

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 9 FEBRUARY 2022**



**Ashleigh Sherry**  
**Manager Business System and Administration**





# **Agenda for a Meeting of the Development Determination Panel to be held via teleconference on Wednesday 9 February 2022 Commencing at 10:00 am**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 22 December 2021	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 22 DECEMBER 2021**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Development Determination Panel held 22 December 2021 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

**ITEM 3.1**                      **REV2021/0037 - 1 A THE SERPENTINE BILGOLA BEACH -  
REVIEW OF DETERMINATION OF APPLICATION DA2021/0148  
FOR ALTERATIONS AND ADDITIONS TO A DWELLING  
HOUSE**

**REPORTING MANAGER**      **Tony Collier**

**TRIM FILE REF**              **2022/049888**

**ATTACHMENTS**              **1 [↓](#) Assessment Report**  
**2 [↓](#) Site Plans and Elevations**

#### **PURPOSE**

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

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#### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to REV2021/0037 for Review of Determination of Application DA2021/0148 for Alterations and additions to a dwelling house on land at Lot 3 DP 511677, 1A The Serpentine BILGOLA BEACH, subject to the conditions set out in the Assessment Report.

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2021/0037
<b>Responsible Officer:</b>	Julie Edwards
<b>Land to be developed (Address):</b>	Lot 3 DP 511677, 1 A The Serpentine BILGOLA BEACH NSW 2107
<b>Proposed Development:</b>	Review of Determination of Application DA2021/0148 for Alterations and additions to a dwelling house
<b>Zoning:</b>	C4 Environmental Living SP2 Infrastructure
<b>Development Permissible:</b>	Yes - Zone SP2 Infrastructure Yes - Zone C4 Environmental Living
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jane Louise Reilly
<b>Applicant:</b>	Rdo Architect
<b>Application Lodged:</b>	17/09/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	27/09/2021 to 11/10/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 318,090.00

### EXECUTIVE SUMMARY

This application is a Review of Determination of a previous application DA2020/0148 that was approved under delegation on 24 June 2021. The proposal is for alterations and additions to a dwelling house.

The consent included a condition (Condition 9) requiring the deletion of all works to the garage which included the conversion and fit out to a home office, thereby reducing the car parking on the site from two spaces to one space. This application seeks to amend the plans, removing all internal works to the garage, retaining the existing car parking arrangements on the site and proposing new windows to the garage to allow for additional light and ventilation. All other elements approved under DA2021/0148

remain unaltered.

The application was notified for a period of 14 days no submission were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the site. Therefore, the proposed development is recommended for approval to the Development Determination Panel subject to the conditions outlined within this assessment report.

### **PROPOSED DEVELOPMENT IN DETAIL**

This application is a Review of Determination of the approved DA2020/0148. The consent included a condition (Condition 9) requiring the deletion of all works to the garage which included the conversion and fit out to a home office, thereby reducing the car parking on the site from two spaces to one space. This application seeks to amend the plans, removing all internal works to the garage, retaining the existing car parking arrangements on the site and proposing new windows to the garage to allow for additional light and ventilation. All other elements approved under DA2021/0148 remain unaltered.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3  
Pittwater Local Environmental Plan 2014 - Zone SP2 Infrastructure  
Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose  
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy

### **SITE DESCRIPTION**



<b>Property Description:</b>	Lot 3 DP 511677 , 1 A The Serpentine BILGOLA BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of The Serpentine. The site does not have a street frontage. Access is obtained via a right-of-carriageway across the lot known as No. 1 The Serpentine.</p> <p>The site is irregular in shape with a width of approx. 29.3m and a maximum depth of approx. 65m. The site has a surveyed area of 1,328m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living and SP2 Infrastructure zones and accommodates a two-storey residential dwelling with a detached carport and garage.</p> <p>The site falls approx. 11m from the west towards the east.</p> <p>The site contains and is surrounding by dense canopy vegetation and is within proximity to an area of littoral rainforest.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b> Adjoining and surrounding development is characterised by low density residential dwellings within a coastal bushland setting.</p> <p><b>Site Inspection</b> A site inspection was conducted 13 January 2022.</p>

Map:



## SITE HISTORY

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

### **Application Town Planning Consent No. 79/79**

Erection of dwelling  
Approved 04/04/1979

### **Application N0362/02**

Alterations and Additions  
Approved 18/07/2002.

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:

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

In accordance with Section 8.3(2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 24 June 2021 and the notice of determination was issued on 25 June 2021. The review was lodged on 17 September 2021 and is to be considered by Delegation on 24 June 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**

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:



*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

*(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and  
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

Council records indicate that the use of the land commenced as a lawful purpose for a dwelling house after the land was subdivided in 1965 and before the approval of the existing dwelling on 04/04/1979, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30/05/2014.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was lawfully approved by Council before 04/04/1979, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30/05/2014.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The land continues to be used for the purpose of a dwelling house, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.



- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

Comment:

The proposed development does not alter the existing building height. Existing boundary setbacks are also maintained. The existing dwelling is generally consistent with the bulk and scale of nearby dwellings.

**2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Comment:

The existing dwelling is to be retained and is consistent with the bulk and scale of nearby dwellings.

**3. What are the impacts on adjoining land?**

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Comment:

The proposed development is generally contained within the footprint and envelope of the existing dwelling. The proposal is not expected to cause any additional bulk or scale and is will have a negligible impact upon surrounding land.

**4. What is the internal amenity?**

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and*

*other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Comment:

The proposed development mostly relates to internal layout changes and changes to window and door openings. It is considered the proposal will improve the internal amenity of the dwelling.

**Conclusion**

The use has been approved under a previous environmental planning instrument (Warringah Planning Scheme Ordinance 1963) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (PLEP 2014).

**BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

**NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 27/09/2021 to 11/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

**REFERRALS**

Internal Referral Body	Comments
Landscape Officer	<p>The application proposes the review of development consent DA2021/0148 imposition of Condition 9 as related to the use of the existing garage as a studio space. The review application proposes the retention of the existing garage use with the proposal for two new windows.</p> <p>Landscape Referral did not provide an assessment of DA2021/0148 and no issues are raised with the review application in terms of landscape outcomes.</p>
NECC (Bushland and Biodiversity)	The Review of Determination seeks to amend Condition 9 of DA2021/0148. Condition 9 was not imposed by Council's Natural Environment Unit - Biodiversity and as such Biodiversity have no objections to amending the condition.
NECC (Development Engineering)	The Review seeks to amend Condition 9 of DA2021/0148. Condition 9 was not imposed by Development Engineers and as such Development Engineers have no objections to amending the condition.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed DA involves retaining the existing garage. This generally complies with the flood controls in the LEP and DCP.
Parks, reserves, beaches, foreshore	The application proposes the review of development consent DA2021/0148 imposition of Condition 9 as related to the use of the existing garage as a studio space. The review application proposes

Internal Referral Body	Comments	
	<p>the retention of the existing garage use with the proposal for two new windows.</p> <p>Parks Referral raise no objections with the review application.</p>	
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>	
	<b>Discussion of reason for referral</b>	
	The proposal has been referred to Heritage as the subject property contains a heritage item	
	<b>Grove of Cabbage Tree Palms - Various lots within Bilgola Beach</b>	
	<b>Details of heritage items affected</b>	
	Details of the item as contained within the Pittwater inventory is as follows:	
	<u>Statement of Significance</u>	
	The Grove of Cabbage Tree Palms ( <i>Livistona australis</i> ) is a landscape heritage item of local significance with natural, aesthetic, scientific, historic and social significance for the Pittwater local government area. Strong and densely established, this grove is emblematic of Bilgola as a locality within the larger peninsula and municipality. The occurrence of cabbage tree palms, said to be the best remaining stand in the Sydney area, add to the natural beauty of the area. The area is an important recreational resource for the people of Sydney.	
	<u>Physical Description</u>	
	The Grove of Cabbage Tree Palms in the Bilgola Valley covers several properties to the east and west of Barrenjoey Road in Bilgola. <i>Livistona australis</i> (Cabbage Palm) is a tall erect indigenous member of the palm family (Arecaceae) very widely distributed throughout lowland forest and swamps of eastern Australia, occurring in QLD, NSW and VIC. The stems are mostly about 10 metres tall but can grow up to 30 metres. The leaves, borne at the top of the stems, are palmately divided, fan shaped and plicate (folded longitudinally).	
<b>Other relevant heritage listings</b>		
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	No	

Internal Referral Body	Comments
	Century Buildings of Significance
	Other
	No
	Consideration of Application
	The proposal seeks a review of Condition 9 imposed on the previous consent for this property being DA2021/0148. That condition related to the use of the existing garage as a studio space. As the review does not impact on a condition imposed by Heritage and now only seeks windows to the garage, the proposal is considered to not impact upon the heritage item or its significance.
	Therefore Heritage raises no objections and requires no conditions.
	Consider against the provisions of CL5.10 of PLEP.
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? A short statement has been included.
	Further Comments
	COMPLETED BY: Brendan Gavin, Principal Planner
	DATE: 23 September 2021

#### 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. A400358\_03 dated 17 September 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**

##### Transport for NSW (TfNSW)

##### **Clause 100 - Development on proposed classified road states:**

Consent for development for any of the following purposes on land reserved for the purposes of a classified road (but before the land is declared to be a classified road) may be granted only with the concurrence of TfNSW—

- (a) subdivision that results in the creation of an additional lot with dwelling entitlements,
- (b) development with a capital investment value greater than \$185,000,
- (c) development for the purpose of dwellings that are, or any other building that is, to be held under strata title.

##### Comment:

The original development application DA2021/0148 was referred to TfNSW for concurrence. Council received advice from TfNSW stating that their concurrence was not required.

#### **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:

##### **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 development consists mostly of internal alterations and additions. No impact to nearby the littoral rainforest is expected.

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

#### Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP2: Yes Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone SP2: No Zone C4 : Yes

#### Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8m	Unaltered	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

#### Detailed Assessment

##### Zone SP2 Infrastructure

The majority of the site including the proposed works to the dwelling are located within the SP2 Infrastructure Zone. Dwelling houses are prohibited development within in this zone.

The existing dwelling and ancillary structures were approved on the site in 1979. The majority of the works are located within the existing building footprint, with only a small addition of a deck located to the south of the dwelling outside of the building footprint. The original development application DA2021/0148 was referred to Transport for NSW for concurrence, who have advised that no response is required in relation to the proposed development.

It is considered that the proposal is acceptable and meets the requirements for Existing Use Rights, which has already been addressed in this report.

#### 5.1A Development on land intended to be acquired for public purpose

The majority of the works are located within the existing building footprint, with only a small addition of a deck located to the south of the dwelling outside of the building footprint. The original development application DA2021/0148 was referred to Transport for NSW for concurrence who has advised that no response is required in relation to the proposed development.

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	10m	0.9m - unaltered	Yes
Rear building line	6.5m	14.8m - unaltered	Yes
Side building line	N - 2.5m	4.4m - unaltered	Yes
	S - 1m	0.6m - unaltered	Yes - no change
Building envelope	N - 3.5m	Within envelope - unaltered	Yes
	S - 3.5m	Outside envelope - unaltered	Yes - no change
Landscaped area	60%	69.57% (924m <sup>2</sup> )	Yes

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	Yes	Yes
D3.9 Building envelope	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

#### Detailed Assessment

#### **B6.3 Off-Street Vehicle Parking Requirements**

The original development application included the conversion of a existing garage into a home office. This reduced the off street parking from two (2) spaces to one (1) space. This is inconsistent with the minimum control requirement. A condition was included in the consent deleting this element of the proposal from the plans.

The proposal for the review of the determination removes the home office form the plans, retaining two car parking spaces on the site. The proposal complies with the requirements of the control.

#### **C1.5 Visual Privacy**

The proposed works do not result in any unreasonable privacy impacts to adjoining properties or the site. The proposed windows and doors are appropriately located, designed and screened by existing vegetation, boundary fence and site layout to limit any potential overlooking or adjoining properties.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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



## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$3,181 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$318,090.

## CONCLUSION

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

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

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

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

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

This Section 8.2 Review application has been assessed having regard for the recommend conditions amending the approved plans and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, the PLEP 2014, PDCP and the relevant codes and policies of Council.

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, and other documentation supporting the application.

The proposed amendments made under this review application are considered sufficient to satisfactorily address the issues identified in the original assessment report. The amended design, which removes the home office and maintains compliant car parking on the site, reduces the environmental impact of the proposal on the Bilgola Locality. In this respect, and based upon the amended plans, it is recommended that Condition 9 be deleted and the proposal is accordingly recommended for approval.

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2021/0037 for Review of Determination of Application DA2021/0148 for Alterations and additions to a dwelling house on land at Lot 3 DP 511677, 1 A The Serpentine, BILGOLA BEACH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA10 - Rev A - Site Plan & Site Analysis	16.02.21	RDO
DA11 - Rev B - Site Management & Erosion Control	10.09.21	RDO
DA12 - Rev B - Car Parking & Vehicle Access	10.09.21	RDO
DA20 - Rev B - Plan - Main Level	10.09.21	RDO
DA21 - Plan - Upper Level	10.09.21	RDO
DA30 - Rev B - Elevations	10.09.21	RDO
DA31 - Rev B - Elevations	10.09.21	RDO

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A400358_03	17 September 2021	RDOO Architect
Bushfire Hazard Assessment & Certificate (Ref: BR-305921-A)	01/03/2021	Bushfire Planning & Design

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

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

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

## 2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged



during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$3,180.90 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 \$318,090.00.

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](http://www.northernbeaches.nsw.gov.au)

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

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

### 5. Security Bond

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

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

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

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

In order to protect property and occupants from flood risk the following is required:

#### Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 0.43m.

#### Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

#### Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level (depth of 0.93m), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

#### Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

#### Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level (minimum height above ground of 0.93m).

#### Balcony

The underfloor area of new balconies below the 1% AEP flood depth (0.43m) is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter must be of an open design from the natural ground level up to the 1% AEP floor level.

#### Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

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.

### 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. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

9. **Boundary Identification Survey**

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

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

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

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

10. **Compliance with Standards**

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

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



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

11. **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](http://www.sydneywater.com.au) for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o 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.

12. **Waste Management Plan**

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

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

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

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

13. **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.

14. **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.

15. **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**

**16. New Vegetation Planting**

Landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Gardening Booklet available on Council's website.

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

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

**17. Clearing for Asset Protection Zones**

Clearing of vegetation for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.

**18. 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.

**19. Stormwater Drainage Disposal Certification**

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

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

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

maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

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

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

Reason: To ensure satisfactory management of stormwater.

20. **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.

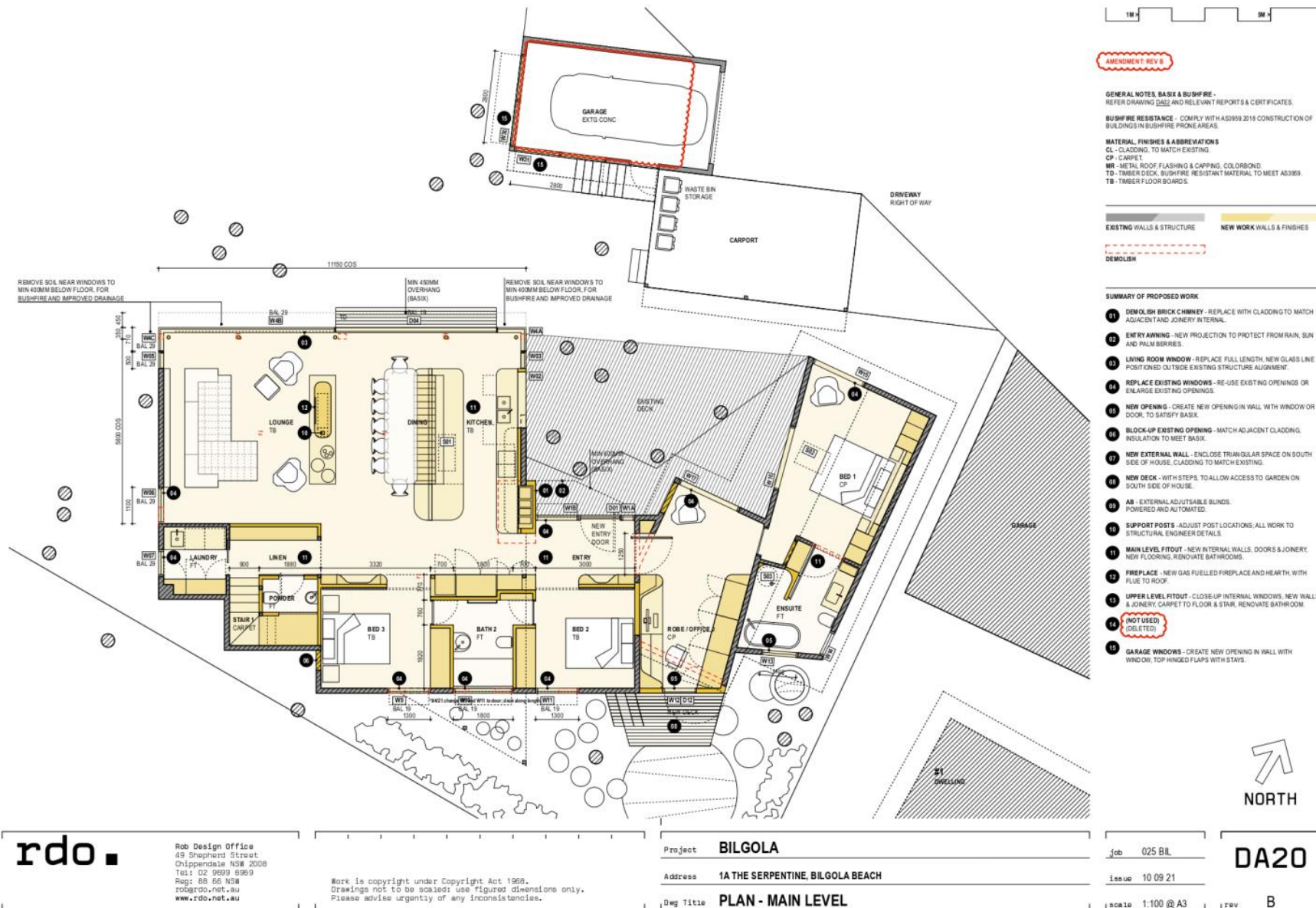
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

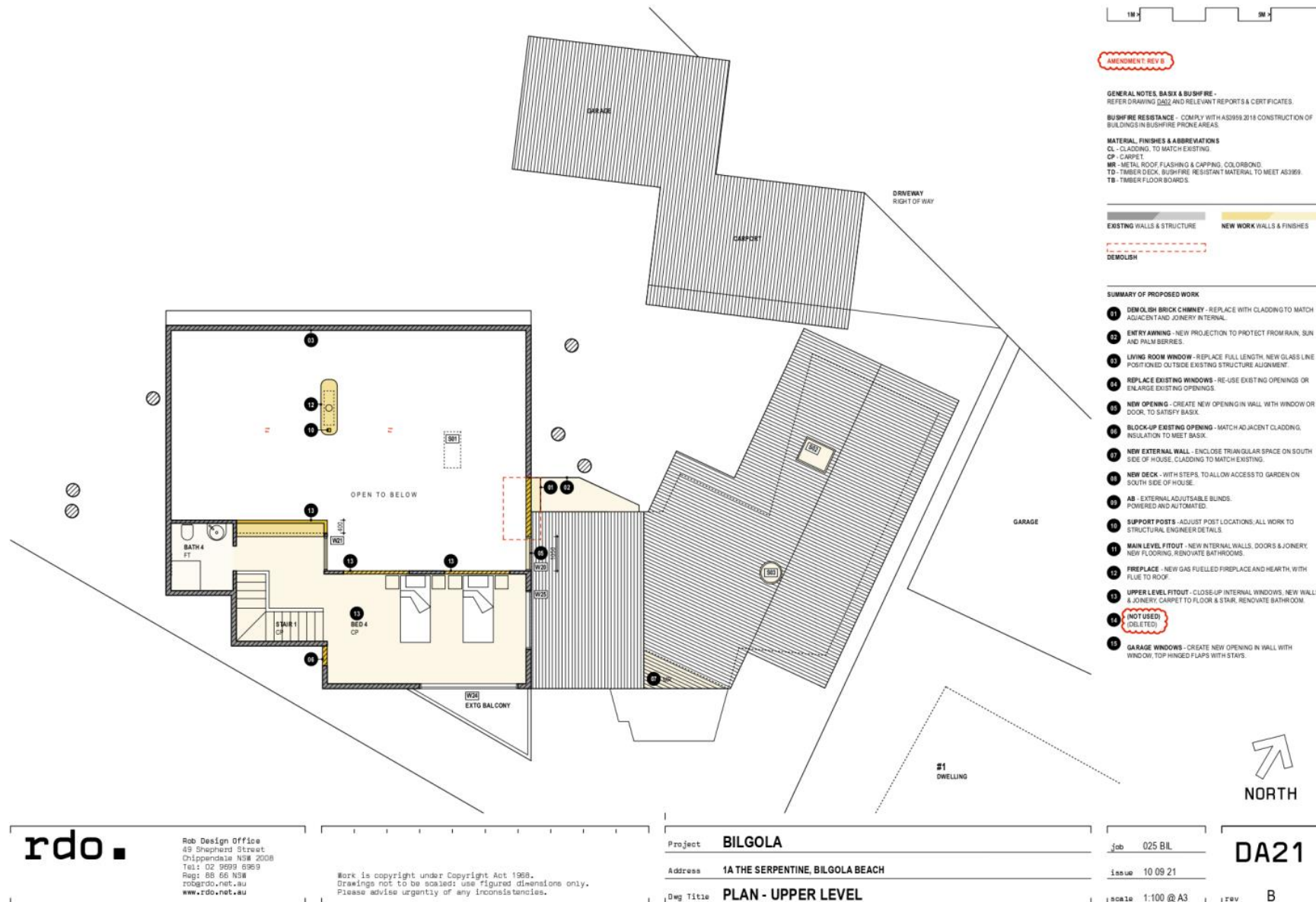
21. **Maintenance of Asset Protection Zones**

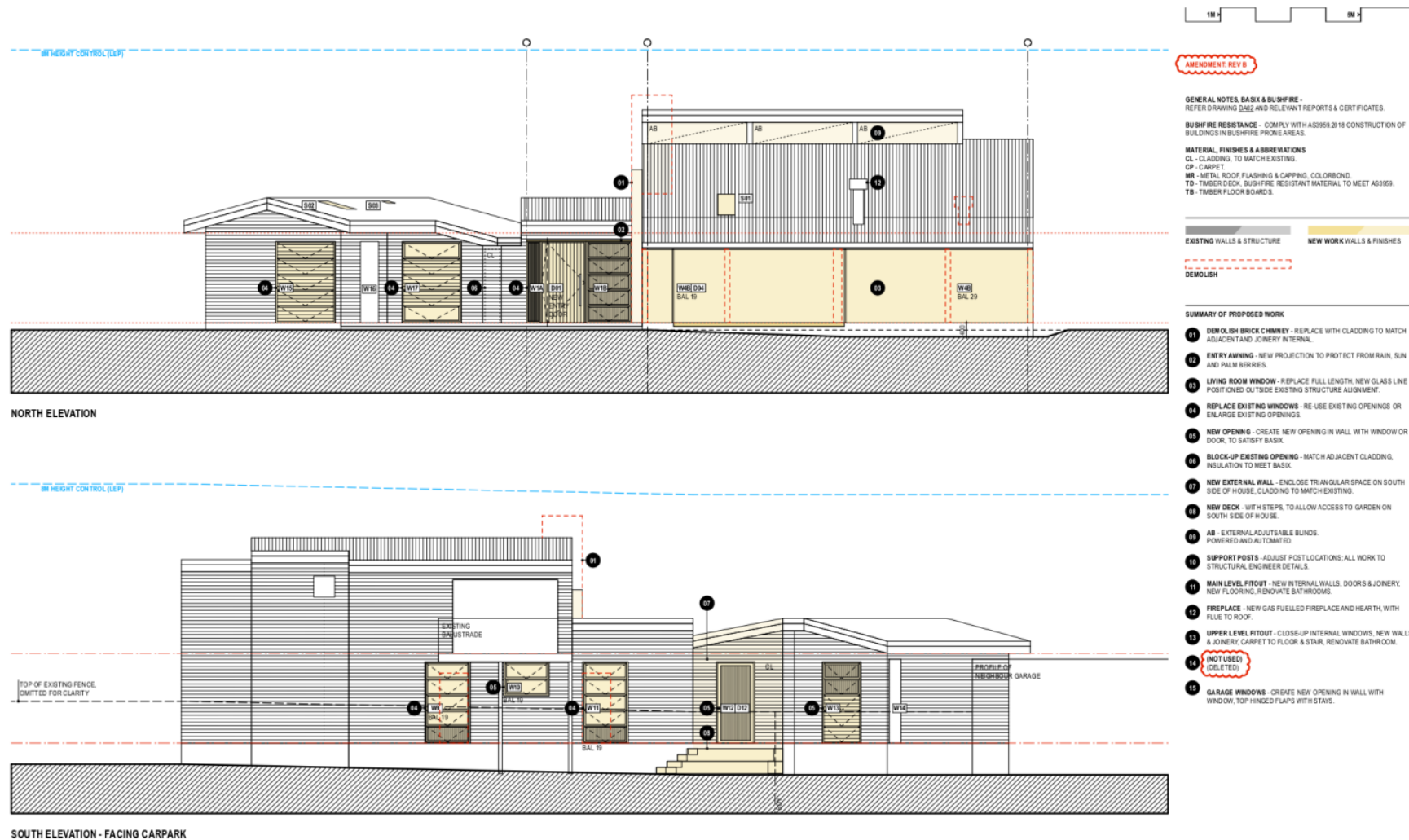
Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.









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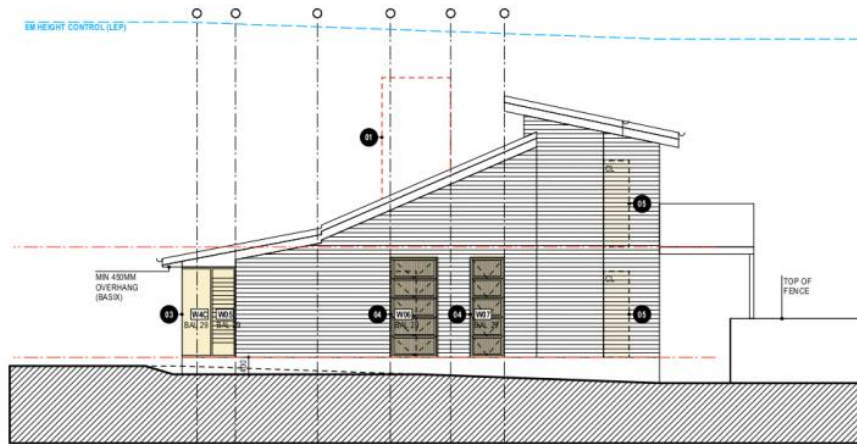
Rob Design Office  
49 Shepherd Street  
Chippendale NSW 2008  
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www.rdo.net.au

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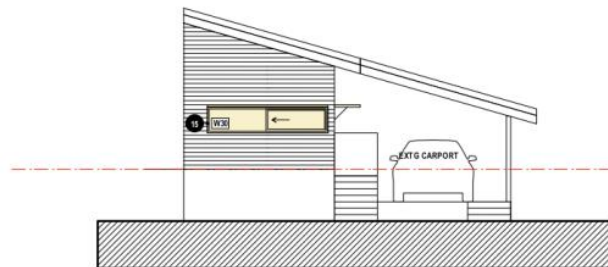
Project **BILGOLA**  
Address **1A THE SERPENTINE, BILGOLA BEACH**  
Dwg Title **ELEVATIONS**

Job **025 BIL**  
Issue **10 09 21**  
Scale **1:100 @ A3**

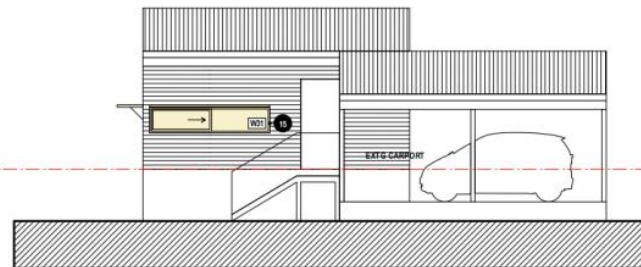
**DA30**  
Rev **B**



HOUSE - WEST ELEVATION



GARAGE - WEST ELEVATION



GARAGE - SOUTH ELEVATION

AMENDMENT REV B

**GENERAL NOTES BASIX & BUSHFIRE**  
REFER DRAWING DA02 AND RELEVANT REPORTS & CERTIFICATES.  
**BUSHFIRE RESISTANCE** - COMPLY WITH AS1859.2018 CONSTRUCTION OF BUILDINGS IN BUSHFIRE PRONE AREAS.  
**MATERIAL, FINISHES & ABBREVIATIONS**  
CL - CLADDING, TO MATCH EXISTING  
CP - CARPET  
MR - METAL ROOF FLASHING & CAPPING, COLORBOND  
TD - TIMBER DECK, BUSHFIRE RESISTANT MATERIAL TO MEET AS1369.  
TB - TIMBER FLOOR BOARDS.

EXISTING WALLS & STRUCTURE  
NEW WORK WALLS & FINISHES  
DEMOLISH

SUMMARY OF PROPOSED WORK

- 01 DEMOLISH BRICK CHIMNEY - REPLACE WITH CLADDING TO MATCH ADJACENT AND JOINERY INTERNAL.
- 02 ENTRY AWNING - NEW PROJECTION TO PROTECT FROM RAIN, SUN AND PALM BERRIES.
- 03 LIVING ROOM WINDOW - REPLACE FULL LENGTH, NEW GLASS LINE POSITIONED OUTSIDE EXISTING STRUCTURE ALIGNMENT.
- 04 REPLACE EXISTING WINDOWS - RE-USE EXISTING OPENINGS OR ENLARGE EXISTING OPENINGS.
- 05 NEW OPENING - CREATE NEW OPENING IN WALL WITH WINDOW OR DOOR, TO SATISFY BASIX.
- 06 BLOCK-UP EXISTING OPENING - MATCH ADJACENT CLADDING, INSULATION TO MEET BASIX.
- 07 NEW EXTERNAL WALL - ENCLOSE TRIANGULAR SPACE ON SOUTH SIDE OF HOUSE, CLADDING TO MATCH EXISTING.
- 08 NEW DECK - WITH STEPS, TO ALLOW ACCESS TO GARDEN ON SOUTH SIDE OF HOUSE.
- 09 AB - EXTERNAL ADJUSTABLE BUNDS, POWERED AND AUTOMATED.
- 10 SUPPORT POSTS - ADJUST POST LOCATIONS, ALL WORK TO STRUCTURAL ENGINEER DETAILS.
- 11 MAIN LEVEL FITOUT - NEW INTERNAL WALLS, DOORS & JOINERY, NEW FLOORING, RENOVATE BATHROOMS.
- 12 FIREPLACE - NEW GAS FUELLED FIREPLACE AND HEARTH, WITH FLUE TO ROOF.
- 13 UPPER LEVEL FITOUT - CLOSE-UP INTERNAL WINDOWS, NEW WALLS & JOINERY CARPET TO FLOOR & STAIR, RENOVATE BATHROOM.
- 14 (NOT USED) (DELETED)
- 15 GARAGE WINDOWS - CREATE NEW OPENING IN WALL WITH WINDOW, TOP HINGED FLAPS WITH STAYS.

rdo.

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www.rdo.net.au

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Project **BILGOLA**  
Address **1A THE SERPENTINE, BILGOLA BEACH**  
Dwg Title **ELEVATIONS**

Job **025 BIL**  
Issue **10 09 21**  
Scale **1:100 @ A3**

**DA31**  
Rev **B**

**ITEM 3.2**                      **DA2021/1670 - 16 ALAMEDA WAY WARRIEWOOD -  
CONSTRUCTION OF A SECONDARY DWELLING**

**REPORTING MANAGER**      Rodney Piggott

**TRIM FILE REF**              2022/049809

**ATTACHMENTS**            1 [↓](#) Assessment Report

                                      2 [↓](#) Site Plans and Elevations

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to DA2021/1670 for construction of a secondary dwelling on land at Lot 10 DP 227843, 16 Alameda Way WARRIEWOOD, subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1670
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<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 10 DP 227843, 16 Alameda Way WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Construction of a secondary dwelling
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Miroslav Mile Stojic
<b>Applicant:</b>	Miroslav Mile Stojic

<b>Application Lodged:</b>	17/09/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	24/09/2021 to 08/10/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 195,320.00
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### EXECUTIVE SUMMARY

The proposed development is for the construction of a secondary dwelling, including a lower ground floor storage area at the rear of the subject site. The proposal generally demonstrates consistency with the outcomes of the built form controls, with minor non-compliance with the rear setback, building envelope and landscaped area control requirements. Despite these non-compliant elements, the proposed development is not considered to cause unreasonable bulk, scale or amenity impacts to the streetscape or adjacent properties.

In accordance with Council's Management of Conflicts of Interest guidelines, the application is referred to the Development Determination Panel for determination as the applicant and property owner of the subject site is a non-planning member of Council staff and a submission in objection to the proposed development has been received.

The application has been assessed against the relevant environmental planning instruments and the outcome of the 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 included at the end of the report.

### **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for the demolition of an existing detached garage and the construction of a detached secondary dwelling with a subfloor storage area.

### **AMENDED PLANS**

During assessment, Council requested the applicant to alter the design of the proposed secondary dwelling to ensure that it complied with the maximum permissible building height.

The applicant provided an amended roof design that resulted in a reduction in the overall building height by 1.3m.

In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain, re-notification of the application was not required.

### **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 - 7.10 Essential services  
Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings  
Pittwater 21 Development Control Plan - D14.8 Side and rear building line  
Pittwater 21 Development Control Plan - D14.11 Building envelope  
Pittwater 21 Development Control Plan - D14.13 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 10 DP 227843 , 16 Alameda Way WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northeastern side of Alameda Way.</p> <p>The site is irregular in shape with a frontage of 15.695m along Alameda Way and a maximum depth of 49.62m. The site has a surveyed area of 872.9m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates two-storey residential dwelling and a detached garage.</p> <p>The site falls approx. 9m from the northeast towards the southwest.</p> <p>The site contains large landscaped front and rear setback areas. A large canopy tree and a smaller tree are located in the front setback area and several small trees are located at the rear.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.</p>

Map:



## SITE HISTORY



A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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



Section 4.15 Matters for Consideration	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/09/2021 to 08/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Kevin Lawrence Churchill	3 / 4 Wetherill Street NARRABEEN NSW 2101

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

- Building height
- Rear setback
- Use of ground floor

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the proposed secondary dwelling exceeds the maximum permitted building height.*

Comment:

The original proposed building height of the secondary dwelling was 6.5m, which exceeded the maximum permitted 5.5m building height. Council did not support the proposed building height and requested the proposal be amended to ensure compliance with the building height requirement. The applicant submitted a revised roof design which lowered the overall height of the building by 1.3m and demonstrates compliance with the building height requirement.

- *Concern is raised that the rear setback of the secondary dwelling is unreasonable and does not take into account the setback of the eave and gutter.*

Comment:

While the proposed secondary dwelling does not comply with the minimum rear setback requirement, the overall impact to adjacent properties is not considered to be unreasonable. Detailed assessment of this non-compliance is included in this report under Part D14.8 of P21DCP. Building setbacks are measured from the external walls. As standard practise, eaves and gutters are not generally included in setback calculations.

- *Concern is raised that the ground floor storage area may be used as a separate habitable room in the future.*

Comment:

The submitted plans identify the ground floor area of the building as 'storage'. As such, the use of this space for the purpose of habitable floor space is not permitted by the development consent.

## REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>No objection, subject to conditions</b></p> <p>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.</p> <p>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.</p>
Landscape Officer	<p><b>No objection, subject to conditions</b></p> <p>The application seeks consent for construction of a secondary dwelling.</p> <p>Council's Landscape Referral staff have assessed the proposal against the following Pittwater 21 DCP Controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> </ul> <p>The plans indicate that no significant landscape features are affected by the works and existing landscaping is to be retained.</p> <p>No objections are raised to approval with regard to landscape issues subject conditions.</p>
NECC (Development Engineering)	<p><b>No objection, subject to conditions</b></p> <p>The proposal is for the demolition of the existing garage and the construction of a secondary dwelling.</p> <p><u>Carparking</u></p> <p>The architectural plans proposes three car parking spaces next to the existing dwelling in tandem. As this area is essentially enclosed with the building on one side and the boundary fence on the other, particularly for the second car space, the minimum dimensions required for a parking space are 3.0m x 6.0m in accordance with Pittwater 21 DCP Clause 6.3. The current arrangement does not meet these requirements.</p> <p>Additionally based on the survey plan provided the gradient of the proposed parking area exceeds the maximum gradient of 5%. Gradients of proposed parking areas are to be in accordance with AS2890.1</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> <li>• <i>Parking facilities for the development in accordance with</i></li> </ul>

Internal Referral Body	Comments
	<p><i>Pittwater 21 DCP Clause 6.3.</i></p> <p><b>Additional Information Provided on 20/12/2021</b></p> <p>The amended architectural plans proposes two car parking spaces in front of the existing dwelling. Gradients of proposed parking areas are to be in accordance with AS2890.1 as conditioned. No objections to approval subject to conditions as recommended.</p>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

##### SEPP 55 - Remediation of Land

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

##### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1183223S, dated 01/09/2021).

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

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



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

#### 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:	Subclause (2FA) - 5.5m	5.5m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### 7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

#### Comment:

All of the above essential services are available on the site. The proposed development does not alter the availability of the services.

#### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Parking area - 11m	N/A	Yes
Rear building line	6.5m	5.4m	16.9%	No
Side building line	SE - 2.5m	11.3m	N/A	Yes
	NW - 1m	1m	N/A	Yes
Building envelope	SE - 3.5m	Within envelope	N/A	Yes
	NW - 3.5m	Outside envelope	13.3%	No
Landscaped area	60% (523.7m <sup>2</sup> )	55.4% (484m <sup>2</sup> )	7.6% (39.7m <sup>2</sup> )	No

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.14 Warriewood 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
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	No	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14.2 Scenic protection - General	Yes	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	Yes	Yes
D14.8 Side and rear building line	No	Yes
D14.11 Building envelope	No	Yes
D14.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

#### **C1.11 Secondary Dwellings and Rural Worker's Dwellings**

##### Description of non-compliance

The control states that a secondary dwelling above a detached garage is not supported.

The proposed development includes the construction of a secondary dwelling that has an incorporated subfloor area indicated on the plans as storage. While not described as a garage, the proposed development is sited in the same location as an existing detached garage and dimensions of the storage area is similar to that of a single garage.

As such, it is expected that this area will likely be used for the parking or storage of motor vehicles as is assessed as a garage.

##### Merit consideration

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

- *Limitation of the visual bulk and scale of development.*

##### Comment:

The proposed development is a new building and is designed to integrate with the slope of the land. While the building has a small breach of the building envelope along the western elevation, it is considered that its overall bulk and scale will not cause unreasonable impact to adjacent properties. The height of the building is compliant with the maximum permissible building height for secondary dwellings.

- *Provision of design flexibility for second storey development.*

##### Comment:

The proposed development provides a design that is effectively integrated into the slope of the land. The proposal demonstrates that a secondary dwelling can be incorporated into a part one and two storey structure whilst limiting the overall footprint for development on the site.

- *Restriction of the footprint of development site.*

Comment:

By incorporating a potential parking area within the footprint of the secondary dwelling, total building footprint area is able to be restricted.

- *Retention of natural vegetation and facilitation planting of additional landscaping.*

Comment:

Council's Landscape Officer has assessed the proposal and is satisfied with the development with respect to tree removal. Conditions have been recommended for tree protection.

- *Provision of rental accommodation.*

Comment:

The proposed secondary dwelling has the potential to be utilised as rental accommodation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D14.8 Side and rear building line**

Description of non-compliance

The control requires built structures other than driveways, fences and retaining walls to be setback a minimum of 6.5m from the rear boundary.

The proposed development is setback 5.4m from the rear boundary. This represents a variation of 16.9%.

Merit consideration

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

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

Comment:

The proposed development will be mostly screened from view from the public domain by the existing dwelling. The design and siting of the of the secondary dwelling will not result in any unreasonable view loss and the design of the structure will complement the existing dwelling therefore creating no unreasonable visual impacts. In this regard, the desired future character of the Warriewood locality is considered to be achieved.

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



Comment:

Through revision of the proposed design of the roof form during assessment, the built form of the development is considered to be minimised to a reasonable extent. This is achieved by altering the originally proposed high-angle skillion roof with a lower profile design. This reduced the overall building height by approx. 1m and is expected to substantially reduce the impact of bulk and scale of the development on the rear adjacent property.

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

Comment:

No significant view corridors or vistas are expected to be unreasonably hindered as a result of the proposed development.

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

Comment:

As above, no significant view corridors or vistas will be unreasonably hindered as a result of the proposed development.

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

Comment:

The proposed development is not expected to unreasonably impact upon the existing level of amenity and solar access afforded to the site and adjacent properties.

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

Comment:

The development does not greatly impact on the existing landscaped area for the site as most new structures will be partially located over existing building footprint or hard surface.

- *Flexibility in the siting of buildings and access.*

Comment:

The proposed development generally maintains the setbacks of the existing building with an increased setback of the upper level to the northwest side boundary. As such, the development is considered to be appropriately sited.

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

Comment:

The proposal does not seek the removal of any established native vegetation or trees. The existing trees and vegetation on the site is expected to assist with visually reducing the built form of the proposed development.

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

Comment:

The proposed development will not disrupt the character of the surrounding urban environment and will not detract from the rural and bushland character of the area as the structure will be mostly unseen from the streetscape.

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

Comment:

Not applicable, given the site does not adjoin a commercially zoned property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D14.11 Building envelope**

Description of non-compliance

The control requires that a building must be sited within the building envelope which is determined by projecting planes at 45° from a height of 3.5m above the ground level at the side boundary.

The proposed secondary dwelling encroaches beyond the prescribed envelope control along the northwest elevation by up to 0.6m in height for a length of 7.3m, which represents a variation of nil to 13.3%.

Merit consideration

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

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

Comment:

The proposed development will be mostly screened from view from the public domain by the existing dwelling. The design and siting of the of the secondary dwelling will not result in any unreasonable view loss and the design of the structure will complement the existing dwelling therefore creating no unreasonable visual impacts. In this regard, the desired future character of the Warriewood locality is considered to be achieved.

- *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 proposal demonstrates compliance with the maximum allowable building height and does not require the removal of any existing vegetation. The development not be readily perceivable from the

streetscape due to its siting at the rear of the property behind the dwelling.

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

Comment:

Notwithstanding the breach of the building envelope, the proposed development is considered to appropriately respond to the spatial characteristics of the site and surrounds and appropriately mitigates built form impact on adjacent properties. The development demonstrates a compliant building height and does not require the removal of any existing vegetation.

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

Comment:

Through revision of the proposed design of the roof form during assessment, the built form of the development is considered to be minimised to a reasonable extent. This is achieved by altering the originally proposed high-angle skillion roof with a lower profile design. This is expected to substantially reduce the impact of bulk and scale of the development on adjacent properties.

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

Comment:

No significant view corridors or vistas are expected to be unreasonably hindered as a result of the proposed development.

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

Comment:

The proposed development is not expected to unreasonably impact upon the existing level of amenity and solar access afforded to the site and adjacent properties.

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

Comment:

The proposal does not seek the removal of any established native vegetation or trees. The existing trees and vegetation on the site is expected to assist with visually reducing the built form of the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D14.13 Landscaped Area - Environmentally Sensitive Land**

Description of non-compliance



The control requires a minimum of 60% (523.7m<sup>2</sup>) of the total site area to be landscaped area.

The proposed development provides 55.4% (484m<sup>2</sup>) of the total site area as landscaped area, which represents a variation of 7.6% (39.7m<sup>2</sup>).

The variations provision of the Control allows for up to 6% of the site area to be impervious landscape treatment, provided the outcomes of the control are achieved and such areas are used for outdoor recreational purposes only. Upon application of such provision, the landscaped area of the site increases to 61.4%.

#### Merit consideration

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

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

#### Comment:

The proposed development will be mostly screened from view from the public domain by the existing dwelling. The design and siting of the of the secondary dwelling will not result in any unreasonable view loss and the design of the structure will complement the existing dwelling therefore creating no unreasonable visual impacts. In this regard, the desired future character of the Warriewood locality is considered to be achieved.

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

#### Comment:

Through revision of the proposed design of the roof form during assessment, the built form of the development is considered to be minimised to a reasonable extent. This is achieved by altering the originally proposed high-angle skillion roof with a lower profile design. This reduced the overall building height by approx. 1m and is expected to substantially reduce the impact of bulk and scale of the development on the rear adjacent property.

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

#### Comment:

The proposed development is not expected to unreasonably impact upon the existing level of amenity and solar access afforded to the site and adjacent properties.

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

#### Comment:

The proposal does not seek the removal of any established native vegetation or trees. The existing trees and vegetation on the site is expected to assist with visually reducing the built form of the proposed development.

- *Conservation of natural vegetation and biodiversity.*

#### Comment:



No native trees or vegetation are proposed for removal. In addition, the development is supported by Council's Landscape Officer.

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

Comment:

The development will provide soft landscaped areas that are of sufficient soil depth for the infiltration of stormwater. It is considered that stormwater runoff will be reasonably reduced as a result of this proposal.

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

Comment:

The proposal will not prevent the establishment of any trees and landscape features, thereby preserving the bushland character of the escarpment and the locality.

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

Comment:

The site is considered to provide adequate areas across the site that are of sufficient soil depth to minimise run-off and assist with stormwater management.

Having regard to the above assessment, 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 \$ 977 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 195,320.

#### **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

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 DA2021/1670 for Construction of a secondary dwelling on land at Lot 10 DP 227843, 16 Alameda Way, WARRIEWOOD, 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
21-18 Sheet 1 Issue C	10/12/2021	RK Designs
21-18 Sheet 2 Issue C	10/12/2021	RK Designs
21-18 Sheet 3 Issue C	10/12/2021	RK Designs
21-18 Sheet 4 Issue C	10/12/2021	RK Designs

21-18 Sheet 6 Issue C	10/12/2021	RK Designs
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Engineering Plans		
Drawing No.	Dated	Prepared By
ME-2021-SW036 SW001 Rev A	26/08/2021	Modular Engineers
ME-2021-SW036 SW010 Rev A	26/08/2021	Modular Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1183223S	01/09/2021	RK Designs
Geotechnical Assessment (Ref: J3567)	27/08/2021	White Geotechnical Group

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	10/09/2021	RK Designs

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

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

## 2. Approved Land Use

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house* and *secondary dwelling*.

A *dwelling house* is defined as:

“a building containing only one dwelling.”

A *secondary dwelling* is defined as:

“a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.”

(as defined by the Pittwater Local Environment Plan 2014 Dictionary)

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

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

**3. 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 \$976.60 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 \$195,320.00.

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](http://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](http://www.northernbeaches.nsw.gov.au)).

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

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

7. **Stormwater Disposal**

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

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

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 27/8/2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Boundary Identification Survey**

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

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

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

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

10. **Fire separation of garage top dwellings**

Where parts of a Class 1a dwelling are located above a Class 10a private garage that is not associated with the Class 1a dwelling, fire separation works is required to comply with Part 3.7.4



of the Building Code of Australia –“Fire separation of garage top dwellings”.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

**11. Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Gradients of proposed parking areas are to be in accordance with AS2890.1.

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

Reason: To ensure suitable vehicular access to private property.

**12. 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](http://www.sydneywater.com.au) for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**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.
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

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

The Certifying Authority must ensure that:

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

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

**Reason:** Tree and vegetation protection.

#### 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.

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

17. **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.

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

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

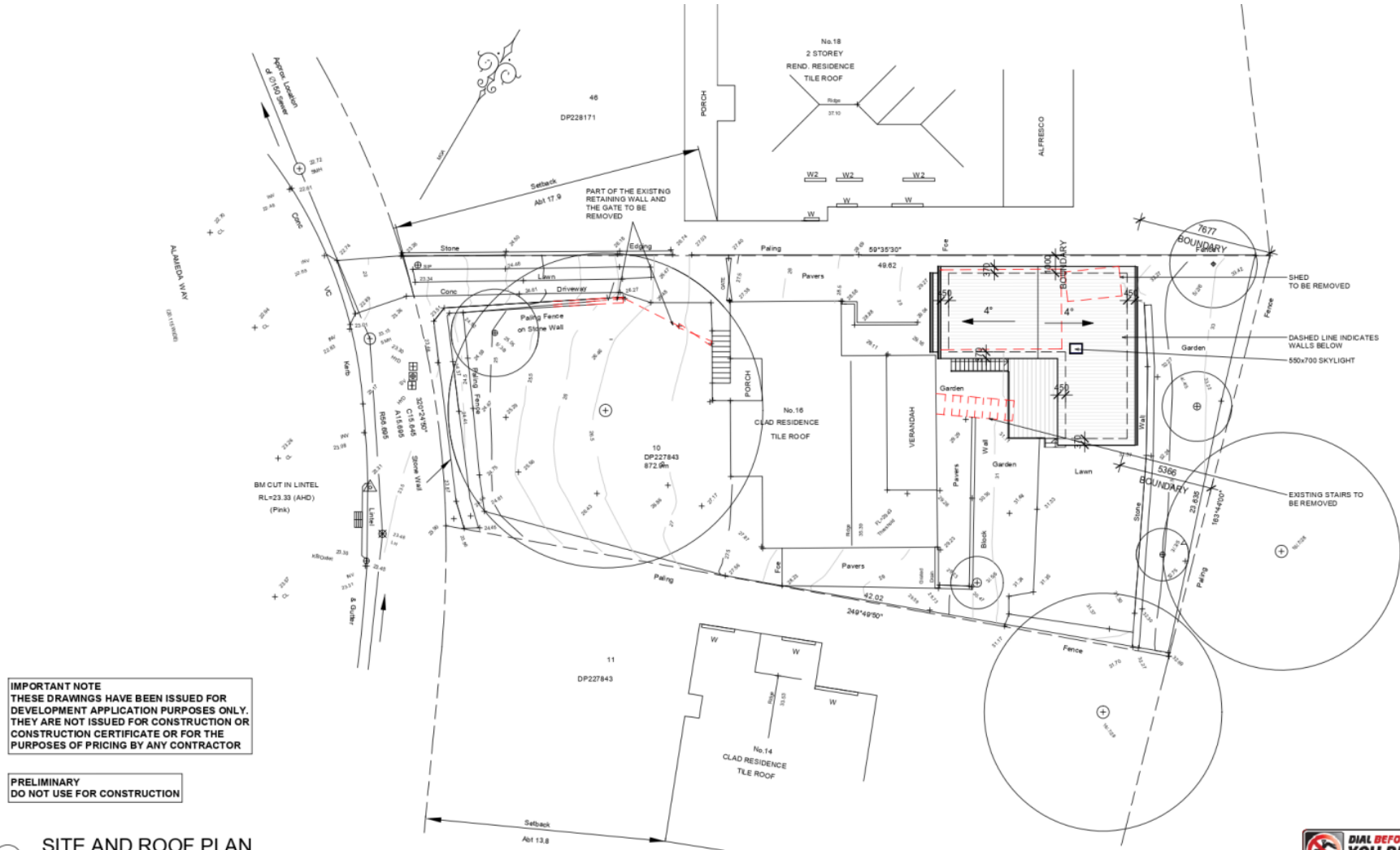
Reason: To ensure geotechnical risk is mitigated appropriately.

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

19. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



**1 SITE AND ROOF PLAN**  
1 : 200



**GENERAL NOTES**  
All dimensions are to be confirmed on site by the builder/subcontractor. Any incongruities must be reported to the Designer before commencement of any work.  
No Survey has been made on the boundaries. All bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.  
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used. The boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor.  
In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the Designer before proceeding further with any work.  
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.  
Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.  
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.  
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	amendment
LS	19/02/21	A	ISSUE FOR DA
LS	22/11/21	B	ISSUE FOR ADDITIONAL INFO
LS	10/12/21	C	ISSUE FOR ADDITIONAL INFO

**project**  
PROPOSED CONSTRUCTION OF A GRANNY FLAT AND ATTACHED STORAGE AT 16 ALAMEDA WAY, WARRIEWOOD NSW 2102 LOT 10 DP 227843

**client**  
MILE STOJIC



**drawing**  
SITE AND ROOF PLAN

project no 21-18  
date 19/02/21  
sheet no 1

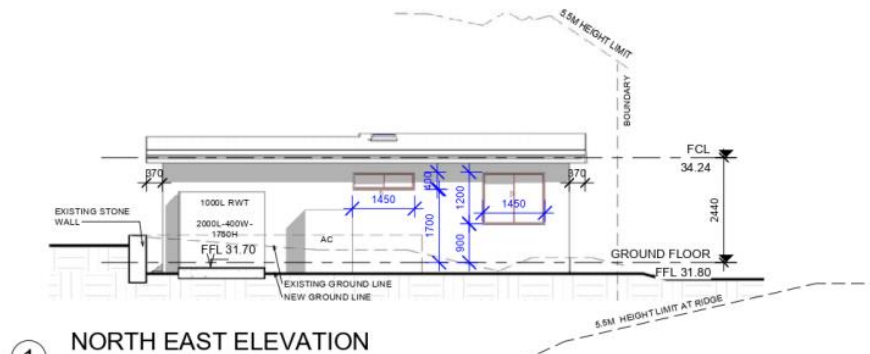
scale @ A3 issue  
1 : 200 C RK

**bdac**  
ACCREDITED  
BUILDING DESIGNER

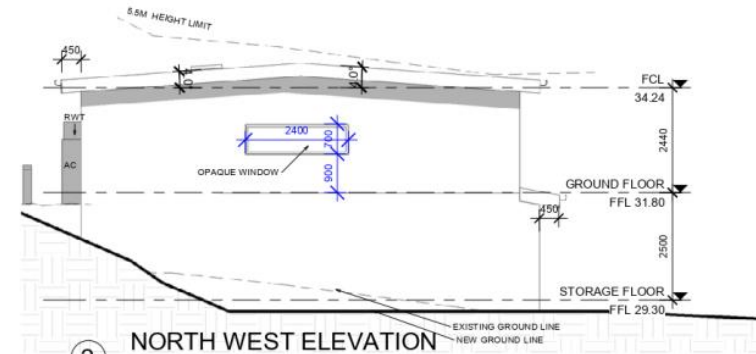
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02 9633 4797  
abn. 393 300 330 53  
spaces designed for life

**RK  
DESIGNS**





**1 NORTH EAST ELEVATION**  
1 : 100

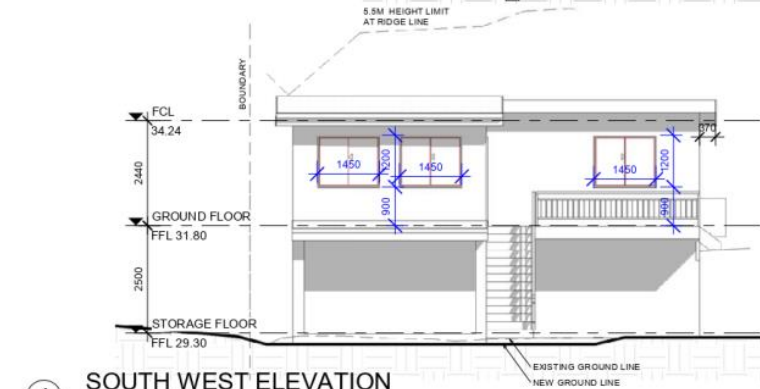


**2 NORTH WEST ELEVATION**  
1 : 100

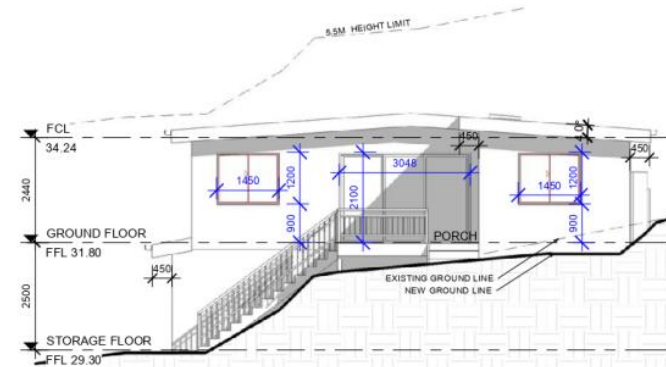


**5 SECTION A-A**  
1 : 100

**IMPORTANT NOTE**  
THESE DRAWINGS HAVE BEEN ISSUED FOR DEVELOPMENT APPLICATION PURPOSES ONLY. THEY ARE NOT ISSUED FOR CONSTRUCTION OR CONSTRUCTION CERTIFICATE OR FOR THE PURPOSES OF PRICING BY ANY CONTRACTOR



**4 SOUTH WEST ELEVATION**  
1 : 100



**3 SOUTH EAST ELEVATION**  
1 : 100

**GENERAL NOTES**  
All dimensions are to be confirmed on site by the builder/subcontractor. Any discrepancies must be reported to the Designer before commencement of any work.  
No survey has been made on the boundaries. All bearings, distances and areas have been taken from the contour survey plan. A survey must be carried out to confirm the exact boundary locations.  
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used. The boundary setbacks take precedence over all other dimensions. The survey work must be performed by a registered Surveyor.  
In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the designer before proceeding further with any work.  
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.  
Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.  
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.  
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	amendment
LS	19/02/21	A	ISSUE FOR DA
LS	22/11/21	B	ISSUE FOR ADDITIONAL INFO
LS	10/12/21	C	ISSUE FOR ADDITIONAL INFO

project  
**PROPOSED CONSTRUCTION OF A GRANNY FLAT AND ATTACHED STORAGE AT 16 ALAMEDA WAY, WARRIEWOOD NSW 2102 LOT 10 DP 227843**

client  
**MILE STOJIC**



**bdag**  
ACCREDITED  
BUILDING DESIGNER

drawing  
**ELEVATIONS AND SECTION**  
project no. 21-18  
date 19/02/21  
sheet no. 4  
scale @ A3 issue drawn  
1 : 100 C RK

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abn. 393 300 330 53  
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**RK  
DESIGNS**

ITEM 3.3	DA2021/1783 - 23 BAROONA ROAD CHURCH POINT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Tony Collier
TRIM FILE REF	2022/054685
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plans and Elevations</a> 3 <a href="#">↓ Clause 4.6</a>

## 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 DA2021/1783 for Alterations and additions to a Dwelling House on land at Lot 4 DP 567442, 23 Baroona Road CHURCH POINT, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1783
<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot 4 DP 567442, 23 Barooka Road CHURCH POINT NSW 2105
<b>Proposed Development:</b>	Alterations and additions to a Dwelling House
<b>Zoning:</b>	R5 Large Lot Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Ganna Konareva Andriy Konarev
<b>Applicant:</b>	Andriy Konarev
<b>Application Lodged:</b>	07/10/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	19/10/2021 to 02/11/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 29.4%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 990,000.00

### EXECUTIVE SUMMARY

The subject development application is for alterations and additions to an existing dwelling.

The application includes a request under Clause 4.6 of the Pittwater LEP 2014 to vary the development standard for height. As the application proposes a variation to the height development standard of more than 10% and involves a Class 1 Dwelling, the application is referred to Northern Beaches Development Determination Panel.

The maximum height of the proposed development has been measured at 11.0m which represents a variation of 29.4% to the prescribed 8.5m building height limit.

Due to the steep slope of the site and the siting and form of the existing building, the non-compliant height element would not substantially alter the character or appearance of the existing dwelling. When assessed on its merits, it is concluded that the bulk and scale of the proposal will be commensurate with the existing built form of the site and surrounding built environment and that the height breach will not result in unreasonable amenity impacts to adjoining neighbours.

No submissions were received in response to neighbour notification.

During the assessment, Council's Environmental Health Officer has raised concern that the existing wastewater management system located on site was not appropriately accredited. As such, a Deferred Commencement condition is recommended, whereby the proposed works would be only able to start once accreditation of the wastewater management system has been approved by Council.

On the balance, although the proposed development is non-compliant with a number of planning controls, it is considered that many of these are a consequence of the context of the site and the existing built form. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited upon the existing building footprint.

Subject to the recommended conditions of consent, it is considered that the proposal would result in a development that displays reasonable scale and density compatible with the surrounding development and would not result in unreasonable amenity impacts to surrounding properties.

Accordingly, the application is referred to the DDP with a recommendation for approval.

## **PROPOSED DEVELOPMENT IN DETAIL**

The new works will provide for demolition works and the construction of alterations and additions to an existing dwelling. Specifically the proposed works consist of the following:

### Demolition

- Partial demolition of the existing dwelling, internal walls, carport, decking, cabana and spa.

### Lower Ground Floor

- Demolition works.
- New Pool terrace/balcony and new external steps & landings.
- New lift access.
- New sitting/change area.
- New shower room and WC.
- Addition to rumpus room.

### Ground Floor

- Demolition works.
- Balcony & Terrace and new external Steps down to Lower Ground Floor Landing.
- Alterations & Additions to form new - Double Garage; Entry Foyer; Dining; Family & Kitchen with Pantry; a Library; Store; Lift; internal Staircase; Powder room. Laundry; Guest Bedroom and a Hallway.



### First Floor

- Demolition works.
- Alterations & Addition forming a Master Suite with Ensuite and Walk in Robe, a new Sitting room & Void over the Ground Floor Dining room; Living room & Lift. internal Staircase; a Games room; two Bedrooms each with Ensuite and Built in Robe; a new Balcony off the Bedrooms and a new Balcony off the Master Bedroom suite.

### External Works

- Removal of carport roof and beams to make open hardstand parking area.
- Driveway extension.
- New retaining walls.
- New "secondary dwelling parking area".

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - 1.9A Suspension of covenants, agreements and instruments  
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater Local Environmental Plan 2014 - 7.10 Essential services  
Pittwater 21 Development Control Plan - A4.2 Bayview Heights Locality  
Pittwater 21 Development Control Plan - B4.3 Flora and Fauna Habitat Enhancement Category 2 Land  
Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
Pittwater 21 Development Control Plan - C1.13 Pollution Control  
Pittwater 21 Development Control Plan - D2.5 Front building line  
Pittwater 21 Development Control Plan - D2.6 Side and rear building line  
Pittwater 21 Development Control Plan - D2.9 Landscaped Area - Non Urban

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 567442 , 23 Baroona Road CHURCH POINT NSW 2105
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Baroona Road.</p> <p>The site is irregular in shape with a frontage of 5.03m along Baroona Road and a depth of 85.56m.</p> <p>The site has a surveyed area of 3709m<sup>2</sup> and a crossfall of approximately 23m from the north-west to the south-east.</p> <p>The site is located within the R5 Large Lot Residential zone and accommodates an existing two &amp; three storey dwelling house with detached carport. A recently approved detached secondary dwelling is currently being constructed to the south of the dwelling. The site is burdened by a Right of Carriageway easement along the northern boundary which provides vehicle access to 25 Baroona Road. The site also benefits from Right of Carriageway access along the access driveway of No.21 Baroona Road.</p> <p>The site contains a variety of native canopy trees and shrubs.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Adjoining and surrounding development is characterised by similar one to three storey dwelling houses.</p>

Map:



## SITE HISTORY

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

### Development Application - DA2020/1278

Construction of a secondary dwelling - Approved 19/11/2020 (under construction)

### Development Application - N0137/11

Demolition of the existing dwelling and construction of a new dwelling, driveway, swimming pool and associated landscaping - Approved 09/12/2011 (Not constructed)

## 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.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to sewerage details.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

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

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/10/2021 to 02/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>General Comments</b></p> <p>Although its not stated that the fireplace will be removed, the site plan shows Open up wall as required for new door, therefore it is expected</p>



Internal Referral Body	Comments
	<p>that the fireplace will be removed and not replaced</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (unsewered lands)	<p>Council preferences a "deferred commencement" condition for this circumstance, whereby, Construction Certificate can only be issued once accreditation of the waste water management system has been completed.</p> <p>It is recommended that the owner/occupier provide proof of 'installation and operation of accredited wastewater management system' for the primary dwelling prior to any other works, approval is required via a 'Section 68 Local Government Act application'.</p>
Landscape Officer	<p>The application seeks consent for alterations and additions to an existing dwelling.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan (R5 Zone) , and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> </ul> <p>The Arborist's Report submitted with the application prepared by Aura Tree Services is noted.</p> <p>The plans indicate removal of several small trees adjacent to the existing dwelling. The Arborist's Report raises no issues with the proposed tree removals.</p> <p>No objections are raised with regard to landscape issues subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and additions to dwelling. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b>  <b>Biodiversity Conservation Regulation 2017</b>  <b>Pittwater Local Environmental Plan (PLEP)</b></p> <ul style="list-style-type: none"> <li>• 7.6 Biodiversity Protection</li> </ul> <p><b>Pittwater Development Control Plan (PDCP)</b></p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>B4.3 Flora and Fauna Habitat Enhancement Category 2 Land</li> </ul> <p>The northwest of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values (BV) Mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS).</p> <p>As the submitted Arboricultural Assessment &amp; Management Report (Aura 2021) states that the application does not require the removal of native trees within the BV mapped areas, the BOS is not triggered. The application does not seek to remove any locally-native trees, therefore the Biodiversity referral team have no objection to the proposal. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>The proposed increase in impervious area does not warrant OSD. The submitted Geotechnical report addresses the relevant DCP controls. The existing driveway crossing is to remain which is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. No objection to the application.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposal is for alterations and additions to the dwelling, which is well outside the flood affected part of the property.</p>
NECC (Water Management)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. No objection to the application, subject to conditions.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

application hereunder.

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No.A425223 dated 23 September 2021).

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

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

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

#### **Pittwater Local Environmental Plan 2014**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.05m	29.4%	No

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### 1.9A Suspension of covenants, agreements and instruments

The site is affected by a right of carriageway easement which runs along the northern portion of the land and provides driveway access to the surrounding properties from Baroona Road. Conditions are recommended to ensure that no works are to be undertaken on the right of carriageway and that any damage during construction is restored. Conditions will also be imposed to ensure that the right of way is not impeded and that access is maintained at all times for properties which benefit from this right of way.

The proposal also seek consent for a parking area located off the access handle No.21 Baroona Road. During the Assessment, confirmation was provided that the subject site has Right of Carriageway through this driveway and owners consent from No.21 Baroona Road was provided.

##### 4.3 Height of buildings

Clause 4.3 (2) stipulates that 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 subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The maximum height of the proposed development has been measured at 11.0m from the interpolated ground levels for the site (pre-excavation) and AHD levels as per the Building Height definition under PLEP 2014. This represents a variation of 29.4%

##### 4.6 Exceptions to development standards

#### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.0m







**Figure 2:** 3D modelling depicting proposed areas above 10.0m height variation.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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



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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

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

The applicants written request argues, in part:

- The departure from the standard is a direct function of the site's steep (20.20 slope within the dwelling footprint) and predominantly unaltered topographical characteristics.
- The existing built form departs from the standard
- The height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply.
- The built form is not readily visible from the surrounding public domain. There is no unreasonable visual impact or visual built form dominance.
- All habitable accommodation is provided below the height standard and established FFL's are not altered.
- The building height breaching elements would be over an existing footprint do not themselves require excavation or modification of the landform.
- The height standard non-compliance will not result in adverse environmental impacts to neighbouring properties and the surrounding public domain.
- The scale is broken down by the articulation of a traditional and integrated façade design. Setbacks and the use of different materials including quality and durable landscaping reduces the perception of any apparent bulk. The retained portions of the dwelling with an integrated first floor addition will positively contribute to the likely future built form character.
- A strictly complying development would require demolition of the existing dwelling which is economically impractical. Considering demolition of the existing dwelling, in that sense it can be said that compliance with the standard would hinder the attainment of the objects of Section 1.3 of the Act. The departure from the standard is minor and does not result in any unreasonable environmental or amenity related impacts.

Council's Planning Assessment Officer generally concurs with the applicant's justification.

The slope and topography of the land is considered steep. The development has been designed to step with the fall of the land and is considered compatible with the existing dwelling and newer development within the vicinity. It is considered that due to the slope of the site, the siting of the existing building and the generous setbacks (for non-compliant elements), that the non-compliance would not substantially alter the character or appearance of the existing dwelling.

It is further noted that the works are largely confined to the existing building footprint and do not result in unreasonable excavation, tree removal or environmental impact. The non-compliance would also be a direct result of the existing built form.



It is also agreed that the proposal will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance. The proposal has been designed to allow for adequate internal amenity, without compromising the amenity of adjoining 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 R5 Large Lot Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 additions are comparable with that of the built form of the existing dwelling and surrounding newer dwellings in the vicinity. The development proposes to maintain a similar building footprint and scale as to what exists and does not result in unreasonable excavation, tree removal or environmental impact. Surrounding dwellings present a mixture of two and three storey typology as viewed from the Pittwater Waterway. The areas on non-compliance would be centrally sites and would retain generous setbacks from side, front and rear boundaries. The 60m rear setback and maintenance of a vegetation buffer also allows for some visual relief towards Pittwater Waterway. As such, the building height breach is not considered to impact on 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 development is located on the downward slope of large rural residential allotment which is characterised by undulating topography. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with. The proposal would be stepped with the topography of the land and the majority of the dwelling will sit well below the 8.5m development standard. The proposed height non-compliance of is largely contained to the new roof form and presents a compatible height and scale with that of the existing dwelling and surrounding and nearby development. As above, the variation is largely attributed to the slope of the land and the the proposal would result in a lowering of the ridge of the dwelling.

In this regard, it is considered that the building height breaching elements do not unreasonable contribute to visual bulk to the extent that the building would be considered incompatible with the existing site and nearby development.

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

Comment:

The submitted shadow diagrams demonstrate that the building height breaching elements will not contribute to unreasonable shadow impact on neighbouring properties

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

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. Given the location of the work, the orientation and building alignment of the neighbouring built form and the associated level differences of the nearby built form, particularly that to the site's northwest, existing views and vistas will be equitably retained.

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

Comment:

The variation to the height control occurs as a result of the siting of the existing dwelling in conjunction with the sloping topography of the site. The development proposes no significant excavation or tree removal to facilitate additional floor area. The proposals design maintains the open style rear balcony areas to provide a "stepped" look when viewed from the rear and the neighbouring properties. The proposal reflects the established built form character of existing site and newer dwellings in the vicinity where multi-level, variably stepped houses are prevalent, due to the steep topography of the land.

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

Comment:

The proposed works will maintain consistency with the general height and scale of the existing dwelling and surrounding newer development, and further, the bulk and scale of the works are minimised as a result of the setbacks, modulation of the facades and the use of materials. No unreasonable amenity impacts are envisioned for the subject site or adjoining properties. The proposal will not require the removal of any significant vegetation or require any significant site

disturbance or excavation to facilitate additional floor area, with minimal alteration to the natural ground levels. No heritage conservation areas or heritage items will be affected as a result of this application.

### Zone objectives

The underlying objectives of the R5 Large Lot Residential zone are:

- ***To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.***

Comment:

The proposed works do not include any significant excavation or site disturbance to facilitate additional floor area and the proposed additions is to be largely sited within the existing building footprint. The proposal will not require the removal of any significant vegetation. The proposal respects the scale and form and relative height of the existing dwelling. The areas on non-compliance would be centrally sites and would retain generous setbacks form side, front and rear boundaries. The 60m rear setback and maintenance of a vegetation buffer also allows for some visual relief towards Pittwater Waterway. As such, the building height breach is not considered to impact on the desired character of the locality.

It is considered that the development satisfies this objective.

- ***To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.***

Comment:

The proposed works would not hinder the proper and orderly development of urban areas in the future

It is considered that the development satisfies this objective.

- ***To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.***

Comment:

The proposal does not seek a change of use or over intensification of the site. It is considered that the proposed works would not unreasonably increase the demand for public services or public facilities

It is considered that the development satisfies this objective.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

Comment:

The site's continued use for the purposes of a single dwelling house with an under construction secondary dwelling will not lead to any conflict with any other land use within the R5 zone and land to the site's south and east zoned E4 Environmental Living.

It is considered that the development satisfies this objective.

- ***To provide for a limited range of other land uses of a low intensity and scale, compatible***



***with surrounding land uses.***

Comment:

The proposal would maintain the residential use of the land

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R5 Large Lot 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 Height of building Development Standard associated with a single dwelling house (Class 1 building).

**5.21 Flood planning**

The application has been reviewed by Council Flood Officer who has raised no objection to the proposal.

**7.2 Earthworks**

The objective of Clause 6.2 - 'Earthworks' requires development 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.

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 waterway, drinking water catchment or environmentally sensitive area*

Comment: The development has been assessed by Council's Flood Engineers, Riparian Officer and Biodiversity Officers, who have raised no objection to the proposal subject to conditions.

*(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.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP 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.

## **7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*

- (e) the geotechnical constraints of the site,  
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or  
(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or  
(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

## 7.10 Essential services

During the assessment, Council's Environmental Health Officer has raised concern that the existing wastewater management system located on site was not appropriately accredited. As such, a Deferred Commencement condition is recommended, whereby the proposed works would be only able to start once accreditation of the wastewater management system has been approved by Council.

### Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20m (NE)	16.6m (Parking structure)	17%	No
Rear building line	20m (S)	53m	N/A	Yes
Side building line	6.5m (SW)	5.3m (Balcony/terrace)	18.5%	No
	6.5m (NW)	7m (Additions)	N/A	Yes

	6.5 (E)	Nil (car stand for secondary dwelling)	100%	No
Building envelope	3.5m (SW)	Within envelope	N/A	Yes
	3.5m (NW)	Within envelope	N/A	Yes
Landscaped area	80% (2967.2sqm)	67.3%	16%	No

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.2 Bayview Heights 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
B3.11 Flood Prone Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
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	No	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D2.1 Character as viewed from a public place	Yes	Yes
D2.3 Building colours and materials	Yes	Yes
D2.5 Front building line	No	Yes
D2.6 Side and rear building line	No	Yes
D2.7 Building envelope	Yes	Yes
D2.9 Landscaped Area - Non Urban	No	Yes
D2.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D2.13 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **A4.2 Bayview Heights Locality**

The proposed development includes small areas of three storeys, where the locality calls for two storey development. However, the proposed development involves minimal environmental impact, is set below the general tree canopy height, includes building modulation to minimise bulk, steps with the topography of the land, and provides an appropriate balance between respecting the landform and encouraging development.

The proposal would also retain the general form of the existing dwelling. As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

#### **B4.3 Flora and Fauna Habitat Enhancement Category 2 Land**

The application has been reviewed by Council's Bushland & Biodiversity Officer who has raised no objection subject to recommended conditions.

#### **C1.3 View Sharing**

No unreasonable view impacts are envisaged.

The adjoining property at 14 Baroona Rd, which would use 23 Baroona Rd as a view corridor is located significantly higher on the escarpment than the proposed dwelling, resulting in their views being captured over the dwelling. The highest RL of the proposed dwelling is 37.99 AHD where as the assumed lowest level of 14 Baroona, that being the swimming pool is at RL 52AHD.

Therefore there is 14m vertical separation between the dwellings. In addition no submissions have been received in this regard.

#### **C1.5 Visual Privacy**

The proposed additions and associated side facing windows and private open space would have adequate spatial separation (greater than 9m) from adjoining neighbours dwellings and private open space. Sufficient landscaping is proposed to be retained along side boundaries in order to mitigate



potential privacy impacts. Additionally, no submissions in relation to privacy have been received by adjoining neighbours. Overall, the privacy impacts associated with the development are considered to be reasonable within a residential environment.

### **C1.13 Pollution Control**

The proposed development includes a fireplace in the Family Room/Dining Room.

No details of the fireplace are included with the application. As such, Council cannot be satisfied that the development is designed to prevent air pollution, or that the development complies with the *Protection of the Environment Operations Act 1997*, and other relevant legislation. As such, a condition of consent has been included to ensure that no solid fuel heaters are approved under this consent.

Subject to compliance with this condition the proposal is considered to meet the requirements of this control.

### **D2.5 Front building line**

#### Description of Non-Compliance

Clause D2.5 of the P21 DCP requires development (other than driveways, fences and retaining walls) to be setback at least 20m from the front boundary.

The proposal seeks works to convert the existing carport into an open parking area by removing the carport structure. These works would be 16.5m from the front boundary, which would be within the 20m front building line requirement. All other additions would meet the 20.0m requirement.

With regard to the consideration of a variation, the proposed development is considered to meet underlying outcomes of the control as the proposal would result in a reduction in the built form and an increased sense of openness within the front setback. The proposal would also retain existing landscaping within the front setback. Therefore, the application is supported on merit.

### **D2.6 Side and rear building line**

#### Description of non-compliance

Clause D2.6 of the Pittwater 21 DCP requires development be setback at least 20m from the rear boundary and 6.5m from side boundaries.

The development proposes the following non-compliance:

- **Rear setback** -Complies
- **North-Western side setback**- Complies
- **South-western side setback**- 5.3m (balcony/terrace) representing a maximum variation of 18.5%
- **Eastern side setback**- Nil (car stand for secondary dwelling) representing a variation of 100%

It should be noted that owners consent has been provided by the adjoining neighbour to the east (No.21 Barooka Road) and confirmation of a right of carriageway over No21 driveway has been provided for the proposed secondary dwelling parking area.

Merit consideration

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

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is discussed further within A4.2 Bayview Heights Locality of this report.

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

Comment:

The non-complying elements of the proposal would relate to a small section of an open balcony and an open parking area. These elements would be of minimal bulk and scale.

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

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

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

Comment:

The proposal is considered to achieve a reasonable level of view sharing as a result of the complimentary siting of the built form, in conjunction with its site-specific design.

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

Comment:

While numerically non-compliant with the side and rear setback controls, the semi-rural nature of the subject site and surrounding sites allows for substantial spatial separation between existing dwellings. Therefore, it is unlikely the proposal will create any unreasonable impacts upon the privacy and amenity of the occupants of the subject site and those of adjoining properties. In summary, the proposal is considered to provide reasonable amenity for the dwelling occupants and those of adjoining and surrounding properties as a result of adequate building separation, site orientation, aspect and landscape treatment. Further, the retention of existing vegetation throughout the site will provide a reasonable screen between the subject site and adjoining properties. The proposed development will not create any unreasonable solar impacts upon adjoining properties.

The proposed parking space would not contain any associated structure and would be a non-habitable area.

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

Comment:

No significant vegetation is proposed for removal as part of this application. An Arboricultural Impact Assessment has been submitted as part of the application which recommend a series of mitigation measures to guide the maintenance of the retained vegetation. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained vegetation would appropriately break up the building massing and reduce the visual impact of the proposal.

- ***Flexibility in the siting of buildings and access.***

Comment:

Despite non-compliance in small areas, the proposal is considered to be an appropriate response to the development of the site. Adequate pedestrian access to the site is maintained..

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

Comment:

As above, no significant vegetation is proposed for removal as part of this application. An Arboricultural Impact Assessment has been submitted as part of the application which recommend a series of mitigation measures to guide the maintenance of the retained vegetation. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained vegetation would appropriately break up the building massing and reduce the visual impact of the proposal.

- ***A landscaped buffer between commercial and residential zones is achieved.***

Comment:

This control is not applicable given the subject site is located within, and surrounded by, residential zoning.

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

Comment:

The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation and the conditioned replacement planting would appropriately preserve the bushland character of the area.

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

Comment:

As above, this control is not applicable given the subject site is located within, and surrounded by, residential zoning.

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

proposal is supported, in this particular circumstance

## D2.9 Landscaped Area - Non Urban

### Detailed description of non-compliance

This control requires development to result in a minimum landscaped area of 80% (2967m<sup>2</sup>). The proposed development will result in a landscaped area of 67.3% (2496sqm).

Notwithstanding, clause D2.9 permits the following variations to the landscaped area control:

***Residential development (including dwellings, buildings and structures such as garages, home workshops, storage sheds and the like that are ordinarily incidental or subsidiary to a dwelling) with a maximum of 800 square metres will be allowed even if the minimum landscaped area, as per the table above, can't be provided.***

The proposed total floor area of the residential development associated with this proposal would be approximately 620sqm, and would thereby comply with the variation which permits a maximum of 800 square metres

Nevertheless, consideration a variation to the control, the proposal is assessed against the outcomes of the control as follows:

### Merit consideration

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

#### Comment:

As established earlier in this report the proposed development achieves the desired future character of the locality. More than half the site is deep soil landscaping and accommodates mature trees. The site maintains an appropriate bushland setting. The site provides adequate room for the establishment of the canopy tree planting required by the DCP. Council is satisfied that the proposed development can achieve the desired future character of the locality.

- ***To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.***

#### Comment:

The shortfall in landscaped area is not considered attributable to any unreasonable bulk or scale of the built form. The bulk and scale of the dwelling is consistent with the existing dwelling.

- ***To ensure that development does not unreasonably diminish sunlight to neighbouring properties and within the development site.***

#### Comment:

Given the spatial separation between dwellings, the proposed development will not create any unreasonable solar impacts upon adjoining properties.



- ***To preserve and enhance vegetation to visually reduce the built form.***

Comment:

No significant vegetation is proposed for removal as part of this application. An Arboricultural Impact Assessment has been submitted as part of the application which recommend a series of mitigation measures to guide the maintenance of the retained vegetation. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained vegetation would appropriately break up the building massing and reduce the visual impact of the proposal.

- ***To minimise the impact of development on Pittwater's biodiversity by minimising the removal of indigenous vegetation and naturally occurring soils, conserving existing significant indigenous and native trees, and encouraging planting of indigenous and native plants and trees on private property.***

Comment:

As above, the application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended condition. The proposed works would be primarily on the existing building footprint.

- ***To conserve significant natural features of the site and contribute to effective management of biodiversity.***

Comment:

As above, the proposed development will retain significant natural features of the site. Council's Bushland and Biodiversity Officer has reviewed this application and, subject to conditions, is satisfied the proposal will effectively management the biodiversity of the site.

- ***To provide for infiltration of water to the water table, minimise stormwater runoff and assist with stormwater management to reduce and prevent soil erosion and the siltation of natural drainage channels.***

Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections subject to conditions included in the recommendation of this report. It is considered the site contains a reasonable amount of pervious surface which will contribute to the prevention of soil erosion and siltation of natural drainage channels.

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

Comment:

The general compliance with the built form controls and retention of existing vegetation ensures the rural and bushland character of the area is maintained.

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

Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections subject to conditions included in the recommendation of this report. It is considered the site contains sufficient pervious surfacing is provided on-site which will enable the infiltration of water to the water table, whilst minimising run-off and assisting with stormwater management (subject to conditions).

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

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

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

A monetary contribution of \$9,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$990,000.

### **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 assessment of the proposal against the provisions of Pittwater 21 DCP has found that the proposed development does not strictly comply with the requirements of the applicable controls related to the Bayview Heights locality, landscaped area, and front and side building lines.

It is considered that these non-compliances would not result in unreasonable amenity impacts to surrounding properties or result in a development that is out of character with the style and scale of the existing dwelling or surrounding newer development in the immediate area.

No submissions were received in response to neighbour notification.

On the balance, although the proposed development is non-compliant with a number of planning controls, it is considered that many of these are a consequence of the context of the site and the existing built form. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited upon the existing building footprint.

During the assessment, Council's Environmental Health Officer has raised concern that the existing wastewater management system located on site was not appropriately accredited. As such, a Deferred Commencement condition is recommended, whereby the proposed works would be only able to start once accreditation of the wastewater management system has been approved by Council. Subject to the recommended conditions of consent, it is considered that the proposal would result in a development that displays reasonable scale and density compatible with the surrounding development and would not result in unreasonable amenity impacts to surrounding properties.

Accordingly, the application is referred to the DDP with a recommendation for approval (subject to a deferred commencement condition). It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION



That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Buildings 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 DA2021/1783 for Alterations and additions to a Dwelling House on land at Lot 4 DP 567442, 23 Baroona Road, CHURCH POINT, subject to the conditions printed below:

### DEFERRED COMMENCEMENT CONDITIONS

#### 1. Approval of an On-site Sewage Management System

Approvals under Section 68 of the *Local Government Act 1993* (the Act) must be granted by Northern Beaches Council for any On-site Sewage Management System on the subject property. The following is required to be addressed:

1. Provide accreditation under Section 41 of the Local Government (General) Regulation 2005 for the (Aline) sewage management tanks currently in place on-site; or
2. Install new sewage management tanks that are accredited under Section 41 of the Local Government (General) Regulation 2005. Should a new new sewage system be required to be installed, the following applications must be made to Council to seek the relevant approvals:
  - a) Application for Approval to Operate an On-site Waste Water Management System; and
  - b) Application for Approval to Install Waste Water System.

**Note:** All of the relevant accreditation information below is relevant:

- o Any "sewage management" system under Section 68 Part C(5) & (6), defined under Section 68A of the Local Government Act 1993, must be approved by Council. This includes systems that are 'installed, constructed, or altered'; and
- o Wastewater holding tanks must be accredited as required under Section 41 of the Local Government (General) Regulation 2005, to be used for single domestic units - capacity for 10 persons or less.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

Evidence required to satisfy the deferred commencement condition/s must be submitted to



Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA01 - SITE PLAN - FULL	22/09/2021	Lifestyle Home Designs
DA02 - SITE PLAN -PARTIAL	22/09/2021	Lifestyle Home Designs
DA03 - EXISTING FLOOR PLANS/DEMOLITION PLAN	22/09/2021	Lifestyle Home Designs
DA04 - PROPOSED FLOOR PLANS	22/09/2021	Lifestyle Home Designs
DA05 - ELEVATIONS	22/09/2021	Lifestyle Home Designs
DA06 - SECTIONS A - D	22/09/2021	Lifestyle Home Designs
DA07 - NORTH-EAST ELEVATION & SECTIONS E - G	22/09/2021	Lifestyle Home Designs
Schedule of Colours & Materials	Received 29/09/2021	-

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
SW1 Rev.A - Site Location Plan	22/09/2021	E2 Civil and Structural Design Pty Ltd
SW2 Rev.A - Concept Roof Drainage Plan	22/09/2021	E2 Civil and Structural Design Pty Ltd
SW1 Rev.A - Concept First Floor Drainage Plan	22/09/2021	E2 Civil and Structural Design Pty Ltd
SW1 Rev.A - Concept Ground Floor Drainage Plan	22/09/2021	E2 Civil and Structural Design Pty Ltd

**Reports / Documentation – All recommendations and requirements contained within:**

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A425223)	23/09/2021	Lifestyle Home Designs
Geotechnical Assessment Report (STC-2058-18380 GEO2 v1)	10/08/2021	ADE Consulting Group Pty Ltd
Arboriculture Assessment & Management Report	September 2021	Aura Tree Services Pty Ltd

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA08 - LANDSCAPE CALCULATIONS PLAN	22/09/2021	Lifestyle Home Designs

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	23/10/2021	J.Adams

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.

3. **No works on adjoining land or right of carriageway**

No Approval is granted under this consent for any works on adjoining land or on the right of carriageway which burdens the subject site.

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

4. **Installation of solid/fuel burning heaters**

No approval is granted for the installation of a solid/fuel burning heater.

Reason: To preserve the amenity and environmental health of adjoining properties.

5. **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.

## 6. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



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

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

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

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

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

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

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,900.00 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 \$990,000.00.

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](http://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](http://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 Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the 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 ADE Consulting Group dated 10 August 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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **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.

12. **Stormwater Treatment Measures – Minor**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.



13. **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.

14. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

15. **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.

16. **External Colours and Finishes**

The external colours and finishes to the external walls and roof shall have a medium to dark range (BCA classification M and D). Light colours such as off white, cream, silver or light grey colours are not permitted. 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 building colours and materials compliment and enhance the natural landscapes and to ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.



17. **Construction Traffic Management Plan**

A Construction Traffic Management Plan is to be prepared for the development given its unusual access arrangements.

The Construction Traffic Management Plan shall include (but not be limited to) the following:

- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Details for maintaining access to adjacent properties and properties which benefit from the right of carriageway easement
- Details regarding the proposed method of access to and egress from the site for construction vehicles, and demonstration these vehicle will manoeuvre the right of way safely – i.e enter and leave in a forward direction.
- Details for storage of materials
- Provision of parking for workers
- Details for loading and unloading of materials
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- The location and operation of any on site crane

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

18. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

19. **Protection of Landscape Features and Sites of Significance**

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

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

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

Reason: Preservation of significant environmental features.

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

21. **Road Reserve**

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

Reason: Public safety.

22. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

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

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

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



24. **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.

25. **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.

26. **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.

27. **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.

**28. Implementation of Construction Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Management Plan. A copy of the approved Construction Management Plan is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent

**29. Right of Carriageway Access**

Construction vehicles and material are not to impede access for the properties that benefit from the right of way and turning area throughout the construction phase. The applicant must provide neighbours who use the right of way and turning area with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

**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.

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

**31. Required Tree Planting**

a) Trees shall be planted in accordance with the following:

- i) Minimum 5 local native trees capable of attaining a minimum height of 5m at maturity; within the grounds of the property; minimum pot size 200mm

b) Native tree planting species may be selected from Council's list:

[www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide](http://www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide).

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

**Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Government's 5 Million trees initiative**

<https://5milliontrees.nsw.gov.au/>

Reason: To maintain environmental amenity.

32. **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 Occupation Certificate.

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

33. **New Vegetation Planting**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Gardening Booklet available on Council's website.

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

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

34. **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.

35. **Retaining wall**

The retaining wall 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

36. **Damage to the right of way**

Any damage to the right of way, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.

Reason: To ensure the site is left in an acceptable state and that access is maintained for adjoining neighbours.

37. **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.

38. **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.

39. **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.

40. **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**

41. **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.

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 be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.









CLAUSE 4.6 VARIATION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

## Alterations and Additions

23 Baroona Road, Church Point

Prepared on behalf of  
Andrew & Anna Konarev c/- Lifestyle Home Designs

20 AUGUST 2021





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## 1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (DA) proposing alterations and additions to the existing dwelling house and its surrounds at 23 Baroona Road, Church Point (the **site**).

Calculations in this submission are based on plans and information provided by Lifestyle Home Designs. This submission should be read in conjunction with the detailed supporting technical information (reports and plans) submitted separately with the DA.

As noted in the separate SEE, the proposed built form departs from the height of buildings standard at Clause 4.3(2) and 4.3(2D) of Pittwater Local Environmental Plan 2014 (**LEP 2014**).

As required pursuant to Clause 4.6(3) of LEP 2014, this submission provides a written request to the Northern Beaches Council (the **Council**) that seeks to justify the proposal's departure from the height of buildings development standard (**height standard**) is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This submission (relative to format and content) takes into consideration relevant (current) NSW Land and Environment Court (**NSW LEC**) judgements.

## **2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION**

### **2.1 What is the name of the environmental planning instrument that applies to the land?**

Pittwater Local Environmental Plan 2014 (LEP 2014).

### **2.2 What is the zoning of the land?**

The land (the site) is zoned R5 Large Lot Residential.

### **2.3 What are the objectives of the zone?**

The objectives of the R5 Large Lot Residential zone are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

### **2.4 What is the development standard being varied?**

Development Standards<sup>1</sup> are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

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

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) ***the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,***
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*



- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed. (my emphasis)*

The height control at Clause 4.3(2) and 4.3(2D) of LEP 2014 is clearly a development standard as it relates to the height of buildings as specified at **subclause (c)**.

## **2.5 Is the development standard a performance based control? Give details.**

Yes, as it contains stated objectives to which compliance with the standard is targeted to achieve.

## **2.6 Under what clause is the development standard listed in the environmental planning instrument?**

The height development standard is typically listed at Clause 4.3(2) of LEP 2014.

However, and subject to certain criteria, of which the site is considered to meet, the site is subject to the height standard at Clause 4.3(2D) of LEP 2014.

## **2.7 What are the objectives of the development standard?**

Relevant to the site and the land use zone it is located within, the objectives of the height standard are expressly stated at Clause 4.3(1) of LEP 2014 and 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.*

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

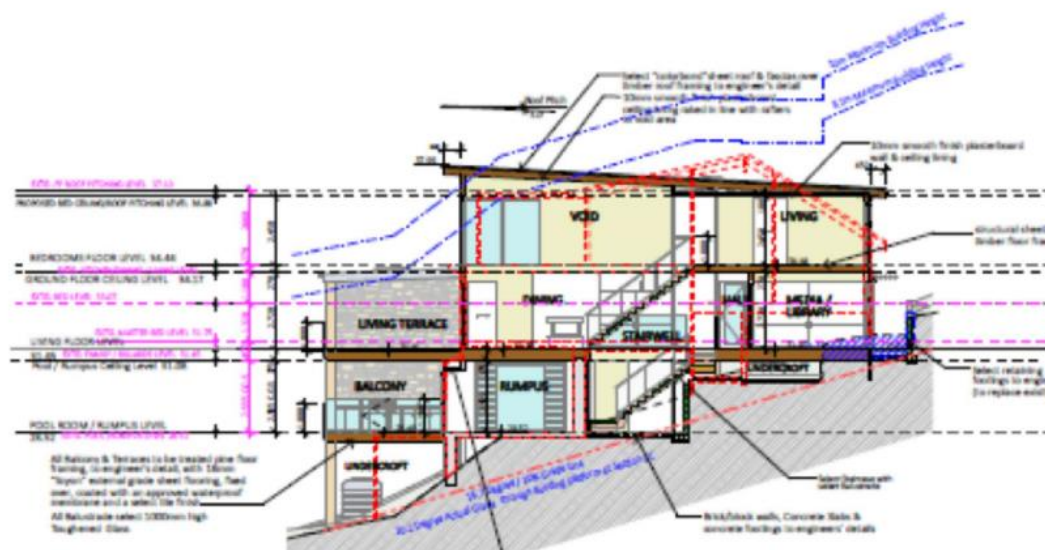
Pursuant to Clause 4.3(2) of LEP 2014, a maximum building height of 8.5m applies to the site, however, Clause 4.3(2D) of LEP 2014 permits a building height not exceeding 10m subject to the following:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

## 2.9 What is the proposed numeric value of the development standard in the development application?

The 10m height standard is considered to apply to the site as the site slopes 20.2° within the dwelling's footprint. This is steeper than the 16.7° or 30% gradient line threshold as specified in subclause (c). As demonstrated later, the proposal is also considered to be consistent with subclauses (a), (b) and (d).

This existing condition is shown at **Figure 1**. The 8.5m height plane and the 10m height plane are also shown in blue.



**Figure 1** – Site slope / gradient and building footprint location

**Figure 2** overleaf provides a 3D building envelope of 10m projected against the site's existing dwelling house. The existing dwelling house departs from the height standard and has a maximum height is 10.49m to the top of the gable roof form as measured from ground level existing. All existing areas which depart from the height standard are shown coloured.

**Figure 3** overleaf provides a 3D building envelope of 10m projected against the site's proposed to be altered dwelling house. Its maximum height is 10.725m to the top of the void on the right hand side as measured from ground level. All areas which depart from the standard are shown coloured. Only a minor portion of the altered dwelling is located above the 10m height standard.



**Figure 2** – Existing dwelling's 10m height plane departure



**Figure 3** – Proposed dwelling's 10m height plane departure

**2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?**

Relative to the 8.5m standard (which would apply should Council disagree with that contained at Section 2.9 above):

- the existing departure is 1.99m or 23.4%;
- the proposed departure is 2.225m or 26.2%.

Relative to the 10m height standard:

- the existing departure is 49cm or 4.9%.
- the proposed departure is 72.5cm or 7.25%.



### 3.0 ASSESSMENT OF THE PROPOSED VARIATION

#### 3.1 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

##### 3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2014, the objectives of the R5 Large Lot Residential zone are:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality*
  - o A single dwelling house plus a secondary dwelling (as approved under DA 2020/1278 and currently under construction) land use is maintained on a large allotment of land. The overall built form will sit within a secluded garden landscape setting. This is the desired future character. The proposal maintains and alters a built form that will have an improved relationship to the site's locational characteristics through a high quality architectural, urban and landscape design solution. The built form maintains visual interest and a human scale. Compliance is maintained with the DCP 21 complementary development guidelines. The overall built form sits comfortably within its established and likely future built form context as desired by the planning controls.
  - o The proposal provides for a low density single dwelling house for a family household.
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
  - o Alterations to the existing subdivision pattern or density of development are not proposed. The site has frontage to Baroona Road, a dead end cul-de-sac. A varied subdivision pattern exists. The existing lot size and its established characteristics including the existing (including approved) built form will not have any identifiable impact on the future orderly development of nearby urban areas.
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
  - o A low density rural residential land use is maintained. Although the principal dwelling house is altered and extended, there will be no additional or unreasonable demand for public services and / or public facilities. The maintained land use is consistent with that of neighbouring and nearby properties.
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
  - o The site's continued use for the purposes of a single dwelling house with an under construction secondary dwelling will not lead to any conflict with any other land use within the R5 zone and land to the site's south and east zoned E4 Environmental Living.
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*
  - o Not applicable for this site. It does provide the opportunity for the occupants to work from home as/if required.

The site may be developed with the stated variations to the height standard. Consistency is not readily quantifiable in absolute numerical terms. The site's built form despite its existing and proposed departure from the height standard is consistent with the stated objectives of the R5 Large Lot Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site as it:

- a low density residential land use is maintained within a garden / park like setting;
- maintains an appropriate mix of rural residential land uses in the locality;
- does not alter the established subdivision pattern;
- is located on a site of sufficient size to appropriately accommodate the proposal;
- responds positively to the site's locational characteristics and complements the existing streetscape character, height, bulk and scale of existing and future dwellings in the immediate vicinity; and
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain.

### **3.1.2 Objectives of the height of buildings standard**

The proposal despite the departure from the height standard is nonetheless consistent with the standard's objectives and therefore provides an appropriate planning outcome for the following reasons:

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

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

- A low density residential land use is maintained on a relatively large rural residential allotment. The site's built form sits within a garden like setting. This low density built form and land use is desired by the site's R5 Rural Residential zoning, its proximity to land zoned E4 Environmental Living and the site's associated planning standards and guidelines.
- The surrounding locality is characterised by multi level elevated dwellings set on large allotments of land influenced by the locality's topographical characteristics and mature/thick vegetation. A variety of housing types and architectural styles are provided within a relatively consistent subdivision pattern to the site's north and east. The subdivision pattern to the site's south and west varies as it contains numerous battle-axe allotments. Baroona Road is a dead end cul-de-sac with the site being at its end. The integrity of dwellings varies considerably. There is little architectural, aesthetic, social or cultural built form significance. Dwellings are typically adjusted to the natural topography or are provided with large undercroft areas. They are oriented to take advantage of their easterly views and vistas. The altered built form sits comfortably within its established and likely future built form context;
- The site and its built form is not readily visible from the surrounding public domain. The desired future character of the locality is determined by the relevant (existing) planning controls. The proposal presents as a part two storey, part three storey dwelling that follows the site's relatively steep (20.2° over the principal dwelling's building footprint) topographical characteristics. A skillion style 'flat' roof is proposed which sits comfortably within the locality's varied roofscape. A new integrated double garage replaces the existing detached double carport. A secondary dwelling is currently under construction and there is appropriate curtilage internal to the site relative to the principal dwelling and neighbouring dwellings. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating

contemporary materials and an architectural aesthetic and making an improved use of external spaces and the lower ground floor level generally. This type of built form and presentation is desired by the planning controls. The existing finished floor levels (FFL) have been retained. As demonstrated at **Figure 3**, the height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply. Notwithstanding the departure from the height standard, the resultant built form is expected and anticipated and is therefore consistent with the desired future character of the area as expressed by the relevant planning controls.

- Compliance is maintained with the DCP 21 complementary development guidelines.
- All habitable accommodation is provided below the height standard.
- Moreover, the dwelling's height is also consistent with the locality's topography. The altered built form appropriately follows the site's natural landform without the need for excessive excavation and when viewed from both the front and rear of the site, the proposal is of a similar height and number of storeys as the neighbouring and nearby properties. Thus, the proposal has a height which is consistent with the desired future character of surrounding buildings and is compatible with the streetscape (where it is visible).
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance.
- The expression of the built form is adjusted to respond to:
  - solar access and the site's orientation;
  - the site and surrounding locality's topographical characteristics;
  - the design and character of existing adjacent development;
  - an improved connection to external areas and the lower ground floor level;
  - the integration of a double garage within the principal dwelling;
  - maintaining the amenity of the adjacent property owners;
  - internal and external amenity for the occupants and the retention of amenity for neighbours;
- The proposal responds and contributes to its context by engaging its desired future character as envisaged by the proposed land uses and densities permissible in the surrounding locality. The surrounding area is undergoing a period of regeneration. The site's appropriate redevelopment will enable the realisation of Council's strategic direction for the locality's future built form and a resultant built form which is not inconsistent with the established and likely future character.

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

- There is no overshadowing impact to any public open space or public domain.
- There is no unreasonable overshadowing of neighbouring properties. That part of the dwelling towards its front that departs from the height standard does not in any way cast unreasonable shadows over the neighbouring properties, including openings to primary living rooms, solar collectors or private open space. The shadows cast by the largely compliant built form are anticipated by the planning controls and do not adversely impact the amenity of the neighbouring owners.

- There is no material impact on neighbouring properties at any critical time of the day or year, that is appropriate levels of sunlight have been retained to these properties and their primary living rooms and private open space areas.
- The site's primary living rooms will receive adequate levels of direct solar access.
- An appropriate portion of the site's landscaped and private open space area receives satisfactory levels of direct solar access.
- Relatively small areas of land are affected and their relative useability is not materially compromised.
- The resultant overshadowing impact of the proposal is unlikely to preclude an appropriate redevelopment or the redevelopment potential of the adjoining properties.
- Development on adjacent properties overshadows itself, including established mature vegetation (although unable to be technically used in the assessment of the overshadowing impacts);
- The design is consistent with the objectives of the control as it ensures the form and scale of the built form whilst large is not excessive and sits comfortably within its established and likely future built form context.
- The limited overshadowing of the proposal is acceptable in the circumstances of the case as it occurs for short periods of time and in the winter arc of the sun. Separation between the site and the neighbouring properties has been maintained.

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

- Given the location of the work, the orientation and consistent building alignment of the neighbouring built form to the north and the associated level differences of the nearby built form, particularly that to the site's northwest, existing views and vistas will be equitably retained. There is no identifiable impact to views and vistas from properties to the site's east (lower down the ridge) or south.
- Filtered long distance vistas from the neighbouring property are provided, pending their location partly across a side boundary, however, they are interrupted by existing built form (and likely future) and mature vegetation.
- There is no loss of views or vistas from the surrounding public domain.
- The built form is largely compliant and therefore anticipated by the planning controls. An equitable outcome is provided relative to view / vista sharing and outlook.

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

- The site slopes steeply at 20.2° within the dwelling's footprint. This is steeper than the 16.70 or 30% gradient line threshold. The proposal conforms to and reflects the site's natural landforms. Excessive excavation is not required proposed, rather use and enlargement of the existing lower ground floor level and existing undercroft areas. As demonstrated at **Figure 3**, the height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply. The non-compliance with the height standard is the result of the site's topographical characteristics.
- Existing FFL's have been retained. The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance.



- The expression of the built form is adjusted to respond to:
  - the site's locational context;
  - the site's topography;
  - an improved connection to external areas;
  - the design and built form character of the adjoining and adjacent development;
  - solar access and the site's orientation; and
  - internal and external amenity for the occupants. In this regard, the design of the proposed built form specifically responds to the location of its adjacent built form relative to the retention of existing amenity levels for those properties.
- Required site works, including minor excavation (as shown at Section CC, **Figure 1**):
  - will not be structurally detrimental to the existing or adjacent building structure;
  - will not significantly alter the underground flows of water;
  - retains the ability of stormwater to connect to existing infrastructure;
  - does not have any impact on natural features or rocky outcrops;
  - maintains the approved residential use of the site, in accordance with the zone objectives;
  - where practicable, some of the excavated material will be re used on site however any remaining excavated material will be removed off site for disposal to a suitable landfill; and
  - will result in an acceptable level of impact to surrounding properties and the excavation is not considered to result in any amenity impact to the neighbouring properties.

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

- There will be no conflict between the site and the neighbouring E4 Environmental Living zoned land as curtilage to this land has been retained. Similar built form is provided on land between the site and any property within the E4 Environmental Living zone.
- the site is not an identified heritage item, is not located within the visual catchment of an identified heritage and is not located within a heritage conservation area;
- the proposal undertakes works which maintain and/or improve the site's natural landscape features;
- a built form is provided which is integrated into its landscape;
- The site does not comprise scenic protection land, does not contain terrestrial biodiversity, riparian lands or watercourse, is not bushfire prone, is not floodprone and is not environmentally sensitive land. There are no environmental factors that would deem the proposal inappropriate.
- the building volume has been designed to be articulated, and to facilitate a contextually appropriate massing to maintain a human scale. The extent of the departure from the height standard is minor and is not readily visible from the surrounding public domain. There is no unreasonable visual impact.
- The visual catchment contains several buildings that will present a similar bulk and scale and which set the character. Consequently, the non-compliance with the standard does not result in a scale of building that is out of character with the surrounding development.

### **3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

#### **3.2.1 *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?***

A development at 23 Baroona Road, Church Point that strictly complies with the height standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form departs from the standard.
- The departure from the standard is a direct function of the site's steep (20.2° slope within the dwelling footprint) and predominantly unaltered topographical characteristics.
- Compliance with the standard would require demolition of an existing built form that despite its departure from the height standard, nonetheless sits comfortably within its established and likely future built form context.
- As demonstrated at **Figure 3**, the departure from the standard is minor. The height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply.
- Compliance is maintained with the DCP 21 complementary development guidelines.
- The built form is not readily visible from the surrounding public domain. There is no unreasonable visual impact or visual built form dominance.
- All habitable accommodation is provided below the height standard.
- Established FFL's are not altered.
- The bulk and scale of the built form although departing has been reduced at the south east elevation, being the location of the departure from the standard.
- Appropriate curtilage to neighbouring properties has been retained.
- Following a rigorous merit based assessment, approval of a building height on the site that relates to the existing and in part (by design elements) desired future character for the locality as expressed in LEP 2014 but which exceeds the LEP 2014 height standard, will not set a precedent for other non-conforming applications.
- The altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.
- The desired future character of the locality is determined by the relevant (existing) planning controls. The proposal presents as a part two storey, part three storey dwelling that follows the site's relatively steep (20.2° over the principal dwelling's building footprint) topographical characteristics. A skillion style 'flat' roof is proposed which sits comfortably within the locality's varied roofscape. A new integrated double garage replaces the existing detached double carport. A secondary dwelling is currently under construction and there is appropriate curtilage internal to the site relative to the principal dwelling and neighbouring dwellings. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating contemporary materials and an architectural aesthetic and making an improved use of external spaces and the lower ground floor level generally. This type of built form and presentation is desired by the planning controls.

- The height, bulk and scale of the dwelling will not set an undue precedent. A highly articulated and visually interesting built form is maintained.
- The scale is broken down by the articulation of a traditional and integrated façade design. Setbacks and the use of different materials including quality and durable landscaping reduces the perception of any apparent bulk. The retained portions of the dwelling with an integrated first floor addition will positively contribute to the likely future built form character.
- Within this context the site can accommodate the building height proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality.
- Although the proposal departs from the height standard, the altered built form is consistent with the locality's desired, established and likely future character and the departure does not result in any adverse environmental impacts to neighbouring properties or the surrounding public domain. The altered dwelling provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual impact.
- The dwelling's height does not preclude (and hasn't done so in the past) redevelopment of the neighbouring and nearby properties.

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

***Are the objectives of the standard achieved notwithstanding non-compliance with the standard?***

See above detailed assessment of the proposal by reference to the objectives of the height standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard, and in some cases the non-compliance better achieves the objectives by allowing for additional amenity for the site's occupants whilst maintaining the amenity of neighbouring properties.

***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?***

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

***Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?***

Compliance with the underlying objectives of the 8.5m / 10m height standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason.

The resultant altered dwelling exhibits a quality architectural and landscape design solution within a large lot rural residential environment. It includes appropriate environmental initiatives, improves the amenity of the owners and maintains expected amenity for the neighbours.

***Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?***

A review of Council's published online Variations Register, demonstrates that the height standard cannot said to be abandoned, however, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (including Church Point) subject to the provisions of LEP 2014 that have been permitted to depart from the height standard.

***Is the zoning of the land unreasonable or inappropriate?***

The zoning of the land is reasonable and appropriate given the site's location. Low density large dwellings set within established landscaped gardens on large allotments of land are the predominant / prevailing built form / land use in the locality. The locality is undergoing periodic regeneration.

### **3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?**

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposed development at 23 Baroona Road, Church Point, there are sufficient environmental planning grounds to justify contravening the height of buildings standard being:

- The departure from the standard is a direct function of the site's steep (20.2° slope within the dwelling footprint) and predominantly unaltered topographical characteristics.
- The existing built form departs from the standard.
- As demonstrated at **Figure 3**, the departure from the standard is minor. The height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply.
- The desired future character of the locality is determined by the relevant (existing) planning controls. The proposal presents as a part two storey, part three storey dwelling that follows the site's relatively steep (20.2° over the principal dwelling's building footprint) topographical characteristics. A skillion style 'flat' roof is proposed which sits comfortably within the locality's varied roofscape. A new integrated double garage replaces the existing detached double carport. A secondary dwelling is currently under construction and there is appropriate curtilage internal to the site relative to the principal dwelling and neighbouring dwellings. The proposed design is re-interpreting established roof shapes and slopes, whilst integrating contemporary materials and an architectural aesthetic and making an improved use of external spaces and the lower ground floor level generally. This type of built form and presentation is desired by the planning controls.
- The built form is not readily visible from the surrounding public domain. There is no unreasonable visual impact or visual built form dominance.
- All habitable accommodation is provided below the height standard and established FFL's are not altered.



- The bulk and scale of the built form although departing has been reduced at the south east elevation, being the location of the departure from the standard.
- The development provides for an appropriate environmental planning outcome and is not an overdevelopment of the site as follows:
  - the proposal satisfies the objectives of the R5 Rural Residential zone;
  - the proposal satisfies the stated objectives of the height standard;
  - compliance is maintained with the relevant DCP 21 complementary development guidelines.
- Only limited works are proposed above the height standard. They do not add to its bulk and scale, rather provide visual interest, amenity for the occupants and are environmentally beneficial / sustainable.
- The altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity, including neighbouring built form;
- It has been demonstrated within the separate SEE that the height standard non-compliance will not result in adverse environmental impacts to neighbouring properties and the surrounding public domain. In this regard the resultant built form provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual impact;
- The nature of such an urban environment is that all future development will seek to maximise amenity and density through design. In this regard, the proposal represents an appropriate planning outcome without any adverse environmental impacts.
- The departure from the standard and the resultant built form does not in any way preclude the redevelopment of any neighbouring property.

### **3.4 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?**

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application as the departure from the height standard relates to local and contextual conditions.

The resultant built form is one that exhibits architectural merit on an existing low density allotment of land. This provision of such built form with associated amenities will assist in meeting housing and locational context demand. The site's overall built form sits comfortably within its established and desired future built form local context.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

### **3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?**

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would require demolition of the existing dwelling which is economically impractical. Considering demolition of the existing dwelling, in that sense it can be said that compliance with the standard would hinder the attainment of the objects of Section 1.3 of the Act. The departure from the standard is minor and does not result in any unreasonable environmental or amenity related impacts.

The site's redevelopment and subsequent departure from the height standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

### **3.6 Is there public benefit in maintaining the development standard?**

Generally, there is a public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the height standard is not achievable given the existing departing built form and would serve no purpose other than to impose numerical inflexibility and economic impracticality. A rigid and inflexible compliance based approach to the development standard forgoes the opportunity to provide a high quality architectural design solution for the site's occupants whilst maintaining the amenity of neighbours, a desirable planning outcome.

As demonstrated at Section 3.2 above, it is known that Council has considered applications favourably which depart from the height standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted. Under the presented circumstances the variation to the height standard is in the public interest because it is not inconsistent with the stated objectives of the height standard and neither is it inconsistent with the objectives for development in the R5 Rural Residential Zone. Therefore, it is argued that there is no public benefit in maintaining the adopted height of buildings planning control.

On balance the variation to the height standard is an appropriate use of the provisions of Clause 4.6 and the development is therefore capable of being granted consent.

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### **3.7 Is the objection well founded?**

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

## 4.0 CONCLUSION

The proposed variation to the height standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical height standard would not significantly alter the development's environmental impacts and therefore impacts to neighbouring properties and the surrounding public domain as:

- the proposal satisfies and achieves the objectives of the R5 Rural Residential zone;
- the proposal satisfies and achieves the stated objectives of the height standard;
- the departure from the standard is a direct function of the site's steep (20.2° slope within the dwelling footprint) and predominantly unaltered topographical characteristics.
- the departure from the standard is minor. The height variation is centrally located over a void area and new flatter roof from located in the mid-section of the ridge line and toward the front of the dwelling, where the site falls sharply.
- habitable accommodation is not provided above the height standard;
- compliance is maintained with the relevant DCP 21 complementary development guidelines.
- the altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity and that desired / permissible by the relevant planning controls; and
- improved amenity for the occupants whilst not presenting any unreasonable amenity impacts to neighbours.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied the proposal is in the public interest because it is consistent with the objectives for development in the zone and the stated objectives of the standard. It therefore is clearly appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2014 in the circumstances of this application.



**ITEM 3.4**

**MOD2021/0654 - 2 MACPHERSON STREET WARRIEWOOD -  
MODIFICATION OF DEVELOPMENT CONSENT DA2019/0887  
GRANTED FOR SUBDIVISION OF LAND INTO 24 COMMUNITY  
TITLE LOTS COMPRISING 22 RESIDENTIAL LOTS AND 2  
RESIDUE LOTS**

**REPORTING MANAGER**      Tony Collier

**TRIM FILE REF**              2022/049733

**ATTACHMENTS**            1 [↓](#) Assessment Report  
                                     2 [↓](#) Site Plans and Elevations

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to Mod2021/0654 for Modification of Development Consent DA2019/0887 granted for subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots on land at Lot 25 DP 5464, 2 Macpherson Street WARRIEWOOD, subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0654
<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 25 DP 5464, 2 Macpherson Street WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0887 granted for subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots
<b>Zoning:</b>	R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Karimbla Properties (NO. 32) Pty Ltd
<b>Applicant:</b>	Karimbla Constructions Services (NSW) Pty Ltd
<b>Application Lodged:</b>	27/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	15/09/2021 to 29/09/2021
<b>Advertised:</b>	15/09/2021
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks consent to modify the approved building envelope which formed part of the approval for the subdivision of the site into 22 residential lots and two residue lots pursuant to DA2019/0887.

The modification relates to the side setback of Lots 4-11 and 14-21 which seek consent for a zero setback to the northern boundary. The subject application has been amended to address issues regarding bulk, scale and amenity by reducing the extent of the side setback breach to apply only to the garage zone.

The modification also seeks consent for 100mm increase in the indicative building height from 7.8m to

7.9m which remains to be below the maximum 8m building height limit. There is a partial reduction in the setback of the upper floor to the street, however, it is noted that the front setback of the upper floor remains compliant. The application also increases the rear setback of the upper floors to Lots 4-9 and 16-21 which results in improved spatial building separation, reduced building bulk and improved amenity.

On balance the minor breach of the side setback control will have no unreasonable impacts on the desired future character of the Warriewood Valley Locality, the bulk and scale of the development, the visual quality of the streetscape or the amenity of the dwellings.

No submissions have been received and the Section 4.55 (2) application is being referred to the Development Determination Panel (DDP) as the original development application was previously determined by the DDP.

The application is recommended for approval subject to conditions.

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent to vary the approved building envelopes / lot boundary setbacks established by DA2019/0887 for the subdivision of the site into 22 residential lots and two residue lots.

The variation of the envelope in respect of the setbacks applies to 16 allotments, namely Lots 4-11 and 14-21 located within the centre of the side and a 100mm increase in the building height. In detail, the proposal seeks consent for:

- Zero setback of the ground level garage zone on northern side to Lots 4-11 and 14-21,
- A 100mm increase in the height of the dwellings from 7.8m to 7.9m,
- A reduction in setback of the first floor to the street, and
- A 2.8m increase in the setback of the upper floors to the rear boundary to Lots 4-9 and 16-21.

### ASSESSMENT INTRODUCTION

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

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

proposal.

## SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C6.8 Residential Development Subdivision Principles  
Pittwater 21 Development Control Plan - D16.1 Character as viewed from a public place  
Pittwater 21 Development Control Plan - D16.7 Side and rear building lines

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 25 DP 5464 , 2 Macpherson Street WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The site is legally described as Lot 25, Section C, Deposited Plan 5464, and is commonly referred to as 2 Macpherson Street, Warriewood ('the site'). The site is irregular in shape, with a 126.96m wide frontage to Macpherson Street to the south and a total area of 2.327 Hectares. The site adjoins Narrabeen Creek, the centreline of which forms the northern and eastern boundaries of the site.</p> <p>The site was formerly used for the purpose of a market garden, however, the site has recently been cleared in preparation for works in association with the approved civil works DA. Whilst the central portion of the site appears to have been built up over time and is generally level (3.28 - 3.71m AHD), the perimeter of the site falls away in each direction towards the creekline, the western side boundary and the street.</p> <p>Macpherson Street is a two-lane roadway that was recently upgraded to alleviate impacts associated with flooding, and as a result, the roadway and adjacent footpath is elevated above natural grounds levels at a minimum RL of 4.16m AHD. Two access driveways have been constructed to provide vehicular and pedestrian access to the site.</p> <p>A Sydney Water Sewerage Treatment Plant is located opposite the site on the southern side of Macpherson Street, with a seniors housing development is located to the east, medium density residential to the north and an existing dwelling to the west. The site is identified as Buffer Area 1M of the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014.</p>

Map:





## SITE HISTORY

On 27 November 2014, Development Application N0431/14 was lodged with Council, seeking consent for the construction of thirty semi-detached dwelling houses and associated infrastructure at the subject site.

On 18 December 2014, Development Application N0431/14 was refused by Council for the following reasons:

1. *The proposed development is inconsistent with the objectives of clause 6.1 of Pittwater Local Environmental Plan 2014, specifically the need for development to be undertaken in accordance with the Warriewood Valley Strategic Review, which identifies that the subject site has no capacity for residential development.*
2. *The “no dwellings” yield prescribed by clause 6.1(3) of Pittwater Local Environmental Plan 2014 prohibits residential development on the site, and cannot be varied pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014.*

On 24 December 2014, the Applicant lodged a Class 1 Appeal with the Land and Environment Court of NSW in regards to the refusal of Development Application N0431/14. The proceedings were ultimately listed for a separate ‘question of law’ hearing to address the following:

*Is the “no dwellings” specification for ‘Buffer area 1m’ in the table to clause 6.1(3) of the Pittwater Local Environment Plan 2014 (“PLEP”) a ‘development standard’ to which clause 4.6 of the PLEP applies?*

On 21 May 2015, the Justice Pain found in favour of Council and agreed that the “no dwellings” specification for the site in clause 6.1(3) of PLEP 2014 was in fact a prohibition and not a development standard.

On 17 November 2016, the Applicant lodged a Planning Proposal (PP0003/16), which seeks to amend the provisions of clause 6.1(3) of PLEP 2014 to provide for 22 dwellings on the subject site.

On 31 January 2017, Council resolved not to support the Planning Proposal for the following reasons:

- a. It is inconsistent with the relevant strategic study being the 'Warriewood Valley Strategic Review Report (2013)', endorsed by the former Director General of the Department of Planning and Infrastructure on 26 June 2013 and adopted by Pittwater Council on 12 June 2013.*
- b. It has not demonstrated adequate strategic merit or site-specific merit in line with the 'NSW Planning & Environment's Planning Proposals: A guide to preparing planning proposals (2016)'.*
- c. The information submitted to support the planning proposal for 2 Macpherson Street, Warriewood is substantially deficient.*
- d. It is inconsistent with Local Planning Direction '4.3 Flood Prone Land' (issued under Section 117(2) of the Environmental Planning and Assessment Act 1979) and insufficient justification has been provided to support the inconsistency.*

On 10 March 2017, Council received notice that a request for a Rezoning Review had been submitted for consideration by the Sydney North Planning Panel.

On 12 April 2017, the Sydney North Planning Panel determined that the Planning Proposal should proceed to Gateway determination.

On 30 June 2017, Council received notice from the delegate of the Greater Sydney Commission that the Planning Proposal should proceed, subject to condition in the Gateway Determination.

On 26 October 2018, the Planning Proposal was formally gazetted to permit 22 lots on the site including:

- The construction of a new road;
- Civil infrastructure associated with the new road;
- Creekline reconstruction; and
- Creekline rehabilitation/revegetation.

On 31 May 2019, development application N0398/17 for the civil works was approved by the Land and Environment Court.

On 22 July 2020, the DDP approved DA2019/0887 for the subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots as per the assessment officers recommendation in addition to one further condition and the amendment of Conditions 21 and 22 to read "Prior to Subdivision Certificate".

On 28 July 2020, the Notice of Determination (the consent) was issued for DA2019/0887. It is noted that the sequencing of the conditions in the Notice of Determination is out of order from condition number 7 - 10. Despite this the numbering of the conditions and the order to which they apply is correct and there is no affect on the validation of the consent.

### **History of the subject application**

On 27 October 2021, a letter was sent to the applicant which raised issues with the bulk and scale of the development and amenity impacts as a result of non-compliant setbacks.

On 20 December 2021, the applicant submitted amended plans which reduces the extent of the zero setback to apply only to the garages located along the northern boundary of Lots 4-11 and 14-21.



## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0887, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0887 for the following reasons:</p> <p>The proposal seeks consent to alter the approved building envelope in respect of the side setbacks and height.</p> <p>The development, as proposed, has been found to be such that Council is not satisfied that the proposed works are substantially the same as those already approved under DA2019/0887.</p> <p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honour states:</p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <p><i>"The development, as proposed to be modified, is substantially the same development as that originally approved. The site will continue to be used for residential dwellings, albeit with some minor updates to the proposed building setbacks on 16 of the allotments. The proposed updates do not affect the ability for future residents to enjoy suitable area for recreation and amenity, nor limit internal amenity within the dwellings such as adequate solar and natural ventilation.</i></p> <p><i>The proposal has introduced zero-lot boundaries on 16 residential lots to accommodate a more efficient building footprint. [Note: The application has been amended to reduce the extent of the zero-lot boundaries to apply only to the garages.]</i></p> <p><i>The changes sought to the approved building envelopes will not affect the already approved subdivision layout. All parcels of land proposed to contain future dwellings remain unaltered and therefore substantially the same as that originally</i></p>



Section 4.55 (2) - Other Modifications	Comments
	<p>approved."</p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application DA2019/0887 required concurrence from NSW Rural Fire Service (RFS) and NSW Natural Resources Access Regulator (NRAR).</p> <p>The subject modification was referred to NRAR have confirmed that the GTA's issued with the previous consent are adequate and remain valid for the purposes of the Water Management Act 2000.</p> <p>The subject modification was also referred to RFS on 29/10/2021, at the time of writing this report no response has been received and the conditions (GTAs) issued by RFS remain valid for the reasons discussed below.</p> <p>The modification solely relates to a minor change in the indicative building envelope in respect of the setbacks. The indicative envelopes (plans) form part of the original consent drawings. The conditions of the GTA's relate to Asset Protection Zones, Water and Utilities and Landscaping remain valid and will apply to the future development of the site and each respective lot.</p> <p>In addition, the future development applications for the detailed design of the dwellings on each lot will be referred to the RFS. Clause 62 of the EPA Reg's requires a concurrence authority to give notice to the consent authority of its decision on a development application. The clause specifically relates to a development application and not a modification. RFS have already given its decision and concurrence to the original DA, the subdivision has not changed and the GTAs remain valid.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan. .</p>

Section 4.55 (2) - Other Modifications	Comments
or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

#### Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The conditions recommended by Health in the original DA relating to asbestos removal remain valid.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.  <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause

Section 4.15 'Matters for Consideration'	Comments
	<p>is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the non-compliance with the setback controls.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable in principle for a residential subdivision. The proposed modification to the boundary however is not supported for the reasons discussed under Clause C16.7 of the PDCP.
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. No submissions have been received.
Section 4.15 (1) (e) – the	This assessment has found the proposal to be contrary to the



Section 4.15 'Matters for Consideration'	Comments
public interest	relevant requirement(s) of the <insert non-compliances/inconsistencies> and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The north-west parts of the site are mapped as containing Bush Fire Vegetation (Buffer to Category 2). The original application was referred to New South Wales Rural Fire Service (NSW RFS) issued who issued, General Terms of Approval (GTA). The GTA's relate to Asset Protection Zones, Water and Utilities and Landscaping.

The subject modification does not materially change the development consent to which the RFS issue the GTA's and the subdivision dwelling and road layout remain as per the original approval. The modification solely relates to a minor change in the indicative building envelope in respect of the setbacks. The indicative envelopes (plans) form part of the original consent drawings. The conditions of the GTA's remain valid and will apply to the future development of the site and each respective lot. In addition, the future development applications for the detailed design of the dwellings on each lot will be referred to the RFS. Despite this the modification was referred to the RFS on 29/10/2021, at the time of writing this report no response has been received.

Clause 62 of the Environmental Planning and Assessment Regulations 2000 requires:

*(1) A concurrence authority that has received a development application from a consent authority must give written notice to the consent authority of its decision on the development application—*

*(a) within 40 days (or a lesser period, if any, provided for in an environmental planning instrument) after receipt of the copy of the application, or*

*(b) in the case of development that is required to be advertised or notified under Schedule 1 to the Act, within 21 days after it receives—*

*(i) the last of the submissions made during the relevant submission period, or*

*(ii) advice from the consent authority that no submissions were made.*

The clause specifically relates to a development application and not a modification. It is noted that no submission have been received and no response from RFS within 40 or 21 days since the referral was issued. In summary, the sub-division dwelling and access layout remains the same as approved and the GTA's issued by the RFS remain to be valid.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/09/2021 to 29/09/2021 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
Building Assessment - Fire and Disability upgrades	<p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p>It is noted that proposed development may not comply with certain requirements of the Building Code of Australia or Premises Standards at this stage, however it is considered that these issues may be assessed and determined at Construction Certificate stage. Accordingly, there are no objections to the development subject to conditions.</p>
Landscape Officer	<p><b>SUPPORTED</b></p> <p>The application is for the modification of development consent 2019/0887, and proposes to amend the building envelope plan and seek the introduction of zero-lot boundaries on 16 of the approved residential lots (lots 4 to 11 and 14 to 21).</p> <p>The lot width proposed at 9.5 metres requires landscaped areas with a minimum of 4 metres to satisfy Pittwater 21 DCP control D16.5 Landscaped Area for Newly Created Individual Allotments, and both the front and rear of the proposed lots succeed in providing suitable landscape area. As such Landscape Referral raise no objections.</p> <p>The side setback deviation from Pittwater 21 DCP control D16.7 Side and rear building lines, is a matter for consideration by Planning.</p>
NECC (Development Engineering)	<p><b>SUPPORTED</b></p> <p>No objections to the proposed 455(2) modification no conditions are required as the changes are only to side boundary building envelopes.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>SUPPORTED</b></p> <p>The proposed modification is to increase the approved building envelope on the future residential allotment which are no longer identified as flood prone. As a result no flood related development controls are proposed.</p>
Strategic and Place Planning (Urban Design)	<p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p>A revised proposal dated 20 December 2021 was submitted to address the concerns below. The revised scheme is now generally acceptable except for Lots 10, 11, 14 and 15 which should have the rear upper floor setbacks applied as well similar to Lots 4 to 9 and 16 to 21. Lot 14 could be further improved by flipping the plan around with the driveway located to the north boundary side.</p> <p><u>Planners Comment:</u></p>

Internal Referral Body	Comments
	<p>The upper floor of Lots 10,11, 14 and 15 have a compliant 6m set back and it is therefore unreasonable to request a further setback of the upper floor. In addition, lots 10-15 are not as deep as the other lots and the request to have the upper floor set back a further 3m would mean that the dwelling would have a limited floor plate on the upper floor.</p> <p>The original application approved the layout of lot 14 to have the driveway to the southern boundary. The subject application does not seek to change the approved layout of lot 14 and it is therefore considered unreasonable to require the modification of the lot as suggested.</p> <p><b>Previous Comments</b></p> <p>The proposal is a Section 4.55 (2) modification application to vary the approved lot boundary setbacks established by DA2019/0887 for 16 allotments along with the corresponding changes in the conditions of consent. The affected 16 lots are located in the middle section of the development with frontages orientated toward east and west to the new accessway.</p> <p>The approved lot boundary setback is 900mm on both side boundaries of each dwelling to ground level, and 1500mm setback to the first storey creating a stepping back massing as building height increases.</p> <p>The proposed changes is 900mm on the southern side applying to both ground level and first storey with zero setback to ground level on northern side and maintaining 1500mm setback to first storey.</p> <p>The modifications cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> <li>1. Building separation distances will be reduced resulting in less visual/ acoustic privacy, outlook, natural ventilation and daylight/ solar access.</li> <li>2. With 900mm separation between buildings, noise nuisance and visual privacy issues will be made worse.</li> <li>3. The future floor plans provided show window and door openings proposed on the zero boundary setback so compliance with building code is not achievable.</li> <li>4. The single storey on the street front setback has been replaced with a two storey built form which will remove the gradual building scale step-down effect to the street.</li> <li>5. The bulk and scale of the buildings will be increased resulting in a diminished and less appealing streetscape outcome compared to what was approved previously.</li> </ol>
Traffic Engineer	<b>SUPPORTED</b>

Internal Referral Body	Comments
	<p>The proposed modification does not result in any change to parking, traffic generation or access arrangements and the modification can therefore be supported on traffic grounds.</p> <p>All previous traffic conditions are to remain in place.</p>
Waste Officer	<p><b>SUPPORTED</b></p> <p>Recommendation - Acceptable, without conditions.</p> <p>No impacts on Waste Management services from the proposed modifications.</p> <p>All existing Waste Conditions of Consent from original DA to remain.</p>

External Referral Body	Comments
Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)	<p>The north-west parts of the site are mapped as containing Bush Fire Vegetation (Buffer to Category 2).</p> <p>The original application was referred to New South Wales Rural Fire Service (RFS) who issued their General Terms of Approval (GTA). The subject modification was also referred to RFS for 21 days. No response and concurrence is therefore assumed. The GTA issue therefore remain valid.</p>
Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse)	<p>The Natural Resources Access Regulator (NRAR) has reviewed the application and considers that, for the purpose of Water Management Act 2000, previously issued GTA's are adequate, remain valid and no further assessment is necessary.</p>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

##### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

The potential for contamination within the site has previously been investigated under Development Application N0398/17 and a Validation Report was submitted with the original application. The proposal to amend the building envelope has no implications on the previous assessment of contamination and the conditions applicable to N0398/17 remains to be valid.

## **SEPP (Infrastructure) 2007**

### **Ausgrid**

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

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

#### Comment:

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

## **SEPP (Coastal Management) 2018**

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

### **10 Development on certain land within coastal wetlands and littoral rainforests area**

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
  - (c) *the carrying out of any of the following:*
    - (i) *earthworks (including the depositing of material on land),*
    - (ii) *constructing a levee,*
    - (iii) *draining the land,*
    - (iv) *environmental protection works,*
  - (d) *any other development.*

#### Comment:

The subject application seeks consent for a minor modification of the approved indicative building envelope approved under DA2019/0887. The application will not result in any additional biodiversity impacts including impacts to the coastal wetland.



**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:  
Refer above.

**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:  
Conditions have been imposed in the original DA that will ensure that the integrity of the biophysical, hydrological and ecological environment can be protected. These conditions remain valid. The proposal will not impact on foreshore access or aboriginal heritage.

**14 Development on land within the coastal use area**

- (1)

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

Comment:

As 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:

The modification to the indicative building envelopes will not increase the risk of coastal hazards.

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Minimum subdivision lot size. The site is zoned within the Warriewood Urban Valley	Clause 6.1(3) of PLEP allows for a	22 residential lots which vary in size from 220sqm to 388sqm. The remaining 2 lots	No change	N/A	Yes

Release Area and is identified as Buffer 1m:	max of 22 dwellings are permitted	are for the private access loop road and the inner creek buffer corridor lot.			
Height of Buildings:	8.5m	Indicative envelopes have been submitted which show 7.8m	7.9m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	<ul style="list-style-type: none"> <li>- Machperson Street - 5m to articulation zone / 6.5m to garage and dwelling.</li> <li>- All other dwellings 1.5m to articulation zone 4m to garage.</li> <li>Corner lots 1 m to articulation zone and 2m to garage</li> </ul>	6.5m to dwelling Lots 4- 11, 21- 14 = 4m to articulation zone  4.5m to 6m to garage	Unaltered	Yes
Rear building line	<ul style="list-style-type: none"> <li>- Lots with a depth of 20m or less - 4m for ground floor and upper floor</li> <li>- Lots with a depth greater or equal to 20m - 4m ground floor and 6m upper floor</li> </ul>	Lots 4- 11, 21- 14 = 6m Lots 2,3, 22 and 23 = 6.5	Unaltered	Yes
Landscaped area	20sqm	20sqm	Unaltered	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion	Yes	Yes
C6.8 Residential Development Subdivision Principles	Yes	Yes
D16.1 Character as viewed from a public place	No	Yes
D16.7 Side and rear building lines	No	Yes

#### Detailed Assessment

##### C6.8 Residential Development Subdivision Principles

Clause C6.8 requires:

*The location of a zero lot line dwelling is to be determined with regard to the allotment orientation and ability to achieve the solar access provisions within this DCP. The location of a zero lot line dwelling should only occur on the southern side boundary of east-west allotments and on either side boundary of north-south allotments.*

*The location of all nominated zero lot lines must be identified on the proposed Plan of Subdivision (refer to control C6.10 Residential Subdivision Approval Requirements).*

*Where a zero lot line is nominated, the following is to be ensured:*

*a Section 88B instrument is to be applied to both the benefited lot and the burdened lot and shall include a notation identifying the potential for a building to have a zero lot line;*  
*the burdened lot is to include an easement for access and maintenance on the burdened boundary in accordance with the following:*  
*900mm for single storey zero lot walls; or*  
*1200mm for two storey zero lot walls;*  
*the easement is to enable servicing, construction and maintenance of the adjoining dwelling;*  
*the Section 88B instrument is to be worded so that Council is removed from any dispute resolution process between adjoining allotments; and*  
*no overhanging eaves, gutters or services (including rainwater tanks, hot water units, air conditioning units, downpipes, electrical conduits or the like) of the dwelling on the benefited lot will be permitted within the easement.*

#### Comment:

The applicant has submitted envelope solar access diagrams which demonstrate that despite the zero setback of the garage zone to the northern boundary adequate solar access is provided to the future dwellings. No windows are proposed at ground floor that have zero setback to the northern boundary



as this portion of the development relates to the garage zone. A condition is included in the recommendation to ensure this. Council's Urban Designer has confirmed that there issues in respect of solar access, ventilation, outlook and visual and acoustic privacy has been addressed.

The application was referred to Council's Development Engineer who offered no objections to the changes to the side setbacks and advised that no additional conditions are required.

#### **D16.1 Character as viewed from a public place**

As the subject modification seeks consent only for a modification of the indicative building envelopes a full assessment of clause D16.6 will be considered under the detailed application for the dwellings. Notwithstanding this the following sub-sections of Clause D16.6 are relevant to the subject application:

- The bulk and scale of buildings must be minimised.
- Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place, and
- Garage door widths are to be in accordance with the following:
  - Lot Dimension - Area >225sqm or 9m-12.5m wide - single with a second hardstand area in front of the garage, 3m wide garage door not exceeding 40% of the lot width, whichever is less.
  - Lot Dimension - Area >225sqm or 9m-12.5m wide - single with a second hardstand area in front of the garage, 3m wide garage door not exceeding 40% of the lot width, whichever is less.

#### Comment:

The proposal involves a modification of the side setbacks to lots 4-11 and lots 14-21 which will result in a zero setback of the garage zone to the northern boundary. The zero setback of the garage zone will result in an increase in the width of the garage zone from 4.5m to 4.6m - 4.7m which represents 53%-54% of the lot width. The applicant has described this garage zone as comprising the future garage and a washroom / toilet. The garage zone is recessed behind the building line and set back between 5m - 7m from the frontage in excess of the 4m setback requirement which will help reduce the visual impacts of the garages in the streetscape. In order to ensure the intent of the control is maintained a condition is included in the recommendation requiring the garage door not to exceed 40% of the lot width.

In addition, Council's Urban Designer has identified that the layout of Lot 14 could be improved by flipping the plan around with the driveway located to the north. It is noted that DA2019/0887 approved lot 14 to have the driveway to the southern boundary. The application does not seek to modify the approved layout and it is therefore not reasonable to request a condition requiring this change, refer to discussion in the Referral section of this report.

#### **D16.7 Side and rear building lines**

The control requires the following setbacks of the side and rear building lines for detached dwellings:

- *Side setbacks for lots between 9m and 14m in width = 900mm side setback at ground level and 1500mm for the upper floor.*
- *Rear setbacks for lots with a depth of less than 20m = 4m setback at both ground and the the upper floor. Lots with a depth greater or equal to 20m = 4m rear setback at ground level and 6m on the upper floor.*

#### Comment

The amended indicative envelope breaches the control as detailed below:

The side setback to Lots 4-11 and 14-21 to zero along the garage zone on the northern boundary which represents a length of 7.8m. Conversely, the proposal increased the rear setback of the upper floor to Lots 4-9 and 16-21 by 2.8m which will improve the spatial separation of the dwellings, reduce the bulk and massing and enhance amenity between the dwellings.

On balance, despite the minor partial breach of the side and rear setback control the spatial separation between the dwellings is assessed as adequate and the proposal generally meets the outcome of the control as discussed below.

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

Comment:

The indicative envelopes demonstrate that the future dwellings on the site will achieve the desired future character of the Warriewood Valley Locality. It is noted the built form controls for Warriewood Valley allow a greater density of the development than that normally permitted within an R2 Low density zone in the PLEP.

- *The area of site disturbance is minimised and soft surface is maximised.*

Comment:

The minor encroachment of the side setback to 16 lots will not impact on the area of site disturbance.

- *The bulk and scale of the built form is minimised and the impact of the proposed development on the adjoining properties is minimised.*

Comment:

The proposal generally complies with the sub-division principles and is noted to exceed the numerical requirements in some areas. On balance the minor (partial) breach of the side setback will not have an unreasonable impact on the bulk and scale of the envelopes approved. Further, the minor change to the indicative building envelope will not have unreasonable impacts on neighbouring amenity in terms of privacy, solar access or access to ventilation.

The setback of the upper floors of lots 10, 11, 14 and 15 all have compliant 6m setbacks it is therefore considered unreasonable to request a further 3m setback as suggested by Council's Urban Designer, refer to discussion in the Referral Section of this report. It is also noted that the proposal amends the upper floor rear setback of Lots 4-9 and 16-21 exceeds the minimum 6m upper floor setback measuring 8.9m which on balance can be argued to reduce any concerns relating to bulk, massing and amenity.

- *To create meaningful breaks between adjoining buildings and regular rhythm of built form, particularly with regard to the built forms presentation to public places.*

Comment:

The minor encroachment of the side setback will not result in unreasonable visual impacts on the streetscape in terms of breaks between buildings and the rhythm and pattern of built form fronting the new accessway. The portion of the dwelling that is in breach of the side setback control, the garage zone, is recessed behind the front facade and setback between 5m to 7m which exceeds the 4m

minimum setback.

Despite the breach the amended envelope allows for appropriate built form which allows for articulation of the dwellings with breaks between all dwellings.

- *To create usable curtilage areas around buildings for viable access, landscaping and open space.*

Comment:

The zero side setback has been amended to apply only to the garage zone thereby allowing for the retention of useable space along the northern curtilage of the future dwellings for access and landscaping.

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

Comment:

The minor variation of the building envelope will not impact on views.

- *Vegetation and natural features of the site is retained and enhanced within the development site design to screen the visual impact of the built form.*

Comment:

The modification will not have any impacts on any existing vegetation or natural features of the site or the approved landscape zones.

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

Comment:

The minor changes to the side setback will not result in any unreasonable impacts on neighbouring amenity.

## **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.

## **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

The modification of the indicative building envelope relates to the side setback to lots 4-11. In addition, the application increases the rear setback of the upper floors to lots 4-9 and 16-21 by 2.8m which results in improved spatial building separation, reduced building bulk and improved amenity.

On balance the minor breach of the side setback controls will have no unreasonable impact on the desired future character of the Warriewood Valley Locality, the resultant built form or the bulk, scale and density of the development, the visual quality of the streetscape or the amenity of the future dwellings.

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0654 for Modification of Development Consent DA2019/0887 granted for subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots on land at Lot 25 DP 5464,2 Macpherson Street, WARRIEWOOD, subject to the conditions printed below:

### **A. Add Condition No.2A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

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

#### **a) Modification Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		



Drawing No.	Dated	Prepared By
DA000 Rev C Coversheet	20.12.2021	Meriton
DA001 Rev E Building Envelope	20.12.2021	Meriton
DA002 Rev E Driveway and Garage Locations	20.12.2021	Meriton
DA003 Rev E Private Open Space	20.12.2021	Meriton
DA004 Rev E Setbacks	20.12.2021	Meriton
DA005 Rev E Indicative Elevation	20.12.2021	Meriton

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

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

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

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

**B. Modify Condition 8 - Amendments to the approved plans to read as follows:**

(a) The sewer service line shown on Drawing reference C070 Rev E (Service and Utilities Coordinate Plan) prepared by AT&L dated 30 January 2020 shall not traverse private property.

(b) The garage doors to Lots 4-11 and 14-21 shall be limited to a maximum of 40% of the lot width.

(c) There shall no windows along the garage zone portion of the dwellings which have a zero setback to Lots 4-11 and 14-21

Reason: To ensure that the garages and hardstand do not dominate the streetscape and to protect neighbouring amenity.

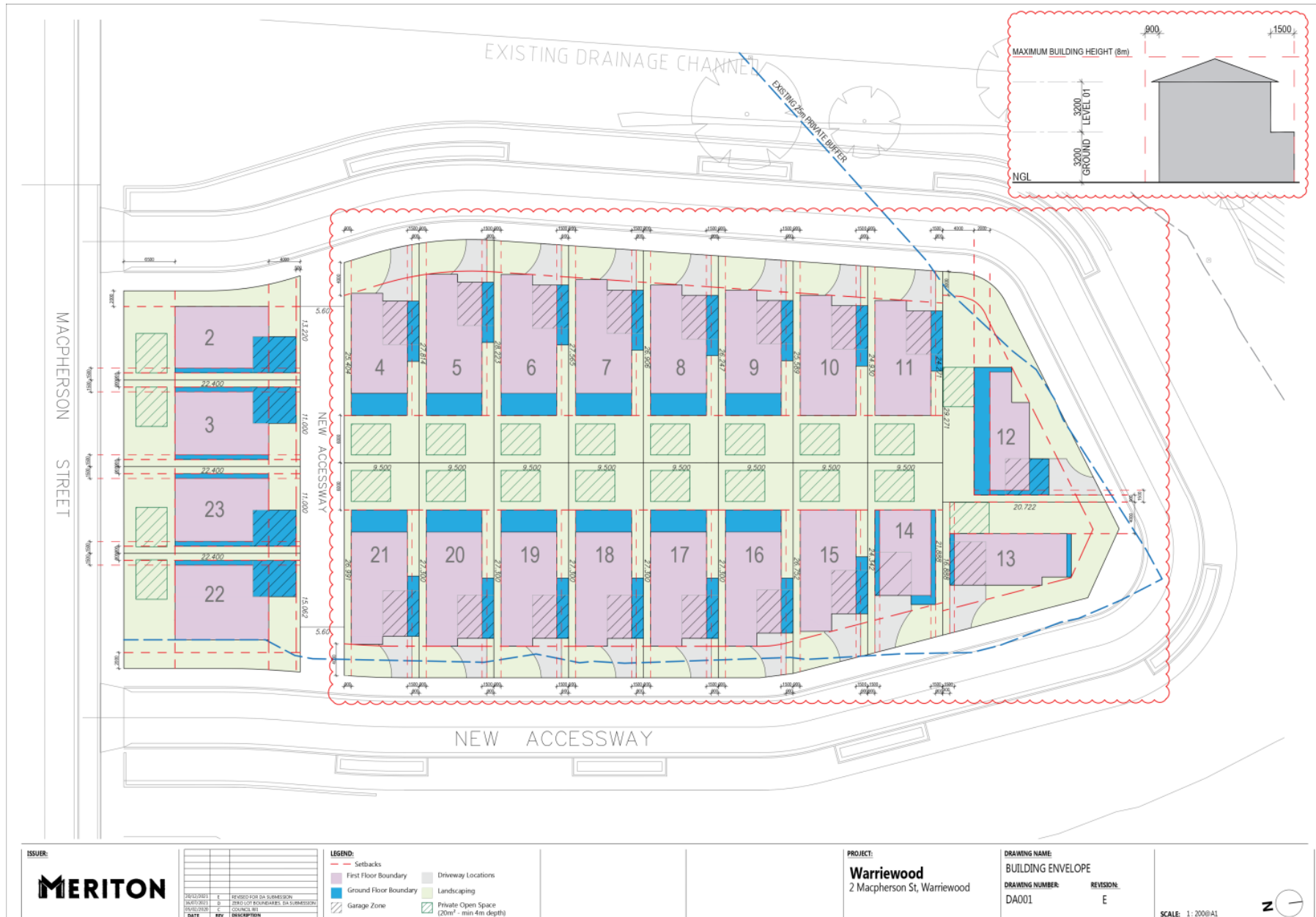
**C. Add Condition 49 - Fire Safety Certificate**

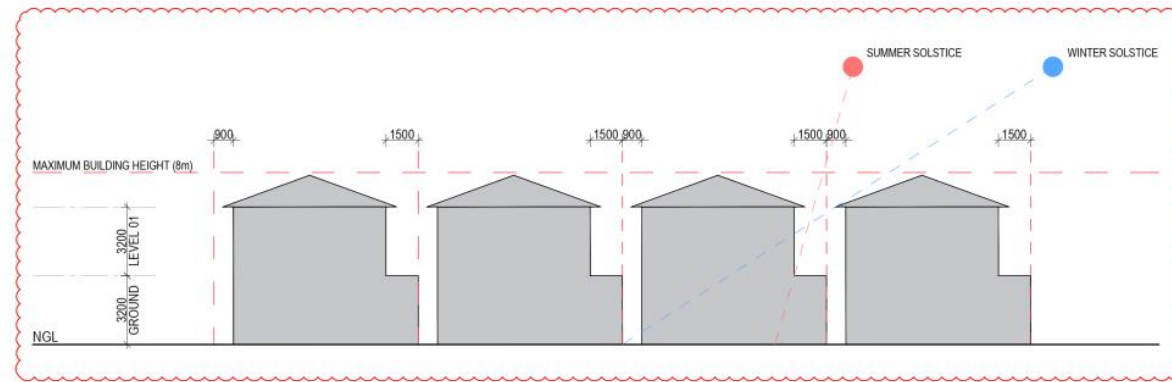
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate (or where applicable, relating to the part of the building, being the subject of this Consent).

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.





ISSUES:

MERITON


**ITEM 3.5****DA2021/1286 - 54 WANDEEN ROAD CLAREVILLE -  
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE  
INCLUDING A SWIMMING POOL AND GARAGE****REPORTING MANAGER** Tony Collier**TRIM FILE REF** 2022/054773**ATTACHMENTS**  
1 [↓ Assessment Report](#)  
2 [↓ Site Plans and Elevations](#)  
3 [↓ Clause 4.6](#)**PURPOSE**

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the 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 DA2021/1286 for Alterations and additions to a dwelling house including a swimming pool and garage on land at Lot 11 DP 219977, 54 Wandeen Road CLAREVILLE, subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1286
<b>Responsible Officer:</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot 11 DP 219977, 54 Wandeen Road CLAREVILLE NSW 2107
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a swimming pool and garage
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Stephen Noel James
<b>Applicant:</b>	Stephen Noel James
<b>Application Lodged:</b>	02/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	12/08/2021 to 26/08/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 27.1%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 3,371,523.00

### EXECUTIVE SUMMARY

This development application is referred to the Development Determination Panel (DDP) for determination as the proposal exceeds the prescribed Height of Buildings Development Standard by more than 10%.

The proposal seeks consent for substantial alterations and additions to an existing dwelling house and includes the demolition of an existing carport on Council's Road Reserve and the construction of an elevated swimming pool.

The proposal attracted two objections from two neighbours raising concerns regarding privacy, construction impacts and on-going stormwater management. Each of these matters has been resolved

by way of either revised plans or condition of consent.

This assessment finds that notwithstanding the variation to the Height of Buildings Development Standard, and several breaches to the prescribed Built Form Controls, the development is a well-designed and sustainable building that is worthy of approval.

Therefore, this report concludes with a recommendation that the DDP approve the development application, subject to conditions of consent.

### **PROPOSED DEVELOPMENT IN DETAIL**

Development Consent is sought for partial demolition works, alterations and additions to the existing dwelling and the construction of an elevated swimming pool.

The application seeks consent for the following:

- Demolition of existing carport that encroaches Council's Road Reserve, and construction of a new garage and entryway (wholly within the site);
- Reconfiguration of existing two-storey dwelling including excavation to the south for a new lift;
- Demolition of existing roof and construction of a new Level 3 which accommodates an elevated swimming pool;
- Alterations to the exterior of existing house; and
- Associated landscaping works.

Cumulatively the works result in a five level house with a double garage, gym, study, open-plan living/kitchen/dining area, cellar, rumpus room, five bedrooms and four bathrooms. All levels are connected by a lift and stairwell. All levels have north-facing decks.

### **AMENDED PLANS**

During the course of the application Council requested amendments including a revised landscape plan, owners consent from a neighbour to remove a tree and an extension to the western privacy screen at the pool level. These revised plans were received on 24 November 2021. The revisions have been published on Council's website, but did not require re-notification in accordance with the Community Participation Plan.

This assessment is made herein is on the basis of these amended plans.

### **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater 21 Development Control Plan - D1.8 Front building line  
Pittwater 21 Development Control Plan - D1.11 Building envelope

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 11 DP 219977 , 54 Wandeen Road CLAREVILLE NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site is legally identified as Lot 11 in Deposited Plan 219977 and is known as 54 Wandeen Road, Clareville.</p> <p>The site falls within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014.</p> <p>The site is trapezoidal in shape with a width of 20.5m, depths of 32 and 36m and an overall surveyed area of 697.6sqm.</p> <p>Presently the site accommodates a one and two storey brick and weatherboard dwelling house situated on the downslope of the site, with the roof ridge sitting 6m lower than the road. At the street frontage there is a double carport which encroaches on Council's Road Reserve and is elevated above pathways and retaining walls.</p> <p>Topographically the site falls steeply to the north, from the street to the back of the block. The road has an RL of approximately 60.00, the roof ridge of the existing house if RL54.83 and the northern edge of the site, which accommodates a 1.83m wide easement for drainage and right of footway, has an RL of 41.00. Thus the site has a 20m variation in its levels throughout.</p> <p>The site has a number of mature native and exotic trees located throughout. A series of stone retaining walls and natural rock outcrops exist throughout.</p> <p>Surrounding properties consist of other detached dwelling houses of varying age, size and construction.</p>

Map:





#### SITE HISTORY

- Pre-lodgement Meeting no. PLM2019/0266**

The applicant met with Council on 17 December 2019 to discuss a proposal for alterations and additions to the existing dwelling including a new double garage and swimming pool. In that meeting Council raised a number of concerns with the proposed development including building height, side boundary envelope, car parking on public land, landscaping and biodiversity.

The development subject of this Assessment Report is reflective of a more developed, refined and reduced building commensurate to that of the pre-lodgement proposal.

#### 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 2014 applies to this proposal.



Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan 2014 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration'	Comments
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 12/08/2021 to 26/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
PWB Building	PO Box 1175 NEWPORT BEACH NSW 2106
Mr J Jones	143 Hudson Parade CLAREVILLE NSW 2107

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

- Visual privacy from pool area
- Construction impacts
- On-going stormwater impacts

The matters raised within the submissions are addressed as follows:

- **Visual privacy from pool area**

### Comment

A submission received from a neighbouring property raises concern that users of the proposed swimming pool and Level 3 deck could be able to see into adjacent rooms and therefore requests that the proposed privacy screen extend for the full length of the swimming pool.

The revised plans received amended the western elevation of the development to provide a privacy screen along the full western edge of the swimming pool. Whilst the portion of screen added in the revised plans is lower in height than the southern portion of the screen, the reduced height is considered acceptable as it sits atop the edge of a swimming pool (i.e. someone will not be able to see over the top of it). From the deck views in a downward direction are obscured by the 2.8m pool width and the screen, combined with the additional 2.539m setback to the boundary, thus resulting in a total distance of 5.338m between the deck and the boundary.

The revised plans are considered to address the privacy concern raised.

- Construction impacts**

Comment

Concern was raised in a submission received from the downslope neighbour that if the recommendations of the Geotechnical Report are not followed that there may be risk to property and life caused by the development. The submission requests *"that Northern Beaches Council provide assurances to us that the recommendations of the report will be implemented including details of how the compliance to the recommendations will be monitored."*

The provided Geotechnical Report forms an approved document of this consent and all recommendations within it must be adhered to as per Condition 1 of this report. The onus of monitoring compliance falls to the private certifying authority and the responsible geotechnical engineer to ensure that all recommendations are followed.

This concern is addressed by way of condition.

- On-going stormwater impacts**

Comment

Similar to the above concern, the submission requests that all drainage systems constructed be compliant and designed to minimise impacts on adjoining properties. That proposed stormwater system, which maintains connection to an existing easement, has been assessed as satisfactory by Council's Development Engineer, subject to a number of conditions which can be found in the recommendations of this report.

This concern is addressed by way of conditions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the alterations and additions to an existing residential dwelling. Alterations include the demolition of a number of internal structures and walls in order to facilitate internal layout changes. Additions are include a number of new floors to allow for a new kitchen, open plan living area, storage, study as well as gym.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1.14 Landscaped Area - Environmentally Sensitive Land</li> </ul>

Internal Referral Body	Comments
	<p><b><u>Updated Comments - 30/11/2021</u></b></p> <p>Following concerns raised regarding the impacts of proposed works on trees partially located in adjoining properties and the lack of Landscape Plan, owners consent has since been provided alongside a new Landscape Plan and amended Architectural set.</p> <p>Consent from the adjacent property owners has been received supporting the removal of Tree No. 8 that is located on the shared boundary line. As previously discussed, Tree No. 8 could be supported subject to replacement tree planting. Considering the Landscape Plan has indicated that compensatory tree planting is to take place, the removal of Tree No. 8 is supported. Although this is the case, it is recommended that one of the proposed trees be relocated towards the rear of the site in accordance with the Biodiversity Teams comments, ensuring the long-term retention and enhancement of the Pittwater's locally native tree canopy. The need for this proposed tree relocation can be addressed through conditions of consent.</p> <p>The Landscape Plan provided proposed the in-ground planting of trees, shrubs, grasses and groundcovers, as well as the on-slab planting of grasses and groundcovers. Generally, no major concern is raised with these proposed works as it is evident landscape works seek to enhance the landscape amenity of the site, whilst also enhancing the privacy and built form mitigation of the site. The completion of these landscape works, inclusive of the relocation of at least one canopy tree, is vital to satisfy control C1.1 and D1.14.</p> <p>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 provided, including the require tree relocation.</p> <p><b><u>Original Comments - 11/08/2021</u></b></p> <p>The Statement of Environmental Effects provided with the application notes that a number of existing trees are required to be removed in order to facilitate proposed works. For this reason, an Arboricultural Impact Assessment has been provided.</p> <p>The Arboricultural Impact Assessment has identified a total of thirty trees, located both within the site, as well as road reserve and adjoining properties. Of these thirty trees identified, eleven trees are proposed for removal. Of these eleven trees, nine trees, identified as Trees No. 7, 9, 10, 11, 12, 13, 14, 16 and 17, have been noted as being of low landscape significance, and as a result do not have a high priority for retention. It is noted that a number of these trees are either below 5m in height and/or exempt species, and as a result they may be removed without Councils approval. The majority of these trees are located adjacent to either the eastern or western boundary, and are within the footprint of proposed works. The remaining two trees proposed to be removed are Trees No. 6 and 8, both of which</p>



Internal Referral Body	Comments
	<p>are native canopy trees with high retention value. Both trees are located towards the eastern boundary however due to the proximity of proposed works, these trees are required to be removed. Considering the number of other native canopy trees located within the site that are proposed for retention, the removal of these trees would be supported subject to replacement tree planting.</p> <p>Concern however is raised with the removal of Tree No. 8, as this tree is located on the boundary line and partially located within the neighbouring property to the east. All trees in adjoining properties, irrespective of species, are prescribed trees and should be retained. As Tree No. 8 is partially in this neighbouring property to the east, consent must be attained from the owners of this property prior to Landscape Referral being able to support the removal of this tree. Should consent not be received, this tree is required to be retained and the proposed dwelling should be redesigned in order to accommodate this.</p> <p>Five trees identified for retention, Trees No. 2, 3, 4, 5 and 20, are significant native trees of high value that are within close proximity to proposed works. The Arboricultural Impact Assessment has noted that proposed works are expected to have an encroachment of less than 10% into the Tree Protection Zone (TPZ) of these trees, and hence no detrimental impacts as a result of works is expected. The Arboricultural Impact Assessment has recommended a number of typical tree protection measures and the appointment of a Project Arborist. If these measures are adhered to, the likely impact of proposed works are to be minimal. For this reason, the Arborists recommendations are supported. The remaining trees identified for retention both within the site as well as road reserve and neighbouring properties are well clear of proposed works and hence no concerns are raised. The retention of all trees noted to be retained is vital to satisfy control B4.22, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", "to effectively manage the risks that come with an established urban forest through professional management of trees", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide".</p> <p>Slight concern is also raised regarding the limited information regarding the proposed landscape works. It is clear some areas of landscaping are proposed, particularly at the front of the site, as well as the green roofs. Due to the site being located within area identified as containing Pittwater Spotted Gum Forest, an Endangered Ecological Community (EEC), the development is to ensure that at least 80% of any new planting incorporates native vegetation that is listed in this EEC. Landscape works will not only play a key role in restoring this sensitive ecological community, but this vegetation is required to provide valuable built form softening and mitigation which is particularly important due to the increased in built form proposed. For this reason, it is recommended that a landscape plan be provided with the application in accordance with Councils Development Application</p>

Internal Referral Body	Comments
	<p>Lodgement Requirements. This landscape plan is required to demonstrate a number of key aspects to ensure the landscape outcomes are achieved. The planting schedule is to demonstrate compliance with the required 80% native species requirement, at least two locally native trees are to be planted in order to compensate significant trees removed, as well as shrub planting at the front of the property is required to illustrate how the built form is complemented and softened. This landscape plan is necessary to satisfy controls C1.1 and D1.14, as key objectives of these controls seek to ensure "landscaping enhances habitat and amenity value", "landscaping reflects the scale and form of development", as well as that the built form is softened and complemented by landscaping.</p> <p>The landscape component of the proposal is therefore not currently supported. It is recommended that owners consent be attained from the neighbouring property to the east for the removal of Tree No. 8. Should this consent be received in support for the removal of Tree No. 8, it is further recommended that a landscape plan be provided in accordance with Councils Development Application Lodgement Requirements. This landscape plan is required to demonstrate a number of key aspects to ensure the landscape outcomes are achieved. The planting schedule is to demonstrate compliance with the required 80% native species requirement, at least two locally native trees are to be planted in order to compensate significant trees removed, as well as shrub planting at the front of the property is required to illustrate how the built form is complemented and softened. Should consent not be received from the neighbouring property, an alternative design arrangement should be sought that ensures this tree is required to be retained.</p> <p>Upon receipt of the required documents, further assessment can be made.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for the construction of alterations and additions to an existing dwelling, including the construction of a new swimming pool and garage. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b> <b>Pittwater Local Environmental Plan (PLEP)</b></p> <ul style="list-style-type: none"> <li>7.6 Biodiversity Protection</li> </ul> <p><b>Pittwater Development Control Plan (PDCP)</b></p> <ul style="list-style-type: none"> <li>B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>The application seeks to remove eleven (11) trees:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• T.6 - Banksia integrifolia</li> <li>• T.7 - Eucalyptus spp. (Dead)</li> <li>• T.8 - Casuarina cunninghamiana</li> <li>• T.9 - Syzygium spp.</li> <li>• T.10 - Brugmansia spp.</li> <li>• T.11 - Lagerstroemia indica</li> <li>• T.12 - Lagerstroemia indica</li> <li>• T.13 - Cyathea cooperi</li> <li>• T.14 - Camellia spp.</li> <li>• T.16 - Cyathea cooperi</li> <li>• T.17 - Cyathea cooperi</li> </ul> <p>Of these, all are exempt based on health, height, distance from dwelling or species (Naturally Trees 2021), except Tree 6 and Tree 8. Neither tree species is diagnostic of the locally-present Pittwater Spotted Gum Forest - endangered ecological community, however they are worthy of constraint. On condition that the removal of Tree 6 &amp; 8 is mitigated with the replanting of canopy species representative of Pittwater Spotted Gum Forest, the application is acceptable in terms of tree impacts. Tree species must be selected from the final determination, and must include at least one of the following canopy trees: Corymbia maculata, Angophora costata, Eucalyptus botryoides, Eucalyptus paniculata, Eucalyptus punctata, Eucalyptus umbra. All remaining vegetation diagnostic of Pittwater Spotted Gum Forest is to be protected in accordance with the tree protection measures recommended within the submitted Arboricultural Impact Appraisal and Method Statement (Naturally Trees 2021).</p> <p>As noted by the Landscape Referral Team, Tree 8 appears to be located on the boundary of the site, and requires the adjoining owners consent for removal, or the proposal must be redesigned to avoid impacts in lieu of this.</p> <p>Subject to tree replacement, and owner approval (Tree 8), the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>The application seeks approval for the construction of alterations and additions to an existing dwelling, including:</p> <ul style="list-style-type: none"> <li>• Construction of a new elevated double car garage with bin storage, storeroom and lift shaft</li> <li>• New timber path and open walkway</li> <li>• New swimming pool</li> <li>• New driveway</li> </ul> <p><b>Access</b></p> <p>The site is accessed via an existing concrete driveway from Wandeen Road with parking provided in a detached carport. Currently the</p>

Internal Referral Body	Comments
	<p>existing carport is located partly within the public road reserve.</p> <p>Proposal is to reconstruct the carport to stand wholly within the site.</p> <p><b>Stormwater</b> The property is located on the northern, lower side of Wandeen Road. The site has a slope towards the rear.</p> <p>Other than the proposed new garage to replace the existing carport and the proposed new swimming pool, the majority of the proposed works are largely within the existing building footprint.</p> <p>The proposed new roof areas will be connected to the existing stormwater system which directs water to existing interallotment drainage easement at the rear of the site.</p> <p><b>Excavation</b> The site is within Hazard H1 area on Council's Geotechnical Hazard Map.</p> <p>A Geotechnical Investigation has been prepared by Crozier Geotechnical Consultants, Reference No. 2020-198, Dated 30 October 2020.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections to the development.

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

##### SEPP 55 - Remediation of Land

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



### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A417274 dated 28 June 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 raised no objections to the development.

### 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
Clause 4.3 - Height of Buildings:	8.5m	10.808m	27.1% (2.308m)	No

#### 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
4.6 Exceptions to development standards	Yes

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

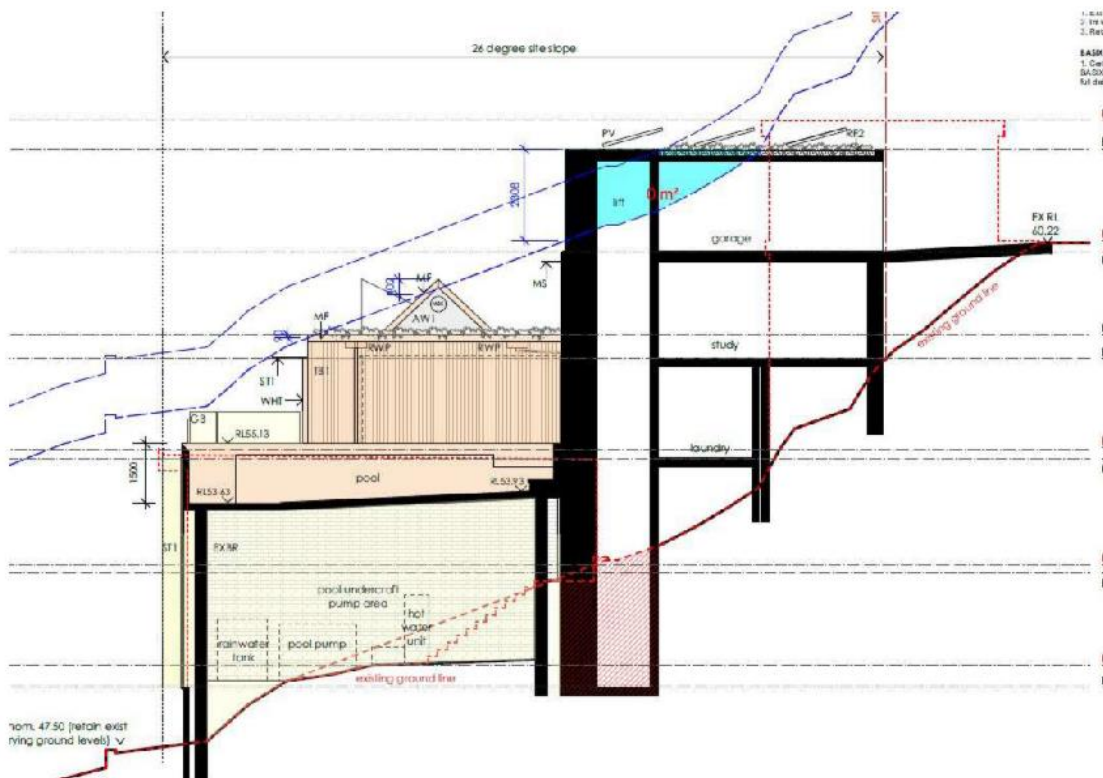
#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.808m
Percentage variation to requirement:	27.1%

A portion of the proposed garage level encroaches beyond the 8.5m height plane as indicated in blue highlight on the below sectional drawing:



#### Assessment of request to vary a development standard

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

#### Clause 4.6 Exceptions to development standards

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

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

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

#### Comment

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

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

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



Comment

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

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

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

Comment

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- that the non-compliance arises as a result of the site's sloping topography and the siting of existing development;
- that the non-compliance removes an existing carport on public land;



- that the bulk and scale of the development is in-keeping with the proportions of surrounding development, and utilises a material palette that is harmonious with the natural environment;
- that the non-compliance, and development as a whole, results in no unreasonable impacts to the amenity, including views, from surrounding public and private properties.

In consideration of the applicant's justification it is concurred that the adaptive re-use of an existing building coupled with the relocation of car parking from public land into the site itself would inherently result in a variation to the building height standard, consequent of the topography of Wandeen Road and Clareville as a whole. The design of the building, particularly the elements breaching the building height standard, is non-offensive and is a positive addition to the streetscape that adds both visual interest and an enhanced habitat for wildlife.

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

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

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

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

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

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

Comment

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

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 height of the proposed development is consistent with that of surrounding buildings that are

designed to step down the hill. The building appropriately responds to the stated desired future character of the locality.

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

Comment

Consequent of the topography of Wandeen Road is it common for garages / carports to be built at the sites frontage and level with the road, which frequently results in said structures exceeding the height of buildings control. The proposal is no different, and the design of the entry / garage level is well-designed and articulated to ensure that the proportions and aesthetic of the building are consistent with surrounding developments and the wider natural environment.

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

Comment

The non-compliant building height does not result in any unreasonable overshadowing of neighbouring properties.

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

Comment

The proposal is considered to allow for the reasonable sharing of views from the public domain given its perforated materiality (timber slats and glass). This matter is discussed in detail later in this report.

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

Comment

The proposal is for alterations and additions to an existing dwelling and is required to relocate the existing car parking area. The building is well-designed to respond to these existing built features and sensitively responds to the natural topography of the site.

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

Comment

The development is not considered to have an adverse visual impact on the natural environment.

**Zone objectives**

The underlying objectives of the C4 Environmental Living zone are:

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

Comment

By way of utilising the existing building, rather than a knock-down-re-build, the development is considered to be low-impact to the natural environment and is a suitable form of development.

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

Comment

The development does not have an adverse impact on any ecological, scientific or aesthetic values.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment

Not applicable.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment

As described above and throughout this report, the development achieves compliance with this objective.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment

The proposal results in the retention of a significant portion of the site which is occupied by rock outcrops and native trees.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of Buildings Development Standard associated with a single dwelling house (Class 1 building).

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(south) 6.5m	Carport - 0.046m House - 3.023 - 9.623m	Up to 99.3%	No
Rear building line	(north) 6.5m	14.4 - 16.4m	-	Yes
Side building line	(east) 1m	1.651m	-	Yes
	(west) 2.5m	2.539m	-	Yes
Building envelope	(east) 3.5m	Two encroachments, maximum encroachment of 2.1m in height by 6.2m in length	60%	No
	(west) 3.5m	One encroachment, maximum encroachment of 4.4m in height by 7.6m in length	125%	No
Landscaped area	60% (418.38m <sup>2</sup> )	60.5% (422m <sup>2</sup> )	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
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



Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	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	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **D1.8 Front building line**

##### Description of Non-Compliance

Clause D1.8 of the Pittwater 21 Development Control Plan 2014 prescribes a front boundary setback requirement of 6.5m. The control includes a variation on steeply sloping or constrained sites to permit reduced or nil setbacks to parking structures, however all other structures on the site must satisfy or exceed the minimum building line.

In this instance the development provides a minimum 0.046m setback to the front boundary which represents a 99% variation to the control requirement, but complies with the side and rear setback building lines and therefore the variation can be applied.

Notwithstanding the applicability of this variation, an assessment of the proposal against the underlying outcomes of the control follows:

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

##### Comment

The proposal shall enhance the desired future character of the locale by removing a carport encroaching on Council's road reserve with an interesting and architecturally designed garage topped by a green roof and solar panels which represents a visual improvement to the existing carport. The non-compliant garage is consistent with what could readily be envisaged to be constructed by virtue of the slope of the land.

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

Comment

The proposed garage will not block any views from the private domain. From Wandeen Road there are views of Pittwater obtained through and around the existing carport. On balance the proposal is not considered to unreasonably impact on these public views as the structure is lesser in height and setback further into the land than the existing carport and is faced with timber batten screens to permit views through the carport to the view beyond. The carport also equates to lesser than 50% of the total width of the site frontage.

Further to the above, given the reasonably 'blind' nature of Wandeen Road for drivers and the absence of footpaths along the street, it would not be a common occurrence for pedestrians to congregate in this public place to enjoy the views of Pittwater.

Therefore on balance whilst the structure will have an impact on the view from a public place, that impact is reasonable and acceptable.

- *The amenity of residential development adjoining a main road is maintained.*

Comment

Wandeen Road is not a main road and therefore this clause does not apply.

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

Comment

The carport requires the removal of two trees, however that removal is inevitable to safely fit cars on to the site. These two trees can only currently exist as the existing development encroaches on Council's road reserve. Notwithstanding that, the development and its green roof visually enhance the streetscape and is a positive addition to the streetscape.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment

Not achieved. This does not form a reason for refusal given the constraints of the site.

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

Comment

The development shall enhance the bushland character of the locality by virtue of green roofs and the planting of new canopy trees.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment

As described above the development is considered to enhance the existing streetscape and

promote a scale and density that is in keeping with the height of the natural environment.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment

The frontage of the site is appropriately active for the location.

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

Comment

As described above, the development appropriately responds to the environment of the locale.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

#### **D1.11 Building envelope**

Description of Non-Compliance

Clause D1.11 Building Envelope of the P 21 DCP prescribes a 3.5m side building envelope to both the eastern and western flank elevations of the proposed development. The control permits a variation where the building footprint is situated on a slope over 16.7 degrees which permits variation to the control requirements on a merit basis.

The building footprint is situated on a slope in excess of 16.7 degrees. Numerically the development results in a 60% variation to the eastern elevation and a 125% variation to the western elevation of the proposed development - the latter variation is shown on the below elevational plan.



### Merit Consideration

Notwithstanding that a variation provision applies to the development, the proposal is considered against the underlying outcomes of the control as follows:

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

#### Comment

The breach of the side boundary envelope does not change the developments ability to achieve the desired future character of the locality. The development remains a single dwelling house of proportions that are in-keeping and subservient to the natural landscape, and is finished in materials that respond to the surrounding foliage.

- *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 variation to the side boundary envelope does not impact on the streetscape. Were the non-complying elements be deleted from the proposal, the development as seen from the public domain would not change. The overall bulk and scale of the building is below the height of existing trees.

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



Comment

Achieved.

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

Comment

On balance the proposal is deemed to be of an acceptable bulk and scale.

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

Comment

As described elsewhere in this report the proposal is found to result in an equitable preservation of views from the public and private domain.

- *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 results in a reasonable level of amenity from neighbouring properties.

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

Comment

The variation to the side boundary envelope does not necessitate the removal of any vegetation. The non-complying elements can be suitably screened by trees both at current, but more so in the future as vegetation grows.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 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 \$33,715 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,371,523.

## 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 assessment of this application has demonstrated that the Built Form Control non-compliances, the Development Standard breaches and the concerns raised in the two submissions are all acceptable on balance when assessed against the underlying objectives of the controls, and concludes that the proposal results in no unreasonable impacts on neighbours or the environment.

This Assessment Report asserts that the development is a high-quality and well considered design that is contextually appropriate for the C4 Environmental Living zone and for the wider Clareville locale.

The development application is worthy of approval from the DDP.  
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That 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 DA2021/1286 for Alterations and additions to a dwelling house including a swimming pool and garage on land at Lot 11 DP 219977, 54 Wandeen Road, CLAREVILLE, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Rev. A - Exist + Prop Site Plans	29 June 2021	Grove Architects
DA03 Rev. A - Existing Plans	29 June 2021	Grove Architects
DA10 Rev. A - Level 6 - Roof	29 June 2021	Grove Architects
DA11 Rev. B - Level 5 - Garage Level	25 October 2021	Grove Architects
DA12 Rev. A - Level 4 - Study Level	29 June 2021	Grove Architects
DA13 Rev. B - Level 3 - Living Level	25 October 2021	Grove Architects
DA14 Rev. A - Level 2 - Bedroom Level	29 June 2021	Grove Architects
DA15 Rev. A - Level 1 - Garden Level	29 June 2021	Grove Architects
DA16 Rev. B - Elevation North	25 October 2021	Grove Architects
DA17 Rev. A - Elevation South	29 June 2021	Grove Architects
DA18 Rev. A - Elevation East	29 June 2021	Grove Architects
DA19 Rev. B - Elevation West	25 October 2021	Grove Architects
DA20 Rev. A - Section A	29 June 2021	Grove Architects
DA21 Rev. B - Section B	25 October 2021	Grove Architects
DA22 Rev. A - Section C	29 June 2021	Grove Architects
DA23 Rev. A - Section D	29 June 2021	Grove Architects
DA24 Rev. A - Section E	29 June 2021	Grove Architects

DA31 Rev. A - Landscape Areas	29 June 2021	Grove Architects
DA40 Rev. A - Colours & Materials	29 June 2021	Grove Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Arboricultural Impact Appraisal and Method Statement	12 July 2021	Naturally Trees
BASIX Certificate no. A417274	28 June 2021	Grove Architects
Report on Geotechnical Investigation (ref:2020-198)	30 October 2020	Crozier Geotechnical Consultants

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L/01 - Proposed Landscape Plan	11 November 2021	A Total Concept
L/02 - Details	11 November 2021	A Total Concept
L/03 - Landscape Specification	11 November 2021	A Total Concept

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 \$33,715.23 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 \$3,371,523.00.

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](http://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](http://www.northernbeaches.nsw.gov.au)).

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

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

#### 6. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs

Design certification shall be submitted to the Certifying Authority by a qualified Structural



Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

7. **Stormwater Disposal 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 the Stormwater Drainage from Low Level Properties Technical Specification. 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.

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants, Reference No. 2020-198, Dated 30 October 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Tree 8 must not be cleared without prior consent from the owner at 56 Wandeen Road Clareville.

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

Reason: To protect native vegetation.

10. **Submission of Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for Infrastructure works on Councils 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 elevated driveway which are to be generally in accordance with the Council's specification for

engineering works - AUS-SPEC -ONE. The plan shall be prepared by a qualified Civil Engineer. The design must include the following information: .

As outlined in the Concept Civil Plan by Grove Architects, Issue A, Dated 29/6/2021.

1. Structural Engineering details relating to the elevated driveway and any associated retaining structures are to be submitted to Council prior to the release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practicing Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E) and has appropriate experience and competence in the related field.
2. At a minimum, the drawings must show the works in plan view, longitudinal sections and details at a relevant scale including all existing levels, any existing services/ infrastructure to be retained in the area of works.
3. All driveways gradients and safe sight distances etc. shall be designed comply with AS 2890.1:2004 (Off-street Parking Standards).
4. The proposed development involves the construction of subsurface structures and excavation that has potential to adversely impact neighboring property if undertaken in an inappropriate manner. To ensure there are no adverse impacts arising from such works, the applicant must engage a suitably qualified and practicing Civil or Structural Engineer specializing in geotechnical and the hydrogeological field to design.
5. The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants, Reference No. 2020-198, Dated 30 October 2020., are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.
6. For the matter of public safety, the elevated vehicle driveway access slab in public domain requires safety barriers on both side of the slab in accordance with AS2890.1-2004, details to be provided.
7. Proposed piers to support elevated driveway in the public domain must not affect existing services in the area. All the existing services are to be shown on the plans and any adjustment of services are to be approved by the relevant service authority with all costs associated borne by the applicant.
8. Vehicle crossing to be 6.5 metres wide at the kerb and 6.5 m (exclusive wings) wide at the boundary. The driveway profile to be in accordance with Northern Beaches Council's standard Drawing No A4-3330/3 NL.
9. Proposed suspended driveway to be designed as an independent structure and should not impose any load on the embankment supports the Wandeen Road.
10. Provision of any grate, vehicle gate or pedestrian gate on the public road reserve is not permitted.
11. Details of pedestrian access to site are 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.

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

11. **Vehicle Driveway Gradients**

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

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

Reason: To ensure suitable vehicular access to private property.

12. **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.

13. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Subdivision Works 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.

14. **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.

15. **Waste Management Plan**

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

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

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

16. **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](http://www.sydneywater.com.au) for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o 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.

17. **External Finishes to Roof**

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

18. **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.

19. **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) *Banksia integrifolia*, located in the south-east corner of the site, Tree No. 6,
- ii) *Casuarina cunninghamiana*, located in the south-east corner of the site on the eastern boundary line, Tree No. 8.

Note:

- i) Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.
- ii) 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: To enable authorised building works.

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. **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

### 22. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

### 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), 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 3 - Arboricultural Impact Appraisal,  
ii) Section 4 - Arboricultural Method Statement,  
iii) Appendix 8 - Tree Management Plan,

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.

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:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;
- and



- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

26. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

27. **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.

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. **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

#### 31. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) at least one native canopy tree is to be planted within the rear yard of the property. It is recommended that the proposed *Elaeocarpus reticulatus* in the front setback be relocated to the rear with its species substituted, or alternatively, this may be retained however an additional tree shall be required to be planted. This tree is to utilise a 75L pot size and must be one of the following species: *Angophora costata*, *Corymbia maculata*, *Eucalyptus botryoides*, *Eucalyptus paniculata*, *Eucalyptus punctata* or *Eucalyptus umbra*.

Tree planting shall be located within a 9m<sup>2</sup> deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees.

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

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.

#### 32. **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.

#### 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. **Replacement of Canopy Trees**

To compensate for the removal of Tree 6 & Tree 8, two (2) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Final Determination for Pittwater Spotted Gum Forest:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing>

At least one of the following canopy trees must be included: *Corymbia maculata*, *Angophora costata*, *Eucalyptus botryoides*, *Eucalyptus paniculata*, *Eucalyptus punctata*, *Eucalyptus umbra*, and should be planted in the rear of the property away from the dwelling.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

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.

37. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying 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**

The retaining wall 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. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifying Authority for approval prior to the issue of the Final Occupation Certificate.

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

41. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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



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

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

Reason: To protect human life.

42. **Removal of All Temporary Structures, Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

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

43. **Landscape Maintenance**

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

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

For all new on slab landscape works, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

44. **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.

45. **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.

46. **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.



EXISTING AREAS:








INTERNAL FLOOR AREA: 160.8m<sup>2</sup>  
DECKS: 63.3m<sup>2</sup>  
CARPORT: 40.9m<sup>2</sup>

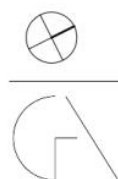


PROPOSED AREAS:

RENOVATED INTERNAL FLOOR AREA:	160.8m <sup>2</sup>
NEW INTERNAL FLOOR AREA:	254.8m <sup>2</sup>
DECKS:	58.3m <sup>2</sup>
CARPORT & OPEN WALKWAY:	66.4m <sup>2</sup>
POOL:	23.2m <sup>2</sup>

**GENERAL KEY**

	proposed additional area
	existing building modified
	existing building walls to be demolished
	area to be excavated
	area to be excavated within existing house footprint
	existing earth and walls
	proposed fill



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Nominated architect: Sky Grove ARB 9304  
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## | PROJECT

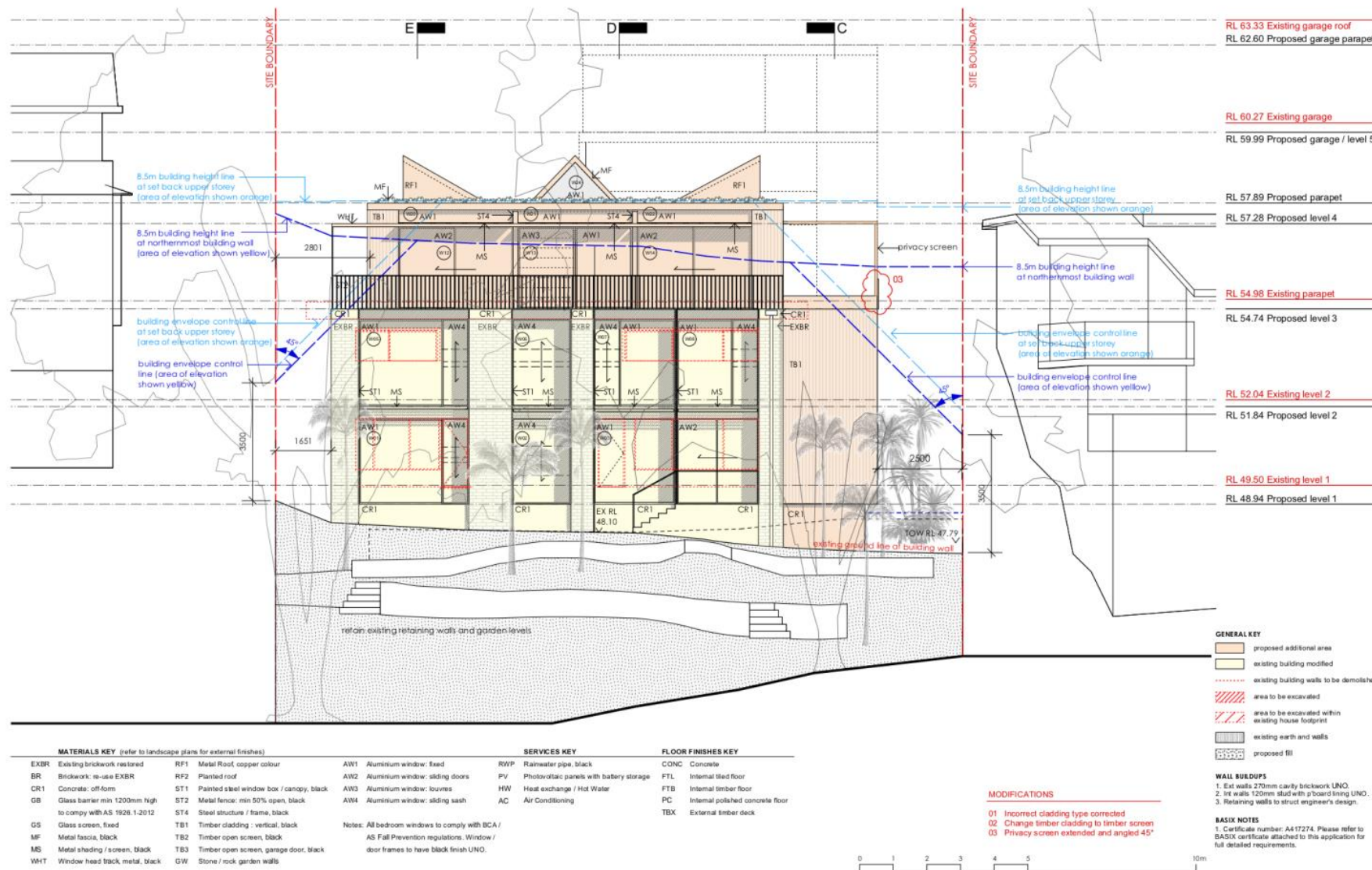
**project** 54 Wandean Rd Clareville  
DP 219977 Lot 11  
**client** Steve James  
**date** June 2021  
**scale** 1:200@A3

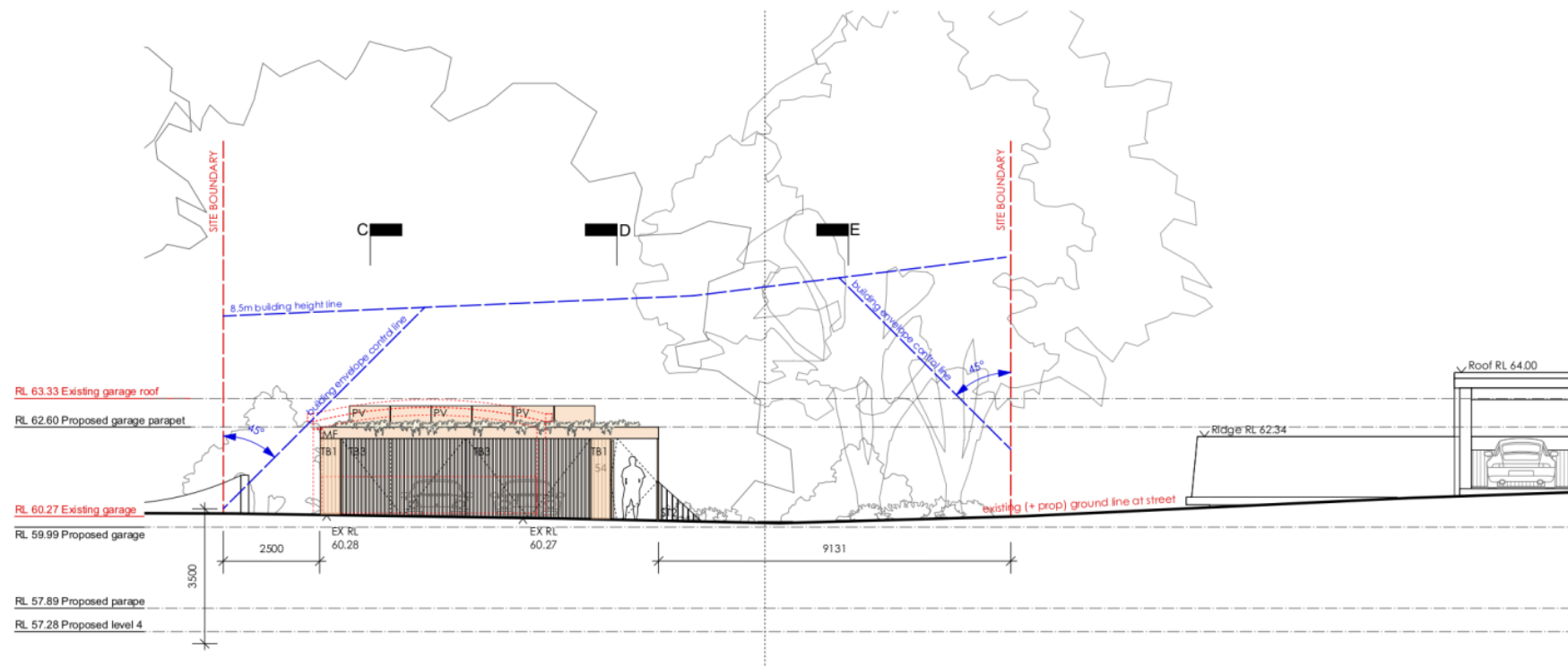
## | REVISIONS

A 29.06.21 DA issue

| EXIST + PROP SITE PLANS

DA 02 A





MATERIALS KEY (refer to landscape plans for external finishes)				SERVICES KEY	FLOOR FINISHES KEY
EXBR Existing brickwork restored	RF1 Metal Roof, copper colour	AW1 Aluminium window: fixed	RWP Rainwater pipe, black	CONC Concrete	
BR Brickwork: re-use EXBR	RF2 Painted roof	AW2 Aluminium window: sliding doors	PV Photovoltaic panels with battery storage	FTL Internal tiled floor	
CR1 Concrete: off-form	ST1 Painted steel window box / canopy, black	AW3 Aluminium window: louvres	HW Heat exchange / Hot Water	FTB Internal timber floor	
GB Glass barrier min 1200mm high	ST2 Metal fence: min 50% open, black	AW4 Aluminium window: sliding sash	AC Air Conditioning	PC Internal polished concrete floor	
to comply with AS 1926.1-2012	ST4 Steel structure / frame, black			TBX External timber deck	
GS Glass screen, fixed	TB1 Timber cladding: vertical, black	Notes: All bedroom windows to comply with BCA / AS Fall Prevention regulations. Window / door frames to have black finish UNO.			
MF Metal fascia, black	TB2 Timber open screen, black				
MS Metal shading / screen, black	TB3 Timber open screen, garage door, black				
WH7 Window head track, metal, black	GW Stone / rock garden walls				

**GENERAL KEY**

- proposed additional area
- existing building modified
- existing building walls to be demolished
- area to be excavated
- area to be excavated within existing house footprint
- existing earth and walls
- proposed fill

**WALL BUILDUPS**

- Ext walls 270mm cavity brickwork UNO.
- Int walls 120mm stud with p'board lining UNO.
- Retaining walls to struct engineer's design.

**BASIX NOTES**

- Certificate number: A417274. Please refer to BASIX certificate attached to this application for full detailed requirements.



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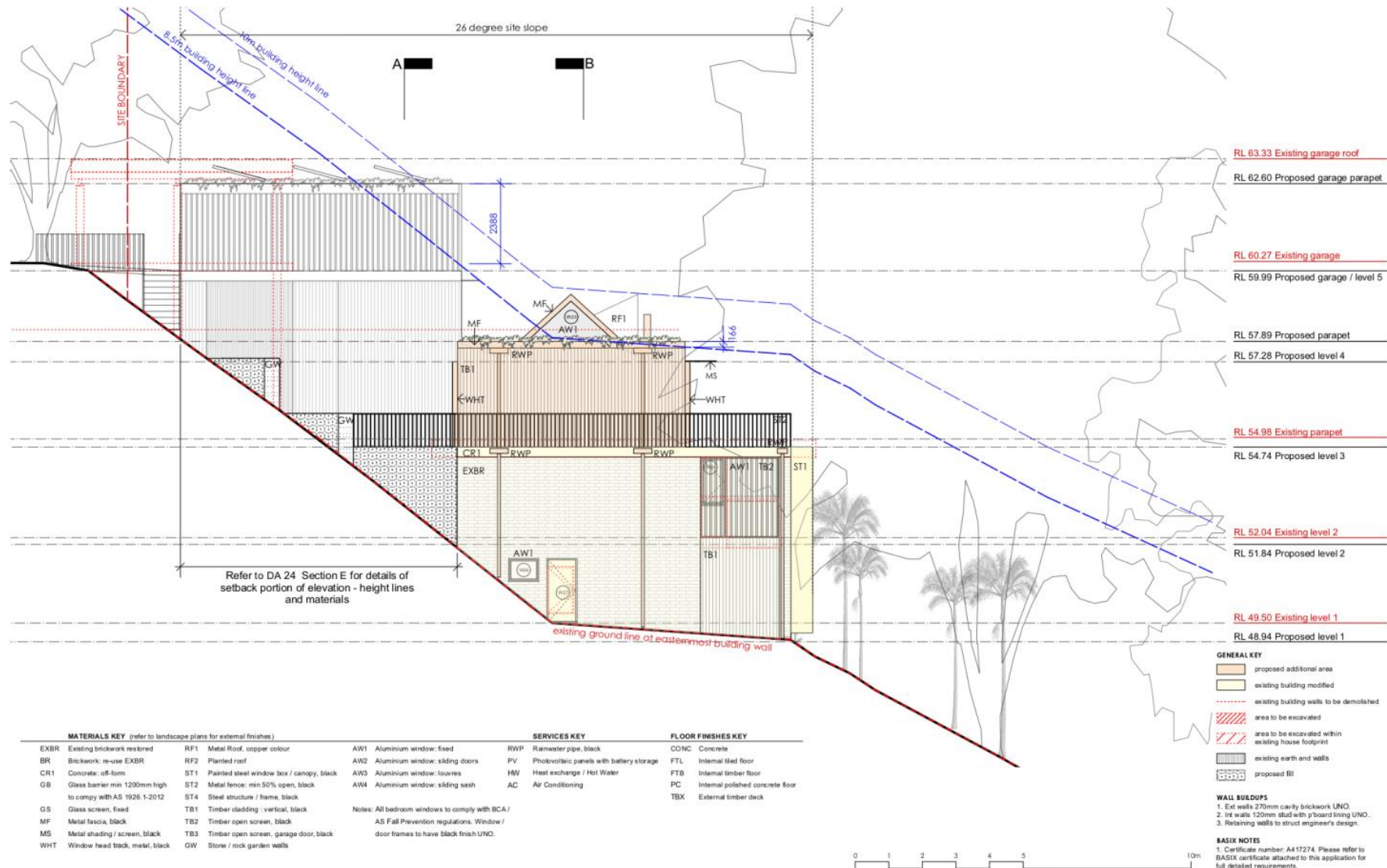
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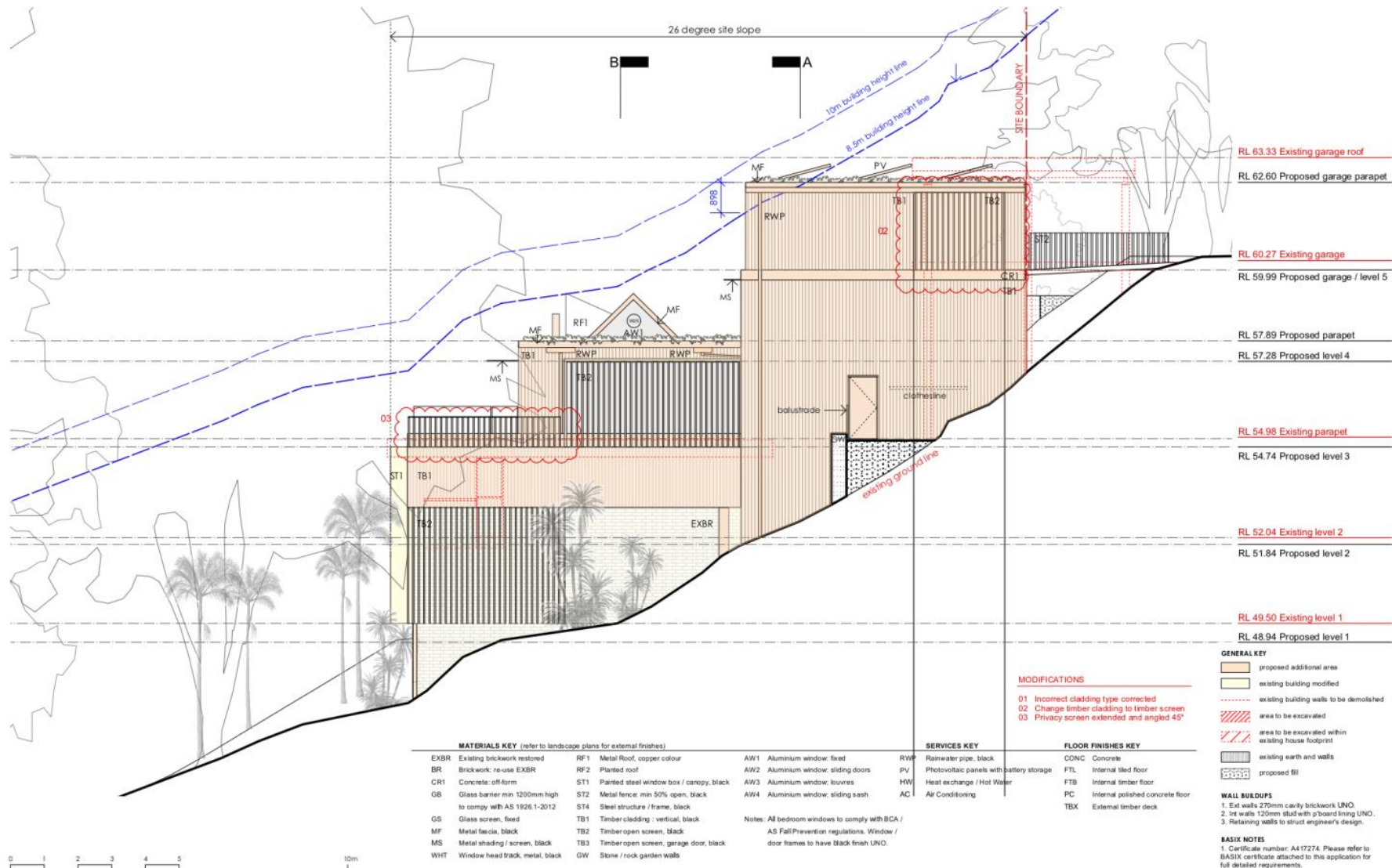
**PROJECT**  
project 54 Wandean Rd Clareville  
DP 219977 Lot 11  
client Steve James  
date June 2021  
scale 1:100@A3

**REVISIONS**  
A 29.06.21 DA issue

**ELEVATION SOUTH**  
**DA 17 A**  
**Not for Construction**







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#### PROJECT

**project** 54 Wandeeen Rd Clareville  
DP 219977 Lot 11  
**client** Steve James  
**date** June 2021  
**scale** 1:100@A3

#### REVISIONS

A 29.06.21 DA issue  
B 25.10.21 DA revisions

#### ELEVATION WEST

**DA 19 B**  
**Not for Construction**

*Vaughan Milligan Development Consulting Pty Ltd*

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

**54 WANDEEN ROAD, CLAREVILLE**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT  
CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

**FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING  
INCLUDING NEW SWIMMING POOL AND GARAGE**

**For:** For proposed construction of alterations and additions to an existing dwelling including new swimming pool and garage  
**At:** 54 Wandeen Road, Clareville  
**Owner:** Steve James  
**Applicant:** Steve James  
C/- Vaughan Milligan Development Consulting

**1.0 Introduction**

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

**2.0 Background**

Pittwater LEP 2014 – Clause 4.3 prescribes a maximum building height for the subject site of 8.5m in this portion of Clareville. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed alterations and additions to the existing dwelling will provide a height of 10.808m above natural ground level which exceeds Council's maximum building height by 2.308m or 27.1% and therefore does not comply with this control.

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

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**Is clause 4.3 of PLEP 2014 a development standard?**

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

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

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

**3.0 Purpose of Clause 4.6**

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

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

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

**4.0 Objectives of Clause 4.6**

Clause 4.6(1) of PLEP provides:

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

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

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

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



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

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

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

Clause 4.6(2) of the LEP provides:

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

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

Clause 4.6(3) of PLEP provides:

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

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Clareville. The additions to the existing dwelling will result in a maximum building height of 10.808m or exceed the height control by 2.308m or 27.1%.

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

Clause 4.6(4) of PLEP provides:

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

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- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

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

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

Clause 4.6(5) of PLEP provides:

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

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

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

The specific objectives of Clause 4.6 are as follows:

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

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

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The non-compliance with the height control arises as a result of the site's sloping topography and siting of existing development.

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

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

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

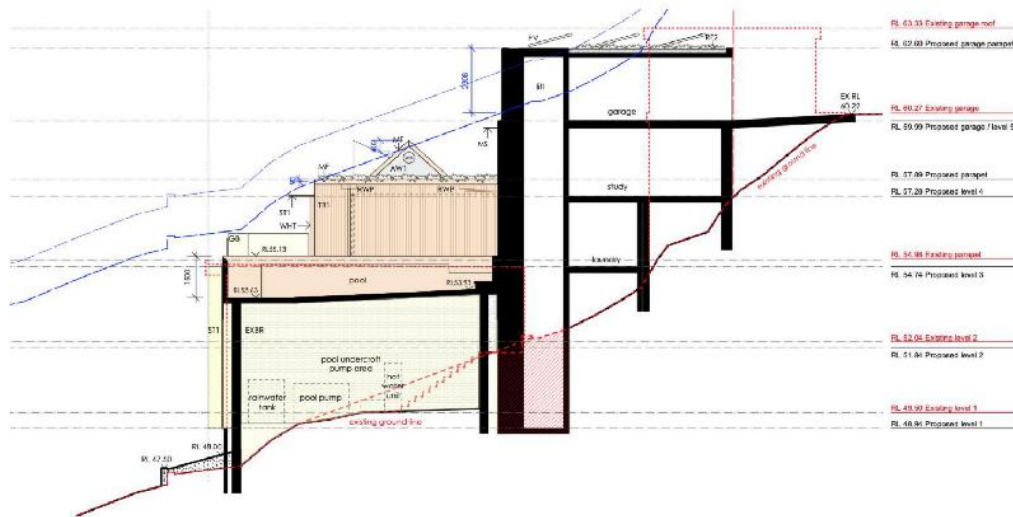
The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

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

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## 5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Clareville.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 10.808m, which exceeds the height control by 2.308m or 27.1%.



**Fig 1: View of area breaching maximum building height control as noted in Section C prepared by Grove Architects**



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## 6.0 Relevant Caselaw

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

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

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

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**7.0. Request for Variation**

**7.1 Is compliance with clause 4.3 unreasonable or unnecessary?**

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

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

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

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

The proposal seeks to accommodate the additions within a compatible building form, with the slope of the site and siting of existing development resulting in a portion of the roof being up to 10.85m in height.

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

The proposed height of the dwelling maintains consistency with the siting of surrounding development. The proposed ridge height of the garage is RL 62.60m, which is up to 730mm below the existing garage ridge height of RL 63.33m.

The proposed alterations and additions present a modest, modulated façade to Wandeen Road. The proposed development is considered to be compatible with the bulk and scale of surrounding development.

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

The proposal is accompanied by Shadow Diagrams (Drawing No. DA 50 A – DA 51 A) which demonstrate that the proposal will see any unreasonable diminution of the existing solar access currently received by neighbouring properties.

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

As uphill properties are substantially elevated above the subject site, the proposal is not considered to result in any unreasonable view impacts on uphill properties. The existing rear setback is maintained, which will ensure that the neighbouring properties to the east and west maintain their views.

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

The external form of the building is stepped to follow the sloping topography of the site.

As the proposal has been designed to follow the sloping topography of the site, it is considered to be effectively integrated into the landform.

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

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

The proposal will present as a modest single storey development to Wandeen Road.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Northern Beaches area.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

**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*



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*written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

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

- The proposed additions will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of Wandeen Road which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).
- The aspect of the development which exceeds the maximum building height control is related to the vertical passenger lift and access to the lift from the proposed garage which allows for safe and convenient access for family members with a disability or age residents to gain access from the street to the dwelling. The variation to the height control is considered to be reasonable in this instance as it will achieve the object of the act particular in relation to Objective 1.3(h) in that the design will promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

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

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative*

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*to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

**7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?**

- (a) Section 4.2 of this written request suggests the 1<sup>st</sup> test in Wehbe is made good by the development.
- (b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

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

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

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

It is considered that notwithstanding the modest breach of the maximum building height by 2.35m at the northern extremity of the dwelling, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living Zone for the following reasons:

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

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

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The E4 Environmental Living contemplates low density residential uses on the land.

The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form which will respect the predominant bulk and scale of the surrounding dwellings.

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

The proposal will continue to present as a modest single storey development to Wandeen Road, in keeping with the extent of existing development.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Pittwater area.

The compatible form and scale of the proposed development will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

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

This control is not relevant to the subject residential development.

- **To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.**

This control is not relevant to the subject residential development.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

**7.4 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.

*Vaughan Milligan Development Consulting Pty Ltd*

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- (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 building height control, with the proposed new building to provide for a height of up to 10.808m, which exceeds the maximum height control by 2.308m or 27.1%.

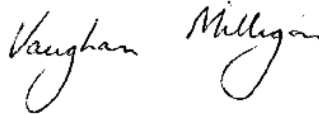
This variation occurs as a result of the sloping topography of the site and siting of existing development.

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

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

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



**VAUGHAN MILLIGAN**  
*Town Planner*