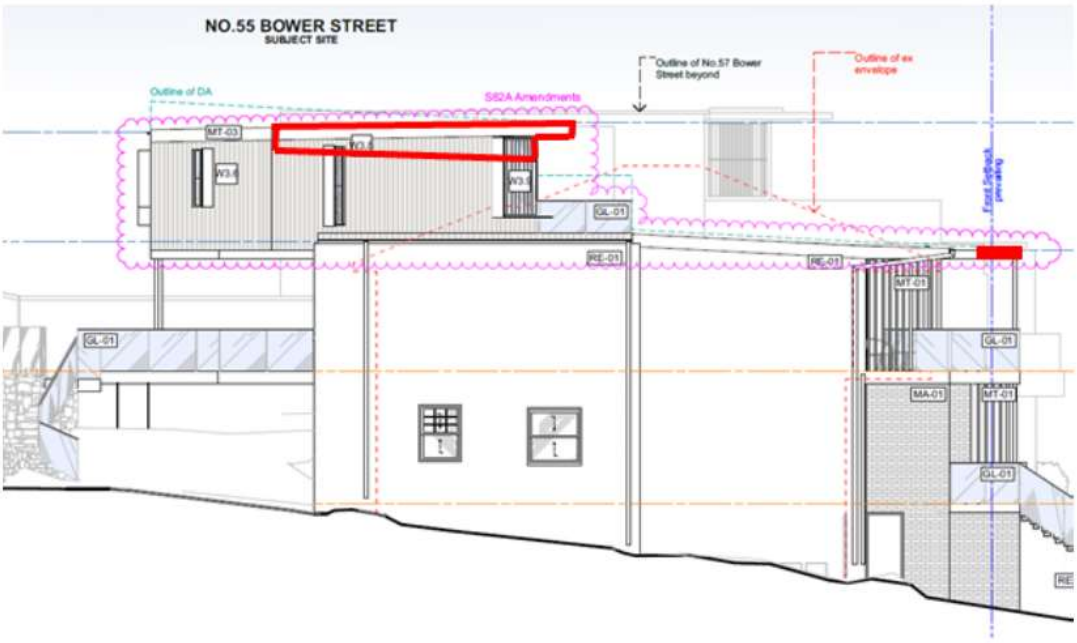


Figure 6 – Eastern elevation with building height breaching elements (as determined form surveyed spot levels) shown in red

I note that the areas of non-compliance are limited to sections of roof form and areas of building façade of variable dimension with the breaching elements reflecting the disturbed nature of the land and its topography rather than an opportunistic increase in floor space given the developments compliance with the prescribed FSR standard.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) The objectives of this clause are:

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

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

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 MLEP 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.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provision at 4.3 of MLEP which specifies a maximum building height however 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 MLEP 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 Director-General has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) of MLEP provides:

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

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

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 MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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 MLEP 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 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 MLEP?

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3 MLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 MLEP is a development standard.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

> *(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Response: Notwithstanding the building height breaching elements, the height and roof form of the proposed additions result in a building form which is consistent with that established by surrounding dwelling houses and consistent with the prevailing height of residential development generally within the site's visual catchment.

With the exception of the upper ground level pergola, the building presents a compliant building height to Bower Street with the proposed upper level setback over 20 metres from the Bower Street frontage where it will not be readily discernible in a streetscape context. Similarly, the building presents as a compliant 2 storey building element as viewed from Montpelier Place with the non-compliant roof and building elements setback over 15 metres from this frontage. Given the topography of the land a significant number of properties in the locality display a 3 storey stepped building form an example of which is depicted in Figures 7 and 8 over page.



Figure 7 – View of subject property (with arches) and the 3 storey development to its west



Figure 8 - View of 3 storey development to the south of the site having frontage and address to Montpelier Place

Having driven around the immediate locality including, but not limited to, the length of Bower Street and Montpelier Place and having viewed the building forms and building heights associated with development within the locality from the streets and from the coastal walkway along Marine Parade, I am satisfied that, notwithstanding the building height breaching elements, the building height and roof form proposed are consistent with the prevailing building heights and roof forms of development within the locality.

Further, as the non-compliant areas of the proposed first floor building elements are setback over 20 metre from the Bower Street property frontage, setback over 15 metres form the Montpellier Place frontage and are screened to a significant extent by the compliant areas of the development located adjacent to both frontages, I am satisfied that the building heights and roof forms proposed are consistent with the desired future streetscape character.

It is clearly evident from an analysis of prevailing building heights that Council has historically applied the building height standard with a degree of flexibility having regard to the topography of the immediate locality. That is, the prevailing and proposed building heights and roof forms are consistent with the topographic landscape.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

The proposal is consistent with this objective.

(b) to control the bulk and scale of buildings,

Response: For the reasons outlined in relation to objective (a) above, I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the compliant floor space (FSR) appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes including a view sharing scenario. In this regard, I note that a substantial view corridor has been maintained down the eastern boundary of the property.

The bulk and scale of the non-compliant building height elements will not be perceived as inappropriate or jarring in the context of the bulk and scale of surrounding buildings with the distribution of the floor space associated with the building height non-compliance ensuring no inappropriate or jarring streetscape or unreasonable view impacts.

The proposal is consistent with this objective.

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

Response: Having viewed the subject site from a number of public spaces including the public walkway along Marine Parade, from Manly Beach and from both Bower Street and Montpelier Place, I am satisfied that the proposed development, notwithstanding the building height breaching elements, will not unreasonably impact any views to nearby residential development from public spaces.

The proposal is consistent with this objective.

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

Response: Clause 3.4.3 (Maintenance of Views) of MDCP adopts the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 it being noted that the DCP provision contains the following note:

> *DA assessment is to determine the extent of, and impact on views at eye height in a standing position (eye height is 1.6m above floor level) from within the main living areas (and associated terraces/balconies) of the proposed and existing, adjacent and nearby developments, as well as public spaces*

I note that clause 3.4.3 MDCP does not seek to maintain a view sharing outcome from any seated position, from bedrooms or from secondary living areas and associated terraces/ balconies.

Having regard to the clause 3.4.3 MDCP provisions, I provide the following view impact assessment from No's 16 and 17 Montpellier Place, being the properties identified during Council's assessment of the development application as being affected in relation to views (and which are representative of other potentially affected properties along Montpellier Place).

First Step - Assessment of views to be affected

An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

No's 16 and 17 Montpellier Place are both 3 storey townhouse style dwellings located on the southern side of Montpellier Place directly to the south of the subject site as depicted in the aerial location photograph at Figure 9 over page.



Figure 9 – Aerial photograph showing spatial relationship of No's 16 and 17 Montpellier Place shown collectively with a red star and the subject property shown with a yellow star.

I have been provided with photographs from these properties which depict survey accurate height poles erected on the subject property reflecting certain roof corners/ levels. A copy of the height pole certification is at Annexure 1.

Both No's 16 and 17 Montpellier Place have their primary living rooms comprising kitchen, dining and lounge areas and main bedroom at the upper most level with direct access from the living room to a north facing balcony.

The lower level contains the entrance foyer, bedroom and secondary living area with access to a street facing terrace.

Sweeping views are avialable from the upper level principal living areas and adjacent balconies in a northerly direction over the properties located on the low side of the street, including the subject property, towards freshwater Beach, its northern headland, Curl Curl Beach and its northern head land and a number of beaches and headlands beyond including Long Reef.

Similar views are available from the lower ground floor secondary living and terrace area although these views are interrupted by building forms and landscaping associated with the properties located to the north.



Figure 10 – Photograph from upper level living room balcony of No. 16 Montpellier. Note: Superseded profiles depicted on subject site.



Figure 11 – Photograph from the lower level bedroom terrace of No. 16 Montpellier. Note: Superseded profiles depicted on subject site.



Figure 12 – Zoomed photograph from the lower terrace adjacent to the front entrance door of No. 16 Montpellier. Note: Superseded profiles depicted on subject site.



Figure 13 – Photograph from the lower level bedroom terrace of No. 17 Montpellier. Note: Superseded profiles depicted on subject site.

All views are obtained across the front boundary of the subject properties and over and between development located on the low side of the street.



Figure 14 – Photograph from the lower terrace adjacent to the secondary living room/ front entrance door of No. 17 Montpellier. Note: Superseded profiles depicted on subject site.

Second Step - From what part of the property are the views obtained

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

Comment: These views are available from the upper level primary living areas, master bedroom and adjacent balconies/ terrace from both a standing and seated position. Views are also available from the lower level entrance threshold, secondary living area, bedroom and adjacent terrace. The views available over the subject site are obtained across the front and side boundaries of these properties. The views from the secondary lower level living, bedroom and terrace areas are highly vulnerable to view impact associated with building height compliant development located on the low side of the street and intervening landscaping however I note that clause 3.4.3 MDCP does not seek to maintain a view sharing outcome from any seated position, from bedrooms or from secondary living areas and associated terraces/ balconies.

Third Step – Assessment of extent of the impact

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

Comment: The proposal will obscure a small portion of immediate water view available from the upper level primary living rooms, master bedroom and adjacent balcony although all land/water interface and headland views will be maintained as depicted in Figure 15 below being a photograph taken by Council staff in their assessment of the original scheme.



Figure 15 – Photograph from the upper level balcony of No. 16 Montpellier Place which is accessed from the primary living room area showing retention of all critical view elements. Note: Superseded profiles depicted on subject site.

Although clause 3.4.3 MDCP does not seek to maintain a view sharing outcome from bedrooms or from secondary living areas, as exist at the lower level of No's 16 and 17 Montpellier Place, the photomontages at Figures 16 and 17 below and over page, prepared with the benefit of survey accurate profiles, demonstrates that the view of Freshwater Beach and its southern headland will be maintained from a standing position on the lower level bedroom terrace of these properties where not already obscured by vegetation or buildings. I note that the red dotted line represents the previously refused roof outline with the proposed amended roof shown in blue. A copy of the height pole certification prepared by CMS Surveyors is at Annexure 1.

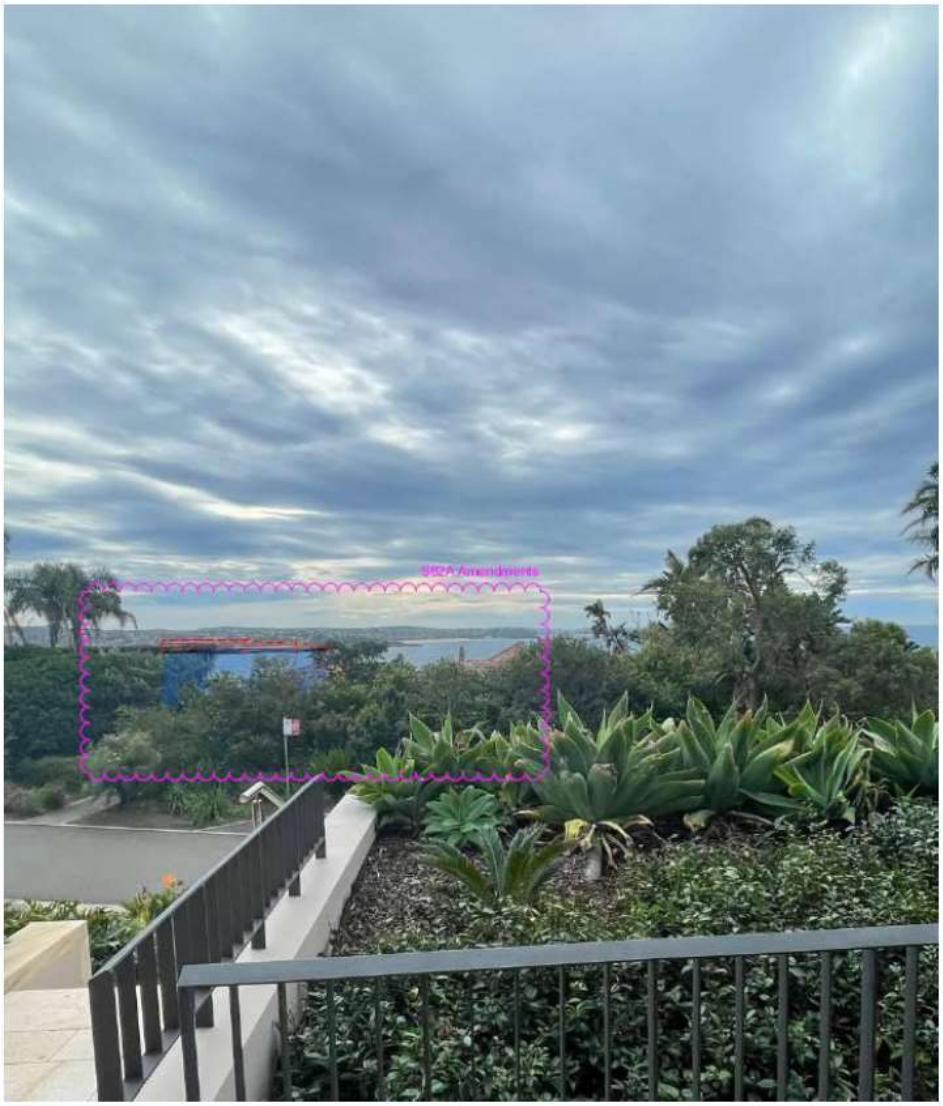


Figure 15 – Photograph (50mm lens) from the lower bedroom terrace of No. 17 Montpellier Place. Demonstrating that the view of Freshwater Beach and its southern headland will be maintained from a standing position where not already obscured by vegetation or buildings. I note that the red dotted line represents the previously refused roof outline with the proposed amended roof shown in blue

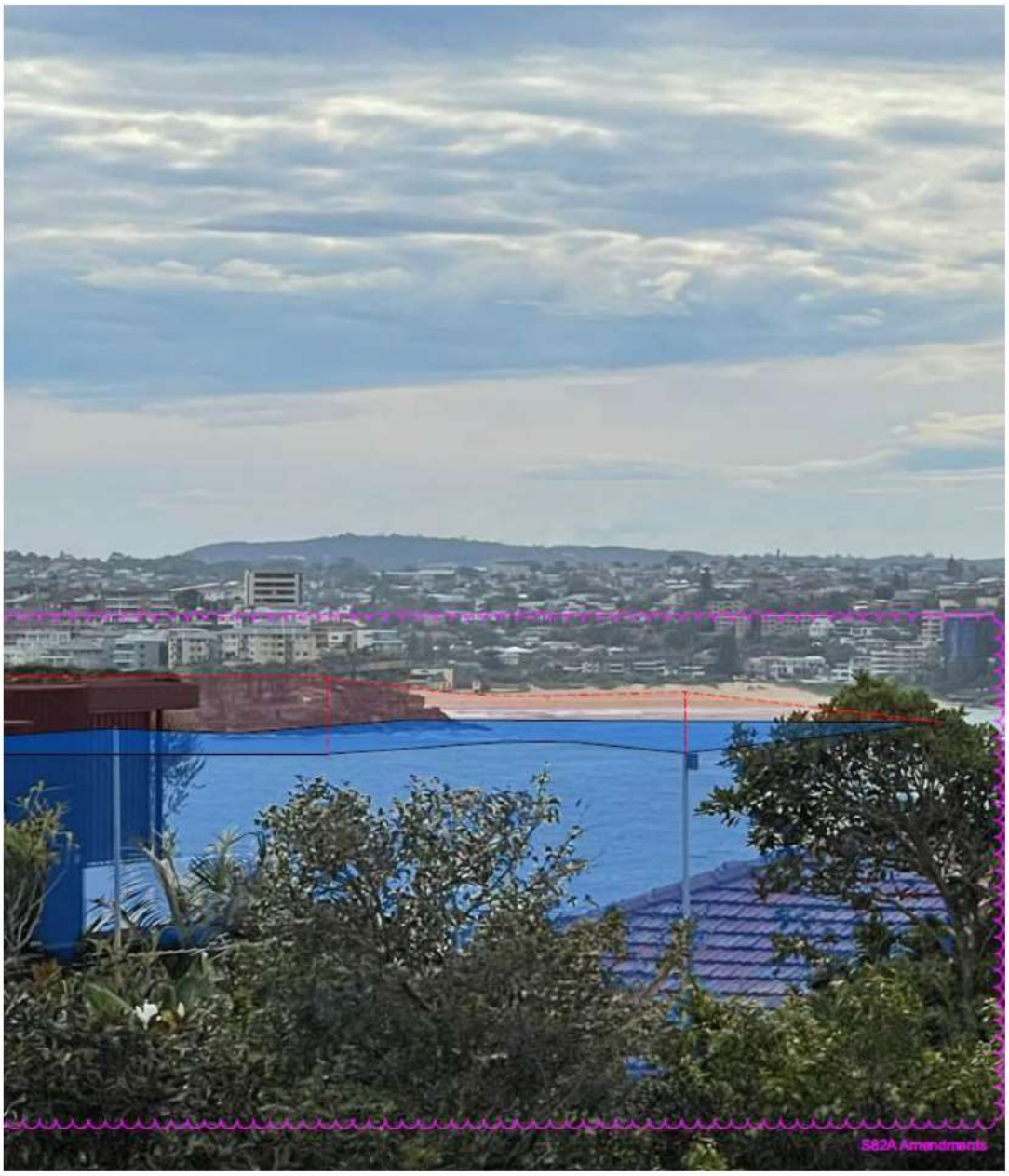


Figure 16 – Photograph (zoomed) from the lower bedroom terrace of No. 17 Montpellier Place. Demonstrating that the view of Freshwater Beach and its southern headland will be maintained from a standing position where not already obscured by vegetation or buildings. I note that the red dotted line represents the previously refused roof outline with the proposed amended roof shown in blue

Based on this analysis, the view impact associated with the non-compliant building elements as viewed from the upper level principal living, adjacent balcony and master bedrooms is appropriately described as minor with all critical view elements maintained from both a seated and standing position. Such outcome satisfies the clause 3.4.3 MDCP view sharing provisions.

The non-compliant building height breaching elements will result in some view impact from the lower level bedroom terrace, adjacent entrance threshold and secondary living space however Figures 15 and 16 demonstrate that a generous view corridor is maintained down the eastern boundary of the property to enable the retention of views towards Curl Curl beach and its surf zone, and the land water interface of a number of headlands beyond including Long Reef, with the view towards Freshwater Beach and its southern headland also maintained from the lower level of these properties where not already obscured by vegetation or buildings.

Given the totality of views retained from this area of the dwelling, and the fact that the views available from the principle living and bedroom areas located at the level above are maintained, I consider the view impact from this lower level bedroom terrace, adjacent entrance threshold and secondary living space to be appropriately described as minor and not determinative in the context of the clause 3.4.3 MDCP view sharing provisions which do not seek to maintain a view sharing outcome from bedrooms or from secondary living areas and associated terraces/ balconies.

In my opinion, the primary focus of the view loss analysis must be in relation to the principle living areas and adjacent balcony located at the upper level of the dwellings as required by clause 3.4.3 of MDCP. All critical view elements will be maintained from all rooms and balconies located at this upper level with impacts appropriately described as minor. That is, the non-compliant building height elements will have a minor impact on existing views available from the principle living and adjacent open space areas of these particular properties.

Fourth Step – Reasonableness of the proposal

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.

I confirm that a number of design options were explored to minimise the height of the first floor master bedroom suite and associated view impacts particular the impact on the view currently available from the lower level of No's 16 and 17 Montpellier Place towards Freshwater Beach and its southern headland.

These design options included, but were not limited to, ceiling height and roof pitch changes and the introduction of a flat roof. The flat roof option was ultimately not pursued due to the increase in roof thickness required to accommodate roof beams capable of supporting additional water loads and the flashing/ water proofing requirements associated with a flat roof. The pitch of the roof was also revisited with the roof pitch ultimately reduced from 3 degrees to 1 degree being the absolute minimum roof pitch required for metal roof sheeting.

Detailed view loss analysis determined that the view impact from the lower level of No's 16 and 17 Montpellier Place to Freshwater Beach was in fact caused by the southern compliant portion of the proposed first floor roof form rather than the non-compliant northern edge. In this regard, a significant reduction in view impact was able to be achieve by reversing the pitch of the roof such that the lowest point was located at its southern edge and highest point at its northern edge.

This alternate roof pitch enabled the southern edge of the roof to be lowered by 685mm with only a minor 70mm increase in roof height required at its northern edge to maintain the required 1 degree pitch. Whilst this increases the extent of building height breach along the northern edge of the roof form it enables the southern edge of the roof form to be lowered to sit some 2.5 metres below the 8.5 metre prescribed height limit with the alternate roof design facilitating the retention of the view to Freshwater Beach and its southern headland from the lower level of No's 16 and 17 Montpellier Place, the only area previously deemed to experience a moderate impact in relation to views.

These amendments collectively represent the more skilful design sought by Council town planning staff and the DDP in its assessment and determination of the original application in that the impacts arising from the building height breaching elements on views available from the lower level of the townhouses at No. 16 and 17 Montpelier Place have been minimised with views of Freshwater Beach and its southern headland now maintained.

Given the totality of views retained from the ground floor areas of these adjoining properties, and the fact that the views available from the principle living and bedroom areas located at the level above are maintained, I consider the remaining view impact from the lower level bedroom terraces, adjacent entrance thresholds and secondary living spaces within these properties to be appropriately described as minor and not determinative in the context of the clause 3.4.3 MDCP view sharing provisions which do not seek to maintain a view sharing outcome from bedrooms or from secondary living areas and associated terraces/ balconies.

The proposed development is fully compliant with the applicable FSR standard with the building height breach directly attributable to the topography of the land and the appropriate distribution of floor space on this particular site. In this regard, I note that a fully compliant 8.5 metre building envelope setback 8 metres from the Montpelier Place frontage would have significantly greater impact on views than the scheme currently proposed noting that the southern edge of the upper most roof form sits some 2.5 metres below the 8.5 metre maximum prescribed height standard.

The proposal represents a skilful design whereby a compliant quantum of floor space has been appropriately distributed on the site in a contextually appropriate manner resulting in a view sharing outcome in accordance with the clause 3.4.3 MDCP view sharing provisions. That said, the amended plans also provide for a view sharing outcome to the secondary living, bedroom and entrance threshold/ terrace areas within No's 16 and 17 Montpelier Place although not required by the clause 3.4.3 MDCP view sharing provisions. The proposed building height is entirely consistent with that established by the adjoining properties and to that extent we consider the proposal to be contextually appropriate and reasonable under the circumstances.

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: N/A

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with clause 3.4.3 MDCP and the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

The proposal is consistent with this objective.

> *(iii) views between public spaces (including the harbour and foreshores),*

Response: The building form and height has been appropriately distributed across the site such that the elements breaching the building height element will have no impact on views between public spaces.

The proposal is consistent with this objective.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Response: The application is accompanied by shadow diagrams DA401 to DA403 which depict the impact of shadowing on the neighbouring properties. The diagrams are at Annexure 2. I note that these adjoining dwellings are predominately north facing to capture the view aspect. The proposal results in some minor additional overshadowing however the non-compliant building elements will not result in any non-compliant shadowing impacts have regard to the MDCP solar access control. The proposal is consistent with this objective.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned E3 Environmental Management pursuant to MLEP 2013 with dwelling houses permissible in the zone with consent. The stated objectives of the zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Response: The proposal results in a dwelling that will result in little impact to the ecological and aesthetic values of the area. A biodiversity report was undertaken and concluded that the development is unlikely to have a significant impact on the conservation of any endangered population.

The development will not adversely impact on the scenic qualities of the area with the design, bulk and scale of the proposal being consistent with existing development within the sites visual catchment.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Response: The proposal maintains the established single dwelling residential use on the site consistent with this objective.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Response: 2 trees are proposed to be removed at the front of the site and not considered to be of significant value. A detailed landscape plan has been provided which represents an enhancement of the site which utilises native species with new tree plantings proposed.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Response: The development will have no impact on the foreshore area, geological features or existing natural vegetation. The landscape plan will include native species which seeks to improve the amount of native vegetation in the local area.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Response: The locational context of the site is not in close proximity to the foreshore area.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Response: The resultant height and bulk of the dwelling is consistent with that of adjoining development along Bower Street. The proposal responds the natural topography of the site and does not impact on any existing vegetation in the area.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the E3 Environmental Management zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

4.2a Clause 4.6(4)(b) – 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].

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which limits the ability to distribute a compliant quantum of floor space across the site in a contextually appropriate manner whist complying with the height of buildings standard.

In this regard, a number of design options were explored to minimise the height of the first floor master bedroom suite and associated view impacts particular the impact on the view currently available from the lower level of No's 16 and 17 Montpellier Place towards Freshwater Beach and its southern headland. These design options included, but were not limited to, ceiling height and roof pitch changes and the introduction of a flat roof. The flat roof option was ultimately not pursued due to the increase in roof thickness required to accommodate roof beams capable of supporting additional water loads and the flashing/ water proofing requirements associated with a flat roof. The pitch of the roof was also revisited with the roof pitch ultimately reduced from 3 degrees to 1 degree being the absolute minimum roof pitch required for metal roof sheeting.

Detailed view loss analysis determined that the view impact from the lower level of No's 16 and 17 Montpellier Place to Freshwater Beach was in fact caused by the southern compliant portion of the proposed first floor roof form rather than the non-compliant northern edge. In this regard, a significant reduction in view impact was able to be achieve by reversing the pitch of the roof such that the lowest point was located at its southern edge and highest point at its northern edge.

This alternate roof pitch, together with the lowering of ceiling heights, enabled the southern edge of the roof to be lowered by 685mm with only a minor 70mm increase in roof height required at its northern edge to maintain the required 1 degree pitch. Whilst this increases the extent of building height breach along the northern edge of the roof form it enables the southern edge of the roof form to be lowered to sit some 2.5 metres below the 8.5 metre prescribed height limit with the alternate roof design facilitating the retention of the view to Freshwater Beach and its southern headland from the lower level of No's 16 and 17 Montpellier Place, the only area previously deemed to experience a moderate impact in relation to views.

Given the totality of views retained from the ground floor areas of these adjoining properties, and the fact that the views available from the principle living and bedroom areas located at the level above are maintained, I consider the remaining view impact from the lower level bedroom terraces, adjacent entrance thresholds and secondary living spaces within these properties to be appropriately described as minor and not determinative in the context of the clause 3.4.3 MDCP view sharing provisions which do not seek to maintain a view sharing outcome from bedrooms or from secondary living areas and associated terraces/ balconies.

The proposed development is fully compliant with the applicable FSR standard with the building height breach directly attributable to the topography of the land and the appropriate distribution of floor space on this particular site. In this regard, I note that a fully compliant 8.5 metre building envelope setback 8 metres from the Montpelier Place frontage would have significantly greater impact on views than the scheme currently proposed noting that the southern edge of the upper most roof form sits some 2.5 metres below the 8.5 metre maximum prescribed height standard.

Given the above analysis, the proposal represents a skilful design whereby a compliant quantum of floor space has been appropriately distributed on the site in a contextually appropriate manner resulting in a view sharing outcome in accordance with the clause 3.4.3 MDCP view sharing provisions. That said, the amended plans also provide for a view sharing outcome to the secondary living, bedroom and entrance threshold/ terrace areas within No's 16 and 17 Montpelier Place although not required by the clause 3.4.3 MDCP view sharing provisions. The proposed building height is entirely consistent with that established by the adjoining properties and to that extent we consider the proposal to be contextually appropriate and reasonable under the circumstances.

The proposal is of good design which facilitates the orderly and economic use and development of the land consistent with that that able to be achieved by surrounding development and development generally within the locality.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

- The development represents good design and amenity (1.3(g)).

- The alterations and additions, as designed, facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the E3 Environmental Management zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it 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. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development 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.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

(a) that the contextually responsive development is consistent with the zone objectives, and

(b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and

(c) that there are sufficient environmental planning grounds to justify contravening the development standard, and

(d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and

(e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and

(f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and

(g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

(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.

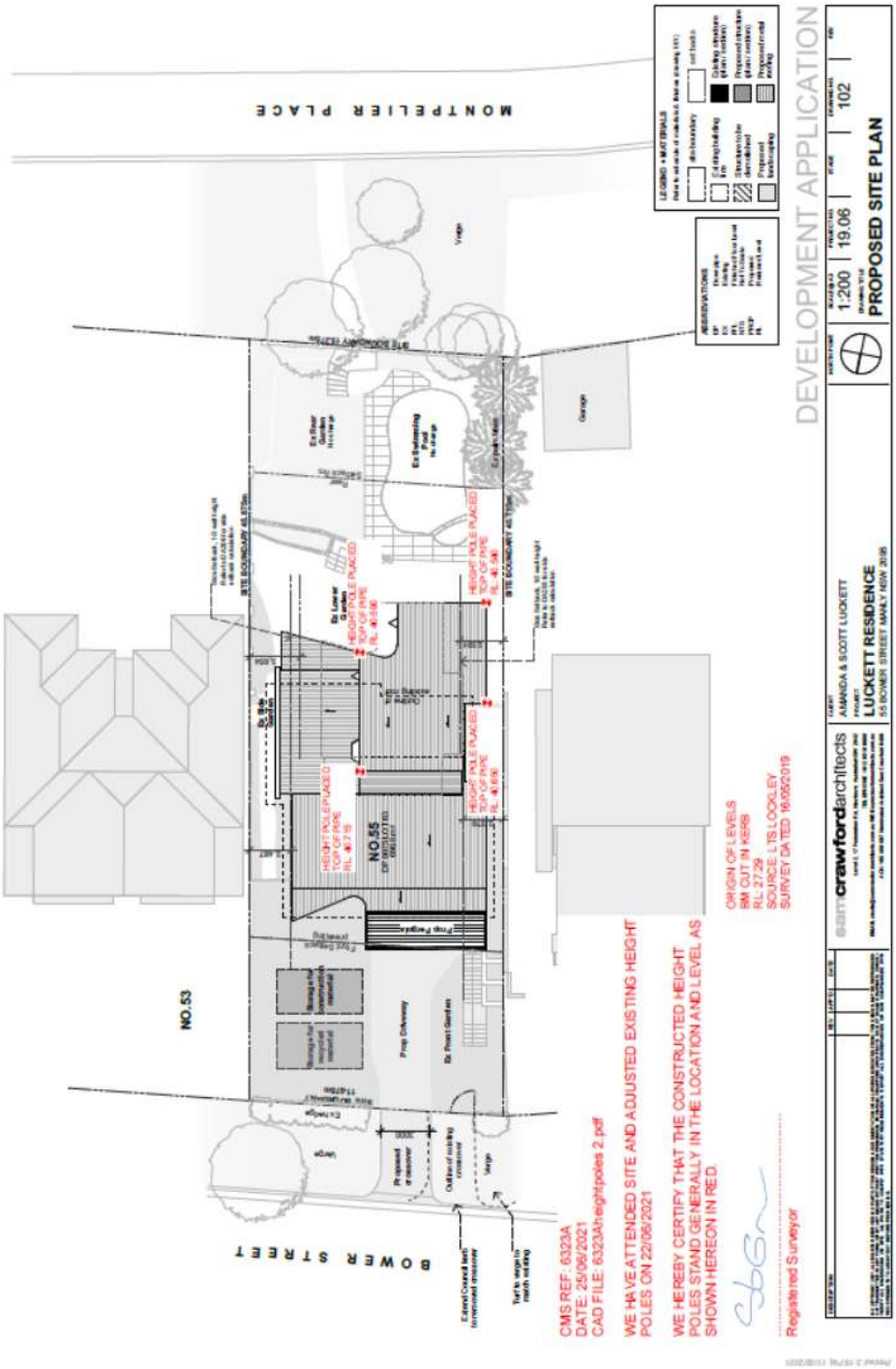
As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

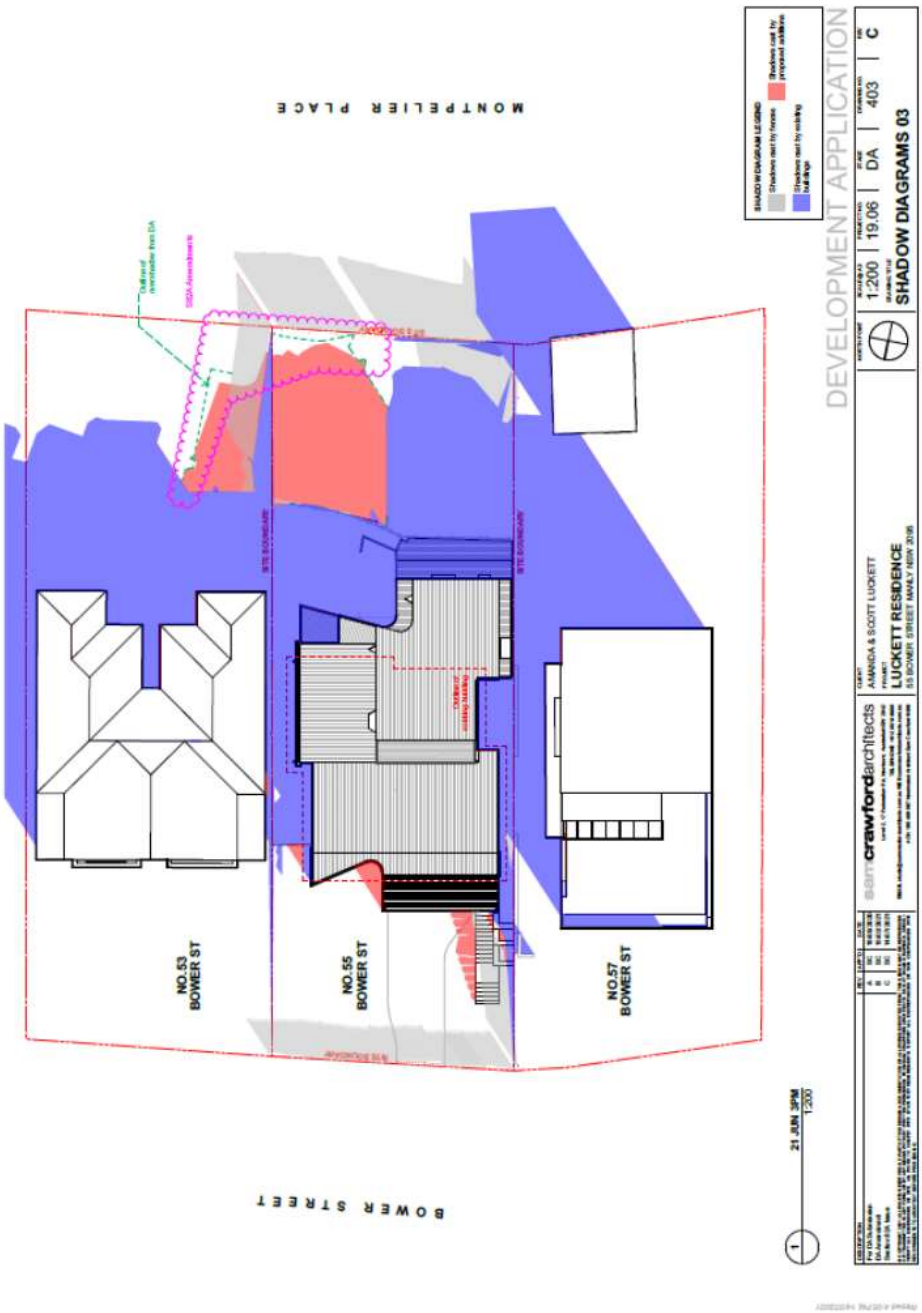
Annexure 1 Height pole certification



Annexure 2 Shadow diagrams




MONTPELIER PLACE
NO.53 BOWER ST
NO.55 BOWER ST
NO.57 BOWER ST
BOWER STREET
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1:200
DEVELOPMENT APPLICATION
SHADOW DIAGRAMS 02
LUCKETT RESIDENCE
55 BOWER STREET MANLY NSW 2095
AMANDA & SCOTT LUCKETT
crawfordarchitects
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MONTPELIER PLACE
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NO.53 BOWER ST
NO.55 BOWER ST
NO.57 BOWER ST
DEVELOPMENT APPLICATION
SHADOW DIAGRAMS 03
LUCKETT RESIDENCE
55 BOWER STREET MANLY NSW 2095
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