



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 23 FEBRUARY 2022

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 23 February 2022
Commencing at 10:00am**

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

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 9 FEBRUARY 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 9 February 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/2067 - ATTUNGA ROAD NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A CARPORT
REPORTING MANAGER	TONY COLLIER
TRIM FILE REF	2022/090680
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.

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 DA2021/2067 for alterations and additions to a dwelling house including a carport on land at Lot 123 DP 752046, 70 Attunga Road NEWPORT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2067
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 123 DP 752046, 70 Attunga Road NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house including a carport
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Shona Florence Lorigan Michael Colm Lorigan
Applicant:	THW Architects
Application Lodged:	22/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/12/2021 to 16/12/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 24.25%
Recommendation:	Approval
Estimated Cost of Works:	\$ 918,500.00

EXECUTIVE SUMMARY

The subject development application is for alterations and additions to an existing dwelling and the construction of a new carport.

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

The maximum height of the proposed development has been measured at 9.94m which represents a

variation of 24.25% to the prescribed 8.0m 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.

One submission was received in response to the notification of the application from the Department of Planning, Industry and Environment – Crown Lands, as an adjoining landowner. The response raised no objection to the proposed works, however, it did request the transfer of the Attunga Road ownership to Council. Road ownership transfer is not a planning matter in this instance and the correspondence recommending this transfer of ownership has been forwarded to the relevant Council department(s) for review and further action if required.

During the assessment, amended plans were received which reduced the size and scale of the proposed carport.

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 existing dwelling and 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 proposal includes demolition works and alterations and additions to the existing dwelling house as follows:

Level 1

- Extension to existing pool deck.
- New balustrades.

Level 2

- Internal reconfigurations to provide internal lift and stairs, study, master bedroom, ensuite and walk in robes, extension to balcony.
- New balustrades.

Level 3

- Kitchen and walk-in-pantry, extension to balcony, internal stairs and lift and fireplace.
- New balustrades.

Level 4

- Internal reconfigurations to provide for a rumpus, study, three (3) bedrooms, ensuite, internal lift.

External works

- Demolition of existing carport and construction of new single carport.
- Rainwater tank.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
Pittwater 21 Development Control Plan - B4.1 Flora and Fauna Conservation Category 1 Land
Pittwater 21 Development Control Plan - C1.1 Landscaping
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 - D3.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D3.3 Building colours and materials
Pittwater 21 Development Control Plan - D3.6 Front building line
Pittwater 21 Development Control Plan - D3.7 Side and rear building line

Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D3.15 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 123 DP 752046 , 70 Attunga Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Attunga Road.</p> <p>The site is irregular in shape with a frontage of 18.17m along Attunga Road and a depth of 53.98m. The site has a surveyed area of 753.4m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a two and three storey dwelling house with an inground swimming pool and spa is located at the rear. The site currently has vehicular access to an existing attached double garage and carport structure to the site of the garage via a brick paved driveway from Attunga Road. Access is obtained via a Right of Carriageway over No.68.</p> <p>The site has a crossfall of approximately 17m from the south (street frontage) to the north (rear)</p> <p>The existing properties landscape character is modified with managed landscape gardens and hard surface areas, whilst a locally native Coast Banksia and She Oak are present within the rear of the property. The frontage of the property does not contain any trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two and three storey dwellings of varying architectural styles. Attunga Reserve adjoins the site to the north and the west which consists of dense bushland.</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 history:

Building Certificate - Three storey rendered brick dwelling with pool under, attached glass covered carport, but excluding encroachments upon the adjoining bushland reserve, retaining walls on the south and west sides of the carport, and the portions extending over the road reserve.- **Issued 02/11/1998**

Minutes of the Environment and Planning Committee Meeting of Pittwater Council held on 12 October 1998 for the Determination of a Building Certificate Application for construction of an unauthorised carport and retaining wall within the building line at 70 Attunga Road, Newport specified:

1. That Council issue a limited Building Certificate of Compliance in respect of the property excluding those encroachments on any adjoining bushland reserve.
2. That in relation to the retaining walls which have existed since 1994 but which there is no record of approval or inspection, the applicant be invited to submit an as built application in respect thereto.
3. That with regard to that part of the retaining wall which encroaches on the road reserve, that subject to paragraph 2 above being complied with, and to Council's inspection to establish whether a lease is required, Council would consider granting a lease of the encroaching area on the road reserve, to the applicant.
4. In respect of the BBQ area constructed on the adjoining bushland reserve, that Council issue Notice immediately to the owner (a copy to be attached if appropriate to the Building Certificate) requiring immediate removal of the BBQ seating and all such other items and indicating that no further such encroachments will be tolerated and thereby that Council may consider replanting and/or fencing off the lawned area at an appropriate time in the future.

APPLICATION HISTORY

24/01/2022

After concerns raised by Council, amended plans were received which reduced the proposed size of the carport and included details of the proposed fireplace.

In accordance with Northern Beaches Community Participation Plan amendments which have a reduction of impact or minimal environmental impact to do have to be formally re-notified. It is considered the proposed amendments would have an overall reduction of impact.

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&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&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&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&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&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><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by The Fire Consultants, dated 17 September 2021). The report stated that the bushfire attack level of the site is “Flame Zone” and the

report recommended an alternative solution to comply with Planning for Bush Fire Protection .

The application was referred to the NSW Rural Fire Service (NSW RFS) for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/12/2021 to 16/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Department of Industry Crown Lands	PO Box 2185 DANGAR NSW 2309

One submission was received from the Department of Planning, Industry and Environment – Crown Lands (the department), as adjoining landowner. The response raised no objection to the proposed works, however made the following comments:

"The Department of Planning, Industry and Environment – Crown Lands (the department), as adjoining landowner has reviewed the development application in accordance with the principles of Crown land management (s.1.4 Crown Land Management Act 2016) and offers no objections to the proposed development. However, it is noted that Attunga Road is still vested with the Department as a Crown public road, the following has been noted.

- *Attunga Road is a constructed road and appears to be maintained.*
- *Attunga Road provides main access to local residential properties.*

With the above identified factors and to ensure Attunga Road is managed in the most efficient way, the Department recommends the Council investigate to transfer Attunga Road (and any developed Crown roads in the vicinity) to the management and control of Northern Beaches Council.

Should the proposed development be modified in any manner that impacts the adjoining Crown land, e.g. by amendment to the development proposal or draft conditions of consent, the department requests an opportunity to further review the application prior to determination".

Comment

The application does not propose any new works on Attunga Road or on Crown Land nor does it authorise any existing works on this land. This is also to be conditioned within any consent.

The matter for road ownership transfer is not a planning matter in this instance and the correspondence recommending this transfer of ownership has been forwarded to the relevant Council department for review and further action if required.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	Plans have been revised to include relevant compliance information for the solid fuel heater, demonstrating that the flue location complies with AS2918 and the burning apparatus compliant with emissions standards AS4012 and AS4013. The proposal is supported.
Landscape Officer	<p>The development application is for alterations and additions to the existing dwelling, including external works involving the extension to the existing pool deck, and reconfiguration of an existing single carport in the south-western corner of the site to improve access and manoeuvrability within the car space.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D10 Newport Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The existing properties landscape character is modified with managed landscape gardens and hard surface areas, whilst a locally native Coast Banksia and She Oak are present within the rear of the property. The frontage of the property does not contain any trees. Existing trees are present within adjoining properties and shall be protected. All of the proposed development works are located with existing disturbed land area.</p> <p>The existing landscape area of 37.2% as reported is substantially less than the required 60% for the C4 zone, and the proposed development works results in a reported 35.7% landscape area. The proposed development does not improve the landscape outcome of the existing site and maintains the existing landscape setting with no opportunity for enhancement.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and additions to an existing dwelling, including an internal reconfiguration and external works including an extension to an existing pool deck and reconfiguration of an existing carport. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p>

Internal Referral Body	Comments
	<p>Biodiversity Conservation Act 2016 (BC Act) Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> B4.1 Flora and Fauna Habitat Category 1 Land B4.3 Flora and Fauna Habitat Enhancement Category 2 Land <p>The submitted Flora and Fauna Report (Kingfisher 2021) states that vegetation within the site is disturbed, and consists partly of exotic and/or non-locally native vegetation. Further it is noted that the site benefits from the 10/50 clearing eligibility and therefore only trees, beyond 10m of the dwelling require consideration. A review of aerial imagery shows that this area is dominated by exotic (exempt) palms, and therefore clearing for APZs can be undertaken without the removal of locally-native species.</p> <p>Subject to the retention of all locally-native trees beyond 10m of the existing dwelling, no objection is raised by Council's Natural Environment Unit - Biodiversity.</p>
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.
Parks, reserves, beaches, foreshore	<p>The development site adjoins Attunga Reserve that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve, and conditions shall be imposed to satisfy this requirement.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>Parks, Reserves and Foreshores Referral raise no concerns.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The application was referred to the NSW Rural Fire Service. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions

External Referral Body	Comments
	from the NSW RFS have been included as part of the recommended conditions of consent.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted</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.A432728_02 dated 08

October 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objection subject to recommended conditions.

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:	8m	9.94m	24.25%	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
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
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

4.3 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 'H' of the Height of Buildings Map which has a maximum height of 8.0m.

The maximum height of the proposed development has been measured at 9.94m 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 24.25%

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.0m
Proposed:	9.94m
Percentage variation to requirement:	24.25%

The site is subject to an 8.0m maximum building height under the requirements of Clause 4.3 of Pittwater LEP 2014. The proposed development contains a maximum building height of 9.94m, which represents a 24.25% variation from the Development Standard.

Figure 1 below demonstrates the area of the development that exceeds the 8.0m statutory height limit (existing non-compliance highlighted in green; proposed additional non-compliance in red).

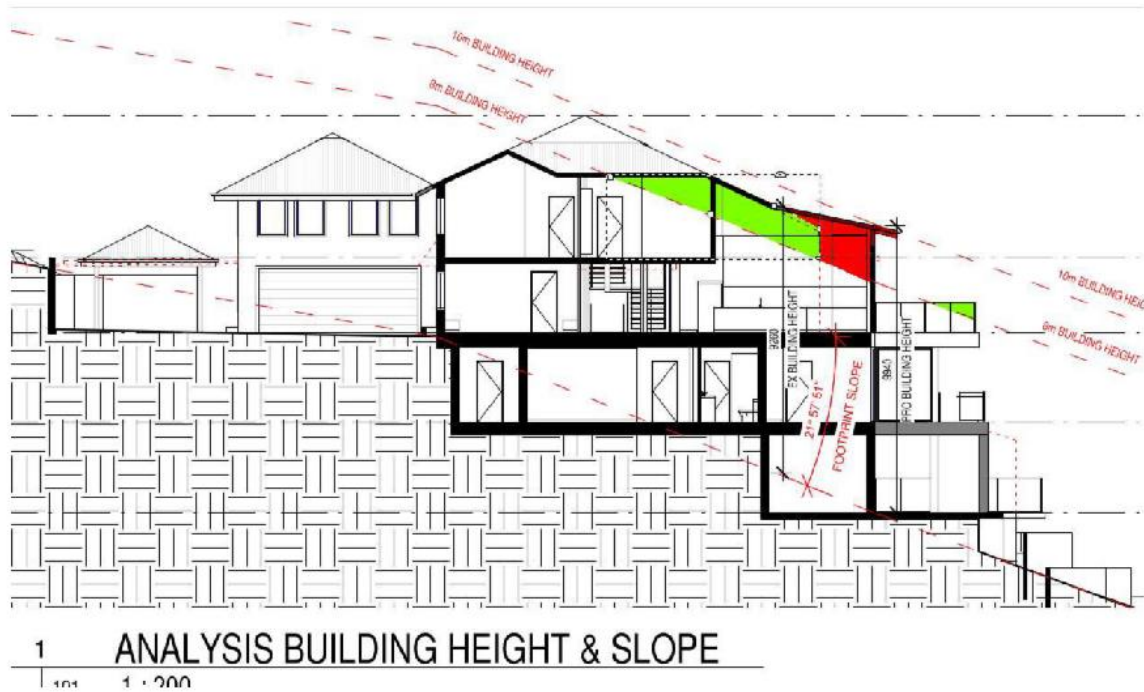


Figure 1: Building height non-compliance. Existing non-compliance highlighted in green; proposed additional non-compliance in red



Figure 2: Building height non-compliance of proposed works shown in green (North Elevation)

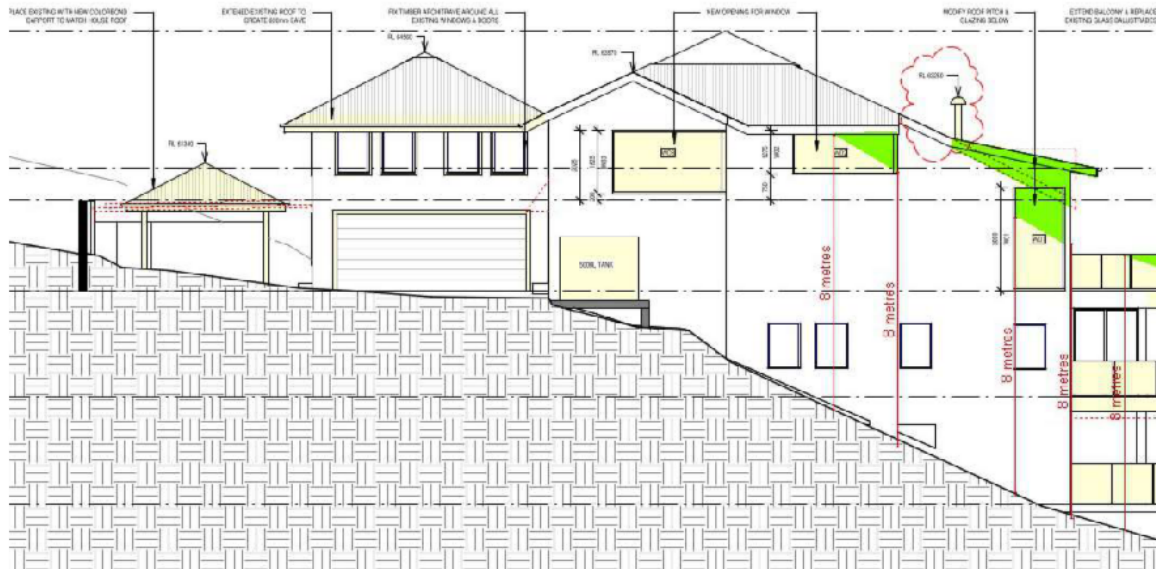


Figure 3: Building height non-compliance of proposed works shown in green (South Elevation)

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 non-compliance with the building height control arises as a result of the sloping topography of the site as the site levels fall towards the north-east and location and the form of the existing notwithstanding that the proposal seeks to provide for minor additions and alterations to the existing building development.
- The new works maintain a bulk and scale which is in keeping with the extent of surrounding development
- The proposal will maintain a consistent character with the built form of the existing dwelling and nearby properties, with the new roof form intended to complement the existing roofing by providing simple skillion roof form which raises the springing line of the existing roof, increasing the extent of light and breezes to the internal space of the dwelling, therefore improving amenity for the occupants;
- The height standard non-compliance will not result in adverse environmental impacts to neighbouring properties and the surrounding public domain.
- The maximum height of the new roof form occurs at the northern extremity of the re-pitched roof over the existing Level 4 kitchen and living area where the proposed new roof (RL 61.180m) is slightly raised above the existing gutter level of RL 60.67. The overall height of the main portions of the roof of the dwelling are not altered.
- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- The proposed development will provide for improved amenity within a built form which is compatible with the streetscape which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed development improves the amenity of the occupants and respects surrounding properties through a minor raising of the existing springing line of the rear roof to allow for improved light and solar access and breezes, 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))

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

The slope and topography of the land is considered steep. The proposed height variation primarily relates to a new skillion roof formation and the balustrading of a balcony extension as the land falls away. The non-compliance is a direct result of the existing built form and the slope of the land. The overall height of the main portions of the roof of the dwelling are not altered and the proposed alterations and additions represent a relatively modest increase to the existing built form. 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 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 C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The proposed additions are comparable with that of the built form of the existing dwelling and surrounding newer dwellings in the vicinity. The proposal seeks to accommodate the proposed additions and alterations to the existing floor levels and restricts the works so that there are not significant increases in floor area or height at each floor level. 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 Bilgola Beach. The 19m rear setback and maintenance of a vegetation buffer also allows for some visual relief towards Bilgola Beach. 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 proposed height non-compliance of is primarily contained to the new roof form. The maximum height of the new roof form occurs at the northern extremity of the re-pitched roof over the existing Level 3 kitchen and living area where the proposed new roof (RL 61.180m) is slightly raised above the existing gutter level of RL 60.67m. The overall ridge height of the main portions of the roof of the dwelling are not altered. The proposal will retain the existing floor levels and the proposed roof changes presents a compatible height and scale with that of the existing dwelling and surrounding 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. The adjoining neighbour to the east is expected to retain adequate sunlight to north facing windows and private open space during the morning and early afternoon.

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, existing views and vistas are anticipated to 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. 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, 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 C4 Environmental Living zone are:

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

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 and recent development within the vicinity. The proposal would not result in an increase in the overall ridge height. 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.

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

Comment:

The proposed works will maintain consistency with the general height and scale of the existing dwelling and surrounding newer development. 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, with minimal alteration to the natural ground levels.

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

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 to maintain a similar building footprint and scale as to what exists and does not result in unreasonable excavation, tree removal or environmental impact. 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. Trees and vegetation will be retained to the north of the dwelling to minimise the visual impact of the development as viewed from Bilgola Beach. The proposal would not result in a significant increase in the bulk and scale of the existing dwelling as viewed from the public realm. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form and would meet the objectives of this control.

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

Comment:

The proposal will not impact upon riparian or foreshore vegetation or wildlife corridors. The additions are largely sited within the existing building footprint. The application has been reviewed by Council's Bushland & Biodiversity Officer and Landscape Officer who has raised no objection subject to recommended conditions. The proposal is also accompanied by a Flora and Fauna Report which determined that the proposed works would not result in unreasonable impact to wildlife or biodiversity.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to

approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	1.6m (Carport)	75.4%	No
Rear building line	6.5m	18.9m	N/A	Yes
Side building line	2.5m (SE)	0.9m (W03) 1.1m (W02) 1.2m (L4 Balcony) 1.1 (L2 balcony) 1.8m (Pool Deck)	64% (Max)	No
	1m (NW)	Nil (L3 landing) 0.8m (L3 Addition and balcony)	100% (Max)	No
Building envelope	3.5m (SE)	Outside envelope	N/A	No
	3.5m (NW)	Outside envelope	N/A	No
Landscaped area	60% (452sqm)	Proposed: 35.8% (270sqm) (Existing: 37.3% (281m ²))	40.3% (182m ²) (37.8% (171m ²))	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola 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
B4.1 Flora and Fauna Conservation Category 1 Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	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
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	No	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.3 Bilgola Locality

The proposed development includes three storeys, where the locality calls for two storey development. However, the existing development includes three storeys and the proposal does not seek the addition of a new level.

The proposed development involves minimal environmental impact, is set below the general tree canopy height, includes building modulation to minimise bulk, and provides an appropriate balance

between respecting the landform and encouraging development. Given the slope of the site, the proposed dwelling presents as two storeys from Attunga Road. The proposed development would appear as three storeys as viewed from the north, however, existing vegetation downslope of the dwelling house will assist in softening the built form as viewed from surrounding properties and Bilgola Beach.

Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form. As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

B4.1 Flora and Fauna Conservation Category 1 Land

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

The proposal is also accompanied by a Flora and Fauna Report which determined that the proposed works would not result in unreasonable impact to wildlife or biodiversity.

C1.1 Landscaping

The landscaping non-compliance is discussed in detail within the section of this report relating to Cause D3.11 of the P21DCP.

The subject application would result in a minor decrease of 11m² to the existing provision of landscaped area (which is calculated at 37.3% (281m²)).

The proposed works would be primarily over the existing building footprint and no substantial trees or vegetation is proposed to be removed.

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

Under these circumstances, the non-compliance is supported in this instance.

C1.3 View Sharing

Views of Bilgola Beach, Headland and the ocean are available to the north-east of the subject site. The adjoining property to the east (68 Attunga Road) is expected to retain these view corridors given its relative positioning to the east.

The proposed additions would be primarily within the existing footprint of the building and the proposed works are not anticipated to result in unreasonable view loss.

Any view loss from the proposal would be over a side boundary and is considered negligible in consideration of the views retained to the north-east and a reasonable sharing of views amongst dwellings is achieved.

Additionally, no objection to view loss has been received adjoining neighbours.

C1.5 Visual Privacy

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping,

screening devices or greater spatial separation.

The proposed new south-eastern windows and balcony extensions would be within 9m of the adjoining neighbour (No.68 Attunga Road).

Merit Assessment

- **Proposed Windows - South-east elevation:**

The proposed "Level 4" south-eastern facing window to the rumpus (W03) is not anticipated to give rise to unreasonable privacy impacts given its positioning and comparative elevation with the adjoining neighbour to the south-east (68 Attunga Road).

The proposed "Level 4" south-eastern facing window to the study (W02) would be within 1.5m of the side boundary and private open space of the adjoining neighbour to the south-east (68 Attunga Road). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this window to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e. containing a sill height of 1.5m from the FFL) or obscure glazed.

The proposed "Level 3" south-eastern facing window to the living room (W01) would be replacing an existing window of a similar size and scale. Given this window would be replacing an existing window and this is an existing arrangement, this is considered acceptable in this instance. Additionally, no objections in relation to privacy have been received by this neighbour.

- **Level 1 Balcony Extension**

The proposed extension to the Level 1 balcony is a continuation of an existing arrangement and would place the balcony further to the north and away from the principle private open space of No.68 Attunga Road. Furthermore, landscaping will be retained along the south-eastern boundary which will assist in mitigating privacy impacts.

Additionally, no objections in relation to privacy have been received by this neighbour.

- **Level 2 Balcony Extension**

The proposed extension to the Level 2 balcony is a continuation of an existing arrangement. The minor addition to this balcony is not anticipated to result in unreasonable additional privacy impacts to the adjoining neighbour (No.68 Attunga Road) in this instance.

Additionally, no objections in relation to privacy have been received by this neighbour.

- **Level 3 Balcony Extension**

The proposed extension to the Level 3 balcony has been designed to angle away from the adjoining neighbour to the south-east (68 Attunga Road). The orientation and design of balcony, as well as its location approximately 10m forward of No.68 Attunga Road is not considered to lend itself to unreasonable privacy impacts.

Additionally, no objections in relation to privacy have been received by this neighbour.

Given the prominent view corridors to the north-east, this portion of Attunga Road is characterised by open balconies void of screening.

The proposed development would adjoin Attunga Reserve to the north-west which contains dense bushland. As such, no unreasonable privacy impacts are anticipated from this neighbouring land.

In consideration of the built form of the existing dwelling and the location of existing windows and balconies, the proposed additions are not considered to result unreasonable privacy impacts to adjoining neighbours. Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved.

Therefore, the application is supported on merit, subject to conditions.

C1.13 Pollution Control

The proposed solid fuel heater has been reviewed by Council Environmental Health Officer who has raised no objection subject to recommended conditions.

D3.1 Character as viewed from a public place

Clause D3.1 specifies that garages, carports and other parking structures including hardstand areas should not be the dominant site feature when viewed from a public place.

Given the sites access arrangements and long driveway, the proposed additions and carport would not be visually prominent from Attunga Road.

The proposed carport would adjoin dense bushland and would not be readily visible from Attunga Reserve walking track.

Additionally the proposed carport would replacing a similar structure and would be over an existing hardstand area.

Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form and would meet the objectives of this control.

D3.3 Building colours and materials

The Control requires external colours and materials of development to be dark and earthy in tone.

The provided exterior colour schedule indicates the window frames and the fascias are to be painted white and light grey, therefore contravening the requirement of the Control. The Statement of Environmental Effects submitted with this documentation stipulates that the external walls will be complimentary to the existing dwelling. The existing wall colours do not strictly meet the prescribed controls entailed within Clause D3.3 of P21DCP.

Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form. The proposal seeks to retain the existing wall colour of the dwelling and given the extent of the additions, the requirement to alter the overall colour scheme of the dwelling is considered unreasonable in this instance. The proposed white window frames is consistent with surrounding dwellings in the vicinity and is not considered detract from the visual quality of the streetscape or locality. The proposed northern elevation would be primarily glazed windows and

balustrading which would be consistent with surrounding development.

D3.6 Front building line

Description of non-compliance

Clause D3.6 of the P21DCP requires development (other than driveways, fences or retaining walls) to be setback at least 6.5m from the front boundary or the established building line, whichever is greater.

The proposal seeks to construct a new carport which would be setback 1.6m from the front boundary.

It should be noted that the proposed carport would be replacing an existing carport in a similar location. However, a search of Council records reveal that this existing carport was constructed with Development Application approval. As referenced within the "History" section of this report, a Building Certificate was issued in 1998 for *"Three storey rendered brick dwelling with pool under, attached glass covered carport, but excluding encroachments upon the adjoining bushland reserve, retaining walls on the south and west sides of the carport, and the portions extending over the road reserve."* As such the existing carport has remained onsite for approximately 25 years.

It should also be noted that the subject property adjoins an unformed portion of Attunga Road which contains dense bushland, as such the proposed carport would not be readily visible from the formed portion of Attunga Road.

It should also be noted that during the assessment of this application, amended plans were received which reduced the size of this carport and increased the proposed front setback to 1.6m.

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 is considered to be appropriate within its context, consistent with the bulk and scale of the existing dwelling and surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.3 *Bilgola Locality* of the Pittwater 21 DCP.

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

Comment:

The proposed carport would not result in view impacts to adjoining properties.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment:

The subject site adjoins a local road, therefore this outcome is not applicable.

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

Comment:

No significant vegetation is proposed for removal as part of this application. The carport would

replace an existing carport and would be located over existing hard surface area. The carport would adjoin dense bushland located within Attunga Reserve. 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.

- ***Vehicle maneuvering in a forward direction is facilitated.***

Comment:

Council's Development Engineer has assessed the proposal with respect to vehicular access and raised no objections, subject to conditions. Therefore, the proposal is considered acceptable in this regard. The existing driveway would facilitate vehicle maneuvering in a forward direction.

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

Comment:

Given the sites access arrangements and long driveway, the proposed carport would not be visually prominent from Attunga Road. The proposed carport would adjoin dense bushland and would not be readily visible from Attunga Reserve walking track. Additionally the proposed carport would replacing a similar structure and would be over an existing hardstand area. The proposed carport does not result in unreasonable visual imposition to the street, and is set well below the height of the surrounding natural environment.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

As above, given the sites access arrangements and long driveway, the proposed carport would not be visually prominent from Attunga Road. The proposed carport would adjoin dense bushland and would not be readily visible from Attunga Reserve walking track. Additionally the proposed carport would replacing a similar structure and would be over an existing hardstand area. The proposed carport would be designed to compliment the design of the existing house. Overall, the proposal will have minimal impact on pedestrian amenity.

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

Comment:

The carport would replace an existing carport and would be located over existing hard surface area. No tree removal or significant earthworks is proposed as part of this application. The proposed carport would be designed to compliment the design of the existing house and would have an open design. The proposed carport would adjoin dense bushland and would not be readily visible from Attunga Road.

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.

D3.7 Side and rear building line

Description of non-compliance

Clause D3.7 of the Pittwater 21 DCP requires development be setback at least 6.5m from the rear boundary, 2.5m from the south-eastern side boundary and 1m from the north-western side boundary.

The development proposes the following non-compliance:

Rear setback - Complies

South-eastern side setback- 0.9m (New window W03); 1.1m (New window W02); 1.2m (L4 Balony) 1.1m (L2 balcony) 1.8m (Pool Deck)

North-western side setback- 0.8m (L3 addition and balcony); Nil (L3 landing)

The control provides a variation which allows for the retention and intensification of existing setbacks, subject to consistency with the outcomes of the control.

Merit Consideration

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

Comment

The proposed development (as amended) 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 further discussed in the section of this report relating to A4.3 Bilgola Locality of the Pittwater 21 DCP.

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

Comment

The additions to the dwelling propose to maintain a similar building footprint and scale as to what exists. The non-compliances are largely a direct result of the existing built form and are not considered to result in unreasonable bulk. The dwelling would be appropriately articulated using recessed and modulated walls, balconies and fenestration break up built form. 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.

- ***Equitable preservation of views and vistas to and/or from public/private places. To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

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. The elements of the proposal that are non-compliant with side setbacks are not considered to result in unreasonable view loss.

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

Comment

As above, the alterations and additions to the existing dwelling primarily follow the side setbacks of the existing development. It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development.

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

Comment

The proposal does not require any significant vegetation to be removed as part of the application. 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.

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

Comment

The proposed development primarily maintain and continues the side setbacks of the existing house. 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, the proposal does not require any significant vegetation to be removed as part of the application. 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. The proposed works would be primarily over the existing built footprint. The 19m rear setback and maintenance of a vegetation buffer also allows for some visual relief towards Bilgola Beach. Vegetation will be retained along the south-eastern boundary to minimise the bulk and scale of the development as viewed from adjoining properties. The proposal will adjoin Attunga Reserve to the south and west which contains dense bushland which will assist in mitigation of visual bulk.

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

Comment

N/A the subject site does not adjoin a commercial zoned area.

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.

D3.9 Building envelope

Description of non-compliance

The clause stipulates that buildings are to be projected at 45 degrees from 3.5m above the existing ground level, measured from the side boundaries.

The proposed dwelling has a encroachment into the prescribed building envelope along the south-eastern and north-western elevations. This variation is represented in figures 1 and 2 below. The non-compliance is largely attributed to the existing built form, large of portions of which, already extend outside the prescribed building envelope. The figures below represent the proposed new works outside the prescribed envelope.

This building envelope non-compliance is also partially attributed to the slope of the site, which exceeds 30%. P21DCP allows for a variation to the prescribed building envelope for development on steep sites, subject to consistency with the outcomes of this Clause.



Figure 1- Proposed building envelope non-compliance on south-eastern elevation (highlighted in green).



Figure 2 - Proposed building envelope non-compliance on north-western elevation (highlighted

in green).

Merit Consideration

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

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

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of the existing dwelling and surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.3 Bilgola Locality of the Pittwater 21 DCP.

- ***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 proposed development is generally set below the height of surrounding canopy tree surrounding the site and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing dwelling and wider locale. Given the slope of the site, the proposed dwelling presents as two storeys from Attunga Road. The proposed development would appear as three storeys as viewed from the north, however, existing vegetation downslope of the dwelling house will assist in softening the built form as viewed from surrounding properties and Bilgola Beach. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form.

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

Comment:

As above, the slope and topography of the land is considered steep. The works are largely confined to the existing building footprint and do not result in unreasonable excavation, tree removal or environmental impact. The subject site has already been heavily modified, with significant retaining walls and pre-existing excavation currently existing on site. It is therefore considered that the resultant development does not unreasonably impact on natural landforms. The proposal has also been assessed by Council's Bushland and Biodiversity; Landscape Officer and Development Engineer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

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

Comment:

The additions to the dwelling propose to maintain a similar building footprint and scale as to what exists. The non-compliances are largely a direct result of the existing built form and are not considered to result in unreasonable bulk. The dwelling would be appropriately articulated using recessed and modulated walls, balconies and fenestration break up built form. 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. The structures will sit below the the height of surrounding canopy trees. The 19m rear setback and maintenance of a existing vegetation downslope of the dwelling house will assist in softening the built form as viewed from surrounding properties and Bilgola Beach. This provides a situation in which presentation of bulk and scale is adequately minimised.

- ***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. The elements of the proposal that are non-compliant with building envelope are not considered to result in unreasonable view loss.

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development.

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

Comment:

As above, the proposal does not require any significant vegetation to be removed as part of the application. 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. The proposed works would be primarily over the existing built footprint. The 19m rear setback and maintenance of a vegetation buffer also allows for some visual relief towards Bilgola Beach. Vegetation will be retained along the south-eastern boundary to minimise the bulk and scale of the development as viewed from adjoining properties. The proposal will adjoin Attunga Reserve to the south and west which contains dense bushland which will assist in mitigation of visual bulk.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

D3.11 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

The control requires a minimum of 60% (452sqm) of the site area to be landscaped. The site area is 753.4sqm

The application proposes a total landscaped area of 35.8% (270sqm), representing a variation of 40.3%.

Provided the outcomes of this control are achieved, impervious areas less than 1.0m in width and impervious areas used for outdoor recreational purposes (only up to 6% of site area) can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 42.3% (319sqm)

It should be noted that the vast majority of works are proposed atop of the existing building footprint and hard surface area. The proposed landscaped area represents a 11sqm reduction to the existing landscaped area. The 11sqm reduction is a result of the level 1 balcony extension. This new structure will be of minimal bulk and scale and will not result in the removal of any existing vegetation (given its elevated nature).

Merit Consideration

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

- ***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 the existing dwelling and surrounding development in the locality and generally in keeping with the desired future character of the locality. The proposed works would not require the removal any significant trees or landscaping. This is further discussed in the section of this report relating to A4.3 Bilgola Locality of the Pittwater 21 DCP.

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

Comment

The additions to the dwelling propose to maintain a similar building footprint and scale as to what exists. The dwelling would be appropriately articulated using recessed and modulated walls, balconies and fenestration break up built form. 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. The 19m rear setback and maintenance of a vegetation buffer also allows for some visual relief towards Bilgola Beach. This provides a situation in which presentation of bulk and scale is adequately minimised.

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

Comment

As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings (subject to recommended conditions). Furthermore, the proposal would retain suitable landscaping along side and rear boundaries to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

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

Comment

The proposal does not require any significant vegetation to be removed as part of the application. 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. The proposed works would be primarily over the existing built footprint. The 19m rear setback and maintenance of a vegetation buffer also allows for some visual relief towards Bilgola Beach. Vegetation will be retained along the south-eastern boundary to minimise the bulk and scale of the development as viewed from adjoining properties. The proposal will adjoin Attunga Reserve to the south and west which contains dense bushland which will assist in mitigation of visual bulk.

- ***Conservation of natural vegetation and biodiversity.***

Comment

No native vegetation or wildlife species will adversely be affected by the proposed works. The additions are largely sited within the existing building footprint. The application has been reviewed by Council's Bushland & Biodiversity Officer and Landscape Officer who has raised no objection subject to recommended conditions. The proposal is also accompanied by a Flora and Fauna Report which determined that the proposed works would not result in unreasonable impact to wildlife or biodiversity.

- ***Stormwater runoff is reduced, preventing soil erosion and 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 bushland character of the area will be maintained as no significant vegetation is required to be removed as a result of the proposed development. Existing vegetation and canopy trees will assist in maintaining the bushland character as viewed from surrounding properties and the streetscape. The application has been reviewed by Council's Bushland and Biodiversity Officer who have raised no objection to the proposal subject to recommended conditions.

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

Comment

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.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions, in this particular circumstance.

D3.15 Scenic Protection Category One Areas

Trees and vegetation will be retained to the north of the dwelling to minimise the visual impact of the development as viewed from Bilgola Beach. The proposed development does not require the removal of any significant vegetation. The proposal would not result in a significant increase in the bulk and scale of the existing dwelling as viewed from the public realm. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form and would meet the objectives of this control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$9,185 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$918,500.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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 Bilgola Locality, landscaped area, front and side building lines and building envelope.

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.

One submission was received in response to neighbour notification from the Department of Planning, Industry and Environment – Crown Lands, as an adjoining landowner. The response raised no objection to the proposed works, however, requested a transfer of Attunga road ownership to Council. Road ownership transfer is not a planning matter in this instance and the correspondence recommending this transfer of ownership has been forwarded to the relevant Council department for review and further action if required.

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 existing dwelling and 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. 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 DA2021/2067 for Alterations and additions to a dwelling house including a carport on land at Lot 123 DP 752046, 70 Attunga Road, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A 01 Issue D - SITE & ROOF PLAN	21/01/2022	THW Architects
A 02 Issue D - LEVEL 1 FLOOR PLAN	21/01/2022	THW Architects
A 03 Issue D - LEVEL 2 FLOOR PLAN	21/01/2022	THW Architects
A 04 Issue D - LEVEL 3 FLOOR PLAN	21/01/2022	THW Architects
A 05 Issue D - LEVEL 4 FLOOR PLAN	21/01/2022	THW Architects
A 10 Issue D - NORTH ELEVATION	21/01/2022	THW Architects
A 11 Issue D - SOUTH ELEVATION	21/01/2022	THW Architects
A 12 Issue D - EAST ELEVATION	21/01/2022	THW Architects
A 13 Issue D - WEST ELEVATION	21/01/2022	THW Architects
A 20 Issue D - SECTION 2	21/01/2022	THW Architects
A 21 Issue D - SECTION 1	21/01/2022	THW Architects
A 104 Issue D - EXTERNAL FINISHES	21/01/2022	THW Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 - SITE STORM WATER MANAGEMENT PLAN	-	Barrenjoey Consulting Engineers
SW2 - SITE STORM WATER MANAGEMENT DETAILING	-	Barrenjoey Consulting Engineers
CIV1 - SEDIMENT & EROSION CONTROL PLAN	-	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

BASIX Certificate (A432728_02)	08/10/2021	THW Architects
Bush Fire Hazard Assessment Report	17/09/2021	The Fire Consultants
Flora and Fauna Report	September 2021	Kingfisher Urban Ecology and Wetlands
Preliminary Geotechnical Assessment (AG 21296)	14/09/2021	ASCENT Geotechnical Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	28/09/2021	THW Architects

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	15/12/2021
NSW Rural Fire Service	RFS Referral Response (DA20211128005224-Original-1)	13/12/2021

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

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

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

4. No Works on Adjoining Land

No Approval is granted under this consent for any works within or on the property boundaries of adjoining land. This consent does not authorise any existing works on adjoining land or within Attunga Reserve.

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

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. **No clearing of vegetation outside property boundaries**

This consent does not authorise any tree removal or the clearing of any vegetation outside the property boundaries of the subject site.

Reason: To protect native vegetation and wildlife.

7. **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

8. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,185.00 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 \$918,500.00.

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

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

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

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

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

9. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining

the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

10. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Clause 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Ascent Geotechnical Consulting dated 14/9/2021 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.

12. **Delineation of Asset Protection Zones**

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries.

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

Reason: To protect native vegetation and wildlife.

13. **Amendments to the approved plans**

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

(a) "Level 4" Window (W02) - Privacy screens are to be installed on the "Level 4" south-eastern window (labelled W02) adjoining the "Study 2" as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.5m above the Finished Floor Level.

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

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

14. **Boundary Identification Survey**

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

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

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

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

15. **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. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

- 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. **Construction Traffic Management Plan**

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Clearing for Asset Protection Zones – Project Ecologist to Certify**

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

Exotic, and non-locally native vegetation must be prioritised for removal prior to any native vegetation being removed.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

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

No encroachments are to be carried out on Land owned or managed by Council or the Department of Planning, Industry and Environment (Crown Lands)

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

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

20. **Installation and Maintenance of Sediment and Erosion Control**

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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.

22. **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.

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

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

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by the Department of Planning, Industry and Environment (Crown Lands).

Reason: Public safety, landscape amenity and tree protection.

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

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council or the Department of Planning, Industry and Environment (Crown Lands) is prohibited.

Reason: Public safety and environmental protection.

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

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

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

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

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

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

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;

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

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

27. **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.

28. **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.

29. **Installation and Maintenance of Sediment Control**

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

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

30. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

31. **Construction access**

Construction access to the property is to be via the existing approved driveway only.

Reason: Protection of the environment

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

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 any interim / final Occupation Certificate.

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

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

34. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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 weeds.

35. **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

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. **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.

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. **Installation and certification of solid/fuel burning heater**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

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

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

40. **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.

41. **Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

- (a) All required safety fencing has been erected in accordance with and all other requirements

have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008;
 - (iv) Australian Standard AS1926 Swimming Pool Safety;
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (b) A warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.
- (c) All signage shall be located in a prominent position within the pool area.

Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To protect human life.

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

42. **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.

43. **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.

44. **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.

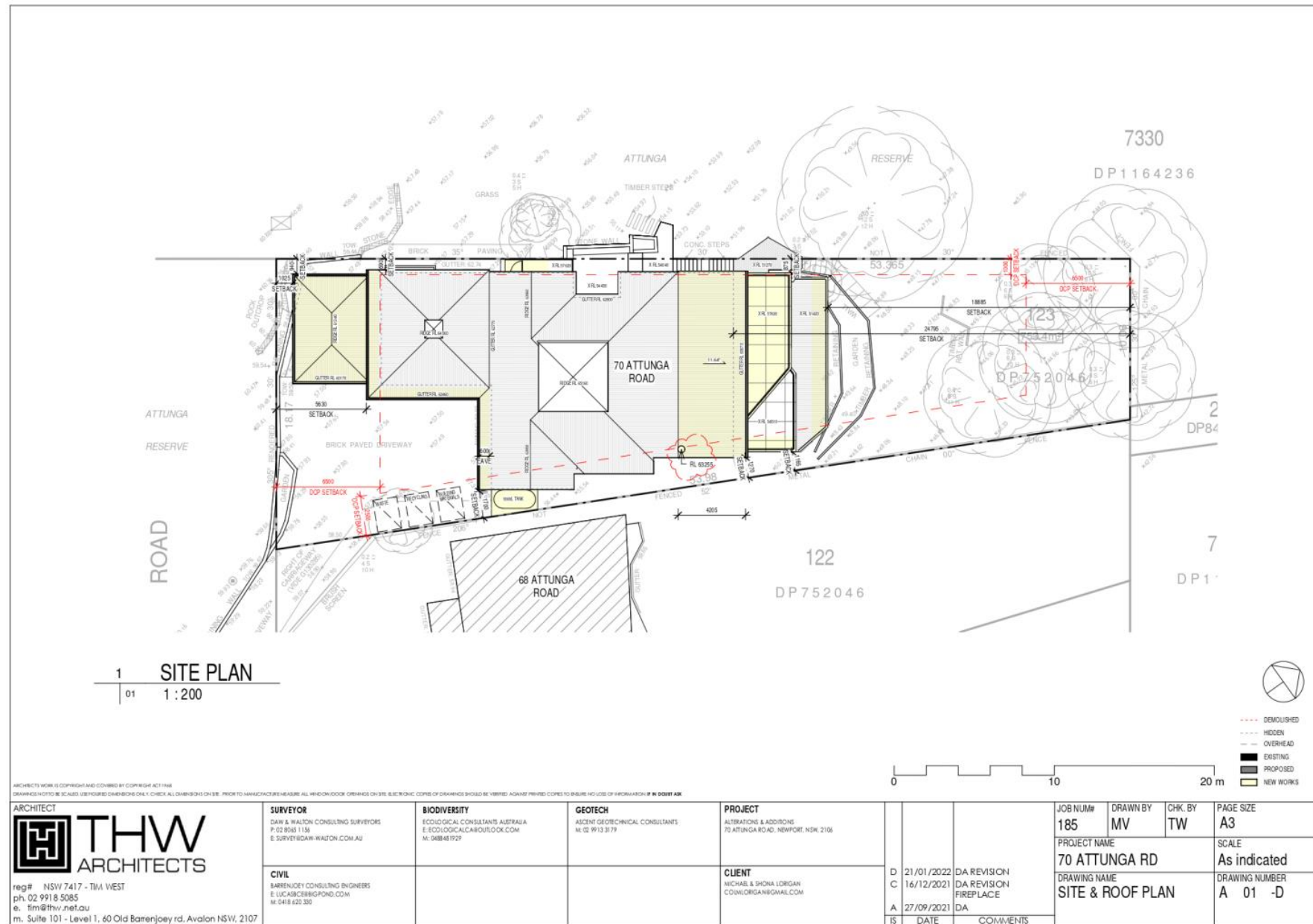
45. **Operation of solid fuel burning heaters**

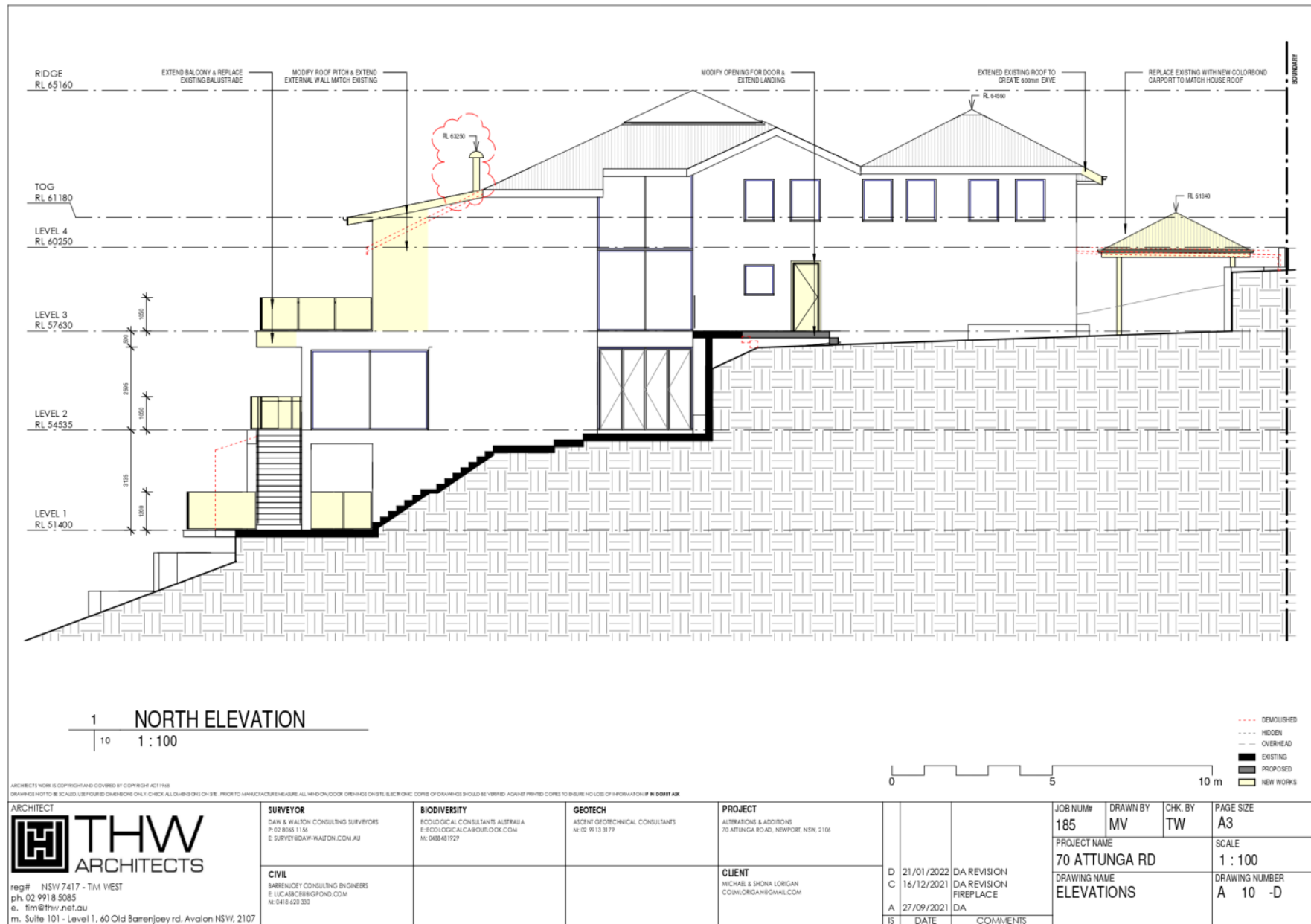
The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

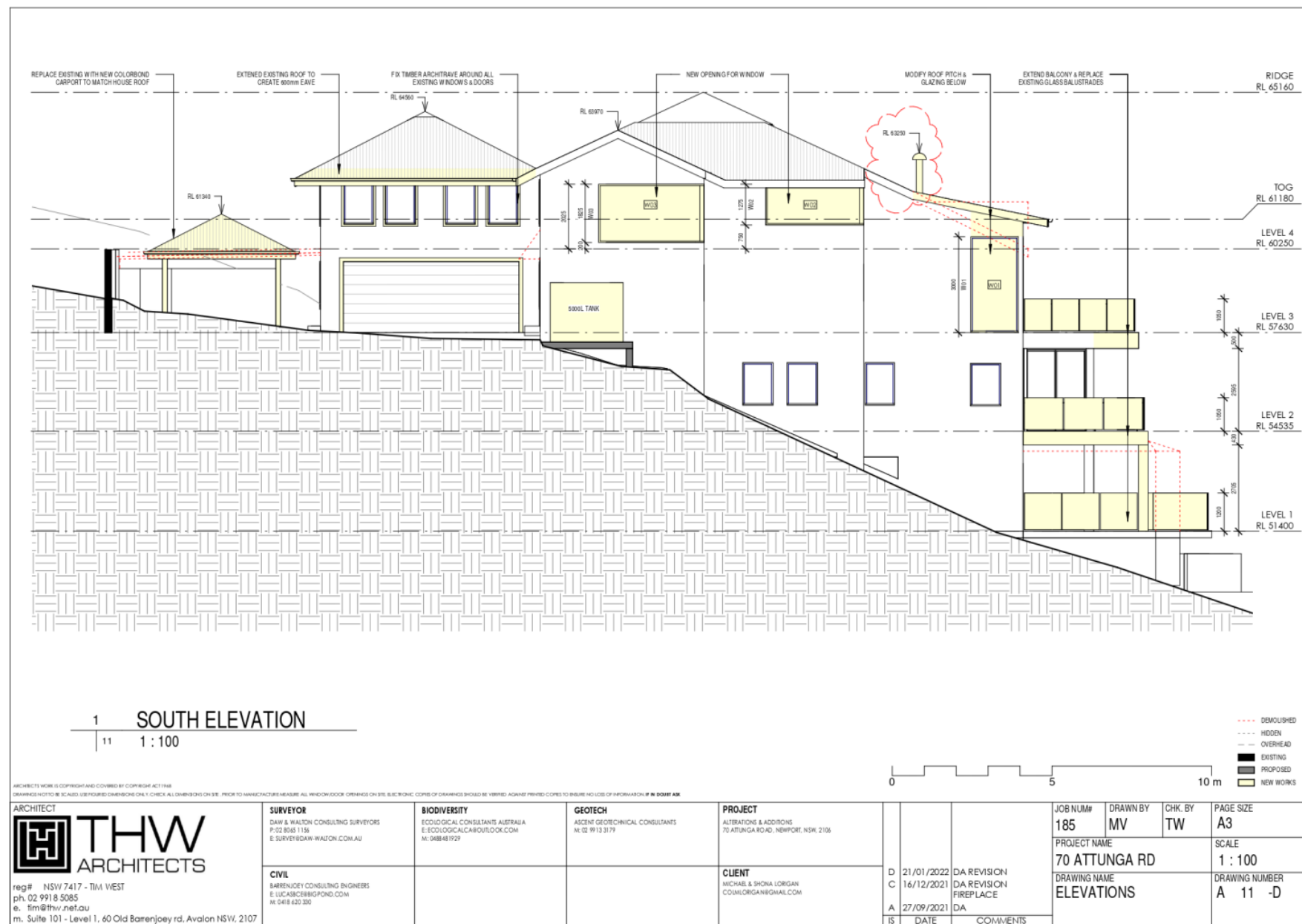
- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire

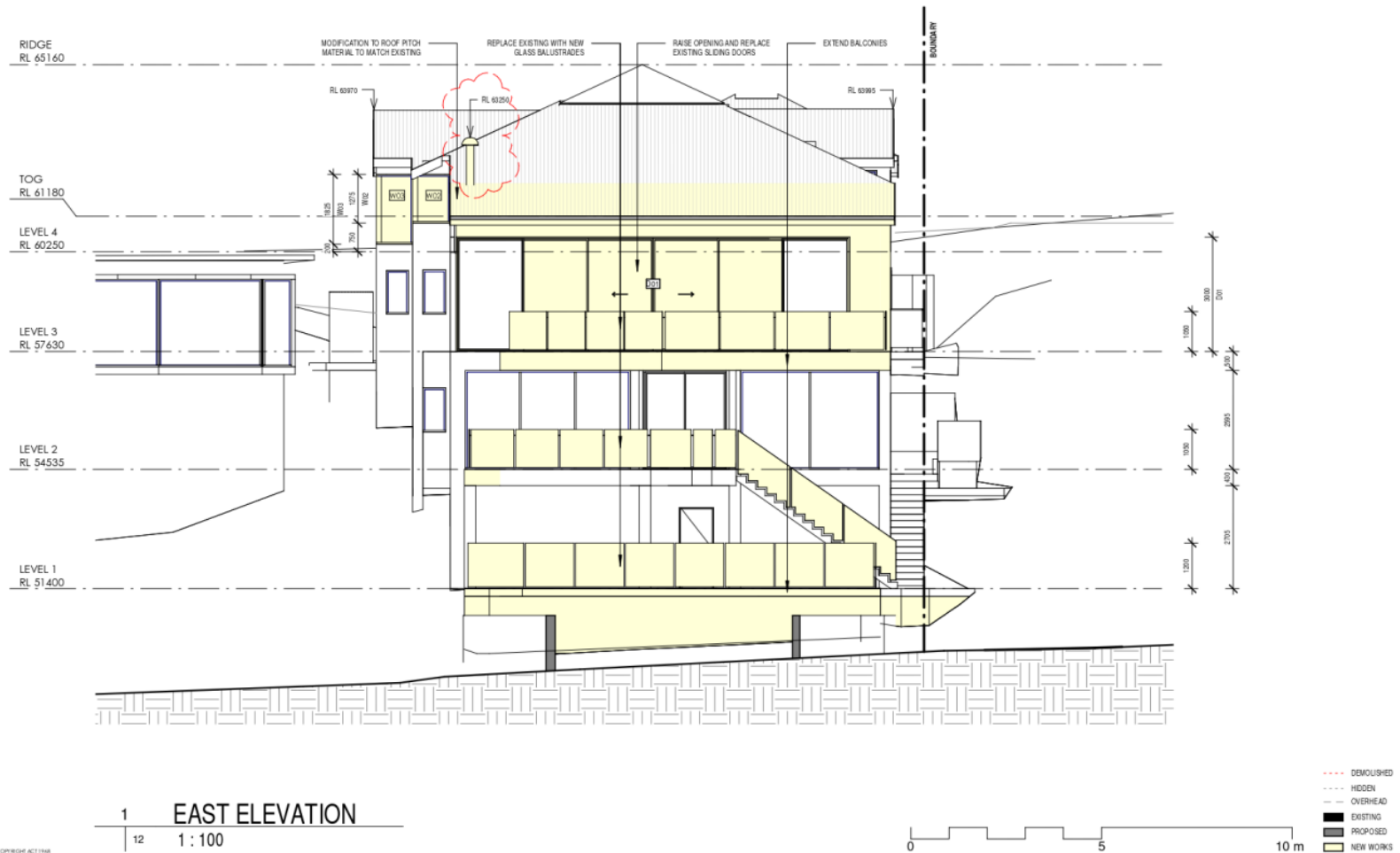
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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









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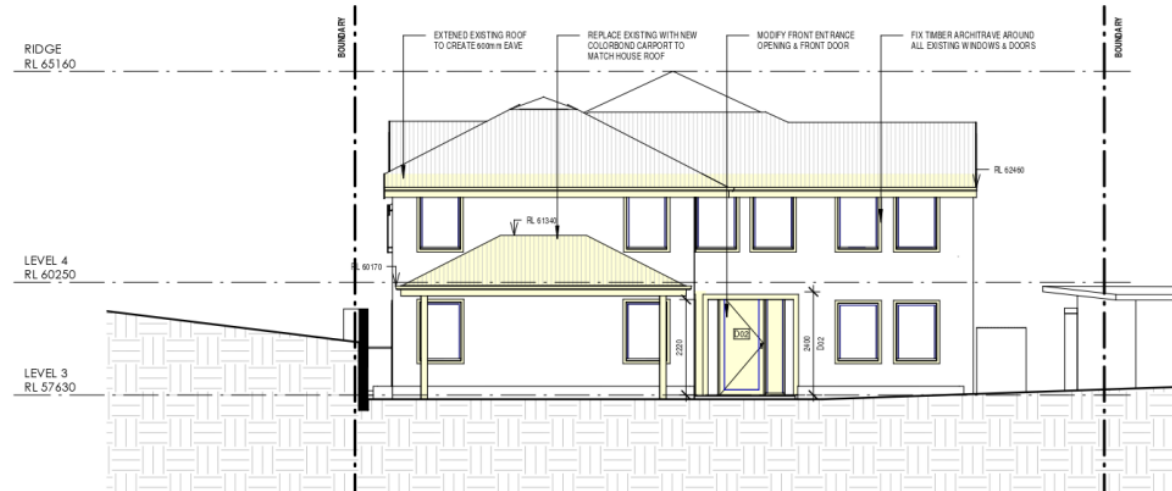
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PROJECT
ALTERATIONS & ADDITIONS
70 ATTUNGA RD RD, NEWPORT, NSW, 2106

CLIENT
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D	21/01/2022	DA REVISION
C	16/12/2021	DA REVISION FIREPLACE
A	27/09/2021	DA
IS	DATE	COMMENTS

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Vaughan Milligan Development Consulting Pty Ltd

APPENDIX CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

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

**70 ATTUNGA ROAD, NEWPORT
FOR PROPOSED ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING**

**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: Proposed alterations and additions to an existing dwelling
At: 70 Attunga Road, Newport
Owner: Michael & Shona Lorigan
Applicant: Michael & Shona Lorigan
C/- THW Architects

1.0 Introduction

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

2.0 Background

Clause 4.3 restricts the building height of a building within this area of the Pittwater locality and refers to the maximum height noted within the "*Height of Buildings Map*."

Clause 4.3 restricts the building height of a building within this area of the Pittwater locality to a maximum height of 8.0m.

Due to the sloping topography of the site and siting of existing development, the proposed northern extremity of the new roof form over the northern portion of Level 4 will be up to 9.94m in height, measured above the natural ground level, and exceeds the building height standard by up to 1.94m or 24.25%.

The figure below notes the variation to the maximum height control occurs as a direct result of the site's steep & falling levels towards the northern, rear boundary.

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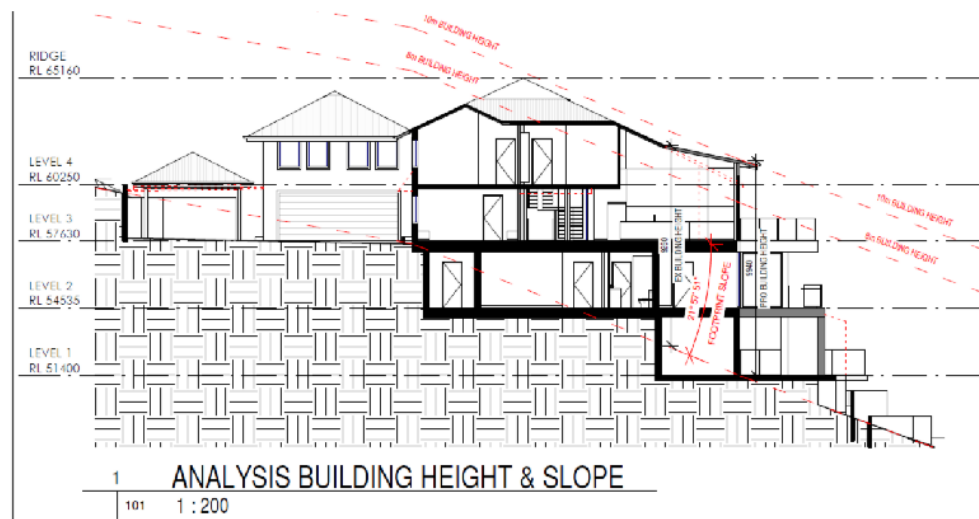


Fig 1: Extract of proposed roof area which demonstrates extent of variation to statutory height limit when assessed against a natural ground line through the site, in its undisturbed state

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

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

Is Clause 4.3 of the LEP 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 height of a building. Accordingly, Clause 4.3 is a development standard.

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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 Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

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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 Building 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 the LEP 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 development standard pursuant to Clause 4.3 of PLEP which specifies a maximum building height of 8.0m in this area of Pittwater. The proposed additions and alterations to the existing dwelling result in a portion of the new roof form at the northern extremity of Level 4 being up to 9.94m in height above the ground levels of the land in its natural state and exceeds the building height standard by 1.94m or 24.25%.

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

Clause 4.6(4) of PLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation

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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 the LEP provides:

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

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

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

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The development will achieve a better outcome in this instance as the site will provide for the partial demolition of the existing structures and the construction of a new dwelling comprising the retention of a substantial portion of the existing dwelling, together with a new garage and swimming pool, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

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

The non-compliance with the building height control arises as a result of the sloping topography of the site as the site levels fall towards the north-east and location and the form of the existing notwithstanding that the proposal seeks to provide for minor additions and alterations to the existing building development.

The proposal seeks to provide for minor additions and alterations to the existing building, the new works maintain a bulk and scale which is in keeping with the extent of surrounding development and 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, with the new roof form intended to complement the existing roofing by providing simple skillion roof form which raises the springing line of the existing roof, increasing the extent of light and breezes to the internal space of the dwelling, therefore improving amenity for the occupants.

The proposed new works will not see any unreasonable impacts on the existing views enjoyed by neighbouring properties, with view corridors over and past the roof extension to be maintained.

The works are designed to ensure that there will not see any unreasonable adverse impacts on the solar access enjoyed by adjoining dwellings.

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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 8.0m in this area of Pittwater.
- 5.3 The proposed new dwelling will have a building height of 9.94m when measured above the ground level of the land in its undeveloped state and exceeds the building height control by 1.94m or 24.25% at the northern extremity of the new roof above the Level 4 kitchen and living areas.

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,*

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*this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

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

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

1. Is Clause 4.3 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives for development for in the R2 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, as outlined under Clause 4.3, 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 surrounding area is predominantly characterised by development between one and three storeys.

The proposal provides for a development which follows the siting of existing dwelling and maintains a compatible building form, which is in keeping with the desired future character of the locality. The dwelling is in keeping with the extent of newer development in the locality.

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

The proposed development maintains consistency with the height and scale of existing surrounding development.

The maximum height of the new roof form occurs at the northern extremity of the re-pitched roof over the existing Level 4 kitchen and living area where the proposed new roof (RL 61.180m) is slightly raised above the existing gutter level of RL 60.67. The overall height of the main portions of the roof of the dwelling are not altered.

Whilst compliance with the height control is constrained by the sloping topography of the site and location of existing development, the development is considered appropriate and compatible within the locality and is therefore worthy of support.

(c) to minimise any overshadowing of neighbouring properties,

The proposal is accompanied by shadow diagrams which demonstrate that the proposal will not result in a substantial reduction in the solar access currently received by the internal and external living areas of the adjoining neighbour to the east. The site is bounded by public reserve to the west

The adjoining properties will maintain suitable solar access throughout the day in accordance with Council's provisions.

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

The subject and adjoining properties enjoy views to the east towards Bilgola Beach. The proposal will provide an altered simple skillion roof form over the northern portion of Level 4.

The proposed modest extent of the new works assists with minimising the impact on neighbouring properties. The proposal is therefore considered to maintain the view opportunities for the surrounding properties.

The proposal will not result in any loss of views from nearby public land.

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

The external form of the dwelling has been stepped to follow the sloping topography of the site, which assists with minimising the visual impact of the development.

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

The proposed development maintains a bulk, scale and character which is in keeping with that of existing surrounding development. The external finishes of the new works comprise earthy tones, which will effectively integrate with the landscaped character of the locality and will not be visually prominent. The proposal will not require the removal of any significant vegetation.

The proposal is not considered to detract from the significance of the nearby heritage items, and will not adversely impact the natural environment within the locality.

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*

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the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

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

- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of The Outlook 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 and respects surrounding properties through a minor raising of the existing springing line of the rear roof to allow for improved light and solar access and breezes, by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from 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

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development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the E4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

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

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

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

It is considered that notwithstanding the variation of to the building height control, the proposal which involves minor additions and alterations to the existing building will be consistent with the individual Objectives of the E4 Environmental Living Zone for the following reasons:

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

The proposed additions & alterations to the existing dwelling are consistent with the single dwelling character of the locality. The proposal will not require the removal of any significant vegetation, and maintains a suitable area of soft landscaping.

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

The proposed development will not detract from the ecological or aesthetic values within the locality.

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

The built form of the development is stepped to follow the sloping topography of the site, and is therefore effectively integrated into the landform. The bulk and scale of the dwelling is in keeping with that of newer development in the locality.

The proposal will not require the removal of any significant vegetation, and will maintain a generous area of soft landscaping.

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

The site is not within the immediate vicinity of riparian land or wildlife corridors.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed minor alterations and additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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8.0 Conclusion

This development proposes a departure from the maximum building height development standard, with the proposed new simple skillion roof form to be re-pitched over the northern extremity of Level 4 to provide a maximum building height of 9.94m when measured above the natural ground level.

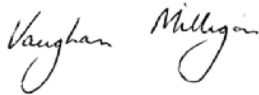
This variation occurs as a result of the sloping topography of the site and the siting of existing development.

The extent of the variation to the building height control is minimised by the low profile roof form, and the area of non-compliance does not result in any significant impact for the views and outlook for the neighbouring properties.

This written request to vary to the maximum building height standard 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 control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.2	DA2021/1573 - 10 PALM BEACH ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE, INCLUDING A DETACHED STUDIO AND INCLINATOR
REPORTING MANAGER	TONY COLLIER
TRIM FILE REF	2022/084894
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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/1573 for alterations and additions to a dwelling house, including a detached studio and inclinor on land at Lot 5 DP 14299, 10 Palm Beach Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1573
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 5 DP 14299, 10 Palm Beach Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house, including a detached studio and inclinator
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Joanna Robin Ryan
Applicant:	Joanna Robin Ryan
Application Lodged:	15/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/09/2021 to 06/10/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,719,197.00

EXECUTIVE SUMMARY

This Development Application seeks consent for alterations and additions to an existing detached dwelling house and includes the construction of a detached studio outbuilding in the rear garden of the property.

The scope of works sought can generally be described as a reconfiguration of the front retaining wall, landscaping and stairs, an internal reconfiguration of the existing part one / part two storey dwelling including new doors and windows, a new first floor addition atop of the part one storey section of the house to the north, and a new detached studio outbuilding.

The application is referred to the Development Determination Panel (DDP) as the proposal has

attracted three unique submissions and has a capital investment value of greater than \$1,000,000.

The submissions received all raise view loss as a concern, both from the built form itself and from proposed landscaping. One of the submissions raises amenity concerns regarding an existing pergola at the front of the property and the exacerbation of use of the area caused by a barbeque and proposed set of French doors.

In the assessment of the application a site visit was conducted to the site, and to the rear neighbour at 24 Palm Beach Road to ascertain view impact. A site visit was not carried out to the other two objecting properties (12 and 22 Palm Beach Road), however photos of views were received from 22 Palm Beach Road. The views concerned from 12 Palm Beach Road can be protected by relocating a proposed Banksia tree.

This report concludes with a recommendation that the DDP **approve** the development application as it is found to be a contextually appropriate development for the Palm Beach locality that does not unreasonably detract from the amenity of any adjoining land.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for alterations and additions to an existing part one / part two storey dwelling house.

The works sought can be summarised as follows:

- Internal demolition works and the reconfiguration of internal spaces.
- Construction of a single storey ground floor kitchen addition within an existing undercroft space.
- Construction of a first floor extension above the existing single storey northern portion of the dwelling.
- Construction of a single storey detached outbuilding measuring 15sqm in the rear garden.
- Demolition works to a portion of the front retaining wall and stairs to create a new stair and inclinator to facilitate disabled access.
- Replacement / recladding of existing rendered retaining walls with stone walls.
- Refinish exterior of dwelling with white render stucco and terracotta tiles.
- Landscaping works throughout.

The development has been designed with an aspiration to retrofit the existing older home with new technologies and insulation to result in a Passive House development.

Herein this report, these works are described as the 'development'.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant

- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 5 DP 14299 , 10 Palm Beach Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site is legally identified as Lot 5 in Deposited Plan 14299 and is known as 10 Palm Beach Road.</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 an easterly frontage to Palm Beach Road measuring 19.35m in width. The site has depths between 35m and 39m and results in an overall surveyed area of 687.8sqm.</p> <p>Presently the site accommodates a part one / part two storey detached dwelling house of Spanish Mission Style architecture. The house is finished in white stucco render and has a terracotta tiled roof. A double garage exists below the front lawn accessible from the street. The frontage of the site has been previously levelled resulting in a retaining wall for the width of the site frontage. The rear of the site is terraced up numerous levels.</p> <p>The existing house is built hard-up to raised ground levels to the west with insufficient water proofing which has caused substantial water damage to the property, particularly evident during rain events where a significant volume of water enters the site from the rear.</p> <p>Topographically the site inclines from east to west. The street has a Reduced Level (RL) datum point of around RL12. The elevated front lawn is at RL15.5. The rear garden is at RL20.5. It is evident that the site would have naturally</p>

sloped prior to being terraced some years ago.

The site has vegetation throughout, including a 4m high hedge running for the full length of the western (rear) boundary, and several frangipani trees in the front garden.

Surrounding properties consist of other detached dwelling houses of varying age, size and construction.

Map:



SITE HISTORY

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

- **Development Application no. N0378/14** for alterations and additions to a dwelling house, approved 29 January 2015.

The works approved under this application included the demolition of the front pergola, enlargement of the house and construction of a first floor addition over the single storey portion of the house, similar to that of the current proposal.

The works approved have not been carried out (no Construction Certificate issued) and the development consent has lapsed.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
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Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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&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&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&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&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&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&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	<p>(i) Environmental Impact</p> <p>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>

Section 4.15 Matters for Consideration	Comments
the locality	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 22/09/2021 to 06/10/2021 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 4 submission/s from:

Name:	Address:
Mr Colin Douglas Blair	2 Chelmsford Avenue LINDFIELD NSW 2070
Mrs Barbara Ann Blair	2 Chelmsford Avenue LINDFIELD NSW 2070
Mrs Beatrice Anne Gray	12 Wyuna Road POINT PIPER NSW 2027
Ms Neroli Marian Naylor	22 Palm Beach Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

- **View Loss.**
- **Built Form Control non-compliances (envelope, setbacks and landscaped area).**
- **Existing pergola structure.**
- **Amenity loss from use of front patio and barbeque area.**
- **Location of A/C units.**

The matters raised within the submissions are addressed as follows:

- **View Loss**

Comment

Objections / comments have been received from Nos. 22 and 24 Palm Beach Road to the rear of the property raising concern about potential view loss caused by the development. An objection has been received from No. 12 Palm Beach Road to the south raising concern with the proposed planting of a Banksia tree in the front garden that may, over time, obscure views.

Matters pertaining to view loss are discussed later in this report under DCP Clause C1.3 but in summary, the extent of loss is not deemed unreasonable and does not warrant the refusal of the application.

- **Built Form Control non-compliances (envelope, setbacks and landscaped area)**

Comment

Submissions received note and object to the proposed built form control non-compliances including front, side and rear boundary setbacks, side boundary envelope and landscaped area. A submission also objects to the building height which is compliant in this instance.

The built form control non-compliances are discussed under their respective clauses later in this report under Section D of the DCP.

- **Existing pergola structure**

Comment

The submission received from no. 12 Palm Beach Road to the south generally objects to the existence of an existing pergola at the front of the property, questioning whether any approval for such has been granted, and goes on to describe amenity impacts from the use of that front pergola / patio area including the addition of new French doors into the front garden.

The objection to amenity impacts is discussed below. This proposal does not seek to alter the existing pergola and the works proposed under this application are not contingent on the existence of that pergola (i.e. french doors could still be installed in the wall regardless of whether a pergola exists or not).

Given the above it is not essential, in this instance, to establish the approval status of the pergola. Notwithstanding that, from a review of Council records the pergola is shown as 'existing' on approved plans dated 1990 and is visible of aerial images from this time. Older aerial images (1975) seemingly indicate the presence of some structure in this location, although those photographs are not clear enough to establish whether it is the pergola in question. Notwithstanding that, it is evident that a pergola like structure has existed in this location for at least 30 years.

Should the objector be concerned about the legality of this pergola then they are to contact Council's Building Enforcement department to discuss, as a development application is not the correct avenue for this matter.

- **Amenity loss from use of front patio and barbeque area**

Comment

The objection from no. 12 contends that the addition of french doors and a BBQ to the pergola / patio area would result in an intensification of the use of this space and could thereby result in increase acoustic and visual privacy disturbances for neighbours. The submission requests that the proposed rear studio building be deleted, in part to facilitate the only private recreation area for the property being in the rear garden thus limiting the usage of the front garden.

Council cannot restrict the location where someone may enjoy their property (i.e. the front or back garden). Given the views and solar access it is clear that the front garden is a valuable space for all properties along this stretch of Palm Beach Road.

The use of the front garden of the subject site is not expected to generate any impacts that would be detrimental to the amenity of neighbouring properties over and above standard residential noise. It is noted that a BBQ (on wheels) already exists at the front of the site in the location shown.

- **Location of A/C units**

Comment

The submission received from No. 12 Palm Beach Road requests that the proposed air conditioning units be located further to the rear of the property to minimise acoustic intrusion.

The dwelling already has air conditioning units along the southern edge of the house, and this application seeks to relocate new units further to the west (rear) and delete the existing unit. The proposed units are adjacent to a high stone wall and are located further from the windows of the neighbouring house than the existing units.

The location is deemed to be acceptable and is expected to have a lesser impact than the existing by virtue of relocation, positioning adjacent to a high stone wall and being a newer unit (i.e. better sound attenuation and fan extraction etc).

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Updated Comments:</p> <p>A Landscape Plan is submitted and provides a landscape outcome that enhances the existing landscape character of the property. Proposed hard and soft landscape elements are included to provide landscape treatment to the available landscape open space areas. The Landscape Plan provides native tree planting to the frontage to satisfy DCP control C1.1 and it is noted that the tree planting is estimated to reach the height of the proposed ridge level, and with the adjoining rear properties set at significantly higher ground levels, no issues are raised.</p> <p>Subject to the merit consideration of a reduced landscaped area by Planning, Landscape Referral raise no issues with the landscape plan outcomes.</p>

Internal Referral Body	Comments
	<p>Previous Comments:</p> <p>The development application is for proposed construction of alterations and additions to an existing dwelling including a detached studio and inclinor.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation. • C1.1 Landscaping. • D12 Palm Beach Locality. <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, and a requirement for 60% landscaped area, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The Master Set for the application includes a reference to Landscape Plans, yet these are not included in the bundle of application information. No Arboricultural Impact Assessment is provided nor required in this instance as the site supports exempt vegetation. It is noted however that two large Norfolk Island Pines exist within adjoining property at 24 Palm Beach Road at the rear and adjoining the rear of the development site, yet the survey does not include this information. It is assessed that with no level changes within the development site including the rear yard retaining wall, impact to these Norfolk Island Pines is not anticipated, subject to review of the Landscape Plans.</p> <p>The existing soft landscape area of 41% is further reduced to a proposed area of 36%, contrary to the requirement under the C4 zone requiring 60%. The current sighted Master Set plans does not provide adequate information on landscape treatments to suggest that the landscape objectives of the C4 Environmental Living zone can be achieved.</p> <p>To continue the Landscape Referral, the Landscape Plans are required to be issued.</p>
NECC (Development Engineering)	<p>The proposed development does not require OSD. The submitted Geotechnical report addresses the relevant DCP controls.</p> <p>No objection to the proposal, 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. A423618 dated 9 August 2021).

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:	8.5m	8.18m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (southeast)	Entry Stairs - Nil First Floor Extension - 16.7m - 18.1m	Up to 100%	No
Rear building line	6.5m (northwest)	Studio - 3 - 3.3m	50%	No
Side building line	1m (northeast)	First Floor Extension - 1.1m Studio - 1.5m	-	Yes
	2.5m (southwest)	Kitchen Extension - 2m	20%	No
Building envelope	3.5m (northeast)	Encroachment to a maximum height of 1.2m for full width of the first floor extension	34%	No
	3.5m (southwest)	No change to existing	-	Yes
Landscaped area	60% (412.56sqm)	248.7sqm (36.1%) + 41.22sqm (6%) Total: 42.16%	28.8%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
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
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes

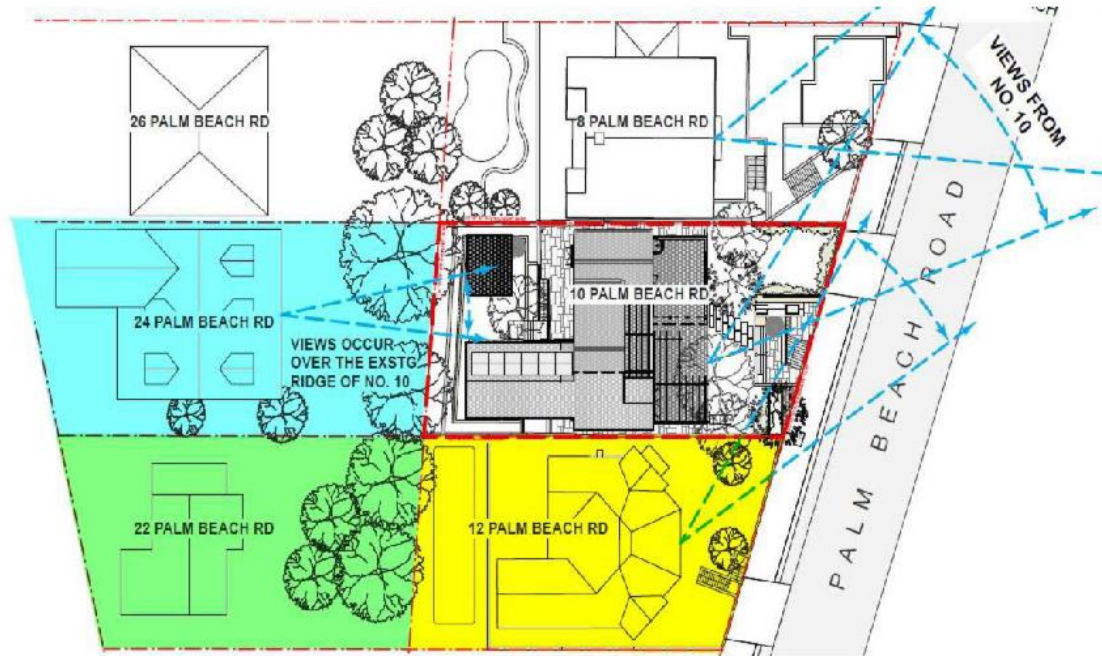
Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	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	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Three objections to the development application have been received and each raise view loss as a concern.

For ease of understanding the location of the objecting properties the below diagram has been prepared:



Yellow - 12 Palm Beach Road - concerned about view loss caused by a proposed banksia tree.

Green - 22 Palm Beach Road - concerned about view loss from proposed built form.

Blue - 24 Palm Beach Road - concerned about view loss from proposed built form - site visit undertaken.

Merit consideration

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

- **A reasonable sharing of views amongst dwellings.**

Comment

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

1. Nature of the views affected

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

Comment to Principle 1

Each of the three objecting properties have water views of Palm Beach and the surrounding locality, generally in an easterly and north-easterly direction. Those views also comprise of a row of mature Norfolk Island Pine trees that run along the western side of Ocean Road. All objecting properties, and the subject development site itself, have their views somewhat impeded by existing built form and vegetation. Consistent with the objectives of this clause, it is

evident in the planning and development of the wider area that canopy trees have priority over views, and this forms an important part of the localities desired future character.

From No. 12 Palm Beach Road the views to be affected are water views, and that view loss is caused by a proposed tree (1 x 100L *Banksia integrifolia*). That tree is to be planted adjacent to two mature frangipani trees and can reach a mature height of 4 to 8 metres.

From Nos. 22 and 24 Palm Beach Road the views to be affected are partial water views that are obstructed by the roof to the existing development and adjoining properties. Those views are depicted below:

Photograph 1, below: View from eastern edge of ground floor balcony at no. 24 Palm Beach Road looking southeast. Proposed development overlaid with black trace by architect.



Photograph 2, below: Top floor balcony of no. 22 Palm Beach Road looking due east. Proposed development overlaid with black trace by architect.



2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2

From No. 12 Palm Beach Road the views to be impacted by the proposed tree are from a bedroom (assumed to be the master bedroom). Those views are available in both a sitting and standing position, across the side boundary of the front lawn of the development site.

From Nos. 22 and 24 Palm Beach Road the views to be impacted are available generally from rear east facing balconies, although some filtered views of the water (atop of the development site) are obtainable from internal spaces. From the balconies the views are available from a sitting and standing position, however the views are significantly better from a standing position. The views are obtainable over the rear boundary of the site.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3

From No. 12 Palm Beach Road the impact is most observable from the corner master bedroom

which has due east facing windows across the side boundary of the subject site. The portion of the development in contention with regards to this view loss is not the building itself, but is the location of a proposed banksia tree which can reach mature heights between 4 to 8 metres. Whilst there are existing frangipani trees within the general vicinity of the proposed tree location, and whilst the impact the development would have on those views is not severe, the impact could be mitigated entirely if the tree is planted in an alternate location. For this reason it is recommended that the tree be planted elsewhere on the site. Subject to this condition, the view loss from No. 12 Palm Beach Road is deemed to be negligible.

From Nos. 22 and 24 Palm Beach Road the claimed view impact is created by the built form. Height poles have not been erected on the site as their visibility would be extremely obscured from neighbouring properties given the dense hedging and broad Norfolk Island Pine trees to the rear of the site. It is considered that height poles would not be beneficial in this instance. Instead, the architect has provided schematic black trace overlay diagrams as above. Whilst these cannot be guaranteed to be 100% accurate, an assessment of them against the proposed plans reveals that they are sufficiently accurate to allow a proper view assessment.

From these overlay diagrams, and as evident on site, the development does not result in the loss of any water views from neighbouring properties but rather obscures views of the flank wall of no. 8 Palm Beach Road and houses to the other side of Palm Beach Road. The development does not obscure views of the iconic row of Norfolk Island Pine trees along the western side of Ocean Road.

It is understood why objections have been received as protecting any view in Palm Beach is valuable and desirable, however in this instance it has been demonstrated that the impact could qualitatively be best described as minor.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4

On the basis of the above conclusions reached it is considered that the proposal is reasonable and that there is no more skillful design alternatives that would lesser the impact on views enjoyed from neighbouring properties.

- ***Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.***

Comment

The development is not anticipated to result in the loss or obstructed of any views of vistas of the water when viewed from a public place.

- ***Canopy trees take priority over views.***

Comment

This application provides new trees on the site. The recommendation of this report does relocate a proposed banksia tree elsewhere on site to maintain a view corridor from the neighbouring house, however in doing such it is not considered that the view has priority over the tree, and the tree is still to be planted and maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 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.

C1.5 Visual Privacy

The southerly neighbouring house at No. 12 Palm Beach Road has raised concern about a loss of visual privacy caused by the development.

The submission contends that the existence of a pergola to the front of the site creates a loss of privacy to the adjoining master bedroom.

The pergola in question is already existing and is not subject to change as a part of this application. The barbeque in the location shown on the plans is also existing and is not subject to change. The addition of a pair of French doors into the patio area is not considered to materially alter the existing level of amenity as there are several other doors on the same facade.

It is also noted that the same submission objects to the planting of a banksia tree between the two properties as it would interrupt an existing view corridor. The tree, if planted in the proposed location, would contribute to enhancing the privacy of the neighbouring house, however it has been relocated elsewhere on the site to maintain the view corridor.

On balance it is not considered that the works unreasonably detract from the amenity of adjoining land.

D12.5 Front building line

Description of Non-Compliance

Clause D12.5 of the Pittwater 21 Development Control Plan 2014 prescribes a front boundary setback requirement 6.5m measured from the front property boundary.

The site presently has a (approx.) 2.5m high stone retaining wall running for the length of the front boundary. This development seeks to break apart the central portion of this retaining wall to create a more formal entry into the property and to provide an inclinator to facilitate disabled access. The revised entry stairs and retaining walls have a nil setback to the boundary and are therefore non-compliant with Clause D12.5. The existing retaining wall and front boundary treatment can be seen in the below photo:



It is noted that the architectural plans draw the front boundary setback requirement line at 10m instead of 6.5m. This drafting error has no bearing on the assessment of the application. The existing house and proposed renovations to the house remain behind the front building line.

Merit Consideration

With regards 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 encroachment into the front boundary setback area achieves the desired future character in that it minimises the presence of a 2.5m solid wall right along the boundary and rationalises / formalises the entry into the site. The works are to be finished in sandstone instead of the current rendered brickwork, and the area is to be landscaped. Given that, notwithstanding the variation sought, the proposal achieves the desired future character of the locality.

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

Comment

The encroachment into the front boundary setback area does not result in any change of views from the public or private domain.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment

Not applicable as Palm Beach Road is not a main road.

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

Comment

The encroachment into the front setback area does not require the removal of any prescribed vegetation. The works include the planting of new vegetation including trees in the front garden which shall contribute to visually reducing the built form.

- ***Vehicle maneuvering in a forward direction is facilitated.***

Comment

Not achieved currently or proposed. No changes sought to vehicular access.

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

Comment

The addition of new plantings and the change of a rendered wall to sandstone will enhance the character of the locality.

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

Comment

The works reduce the bulk of development at the streetscape to create a more human scale frontage.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment

Achieved.

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

Comment

Achieved.

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.

D12.6 Side and rear building line

Description of Non-Compliance

Part D12.6 Side and Rear Building Lines of the P21 DCP prescribe a minimum rear building line of 6.5m, and required side setbacks of 1m to one side (northeast) and 2.5m to the other side (southwest).

The proposed outbuilding encroaches the rear setback area with a setback of 3.0 to 3.3m. The kitchen extension encroaches the southwestern side building line with a setback of 2m, although this setback is a continuation of the existing dwelling what can be varied pursuant to the DCP.

Merit Assessment

With regard to the request 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 proposal is considered to achieve the desired future character of the locality.

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

Comment

The proposal has been assessed as having a satisfactory bulk and scale.

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

Comment

The encroaching elements into the side and rear building line do not detract from the equitable preservation of views and vistas to and or from public and private properties.

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

Comment

As above.

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

Comment

The encroaching elements into the side and rear building line are not considered to detract from the amenity of neighbouring properties, and do not cause any overshadowing given the site's orientation and topography.

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

Comment

The development does not require the removal of any substantial landscaping, and is accompanied by a professionally designed Landscape Plan that shall enhance the streetscape.

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

Comment

As described elsewhere in this report, whilst the detached outbuilding does encroach in the rear setback area and lessen the existing calculable landscaped area, applying flexibility to the siting of buildings results in an acceptable and potentially superior outcome commensurate to a compliant development. If the outbuilding floorspace were to be distributed elsewhere on the site then it is likely that that additional floorspace would result in building bulk and potential view

impacts, and thereby flexibility is considered acceptable in this instance.

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

Comment

As above.

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

Comment

Not applicable as the site is not located adjacent to a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 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.

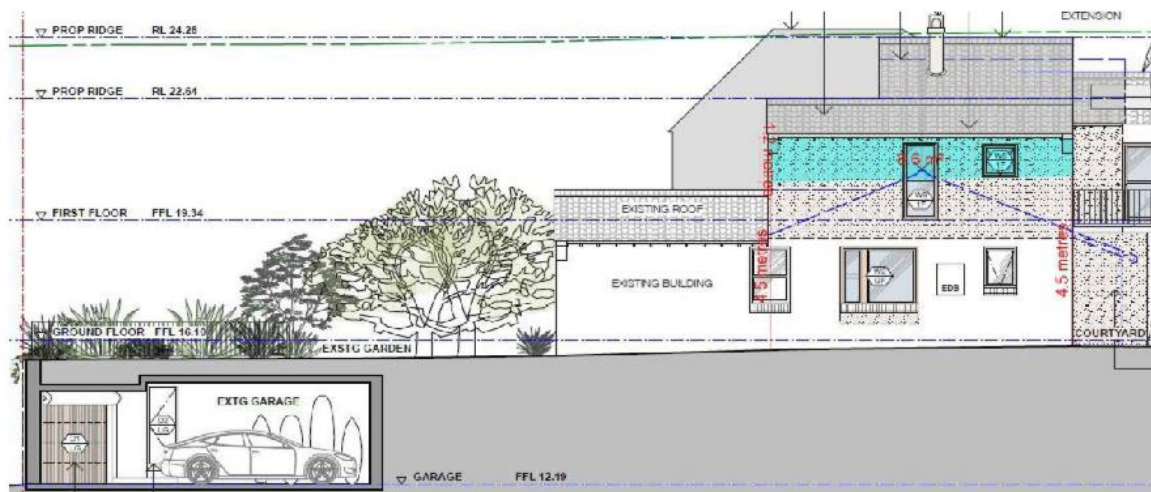
D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 Building Envelope of the P21 DCP prescribes an envelope measured at 3.5m in height at each side boundary before turning inward at 45 degrees. The effect of such means that the proposed northern facade of the new first floor encroaches the envelope for the full width of the extension, to a maximum height of 1.2m.

The clause states that Council may consider a variation for the addition of a second storey where the existing dwelling is retained. It is on this basis that the below assessment is made.

The encroachment proposed can be seen in blue highlight on the below image:



Merit Consideration

With regard to the request 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 proposal remains as a detached two storey dwelling with a large landscaped garden addressing the street. The character of the building (being Spanish Mission Style) creates visual interest within the streetscape and is considered to be a positive addition to the street. The encroachment of the side envelope does not change these factors, nor does it contribute to any unreasonable visual bulk. For that reason the development is consistent with the desired future character of the locality.

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

Comment

The subject area of encroachment is setback 13.4m from the front property boundary and is lesser in height and length than the immediately adjoining development to the north at no. 8 Palm Beach Road, and to the existing first floor element of the development site. To that extent, the proposal is below the height and scale of built development. The extension remains lesser than the height of canopy trees already on the site.

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

Comment

The extension is appropriately designed to blend in with the character and proportions of the host property and to relate to the spatial characteristics of the locale.

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

Comment

Achieved.

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

Comment

View loss is assessed earlier in this report. The non-compliant side envelope is not found to result in any view loss.

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

Comment

The development is not found to result in any unreasonable amenity impacts upon adjoining land.

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

Comment

The extension is to be built atop of the existing ground floor and does not result in the loss of any vegetation.

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.

D12.10 Landscaped Area - Environmentally Sensitive Land

Description of Non-Compliance

Clause D12.10 Landscaped Area of the P21 DCP prescribes a landscaped ratio of 0.6:1 (or 60%) applying to the land. In this instance that requires 412.56sqm of landscaping. In the event of a shortfall to that figure, the control permits an additional 6% of the site area (41.22sqm) used for outdoor recreation but not landscaping (i.e. decks, patios and the like) to be included within the landscape calculation.

The proposal provides 248.7sqm or 36.1% landscaping. With the 6% addition added, that figure increases to 289.92sqm of 42.16%. This falls short of the control requirement by 28.8%.

Merit Consideration

With regard to the request 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

It is established throughout this report that the existing house and the proposed works achieve the desired future character of the locale. Whilst the outbuilding to the rear of the site does reduce the quantum of landscaped area, the reduced quantum is not incongruous with other similarly proportioned allotments within the immediate locale (i.e. the adjoining houses to the north and south). In consideration of the request for a variation to the landscaped area weight has been put on the fact that the works sought are a creative adaptation of the existing building which is considered to contribute significantly to the streetscape with its Spanish Mission Style. The positioning of the existing dwelling and the man-made topographical changes of the existing site so not leave significant scope for modest additions to the current building. Therefore, because it is considered that the additions to the host dwelling are acceptable and complementary to that existing building, the addition of a small (15sqm) outbuilding to the rear of the site for additional recreation is supported, because it reduces the volume of the host property, does not result in the loss of any significant landscaping, is not readily visible from surrounding properties and does not impact on anyone's amenity.

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

Comment

The reduction of landscaped area to the front of the site reduces the existing bulk of the front retaining wall and rationalises the layout to provide disabled access into the site. This does not create any new bulk.

The outbuilding to the rear of the site reduces the landscaped area more than the works at the front, but is positioned in such a manner that it is not readily visible from surrounding properties, and has a roof height lesser than that of the existing dwelling. The structure is small (3.69m x 4.2m, equivalent to a standard bedroom) and is to be finished in facade materials to match the host dwelling.

On balance the works do not create any unreasonable bulk and scale.

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

Comment

The shortfall sought in landscaped area is not attributable to the loss of amenity or solar access to any neighbouring properties. The property that would be most likely to view the structure would be no. 8 Palm Beach Road, however this property is located northwards of the development site and won't be overshadowed by the development.

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

Comment

The proposal does not result in the loss of any significant vegetation on the site. The application is accompanied with a detailed Landscape Plan prepared by a landscape architect which demonstrates that the proposed landscape solution will be enhancing to both the aesthetics and biodiversity of the site, and will visually reduce the built form.

- ***Conservation of natural vegetation and biodiversity.***

Comment

As above.

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

Comment

Council's Development Engineer has reviewed the proposal and is satisfied with the method of stormwater dispersal. It is noted that the property is severely prejudiced by large volumes of stormwater from the west (as seen in videos and evidenced by damp on the site) and this application provides an opportunity to manage (in part) this impact.

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

Comment

To the front of the site the works will contribute to the beachy character of the locale. To the rear the outbuilding will not detract from the existing character.

- ***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 retains landscaped area sufficient to permit water infiltration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$17,192 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,719,197.

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 Assessment Report asserts and concludes that notwithstanding that the fact that three objections have been received and that there are several breaches to the applicable built form controls, the development proposal is reasonable in its context and does not unreasonably prejudice the amenity of surrounding land.

It has been demonstrated that the views of neighbouring houses are protected by this development and that the extensions and outbuilding proposed do not result in the loss of any visual privacy or solar access.

The Spanish Mission Style characteristics of the existing dwelling, which contribute greatly to the streetscape, are being maintained and improved upon through the proposed design which will enhance the Palm Beach locality.

The aspiration to retrofit the existing house to meet Passive House standards is to be commended and may be the first of its type in the Northern Beaches, notwithstanding that this requirement is not enshrined within any condition of consent.

The development is appropriate for the land and this report concludes with the recommendation that the Development Determination Panel **approves** the DA.

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 DA2021/1573 for Alterations and additions to a dwelling house, including a detached studio and inclinor on land at Lot 5 DP 14299, 10 Palm Beach Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA100 - Site Analysis Plan	June 2021	Alwill Architecture
DA103 - Excavation + Fill Plan	June 2021	Alwill Architecture
DA200 - Exstg/Demolition Plan - Garage	June 2021	Alwill Architecture
DA201 - Exstg/Demolition Plan - Ground Floor	June 2021	Alwill Architecture
DA202 - Exstg/Demolition Plan - First Floor	June 2021	Alwill Architecture
DA203 - Exstg/Demolition Plan - Roof	June 2021	Alwill Architecture
DA210 - Proposed Garage Floor Plan	June 2021	Alwill Architecture
DA211 - Proposed Ground Floor Plan	June 2021	Alwill Architecture
DA212 - Proposed First Floor Plan	June 2021	Alwill Architecture
DA213 - Proposed Roof Plan	June 2021	Alwill Architecture
DA300 - East (Street) Elevation	June 2021	Alwill Architecture
DA301 - South Elevation	June 2021	Alwill Architecture
DA302 - West Elevation	June 2021	Alwill Architecture
DA303 - North Elevation	June 2021	Alwill Architecture
DA304 - Studio South + West Elevations	June 2021	Alwill Architecture

DA310 - Long Section A	June 2021	Alwill Architecture
DA311 - Cross Section B	June 2021	Alwill Architecture
DA500 - External Finishes	June 2021	Alwill Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A423618	9 August 2021	Alwill - Design Pty Ltd
Geotechnical Investigation (ref:J3493)	8 July 2021	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LP01-D0621 - DA Cover Sheet Rev. A	21 July 2021	Dangar Barin Smith
LP02-D0621 - Plant Schedule Rev. A	21 July 2021	Dangar Barin Smith
LP03-D0621 - Landscape Plan Rev. A	21 July 2021	Dangar Barin Smith
LP03-DXXXX Rev. A - Details	7 January 2021	Dangar Barin Smith

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	3 September 2021	Alwill Architecture

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

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

2. 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 \$17,191.97 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,719,197.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, proposed buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Palm Beach Road.

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

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

7. **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 8 July 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.

8. **Traffic Management and Control**

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

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

9. **Amendments to the approved plans**

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

- o The banksia tree is to be relocated to the northern half of the front garden.

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

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

10. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

11. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

12. **Compliance with Standards**

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

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

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

13. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

- 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

14. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree

protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

15. **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.

16. **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.

17. **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.

18. **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.

19. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

20. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<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.

21. **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**

22. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 2.0 metres from structures including driveways, walling and paths, and at least 1.5 metres from common boundaries,
- iii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- iv) nominated species known to self-seed (*Pennisetum* and *Rhaphiolepis* in this instance as scheduled) shall be replaced with alternative species of similar size and form.

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

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
<https://5milliontrees.nsw.gov.au/>

23. **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 the Occupation Certificate.

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

24. **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.

25. **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.

26. **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

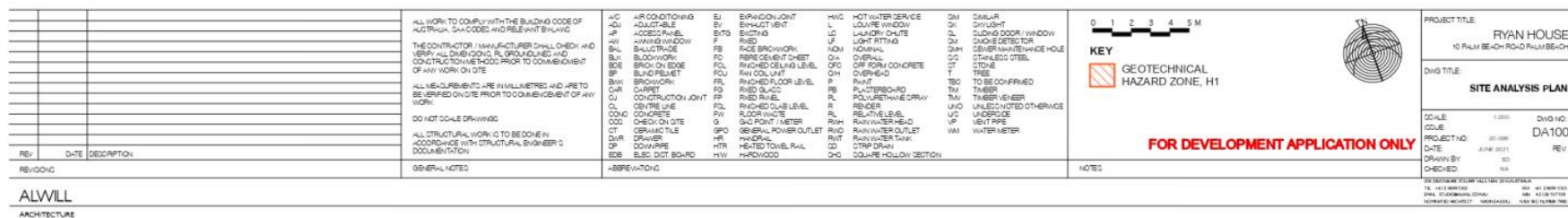
27. **Landscape Maintenance**

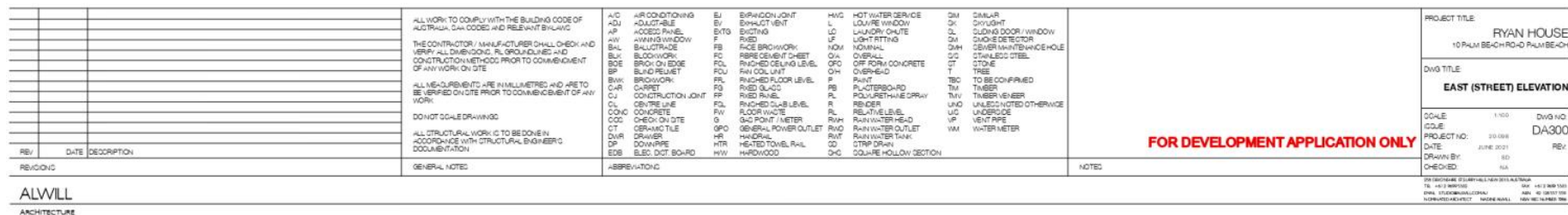
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

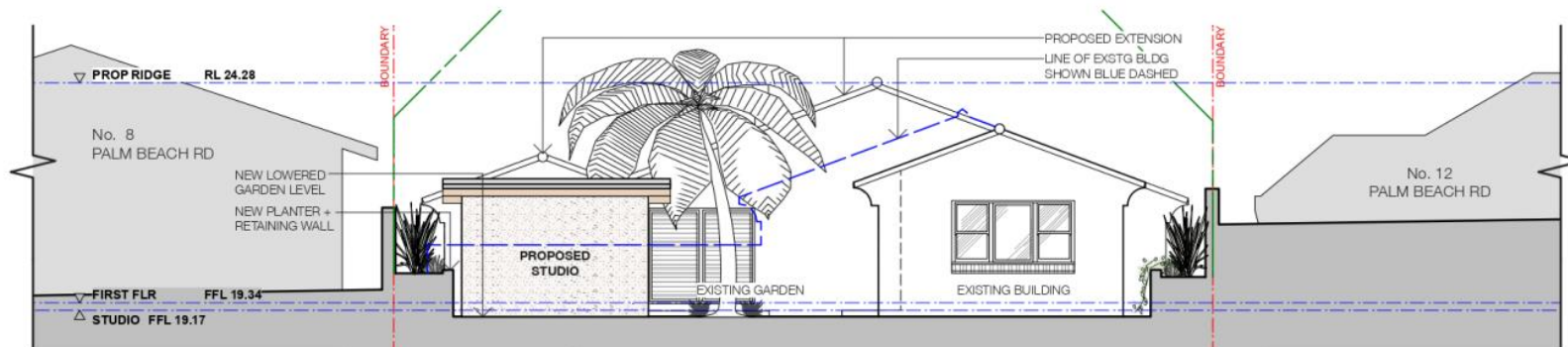
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

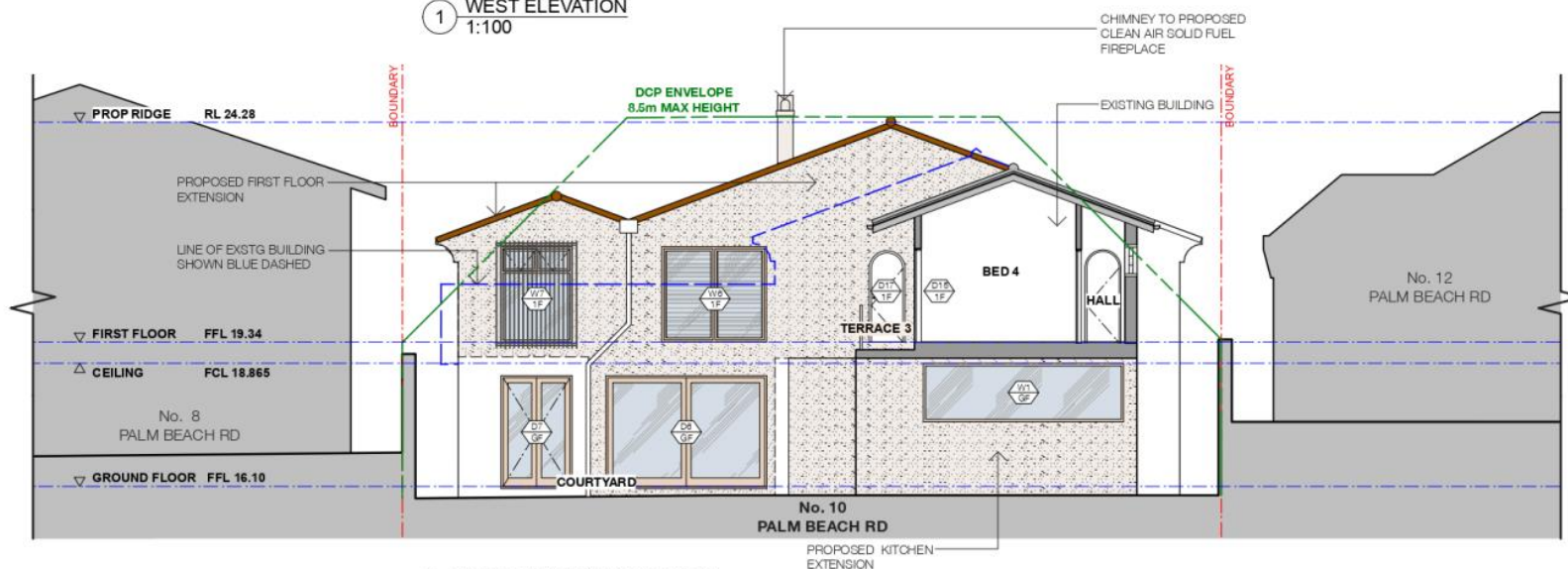




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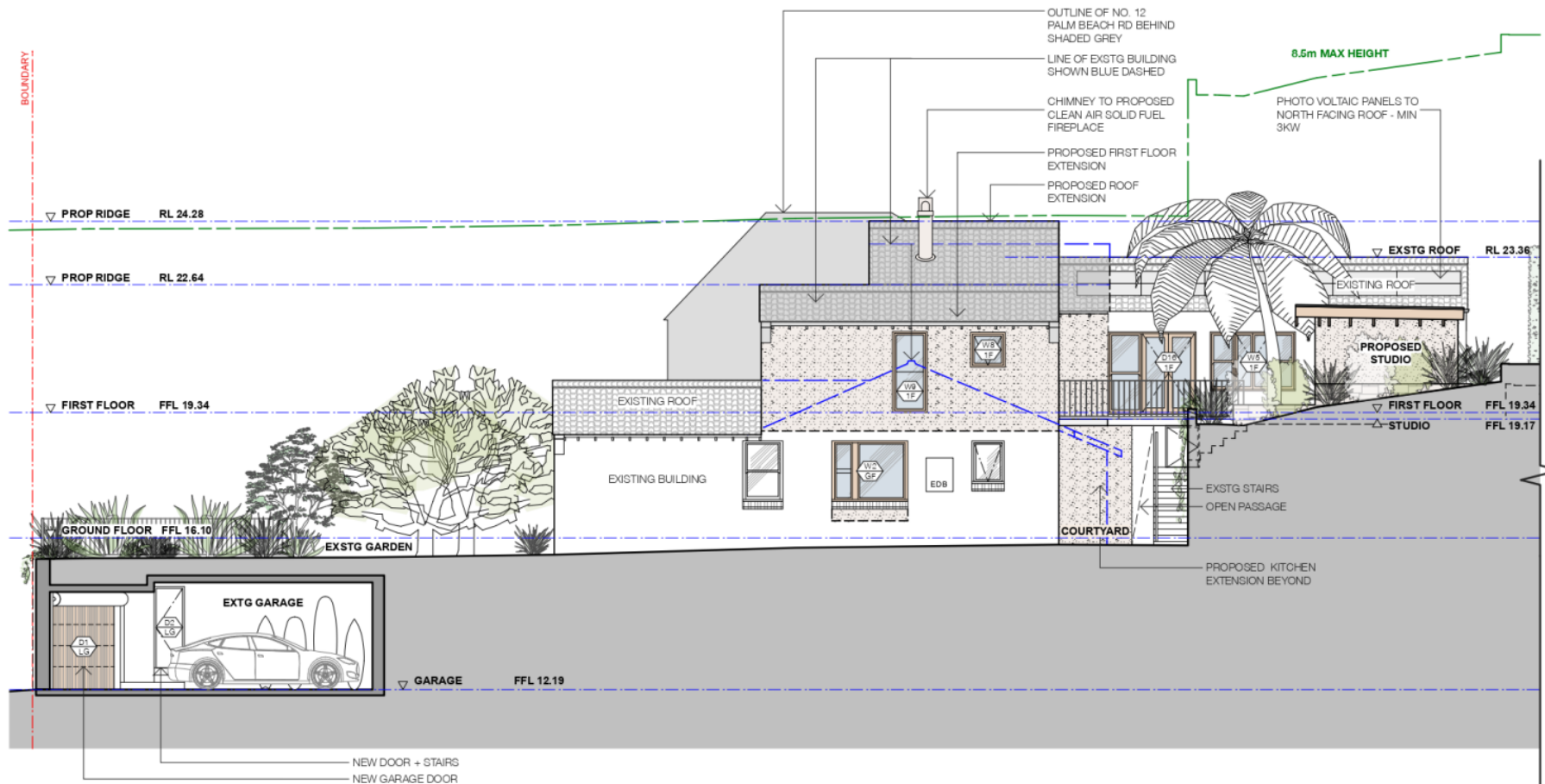


**1 WEST ELEVATION
1:100**

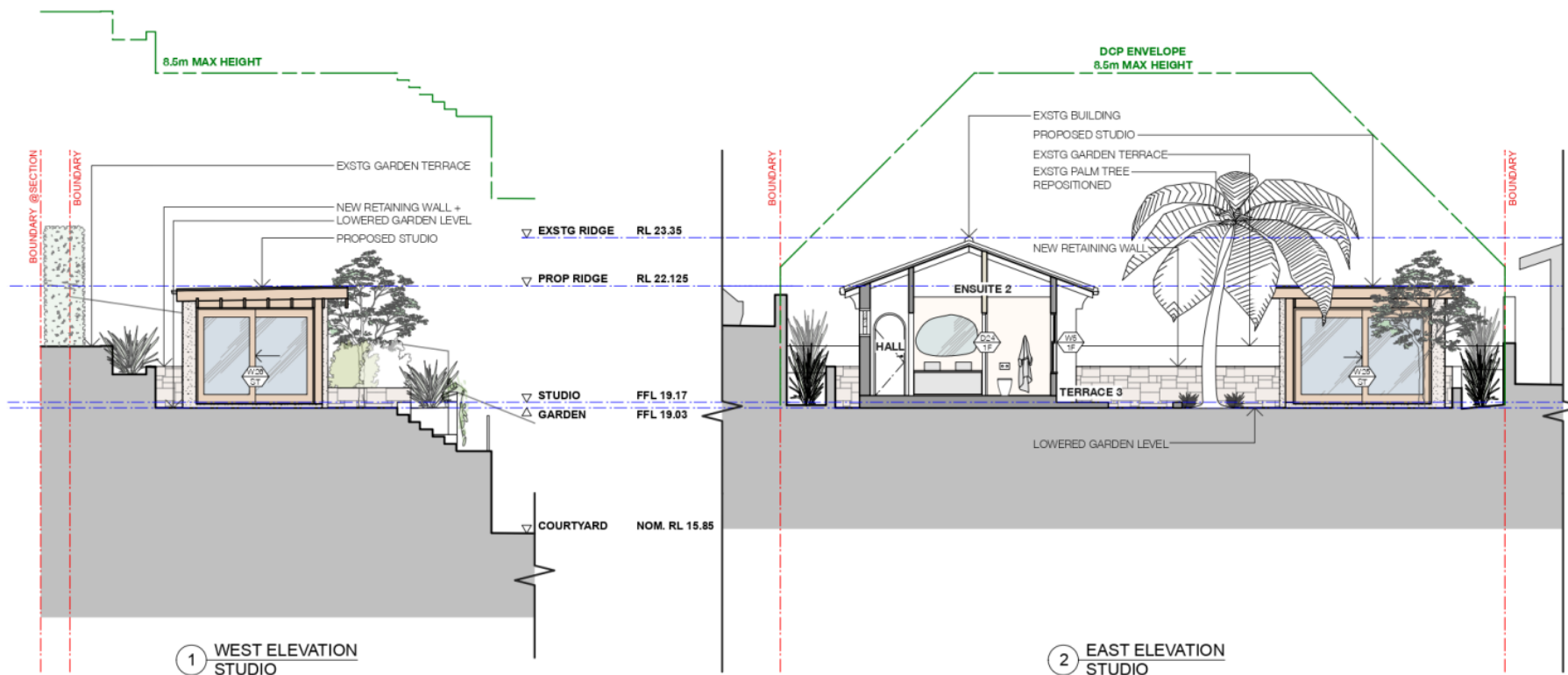


**2 WEST ELEVATION / SECTION
1:100**

			ALL WORK TO COMPLY WITH THE BUILDING CODE OF AUSTRALIA, CAN CODES AND RELEVANT BY-LAWS.			A/C AIR CONDITIONING			HVC HOT WATER SERVICE			PROJECT TITLE		
			THE CONTRACTOR / MANUFACTURER SHALL CHECK AND VERIFY ALL DIMENSIONS, RL, GROUNDLEVEL AND CONSTRUCTION METHODS PRIOR TO COMMENCEMENT OF ANY WORK ON SITE.			ADU ADULT SUITE			LAUNDRY CHUTE			RYAN HOUSE		
			ALL MEASUREMENTS ARE IN MILLIMETRES AND ARE TO BE VERIFIED ON SITE PRIOR TO COMMENCEMENT OF ANY WORK.			AP ACCESS PANEL			LIGHT FITTING			10 PALM BEACH RD - O PALM BEACH		
			DO NOT SCALE DRAWING			BAL BALCONY/DOOR			NOMINAL			DWS TITLE		
			ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION			BLU BLIND RELINET			OVERALL OFF FORM CONCRETE			WEST ELEVATIONS		
						BWA BROUWORK			PAINT			SCALE 1:100		
						CAR CARPET			TBC TO BE CONFIRMED			PROJECT NO: 210/188		
						CJ CONSTRUCTION JOINT			TIMBER			DATE: 21/02/2021		
						CU CURTAIN LINE			TUV TIMBER VENEER			DRAWN BY: RD		
						CONC CONCRETE			UNO UNLINED/NOTED OTHERWISE			CHECKED: RA		
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			ALL WORK TO COMPLY WITH THE BUILDING CODE OF AUSTRALIA, SAA CODES AND RELEVANT BY-LAWS.										PROJECT TITLE	
			THE CONTRACTOR / MANUFACTURER SHALL CHECK AND VERIFY ALL DIMENSIONS, RL, GRADATIONS AND CONSTRUCTION METHODS PRIOR TO COMMENCEMENT OF ANY WORK ON SITE.										RYAN HOUSE	
			ALL MEASUREMENTS ARE IN MILLIMETRES AND ARE TO BE VERIFIED ON SITE PRIOR TO COMMENCEMENT OF ANY WORK.										10 PALM BEACH ROAD PALM BEACH	
			DO NOT SCALE DRAWING										DWG TITLE	
			ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION										STUDIO SOUTH + EAST ELEVATIONS	
REV	DATE	DESCRIPTION											SCALE: 1:100	DWG NO: DA304
REVISIONS			GENERAL NOTES										DATE: 23 FEB 2021	
			ABBREVIATIONS										DRAWN BY: RD	
													CHECKED: N/A	
ALWILL													PROJECT NO: DA304	
ARCHITECTS INC													DATE: 23 FEB 2021	
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ITEM 3.3**DA2021/1814 - 58 FOREST WAY FRENCHS FOREST -
DEMOLITION WORKS AND CONSTRUCTION OF A SENIOR
HOUSING DEVELOPMENT****REPORTING MANAGER****TONY COLLIER****TRIM FILE REF****2022/090740****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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/1814 for demolition works and construction of a senior housing development on land at Lot 38 DP 20461, 58 Forest Way FRENCHS FOREST, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1814
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 38 DP 20461, 58 Forest Way FRENCHS FOREST NSW 2086
Proposed Development:	Demolition works and construction of a senior housing development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Housing for Seniors and Persons with a Disability) (HSPD) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Khosrow Ataii Mojgan Ataii
Applicant:	Khosrow Ataii
Application Lodged:	08/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	22/10/2021 to 05/11/2021
Advertised:	22/10/2021
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,694,792.98

EXECUTIVE SUMMARY

The application seeks consent for the demolition of all structures on the site and the construction of four (4) independent living three (3) bedroom dwellings with one level of basement parking for nine (9) cars. The proposed development is defined as Seniors Housing, which is prohibited under the *Warringah Local Environmental Plan 2011* (WLEP 2011), however, the proposal is made permissible by virtue of the *State Environmental Planning Policy (Housing for Seniors and Persons with a Disability) 2004* (SEPP HSPD).

The application was referred to the Design Advisory Panel (DSAP) who generally supported the proposal subject to conditions to address issues relating to the visual impact of the retaining wall along the frontage in order to appropriately respond to the landscape character of the Locality. In addition, the Panel recommended that privacy screens be applied to the upper floor south facing bedroom windows and the first floor landing to the communal external stair to protect neighbouring privacy. The applicant has nominated to respond to these recommendations with the imposition of conditions which is considered to be reasonable subject to an additional condition relating to the articulation of the retaining wall to the frontage.

Subject to conditions relating to the above-mentioned retaining wall, the proposal is considered to appropriately respond to the built form and landscape character of the Locality. The height, bulk and scale are assessed as acceptable and are compliant with the built form controls of the SEPP (HSPD), the WLEP 2011 and the *Warringah Development Control Plan 2011* (WDCP 2011). The proposal retains a landscaped area of 43% of the site area (consisting 31.5% deep soil planting). Two large trees are required to be removed from the frontage to accommodate the relocation of the retaining wall from the road reserve to address the recommendations of Transport for NSW. Replacement planting, included fifteen (15) new trees across the site is proposed. The proposal provides adequate servicing and no objections have been raised by from Transport for NSW, Council's Transport Unit, Development Engineer or Waste Officer, subject to conditions.

The public exhibition of the application resulted in three (3) submissions, which raised concerns with regards to amenity impacts (overshadowing, privacy, density), construction impacts (asbestos, dust and vibration management), and structural impacts (excavation and the management of stormwater). The proposal complies with the solar access provisions of the SEPP (HSPD), the WDCP 2011 and subject to conditions relating to privacy screens construction and stormwater management the proposal will not result in unreasonable impacts on neighbouring amenity.

On balance, the assessment of the proposed seniors housing development on this site against the applicable planning controls and related legislation reveals that the application can be supported subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and the construction of a seniors living development comprising a two-storey building over one single level of basement accommodating four self-contained units.

The development provides the following key metrics:

Basement (RL150.520)

- Car park for nine (9) vehicles including one (1) visitor space accessed via a new driveway along the northern boundary of the site.
- Lift and stair access to all levels.

Ground Level (RL153.62)

- Two (2) x three (3) bed units
 - Unit 1 (101.7 sqm plus 40 sqm terrace); and
 - Unit 2 (118.6 sqm plus 54 sqm terrace).

Level 1 (RL156.720)

- Two (2) x three (3) bed units:
 - Unit 3 (115.5 sqm plus 28sqm balcony); and
 - Unit 4 (119.4sqm plus 15 sqm balcony).

External

- Ramped pedestrian access along the southern boundary with bin store area.
- Demolition of existing retaining wall within the road reserve; and
- Construction of a new 1.5m high brick retaining along the street frontage within the subject site.

Landscape

- Removal of five (5) trees, retention of six (6) trees and replacement planting of twenty-three (23) trees.

Materials

- Dark and light brick, timber look cladding, concrete, metal (colour monument) and blockwork.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 38 DP 20461 , 58 Forest Way FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Forest Way.</p> <p>The site is irregular in shape with a frontage of 21.4m along Forest Way and a depth of between 59.8m and 51.3m. The site has a surveyed area of 1012m².</p> <p>The site is located within the R2 (Low Density Residential) zone from WLEP 2011 and accommodates a single storey detached dwelling with a detached outbuilding and shed to the rear. A carport is located to the frontage with an access driveway along the northern boundary providing access to Forest Way. Steps a pedestrian path are provided along the southern boundary and a retaining wall has been erected along the street frontage within the road reserve.</p> <p>The site is has a gentle slope and a number of mature trees are located throughout the site including three eucalypt trees within the frontage.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Surrounding development consists primarily of one and two storey detached dwellings set back from the road in landscape settings interspersed with a dual occupancies, including (No. 17 & 17A Grace Avenue) and a townhouses developments located to the rear at No. 19 Grace Avenue and to the north-west at 27 - 33 Adam Street. Forest Way (a classified road) is located to the immediate east and Adams Street is located approximately 30m to the north.</p>

Map:



SITE HISTORY

DA2020/1287

Development Application (DA2020/1287) for a Seniors Housing Development consisting four (4) x two (2) bedroom (plus study) self-care housing units, four (4) car parking spaces and the removal of seven (7) x trees was refused by the NBLPP on 14 April 2021.

History of the subject Development Application

A pre-lodgment meeting was not held for this proposal.

The subject application was presented to the Design Sustainability Advisory Panel (DSAP) on 9 December 2021.

The Panel concluded that it *"recognises that substantial improvements have been made since the earlier proposal viewed by the Panel. The Panel supports the proposal overall if it were amended in accordance with the recommendations that aim to enhance the amenity, improve privacy landscaped character and sustainability of the proposal"*.

On 7 January 2022 a letter was sent to the applicant regarding concerns about:

- The front retaining wall.
- Privacy.

On the 14 January 2021, the applicant was also provided with the DSAP report and recommendations. The applicant's response to the Panel's recommendations are discussed in detail under the SEPP (HSPD) section of this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/10/2021 to 05/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Ms Susan Melanie Trahair	56 Forest Way FRENCHS FOREST NSW 2086
Mr David Vincent Walker	60 Forest Way FRENCHS FOREST NSW 2086
Ms Elizabeth Jane Lim	19 A Grace Avenue FRENCHS FOREST NSW 2086

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

- **Overshadowing**
- **Privacy**

- **Construction**
- **Density increase**
- **Stormwater**

The matters raised within the submissions are addressed as follows:

- **Overshadowing**

Concerns are raised that the shadow diagrams are based on an existing 1.8m high fence this is inaccurate as there is a 1m high wire fence. The impact of over shadowing is under estimated and there will be a loss of solar access to the main private open space / outdoor area. One contributing factor is the excessive height above unit 3 and it is requested that the design be amended to reduce the building height in this area.

Comment:

It is appreciated that there may be an issue with the diagrams that show the existing shadow as a result of the discrepancy with the boundary wall detail. However, the shadow diagrams illustrate that the proposal complies with the solar access provisions of Clause D6 of the WDCP in that at 3 hours of solar access will be retained to at least 50% of the required area of private open space of adjoining dwellings between 9am and 12 noon at mid winter. In this regard it is not reasonable to require a design change to roof above unit 3 as the proposal complies with the solar access control. Refer to discussion under SEPP (HSPD) of this report.

- **Privacy**

Concerns are raised that the large windows and an external stair and landing are proposed in the side elevation that over look habitable rooms and areas of private open space.

Comment:

Conditions are recommended requiring privacy screens to be applied to the upper floor bedroom windows in the southern elevation and the landing to the external stair, refer to discussion under SEPP (HSPD) and Clause D8 of the WDCP.

- **Construction**

Concerns are raised that the excavation for the basement car park may result in structural impacts on neighbouring properties. Conditions are required to control vibration and monitor the work. Dust control measures asbestos controls are also required to minimise impacts to neighbours.

Comment:

The application is supported with a geotechnical report that makes recommendations to control vibration. Should the Panel decide to approve the application conditions are included requiring compliance with the recommendations of the geotechnical report to ensure there will be no unreasonable impacts on

neighbouring amenity. Conditions are also recommended relating to asbestos and dust control.

- **Density increase**

Concerns are raised that the number of bedrooms has increased from two (2) to three (3) per unit which will result in additional amenity impacts.

Comment:

That is correct. The previous DA (DA20201287) sought consent for four(4) x two (2) bedroom units (plus study). The subject application seeks consent for four (4) x three (3) bed units. The number of car parking spaces has increased to respond to this increase in density. Conditions require privacy screens to be installed on the south facing bed room windows and the first floor landing to ensure that privacy impacts are minimised.

- **Stormwater**

It is requested that adequate stormwater drainage and retention - during demolition, construction and post construction will be put in place.

Comment:

Conditions are included in the recommendation relating to stormwater management.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported subject to conditions</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>
Environmental Health (Industrial)	<p>Supported subject to condition</p> <p>Noise from mechanical plant can be managed as a whole, in compliance with the Warringah DCP. No objection to the proposal.</p>
Landscape Officer	<p>Supported subject to conditions</p> <p>The development application seeks consent for demolition and construction of a Seniors Housing Development comprising 4 self-care dwellings with basement car parking at.</p>

Internal Referral Body	Comments
	<p>Council's Landscape Referral section have assessed the application against the following relevant landscape controls and policies:</p> <ul style="list-style-type: none"> State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004: <ul style="list-style-type: none"> clause 33 Neighbourhood amenity and streetscape, and clause 34 Visual and acoustic privacy Seniors Living Policy: <ul style="list-style-type: none"> clause 2. Site Planning and Design; and clause 3. Impacts on Streetscape. Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): <ul style="list-style-type: none"> D1 Landscaped Open Space and Bushland Setting E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation <p>The Arborist's Report prepared by Hugh the Arborist and Landscape Plans prepared by Plot Design Group are noted.</p> <p>The Arborist's Report indicates that four Category A trees and one Category Z tree are required to be removed. Two large trees at the front of the site are required to be removed to accommodate the relocation of a retaining wall from the road reserve into the site as required by RMS.</p> <p>The other trees are to be removed to accommodate the basement parking proposed with significant incursions into the Tree Protection Zone.</p> <p>Three other trees on the site are to be retained. All trees on adjoining sites are to be retained.</p> <p>The Landscape Plans indicate replanting of fifteen new trees, four of which are over 20m in height at maturity, in addition to shrub and groundcover planting across the site.</p> <p>The setbacks provided are considered capable of supporting the proposed planting, which comprises predominately native species.</p> <p>The proposal is considered to satisfy the requirements of the SEPP and intent of the Council planning instruments with regard to landscape issues.</p> <p>No objections are raised with regard to landscape issues subject to conditions as recommended.</p>
NECC (Development Engineering)	<p>Supported subject to conditions</p> <p>The stormwater drainage plans detail the provision of an on site</p>

Internal Referral Body	Comments
	detention basin in the front set back. A DRAINS model has been provided which is satisfactory. No objections subject to conditions.
NECC (Water Management)	<p>Supported subject to conditions</p> <p>The development application have been assessed under the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The documentation is satisfactory and the project environmental impacts are acceptable.</p>
Traffic Engineer	<p>Supported subject to conditions</p> <p>The development scheme involves demolishing the existing building, excavating the site for basement carparking, and constructing a two-storey seniors housing complex of 4 residential units having three bedrooms each.</p> <p>A single-level basement car park of 9 spaces (2 per unit and 1 for visitor) will be provided with vehicle access on the Forest Way frontage.</p> <p>The driveway access complies with the TfNSW requirement to allow access for a B99 design vehicle from lane 1 while there is a B99 design vehicle waiting to exit the development.</p> <p>The site is serviced by numerous bus services and both inbound (148m) and outbound (105m) bus stops are well within the SEPP walking distance requirement.</p> <p>The site frontage will require the construction of a 3.0m shared user path across the full frontage of the site in line with Council's adopted Bike Plan - Regional Route 11.</p> <p>The proposal is supported subject to the conditions provided, and those provided by TfNSW in the response to the referral dated 26/11/21.</p>
Waste Officer	<p>Supported subject to conditions</p> <p>The development application have been assessed under the requirements of the relevant Environmental Planning Instruments and policies. The documentation is satisfactory and the project environmental impacts are acceptable. The proposal is therefore supported.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Supported subject to conditions</p> <p>The proposal was referred to Ausgrid who provided a response</p>

External Referral Body	Comments
	stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Roads and Maritime Services (Traffic Generating Development)	Supported subject to conditions Transport for NSW have no objections to the development subject to conditions which are included in the recommendation.

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. 1239362M dated 15 September 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	45

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 SEPP (HSPD) as the development is for in fill self care housing.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

The proposed development is considered to be inconsistent with the aims of the Policy as detailed below:

The proposal will increase the supply and diversity of residences that meet the needs of seniors or people with a disability. The proposal makes efficient use of the existing infrastructure with safe pedestrian access to existing bus stops.

When considering the development against the aims of achieving good design, the development must be considered in context with the other provisions of the SEPP. The design of the development was peer reviewed by the Design Sustainability Advisory Panel (DSAP) who support the design subject to minor amendments to address issues with the visual impact of the retaining wall to the frontage, privacy issues relating to bedroom windows and an external landing and sustainability.

Chapter 2 – Key Concepts

Comment:

The proposed development is for the redevelopment of the site to accommodate "*in-fill selfcare housing*" which is defined as "*seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care*". Accordingly, the proposed development is considered consistent with the provisions outlined in Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	Safe pedestrian access is available to bus stops on Forest Way.	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	Refer above.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not Bush Fire prone land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Given the existing residential use of the site, it is considered that there is suitable access to water and sewerage infrastructure.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the	The proposed development is considered in principle, compatible with the surrounding residential land uses and was not subject to the requirements of Clause 25 for the attainment of a Site Compatibility Certificate. i) The proposal retains the a number of high value trees within the frontage with the exception of two large trees which is required to be removed to allow the relocation of the retaining wall from the road reserve to meet the requirements of Transport for NSW, refer to the comments from Council's Landscape Officer. iii) The site is serviced by existing	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	infrastructure (electricity, water and sewerage) that is capable of meeting the demands that will arise from the development. v) The bulk, scale, built form and character of the proposed development will not have unreasonable impacts on the existing, approved and future uses on land in the vicinity.	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A site analysis plan has been provided.	No

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	DSAP have reviewed the proposal and considered that the development generally responds appropriately to the context of the site subject to landscape recommendations to address design issues with the concrete block wall on the front boundary . The Panel considered the wall to be "out of character with the existing landscaped context as it would be visually prominent due to its flat surface being unrelieved by surface articulations and vegetation." In response to the recommendation the applicant argues that articulation to the retaining wall

Section	Requirements	Comment
		<p><i>will draw your eye to the wall which we want to look recessive (hence the dark colour).</i></p> <p>The applicant agrees that the landscaping of the wall will help reduce its visual impact with planting dropping down to cover the wall. The applicant has suggested that the recommendation can be addressed with the following condition:</p> <p><i>The following landscape planting is to be provided to enhance the street frontage and retaining wall located on Forest Way</i></p> <p><i>i) Include planting 'Silver Falls' spaces at 1m intervals along the eastern boundary on the inside edge of the retaining wall. The Silver Falls are to be a minimum 150mm pots. First 1m from Northern Boundary is to remain Strata Area to ensure retention of Silver Falls for the life of the property.</i></p> <p><i>Details are to be shown on the Landscape Plans, drawn by Plot Design Group.</i></p> <p>The applicants justification for the lack of articulation is not accepted. In order to meet the Panels recommendation it is therefore suggested that in addition to the landscape condition proposed by the applicant the following condition be included:</p> <p><i>ii) Articulation of the front retaining wall should be provided by the use of split faced concrete blocks; engaged piers and corbels in brickwork or other means of articulation through materials and form.</i></p> <p>Subject to the inclusion of these conditions the proposal will help contribute to the landscaped character of the Locality.</p>

Section	Requirements	Comment
		In terms of the Policy controls it is noted that the proposal generally compliance with the built form controls contained in the SEPP and the Warringah LEP and DCP.
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation. 	<p>The proposed development uses the existing driveway to minimise impacts on mature canopy trees to the frontage which are assessed as high value.</p> <p>Car parking is provided in the basement with no visual impacts on the streetscape.</p> <p>Subject to a condition requiring planting to the wall along the frontage the proposal is assessed as being consistent with the landscape character of the immediate area in accordance with Clause 31 (2) of the SEPP (HSPD).</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape. 	<p>The proposal seeks to retain a significant number of high value mature canopy trees from the front setback in order to ensure that the development is in consistent with the landscape character of the immediate area. In this regard, the desirable characteristics of the streetscape are enhanced. Subject to a condition to ensure the visual impact of the front wall is softened with landscaping the proposal will not result in unreasonable impacts on the streetscape.</p>
4. Impacts on neighbours	<p>The proposal is generally in accordance with the requirements of this section.</p>	<p>The Panel have recommended that privacy screens be added to the Level 1 landing, the upper level stair and Unit 3 bedroom windows to ensure that there are no privacy impacts to the neighbour. The applicant has suggested that the recommendation be address by way of a condition which is reasonable. A condition is included in the recommendation.</p>
5. Internal site amenity	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Provide safe and distinct 	<p>The proposal provides a pedestrian path from the development to the Forest Way frontage and safe pedestrian access to the bus stops.</p>

Section	Requirements	Comment
	pedestrian routes to all dwellings and communal facilities.	Conditions are included in the recommendation requiring compliance with the recommendations in the acoustic report to ensure there will be no unreasonable impacts on the internal amenity of the dwellings from traffic noise along Forest Way.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p>The desirable elements of the locations current character consists of low density one and two storey dwellings interspersed with some medium density developments. There is a consistent pattern of developments setback from the street in landscape settings.</p> <p>The development has a substantial setback to Forest Way and the some of the existing mature canopy trees will be retained and enhanced with additional planting.</p> <p>Subject to conditions to address the visual impact of the wall t the frontage the proposal has been assessed as being consistent with the desirable elements of the location's current character and the proposal will positively contribute to the quality and identify of the surrounding area.</p>	Yes
	b. Retain, complement and	b) The site is not located within a heritage conservation area	N/A

Control	Requirement	Proposed	Compliance
	<p>sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.</p> <p>c. Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</p>	<p>or within proximity to any heritage items.</p> <p>The proposal exceeds the minimum side setbacks and the bulk and scale of the development. While the proposal will result in additional over shadowing to the neighbouring property to the south the proposal complies with the solar access controls on the WDCP refer to Clause D6 of the WDCP of this report.</p> <p>Conditions are included in the recommendation requiring privacy screens to the upper floor windows and the stair and landing in the southern elevation to ensure that there are no unreasonable privacy impacts to the neighbour.</p> <p>In summary, the proposal will not maintain reasonable neighbouring amenity and appropriate character.</p>	Yes
	<p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p>	<p>The building has a minimum 8.5m front setback to the terrace and 9.8m front setback to the eastern wall and is generally consistent with the front setback to No. 56 Forest Way.</p> <p>The proposal retains some of the existing mature trees and provides replacement and enhanced planting to the front and sides to ensure that the development is sympathetic to the existing landscape character in the immediate area.</p>	Yes

Control	Requirement	Proposed	Compliance
	<p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p>Subject to conditions the planting is acceptable.</p> <p>The proposal seeks to retain as many existing major trees as possible. Two mature trees will be removed to allow for the the relocation of the retaining wall from the road reserve to meet the requirements of Transport for NSW.</p> <p>The site is not located within a Riparian Zone.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>
CL 34 Visual and acoustic privacy	<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p>Upper floor bedroom windows are located within 2.9m of the southern boundary and the stair and landing is sited 6m from the southern boundary.</p> <p>Concern has been raised by the DSAP about overlooking to the neighbouring property at No. 56 Forest Way. The Panel made the following recommendation:</p> <p><i>Avoid overlooking of the neighbours yard from the Level 1 landing, the upper level stair and Unit 3 bedroom windows with screening.</i></p> <p>A condition is included in the recommendation requiring privacy screens to the bedroom windows and level 1 landing.</p> <p>Conditions are also included requiring compliance with the recommendations of the acoustic report to ensure that noise impacts on the internal amenity of the dwelling to the front due to noise issues from Forest Way is managed.</p> <p>In summary, subject to</p>	No

Control	Requirement	Proposed	Compliance
		conditions the development has been found to be inconsistent with the requirements of this Clause.	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<p>A submission has been received from the neighbour to the south in respect of overshadowing. It is noted that the Design Panel did not raise any issues with respect of solar access.</p> <p>The applicant has submitted shadow diagrams in plan that demonstrate that the proposal complies with the solar access provisions of the WDCP in terms of retaining solar access at mid winter to at least 50% of the required area of private open space of adjoining dwellings.</p> <p>In addition, the applicant has submitted hourly Views From Sun in both the existing and proposed states which show that the only windows impacted by the additional overshadowing are the two ground level windows from 12 noon to 2pm. A search of Council records confirm that the windows relate to a rumpus room and laundry. In summary, the proposal will not impact on solar access to the main living areas of the adjoining dwelling.</p> <p>In terms of Sustainability the Panel made the following recommendations:</p> <p><i>6. Make the building fully electric, with no gas provided.</i> <i>7. Use efficient electric options for hot water, cooking, and space conditioning (if required)</i> <i>8. Increase the energy efficiency of the building to</i></p>	No

Control	Requirement	Proposed	Compliance
		<p><i>deliver more natural comfort, higher BASIX scores and natural comfort for the occupants</i></p> <p><i>9. Consider redesigning the roof to the southern block to reduce clerestory windows to the bedrooms, provide solar access to the living rooms and allow more space for PV panels to be included.</i></p> <p>The applicant has made the following response to these recommendations:</p> <p><i>6, 7 and 8. The applicant has considered this but it not what the market demands. Applicant meets the requirements of BASIX which is the requirements and therefore cannot be refused on this matter.</i></p> <p><u>Planner Response:</u> The applicant has submitted a compliant BASIX certificate and the design includes 8 PV roof panels. It is agreed that the application cannot be refused on this matter and it is not reasonable to request these changes by way of conditions.</p> <p><i>9. There is already complying solar access to the living rooms, yet the bedrooms receive no northern light if the clerestory is removed. Best benefit for the residences is to keep the high level light. The panel had concerns over blinds needing to be installed so suggested skylights, but these would also require blinds so are no different. Applicant will keep the clerestory window to maximise northern light through the dwelling. This northern light is also very important considering recommendation 4,</i></p>	

Control	Requirement	Proposed	Compliance
		<p><i>where privacy screens would limit light into the room meaning the northern windows are more important.</i></p> <p><u>Planners response:</u> The applicants response / justification in relation to recommendation 9 is supported. No additional design changes are required by way of condition</p>	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	The proposed stormwater Management is considered to be acceptable.	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front	The development provides clear sight lines of the entry to the development and the front of the site and provides adequate casual surveillance of both streets and the entry of the site.	Yes

Control	Requirement	Proposed	Compliance
	door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The pathway to the bus stops are assessed as compliant.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The site provides inadequate waste storage facilities.	No

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1012sqm	Yes
Site frontage	20 metres	21.4m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.2m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	2 storeys	Yes
	A building located in	There are no structures	Yes

Control	Required	Proposed	Compliance
	the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	within the rear setback.	

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	Complies	Yes
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Can be addressed by a condition.	Yes, by condition.
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable,	The letterboxes are accessed from within pathway.	Yes

Control	Required	Proposed	Compliance
	and (c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a) Carparking space must comply with AS2890 (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	The development is consistent with this clause refer to comments from Transport.	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	The development is capable of complying with this requirement.	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	The development is capable of complying with this requirement.	Yes
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	The development is capable of complying with this requirement.	Yes
Bathroom	The bathroom is to comply with the requirements described	The development is capable of complying with this requirement.	Yes

Control	Required	Proposed	Compliance
	in Clause 9 of Schedule 3.		
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	The development is capable of complying with this requirement.	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	The development is capable of complying with this requirement.	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	The development is capable of complying with this requirement.	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	The development is capable of complying with this requirement.	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	The development is capable of complying with this requirement.	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	The development is capable of complying with this requirement.	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	The development is capable of complying with this requirement.	Yes
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	The development is capable of complying with this requirement.	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	The development is capable of complying with this requirement.	Yes
Garbage	A garbage storage area must be provided in an accessible location.	The development is capable of complying with this requirement.	Yes

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.2m	Yes
Density and scale	0.5:1	0.5:1	Yes
Landscaped area	30% of the site area is to be landscaped	43% (441sqm)	Yes
Deep soil zone	15% of the site area two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	31.5% (319sqm)	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct	All dwelling will achieve a minimum of 3 hours direct sunlight between 9am and 12 noon in mid winter.	Yes

Control	Required	Proposed	Compliance
	sunlight between 9am and 3pm in mid winter		
Private open space	<p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area</p>	All dwellings have areas of private open space in excess of the minimum requirements which vary from 40sqm to 54sqm at ground level to 15sqm to 28sqm on the upper floor.	Yes
Parking	0.5 car spaces for each bedroom where the development application is made by a person other than the Department of Housing or a local government or community housing provider.	Based on the twelve (12) bedrooms proposed – six (6) carparking spaces required. The proposal provides a a total of nine (9), including one (1) visitor space, which exceeds the minimum requirement.	Yes
Visitor parking	None required if less than 8 dwellings	Four (4) units are proposed therefore no visitor spaces are	Yes

Control	Required	Proposed	Compliance
		required. Notwithstanding this one (1) one visitor space is provided.	

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 offered no objections to the development subject to conditions.

Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to classified road

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
- (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The application was referred to RMS who offered no objections to the development subject to conditions.

Clause 102 - Impact of road noise or vibration on non-road development

(1) This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of TfNSW) and that the consent authority considers is likely to be adversely affected by road noise or vibration—

- (a) residential accommodation,
- (b) a place of public worship,
- (c) a hospital,
- (d) an educational establishment or centre-based child care facility.

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:

Forest Way is a Classified State Road that has 26,600 average daily vehicles per day, as such, clause 102 is relevant.

The development has included an Acoustic Assessment of the impacts of noise and vibration from Forest Way on the amenity of the proposed residential development. The report makes recommendations to ensure the internal amenity of the dwellings to the front of the development can be protected to avoid excessive noise from traffic. Subject to conditions it ensure compliance with the recommendations of the acoustic report the proposal satisfied the requirements of Clause 102.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.2m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes

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

Detailed Assessment

Zone R2 Low Density Residential

The proposed development is defined as Seniors Housing, which is prohibited under the Warringah Local Environmental Plan 2011 (WLEP 2011), however, the proposal is made permissible by virtue of the State Environmental Planning Policy (Housing for Seniors and Persons with a Disability) 2004 (SEPP HSPD).

6.2 Earthworks

Clause 6.2 requires the consent authority to consider the following matters before granting development consent for earthworks.

- (a) the likely disruption of, or any detrimental effect on, 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,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Comment

The proposal involves excavation to a maximum depth of 3m to accommodate a basement car park. The application is supported with a geotechnical report that makes recommendations to ensure that there are no impacts on drainage, adjacent structures and the amenity of neighbours.

Subject to compliance with the recommendation of the geotechnical report the proposal addresses the matters consideration listed under Clause 6.2 of the WLEP.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.1m	N/A	Yes
B3 Side Boundary Envelope	4m	Within the envelope	N/A	Yes
	4m	Within the envelope	N/A	Yes
B5 Side Boundary Setbacks	North 0.9m	Basement 0.7m - 2m Ground and First Floor - minimum 2m	22%	Minor breach Of 200mm to stair Assessed as acceptable.

	South 0.9m	Basement 2m- 5.3m Ground min 2.4m First Floor Minimum 2.2m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Basement 6.6m to driveway & 10.4m to car park Ground and First Floor - 8.5m to terrace and 9.8m to front wall	N/A	Yes
B9 Rear Boundary Setbacks	6m	Basement minimum 12m Ground 11.2m to the terrace and 15.3m to the rear wall First 15.3m to the rear wall	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	43% (441sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

There is a minor 200mm breach of the side setback control to the northern boundary to accommodate the fire stair to the basement.

Merit consideration

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

- ***To provide opportunities for deep soil landscape areas.***

Comment:

The proposal retains 31.5% of the site as deep soil landscaping in excess of the 15% required under the SEPP (HSPD).

- ***To ensure that development does not become visually dominant.***

Comment:

The minor breach of the side setback to accommodate the fire stair will not result in the development being visually dominate.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment:

The bulk and scale of the building is acceptable.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment:

Subject to conditions the proposal has been assessed as providing adequate separation between building to ensure a reasonable level of privacy, amenity and solar access. The minor breach of the setback to the north will not result in any amenity impacts.

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

Comment:

The proposal will not impact on view sharing.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

Clause D8 requires:

1. *Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
2. *Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
3. *The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
4. *The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
5. *Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

Bedroom windows to Unit 3 on Level 1 are located between 2.9m and 4.1m from the southern boundary. In addition, the first floor landing to the common stairwell is positioned 6m from the southern boundary. The DSAP have requested that these windows are treated with screening to avoid overlooking. Subject to a condition required fixed and angled privacy screens to be installed along the outer edge of the bedroom windows to unit 3 and the first floor landing the development is considered as meeting the underlying Objectives of the Control as follows:

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

Comment:

Subject to a condition requiring privacy screens to the unit 3 south facing bedroom windows and first floor landing the development will ensure that privacy for occupants and neighbours is protected. A condition also requires compliance with the acoustic recommendations to ensure that the internal amenity of units 1 and 3 is protect against noise from the traffic from Forest Way.

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

Comment:

The privacy screens combined with the planter bed adjacent to bedroom window 2 are regarded as an innovative design solution to improve the urban environment.

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

Comment:

The proposal has been designed to ensure personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS**Northern Beaches Section 7.12 Contributions Plan 2021**

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

A monetary contribution of \$16,948 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,694,793.

CONCLUSION

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

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

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

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

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

Height, bulk, scale and character

The proposal complies with the built form controls of the SEPP (HSPD), the WLEP 2011 and the WDCP 2011. Subject to conditions relating to landscaping and articulation of the front retaining wall the proposal is consistent with the built form and landscape character of the Locality. The proposal retains 43% of the site as landscaping with the protection of a number of canopy trees within the frontage which will be further supplemented with additional planting.

Amenity

Subject to conditions relating to privacy treatment to the south facing bedroom windows to Unit 3 and the first floor landing to the shared external stair the proposal will not have unreasonable impacts neighbouring residential amenity. The proposal complies with the solar access provisions of the SEPP (HSPD) and the WDCP 2011. The proposal provided for a good level of of internal and external amenity to the four (4) units subject to compliance with the acoustic report to ensure that noise from traffic using Forrest Way will not have unreasonable impacts on the internal amenity of the units that front the classified road.

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 DA2021/1814 for Demolition works and construction of a senior housing development on land at Lot 38 DP 20461, 58 Forest Way, FRENCHS FOREST, 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
DA030 Rev A Demolition Plan	13.09.2021	Walsh Architects
DA040 Rev A Proposed Site Plan	13.09.2021	Walsh Architects

DA100 Rev A Basement Plan	13.09.2021	Walsh Architects
DA101 Rev A Ground Floor Plan	13.09.2021	Walsh Architects
DA102 Rev A Level 1 Plan	13.09.2021	Walsh Architects
DA104 Rev A Roof Plan	13.09.2021	Walsh Architects
DA200 Rev A Sections	13.09.2021	Walsh Architects
DA201 Rev A Sections	13.09.2021	Walsh Architects
DA300 Rev A Elevations	13.09.2021	Walsh Architects
DA301 Rev A Elevations	13.09.2021	Walsh Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
A.010 Rev C Ground Floor - Stormwater Drainage Concept Plan	14.09.2021	Rise Engineers Pty Ltd
D.020 Rev C Roof / First Floor - Stormwater Drainage Concept Plan	14.09.2021	Rise Engineers Pty Ltd
D.030 Rev C Basement Stormwater Drainage Concept Plan	14.09.2021	Rise Engineers Pty Ltd
D.040 Rev C OSD Calculations	14.09.2021	Rise Engineers Pty Ltd
SC.01 Rev B Site Sediment Control Plan	14.09.2021	Rise Engineers Pty Ltd
SC.02 Rev B Sediment Control Details	14.09.2021	Rise Engineers Pty Ltd
PDW.00 Rev A Public Domain Works and Documentation	14.09.2021	Rise Engineers Pty Ltd
PDW.01 Rev A Proposed Public Domain Works	15.09.2021	Rise Engineers Pty Ltd
PDW.02 Rev A Public Domain Works Sections	15.09.2021	Rise Engineers Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate number 1239362M	15.09.2021	Building Sustainability Assessment
Traffic Report Issue B Ref 21281	September 2021	Transport and Traffic Planning Associates
Geotechnical Report Ref 21/09798	24.09.2021	Michael Adler and Associates
National BCA Capability Report Version 1.01a Ref 21115	22.09.2021	Rodger Dowsett
Building Sustainability Assessment Assessor Certificate Ref 16236	15.09.2021	Gavin Chambers
Access Assessment Report (SEPP Seniors) Ref 112591-Access-r3	15.09.2021	BCA Logic
Arborist Report Rev A	14.09.2021	Hugh Millington
Acoustic Report Ref BA210829	15.09.2021	Blackett Acoustics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LS501.1 Rev B Landscape Plan Sheet 1 and 4	13.09.2021	PLOT Design Group

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	12.09.2020	Scott Walsh

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	10.11.2021
Transport for NSW	TfNSW Referral Response	26.11.2021

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

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or

demolition work is being carried out, but must be removed when the work has been completed.

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$16,947.93 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,694,792.98.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount

unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$ 10000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

8. **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.

9. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1:2004.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

10. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion, truck movements will be restricted during the major commuter peak times being 6.00-10.00am and 3.00-7.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles,

- including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
 - Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
 - Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
 - Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
 - The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
 - Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
 - Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
 - The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
 - Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
 - The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
 - Proposed protection for Council and adjoining properties
 - The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

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

11. **Submission of Engineering Plans (standard from development engineers).**

The submission is to include four (4) copies of Civil Engineering plans for the design of:

The 3 metre wide shared user footpath across the full frontage of the site including details of the transitions at the driveway into the developments basement car park.

These are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.

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

12. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

13. **Amendments to the approved plans**

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

(a) The following landscape planting is to be provided to enhance the street frontage and retaining wall located on Forest Way

(i) Include planting 'Silver Falls' spaces at 1m intervals along the eastern boundary on 1

(ii) The first 1m from Northern Boundary is to remain Strata Area to ensure retention of

Details are to be shown on the Landscape Plans, drawn by Plot Design Group and sub

(b) Articulation of the front retaining wall should be provided by the use of split faced concrete blocks; engaged piers and corbels in brickwork or other means of articulation through materials and form. The wall shall be painted a dark recessive colour.

Details demonstrating compliance with this condition are to be submitted to the Certifyi

(c) Fixed and angled privacy screen to a minimum height of 1.6m shall be installed along the outer edge of the south facing bedroom windows to unit 3 level 1 and the outer edge of the first flood landing to the common stairwell.

Reason: To ensure the development is consistent with the landscaped character of the Locality and ensure that the proposal will not result in unreasonable amenity impacts to neighbours.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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.

15. BCA Fire Safety Matters

The Building Code of Australia fire safety matters as detailed and recommended in the BCA Capability Report prepared by National BCA, dated 22/9/2021, Version 1.0a, are to be considered as part of the assessment of the Construction Certificate. 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 Health, Amenity, access and Fire safety for building occupant health and safety.

16. Building Code of Australia Access Report

Access to and within the building is to be provided for Persons with a Disability and is to comply with the Building Code of Australia and AS 1428.1. In this regard the Access Assessment Report (SEPP Seniors) prepared by BCA Logic, dated 15/9/2021 Ref. 112591-Access-r3 is to be considered as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

17. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY FOR DEVELOPMENT ", and generally in accordance with the concept drainage plans prepared by Rise Engineers, drawing number DO10,DO20,DO30, dated 4/9/21, 16/9/21. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) and or Professionals Australia (RPENG) registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The orifice plate in the discharge control pit is to be 135mm. A discharge control pit is to be detailed on amended plans together with an overflow pipe/route.
- ii. A section of the outlet pipe through the footpath area is to be provided detailing allowable clearance to all services.
- iii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

18. Compliance with Standards

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

19. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. Project Arborist

a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated 14 September 2021 prepared by Hugh the Arborist and 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.

b) 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.

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

d) All tree protection measures specified 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 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.

21. Tree Removal Within the Property

This consent approves the removal of the following tree(s) within the property as identified in the Arboricultural Impact Assessment dated 14 September 2021 prepared by Hugh the Arborist:

- i) Trees numbered 6, 7, 8, 9 and 11

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

Reason: To enable authorised building works.

22. Road Occupancy Licence

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy

License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

23. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

56 Forest Way, Frenchs Forest
60 Forest Way, Frenchs Forest

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

24. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 14 September 2021 prepared by Hugh the Arborist and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted

- without consultation with the Project Arborist ,
- 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 the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist 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.

25. Road Reserve

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

Reason: Public safety.

26. **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.

27. **Dewatering Management**

Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about permits.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

28. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

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

29. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

30. **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.

31. **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.

32. **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.

33. **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.

34. **Vehicle Crossings**

The Applicant is to construct a vehicle crossing in accordance with a Transport NSW Section 138 Roads Act approval and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Transport NSW.

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

Reason: To facilitate suitable vehicular access to private property.

35. **Dust**

Measures shall be documented and be undertaken to minimise any dust created as a result of excavation, vehicle movements and construction so as not to impact on neighbouring premises or create air pollution at any time.

Reason: To prevent air pollution from dust and comply with legislation.

36. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

37. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

38. **Required Tree Planting**

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

- i) All trees as indicated on Landscape Plan Dwg No. LS501.1 Rev B dated 14.09.2021 prepared by Plot Design Group

b) Details demonstrating compliance are to be submitted to the Principal Certifying Authority by

a qualified horticulturalist, landscape architect or landscape designer prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

39. **Landscape Completion**

a) Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

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

Reason: Environmental amenity.

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

Prior to the issue of any 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.

41. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with the approved design plans by the design engineer in accordance with Councils Water Management Policy for Development. 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.

42. **Installation of Rainwater Tanks**

Rainwater tanks shall comply with the following:

- a) Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted to connect to the stormwater system
- b) Have a sign affixed to the tank stating the contents is rainwater
- c) Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
- d) Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
- e) Pumping equipment must be housed in a soundproof enclosure
- f) Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross

connection prevention requirements

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

43. **Allocation of parking spaces (strata title)**

All carparking spaces are to be assigned to individual units. All residential units must be assigned a minimum of one parking space. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability for residents in accordance with section C3 of Warringah Council's Development Control Plan.

44. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

45. **Footpath Construction**

The 3 metre shared user path, in accordance to Council's standard specifications, shall be constructed along the property frontage to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide pedestrian access to and from the property.

46. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

47. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council

and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user 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 adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

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

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures 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 for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

49. **Post-Construction Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

50. **Security Gate and waste storage access gate configuration**

The gate to the bin store must be hinged on the left hand side and swing open 180 degrees to latch against the wall outside the bin storage area. The security gate fence must be located at least 900 mm away from the opening of the entrance to the bin store to allow the bin store gate to swing outwards and latch against the wall.

Reason: To ensure unobstructed and safe access to the waste storage area to service the bins

51. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) BASIX Certificate number 1239362M dated 15.09.2021 prepared by Building Sustainability Assessment.

(b) Traffic Report Issue B Ref 21281 dated September 2021 prepared by Transport and Traffic Planning Associates.

(c) Geotechnical Report Ref 21/09798 dated 24.09.2021 prepared by Michael Adler and Associates.

(d) National BCA Capability Report Version 1.01a Ref 21115 dated 22.09.2021 prepared by Rodger Dowsett.

(e) Building Sustainability Assessment Assessor Certificate Ref 16236 dated 15.09.2021 prepared by Gavin Chambers.

(f) Access Assessment Report (SEPP Seniors) Ref 112591-Access-r3 dated 15.09.2021 prepared by BCA Logic.

(g) Arborist Report Rev A dated 14.09.2021 prepared by Hugh Millington.

(h) Acoustic Report Ref BA210829 dated 15.09.2021 prepared by Blackett Acoustics.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To ensure compliance with standards.

52. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

53. **Building Number**

A 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.

54. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines
(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

55. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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 waste and recycling facilities are provided.

56. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

57. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

58. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

59. **Landscape Maintenance**

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

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

c) For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

60. **Undesirable Trees**

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

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

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

61. **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.

62. **Noise controls from mechanical plant**

Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5 dB(A) when measured in accordance with the *Noise Policy for Industry 2017* and *Noise Guide for Local Government 2013* at the boundary of a receiving residential premises or other noise sensitive land uses.

Furthermore, noise from air conditioning plant must not be audible in a habitable room of an adjacent residence:

(i) before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or

(ii) before 7 am or after 10 pm on any other day.

Reason: to minimise the impact fixed mechanical plant noise has on residential amenity.
(DACHPGOG5)

63. **Parking for all construction staff and contractors**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.





1 EAST ELEVATION
SCALE 1:100 @ A1



2 WEST ELEVATION
SCALE 1:100 @ A1

EXTERNAL FINISHES SCHEDULE

CODES	EXTERIOR
F1	DARK BRICK - LA-PALOMA ROMEO
F2	LIGHT BRICK - WILDERNESS SILVERBERCH
F3	DECKWOOD TIMBER LOOK CLADDING
F4	INTER-CONCRETE
F5	LONGLINE METAL - MONUMENT
F6	AVEN CLADDING - MONUMENT
F7	POWDER COATED PAINT - MONUMENT
F8	BLOCKWORK



EXTERNAL FINISHES SCHEDULE	
CODES	EXTERIOR
F1	DARK BRICK - LA PALOMA ROMEO
F2	LIGHT BRICK - WILDERNESS SILVERBERCH
F3	DECORWOOD TIMBER LOOK CLADDING
F4	INSITU CONCRETE
F5	LONGLINE METAL - MONUMENT
F6	AXON CLADDING - MONUMENT
F7	POWDER COATED PAINT - MONUMENT
F8	BLOCKWORK

ITEM 3.4	DA2021/1127 - 69 CASTLE CIRCUIT SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2022/091388
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans and Elevations 3 ↓ Clause 4.6

PURPOSE

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

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2021/1127 for demolition works and construction of a dwelling house including a swimming pool on land at Lot 29 DP 200638, 69 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1127
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 29 DP 200638, 69 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kylie Maree Riches
Applicant:	Romeocad Design

Application Lodged:	19/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/07/2021 to 10/08/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.4 Floor space ratio: 18.64%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,900,345.00
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EXECUTIVE SUMMARY

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

As the proposal attracted three submissions with a cost of works over \$1million and includes a variation to the Floor Space Ratio (FSR) development standard of greater than 10%, the application is referred to the Development Determination Panel.

Three submissions were received in response to the notification of the application, generally relating to the proposed FSR and setback non-compliances, streetscape, bulk and scale impacts, privacy and view loss. As detailed in the report, none of the concerns raised in submissions warrant the refusal of the application subject to the recommended conditions of consent.

The development proposes a floor space ratio of 0.475:1, resulting in a variation of 18.64% (45.58m²) to the 0.4:1 control. The Applicant's Clause 4.6 written request has adequately demonstrated that the proposal achieves the objectives of the height of buildings development standard, and that there are sufficient environmental planning ground to justify the extent of the proposed variation sought - noting the undersized nature of the lot and the consistency of the proposal with MDCP Clause 4.1.3.

The proposal maintains a compatible visual relationship with surrounding development and will not result in adverse amenity impacts to surrounding properties, notwithstanding the proposed floor space ratio and DCP built form non-compliances.

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

PROPOSED DEVELOPMENT IN DETAIL

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

Garage/Basement

- Double garage
- Basement
- Stair and lift access

Ground floor

- Kitchenette, sitting room & terrace
- Bedroom
- Bathroom
- Bedroom 4 with ensuite
- Foyer
- Media
- Rumpus
- Swimming pool & terrace with planters and privacy screen

First floor

- Kitchen, living/dining & balcony
- Bedroom 1 with ensuite, robe & balcony
- Study
- Laundry & powder room
- Bedroom 2 with terrace
- Bedroom 3
- Bathroom

External (various levels)

- New driveway and crossover
- New entry gate, paving and stair
- New terraced retaining walls and landscaping

Amendments to Proposal

Following lodgement of the application, amendments were made as follows:

- Increased front setback to garage/swimming pool wall with new planter above
- Privacy screen to southern elevation of pool terrace
- Reconfigured retaining walls and landscaping within front setback
- Deletion of gatehouse
- Increased front setbacks to northern terraces and western balcony
- Changes to ensuite at windows at the southern elevation
- Reduced basement excavation extent
- Amended driveway and stormwater design
- Lowered northern butterfly roof ridge by 600mm

Note: The demolition works associated with the existing retaining walls located in the Council road reserve do not form part of this application, as noted on the submitted 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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 29 DP 200638 , 69 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of allotment located on the south-eastern side of Castle Circuit.</p> <p>The site is irregular in shape with a curved frontage of 34.025m along Castle Circuit, an eastern boundary length of 34.595m and a southern boundary length of 29.455m. The site has a surveyed area of 611.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a detached dwelling, swimming pool and various retaining walls.</p> <p>The site slopes approximately 10m from the south-eastern corner to the north-western frontage.</p> <p>The site does not include any significant vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two and 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:

DA2020/0671 - Alterations and additions to a dwelling house and swimming pool including a secondary dwelling - Withdrawn.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 Matters for Consideration	Comments
	<p>Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 11 June 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/07/2021 to 10/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Anthony Foresto	71 Castle Circuit SEAFORTH NSW 2092
Hongling Zhang	C/- Mac Lee Realty Shop 17/3-9 Spring Street CHATSWOOD NSW 2067
Mr Donald Roy McNeil	5 Castle Circuit Close SEAFORTH NSW 2092

The matters raised within the submissions are addressed as follows:

- Streetscape, bulk and scale impacts

Comment:

The proposed development ensures an appropriate streetscape outcome in the context of the site. The amended proposal provides an increased front setback to the garage/pool front wall adjacent to the southern boundary, and also incorporates a planter box to provide screening and reduce the wall height at the frontage. The resulting wall height at the building line (measured to the top of the planter box) is comparable to or lower than the adjoining development, while the remainder of the street frontage is maintained as soft landscaping. The front and side setback non-compliances are discussed in detail under 3.1.1 and 4.1.4.

This matter is not considered to warrant refusal of the application.

- FSR non-compliance

Comment:

The proposal includes an 18.64% variation to the floor space ratio control, equating to an additional 45.58m² of additional gross floor area. The proposed variation and the applicant's Clause 4.6 written request are assessed under Clause 4.6 and are found to be satisfactory, taking into account the undersized nature of the site.

This matter is not considered to warrant refusal of the application.

- Setback non-compliances

Comment:

The proposed garage, northern terraces, first floor balcony and the north-western corner of the dwelling breach the front setback control. The dwelling non-compliance is limited to 200mm and the remaining elements within the front setback are generally consistent with various examples of developments within the visual catchment that include structures located in the front setback. The proposed southern side setback non-compliances are limited to a maximum of 370mm and will not adversely impact the adjoining property or streetscape.

This matter is not considered to warrant refusal of the application.

- View impacts associated with roof form and northern terraces

Comment:

The loss of views from 71 Castle Circuit resulting from the development is not unreasonable, as

assessed in detail against the planning principle under 3.4.3.

This matter is not considered to warrant refusal of the application.

- Privacy impacts to 71 Castle Circuit

Comment:

The proposed ground and first floor terraces are orientated to the north-west towards the available views and include blade walls and compliant side setbacks at the eastern elevation. The proposed design and location of windows at the eastern elevation is appropriate. The proposal will not adversely impact the privacy of 71 Castle Circuit.

This matter is not considered to warrant refusal of the application.

- Retaining walls and landscape design

Comment:

The proposal has been amended to provide an increased front setback and planter box to the garage wall. The proposed retaining walls within the front setback have been reconfigured to allow for more substantial planting to screen the built form. The proposed gate house has also been deleted from the plans. The amendments to the proposal will result in a satisfactory outcome in relation to visual impact and landscaping.

This matter is not considered to warrant refusal of the application.

- Swimming pool location, separation and privacy

Comment:

The proposed swimming pool is lowered in height and provides an increased side setback, privacy screening and supplementary screen planting at the southern side boundary. The proposed pool design and location is compatible with the site context and will not adversely impact the privacy of 67 Castle Circuit.

This matter is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported with conditions.</p> <p>This application is for the demolition of an existing residential dwelling, and construction of a new residential dwelling, including a double garage and swimming pool.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environmental Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping • 5.4.1 Foreshore Scenic Protection Area

Internal Referral Body	Comments
	<p>The Statement of Environmental Effects provided with the application notes there are a number of trees located within the site, however none are prescribed trees. For this reason, no Arboricultural Impact Assessment has been provided with the application. It is noted that a large portion of these existing trees appear to require removal in order to facilitate proposed works, however, the Landscape Plans provided indicate that sufficient compensatory planting is proposed.</p> <p>The Landscape Plans provided propose the in-ground planting of trees, shrubs, grasses and groundcovers. The combination of these planting types, in addition with a series of low retaining walls at the front of the site, seeks to create a large planted area at the front of the site in order to mitigate and soften the built form of the site, which is a direct result of the existing significant level changes present. This planting not only seeks to screen the built form from street level, but as the site falls within the foreshore scenic protection area, this landscape also helps portray landscape as being the dominant feature of the site, particularly when viewed from public space. Concern is raised regarding the use of <i>Rhaphiolepis indica</i> 'Oriental Pearl' as this has been identified as an environmental weed, and as a result, is an undesirable species. It is recommended that this be substituted for a locally native alternative instead. The completion of the proposed landscape works, including the required species change, is vital in order to satisfy control 4.1.5 and 5.4.1 as key objectives of this control include "to maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland", "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area", as well as "maintain the visual dominance of the natural environment".</p> <p>It is noted that there appears to be a number of existing trees within the neighbouring property to the south that are within close proximity to proposed works. As these trees are located within the adjoining property, they are required to be protected and retained accordingly, as any negative impacts to both the short-term and long-term health of these trees would not be supported. The retention of these trees is necessary in order to satisfy control 3.3.2, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide".</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, inclusive of the required species substitution.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p><u>Driveway access</u></p> <p>The proposed new driveway and vehicular crossing is in close proximity to the Council stormwater pit. The proposed layback must</p>

Internal Referral Body	Comments
	<p>be located a minimum of 1m away from the edge of the lintel.</p> <p><u>Stormwater</u></p> <p>The site is located in Zone 1 and the proposed impervious area is greater than 35% of the site area plus 50m². Hence OSD shall be provided in accordance with Clause 9.3.3.2 of Council's Water Management for Development Policy.</p> <p>Additional Information Provided on 20/12/2021 & 7/2/2022</p> <p>The amended architectural plans showing the proposed vehicular crossing with a 1m clearance from the existing lintel is satisfactory. The amended stormwater plan has been reviewed. No objections to approval subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The proposal was referred to the NSW RFS with appropriate conditions recommended.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</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. 1102813S_02 dated 16 June 2021).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	70

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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8m	N/A	Yes
Floor Space Ratio	0.4:1 244.52m ²	0.475:1 290.1m ²	18.64%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (244.52m ²)
Proposed:	0.475:1 (290.1m ²)

Percentage variation to requirement:	18.64%
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Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The proposal is consistent with the existing streetscape character by providing a dwelling that is 2 storeys with a basement garage. This is consistent with development in the vicinity. The proposal will sit comfortably below the 8.5m height development standard.*
- *The proposed FSR is reasonable within its context of the locality whilst the proposed built form is considered to be reasonable when compared to existing development within the streetscape. The subject site is consistent with the undersized lot provisions (cl: 4.4.3.1) with the Manly DCP which states that Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. In this regard, we note that the minimum lot size applicable is 750m² resulting in a maximum GFA of 300m². The proposed GFA is compliant with the 300m² control and this report has demonstrated consistency with the FSR and zone objectives within the LEP.*
- *The works have been designed to maintain a predominately 2 storey form which maintains view corridors over the subject site from 71 Castle Circuit. Again, we note that the proposal sits below the 8.5m height limit. Significant side setbacks to the ground and first floor provides relief from any visual impact with the proposed wall heights also being compliant. Total open space and landscaping are also compliant with the DCP control. Compliance with the numerical controls within the LEP and DCP is reflective of the considered design approach to limit any potential bulk and scale and visual impact concerns despite the FSR variation.*
- *The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. The concerns raised by Council with the previous application with regard to view loss of 71 Castle Circuit have been addressed by removing the third storey with the previous scheme. As outlined in the statement of environmental effects, views will be maintained over the subject site despite the view being accessed across a side boundary and the proposal being compliant with 8.5m height development standard.*
- *We note that Council has applied the FSR development standard flexibility in this locality and have approved variations provided that the undersized lot provisions within the DCP can be met. 60 Castle Circuit (DA2020/1585) most recently was approved for a new dwelling with an FSR of 0.47:1 and had a floor area of 300m², consistent with the DCP undersized lot provision."*

Comment:

Manly DCP Clause 4.1.3 provides for the consideration of exceptions to the FSR control for sites with an area less than the minimum lot size under the LEP lot size map, subject to consistency with the relevant LEP objectives and the provisions of the DCP. The subject site is mapped as Area T (950m²) on the MLEP lot size map, with a site area of 611.3m². In this case, 4.1.4.1(a) provides for a maximum FSR calculated based on a lot size of 750m², resulting in a maximum GFA of 300m². The proposal has a GFA of 290.1m² and is found to achieve consistency with the relevant LEP objectives and DCP provisions, and as such is eligible for consideration of a variation under Clause 4.1.3.

The proposal is compatible with surrounding developments with regard to height, bulk, scale and streetscape character, and will not give rise to any unreasonable impacts in relation to views or amenity. The proposal is consistent with the MDCP provisions for undersized lots and is appropriate in the context of the site.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal is compatible with the existing and desired streetscape character with regard to bulk and scale. It is noted that the proposed FSR is largely achieved within the developable footprint of the site, with no GFA proposed within the front setback and only minor breaches of the southern side setback at the upper level (max. 370mm).

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

Comment:

The proposed building bulk is appropriate in relation to the site area and will not obscure any important landscape or townscape features.

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

Comment:

The proposal maintains an appropriate visual relationship with the existing character and landscape of the area. The proposed dwelling is suitably positioned on the site and the associated landscaping works will provide screening of the built form, noting the constraints presented by the topography and previous alteration of the site.

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

Comment:

The proposal will not adversely impact on the use or enjoyment of adjoining land or the public domain. The development is appropriately designed for privacy and an assessment of view loss is completed under 3.4.3.

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

Comment:

N/A

Zone objectives

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

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

Comment:

The proposal retains the existing low density residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

N/A

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of

the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

6.2 Earthworks

The subject site has been subject to extensive previous alteration and includes significant excavated areas and retaining walls. The proposal seeks to rationalise the existing altered levels and retaining walls, some of which extent beyond the site and into the Council road reserve. The more substantial excavation works are generally limited to a portion of the proposed building footprint, and are not anticipated to adversely impact the natural environment or adjoining properties. Conditions are imposed requiring geotechnical certification of the works at various stages and the preparation of pre and post-construction dilapidation reports for the adjoining property.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 611.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	S: 8m (gradient 1:4 +)	Bed 1, study: 4.7m - 7m	N/A	Yes
		Ensuite: 5m	N/A	Yes
	E: 8m (gradient 1:4 +)	Bed 2 & 3: 4.3m - 6.4m	N/A	Yes
		Study, laundry: 2.5m - 4.7m	N/A	Yes
4.1.2.2 Number of Storeys	2	2 (+ basement)	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.4m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Garage: 1.7m - 2.6m	71.7%	No
		North terrace: 3.4m	43.3%	No
		FF Balcony: 4.3	28.3%	No
		Dwelling: 5.8m	3.3%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	S Bed 1, study: 1.57m - 2.3m	2.15m	7%	No
	S Ensuite: 1.67m	1.3m	22.2%	No
	E Bed 2 & 3: 1.43m - 2.13m	2.25m	N/A	Yes
	E Study, laundry: 0.83m - 1.57m	4.8m - 7.8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 366.78m ²	63.8% 390.3m ²	N/A	Yes
	Open space above ground 25% of total open space	8.7%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of	51.9%	N/A	Yes

	open space 156.12m ²	202.4m ²		
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.4m	240%	No
	1m curtilage side/rear setback	0.73m	27%	No
	1.5m water side/rear setback	1.5m	N/A	Yes
4.1.10 Fencing	1m height / 1.5m transparent	0.47m - 1.33m	33%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

***Note:** For the purpose of this assessment, the eastern and southern boundaries are nominated as side boundaries as they form the side boundaries of the adjoining properties. The subject site is not considered to have a rear boundary.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Compliance with control

The proposal maintains an appropriate visual relationship with surrounding developments. The proposed dwelling complies with the building height control and maintains a level of bulk that is compatible with adjacent developments at the street frontage, noting the constraints associated with the topography of the site and locality.

The proposed reconfiguration of the existing retaining walls is considered to improve the streetscape appearance of the development. Notwithstanding the partially non-compliant height of proposed lower retaining wall adjacent to the front boundary, the proposal seeks to locate this wall wholly within the site (with the existing retaining wall that is partially located within the Council road reserve to be removed under a separate application). The stepped retaining walls and new planting proposed within the front setback will minimise the visual bulk of the development.

The proposal includes an increased front setback to the garage wall location in relation to the existing sandstone wall. The overall height of the proposed garage wall (RL 33.0) is 300mm lower than the existing wall, and incorporates a planter box that reduces the height at the building line (to RL 31.8) and enables landscape screening to soften visual impact. The proposed front fences/walls are compatible with the adjoining developments on the western side of Castle Circuit and result in an overall improvement to the existing development.

3.4.1 Sunlight Access and Overshadowing

Merit consideration

Solar access to 67 Castle Circuit during the morning is limited due to the topography of the surrounding area and the existing dense vegetation to the northeast. At 9am the additional overshadowing impacts are generally contained to the northern side setback and wall of No. 67. At 12pm there is additional impact to the northern wall and various minor increases and decreases in shadow within the front setback and rear courtyard. At 3pm there is a minor reduction in the overshadowing of the northern elevation of No. 67 and the western elevation maintains unobstructed afternoon sun.

Given the proposal's level of compliance with the height and setback controls at the southern elevation, and the existence of private open space areas at both the front and rear of the dwelling at No. 67, the proposal is considered to achieve consistency with the objectives of the control and maintain adequate sunlight access to adjoining properties.

3.4.2 Privacy and Security

Compliance with control

Windows

The proposed glazed areas are appropriately designed and located to maintain the privacy of the adjoining properties. At the southern elevation, WF-14 is a small study window and WF-18 is to a walk-in-robe. The low frequency of use of these rooms is not anticipated to result in adverse privacy impacts to 67 Castle Circuit. At the eastern elevation, WF-7 is to a bathroom and is conditioned to be frosted/translucent, WF-6 and WF-8 are highlight windows and WF-10 is sufficiently set back from the adjacent boundary.

Private open space areas

The existing development allows opportunities for overlooking of the principal private open space of 71 Castle Circuit from the unscreened northern balcony (Photo 1). The existing context also allows for direct viewing between the upper level balconies and pool areas of the subject site and 67 Castle Circuit to the south (Photo 2).

The proposed outdoor areas and elevated balconies are generally orientated to the west and north-west to access the available water views. The proposed ground and first floor northern terraces incorporate blade walls to the eastern elevation to minimise overlooking of No. 71. The proposed pool terrace is lowered by 300mm and set back an additional 730mm in comparison to the existing, includes a new 1.8m high privacy screen at the southern elevation and provides screen planting within the increased southern side setback area. A condition is also imposed requiring the provision of privacy screening to the southern elevation of the Bedroom 1 western balcony.

Based on the above considerations, the proposed development is considered to facilitate an improved privacy outcome and is supportable.



Photo 1. Overlooking of 71 Castle Circuit from the existing development.



Photo 2. Direct viewing between the existing development and 67 Castle Circuit.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

The first step is the assessment of views to be affected. Water views are valued more highly than land

views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The available views from 71 Castle Circuit include expansive water views of Middle Harbour to the south-west, west and north-west, and include areas of land-water interface. The affected views are generally partial views as they are disrupted by the existing development and vegetation on the subject site.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The affected views are available from the rear pool terrace, the upper level bedroom and the lower level northern balcony. The views are obtained across a side boundary from a sitting and standing position.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The proposed roof form and heights are shown on the eastern elevation and the approximate extent of the view impact is depicted in the marked up photos below.

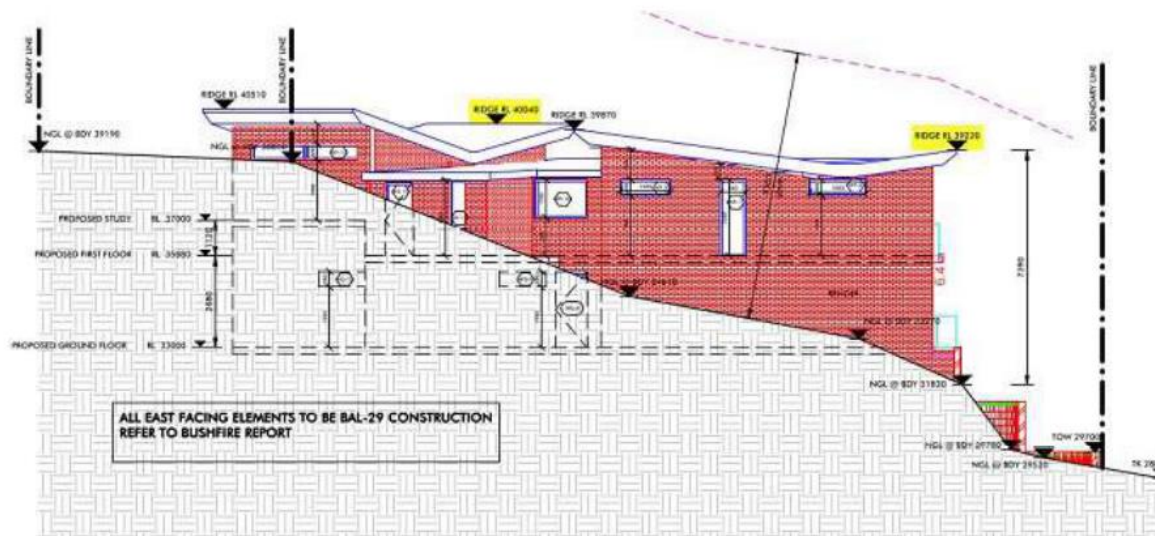




Photo 3. Approximate worst case impact to views from No. 71 pool terrace.



Photo 4. Approximate worst case impact to views from No. 71 upper level bedroom.



Photo 5. Approximate worst case impact to views from No. 71 lower level northern balcony.

In Photo 3, the upper line represents the approximate worst case scenario based on the maximum height of the proposed roof at the leading western edge (RL 40.04). The actual extent of the impact is anticipated to be lesser as the central and northern roof sections reach a maximum height of RL 39.22 (lower line) at the leading western edge. However, even if the impact was to the extent shown by the upper line, the impact would still be acceptable.

In Photos 4 and 5, the yellow lines represents the approximate worst case scenario based on the extension of the roof form over the proposed northern terraces. The actual extent of the impact is anticipated to be lesser as the terrace blade walls at the ground and first floor do not extend to the northern roof edge. Again, even if the impact was to the extent shown in Photos 4 and 5, the impact would still be acceptable.

The likely view impacts resulting from the proposal are found to be acceptable based on the following considerations:

- The impact to views is largely limited to water views that are partial obscured by the existing dwelling and vegetation on the subject site. The proposal is unlikely to cause any impact to the available land-water interface views.
- The primary views from No. 71 are the less obstructed views to the north-west rather than those

to the west directly across the common side boundary. The primary views to the north-west are largely unaffected by the proposal (Photos 6, 7 and 8 below).

- The proposed removal of a number of existing palms adjacent to the eastern boundary will improve views over the top of the dwelling.
- The lower level northern balcony accessed directly from the living areas of the dwelling is the principal private open space area of No. 71, while the pool terrace area is considered to be a secondary private open space area. The views from the bedroom are also of lesser value in comparison to the living areas/private open spaces.
- The affected views from the pool terrace are vulnerable as they are obtained across a side boundary generally through the developable footprint of the subject site, noting the compliance of the proposal with the building height control.
- The affected views from the northern balcony and bedroom are vulnerable as they are obtained at an acute angle across the side boundary and are partially obstructed by the existing development and vegetation on the subject site.



Photo 6. Unaffected views to the north-west from from No. 71 pool terrace.



Photo 7. Unaffected views to the north-west from from No. 71 upper level bedroom.



Photo 8. Unaffected views to the north-west from from No. 71 lower level northern balcony.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The proposed dwelling is non-compliant in relation to FSR, front setback and southern side setback.

The offending element to views from the pool terrace is the roof form, which is fully compliant with the building height control. The offending elements to views from the bedroom and balcony are the ground and first floor northern terraces, which are non-compliant with the front setback control. Despite the front setback non-compliance, the impacts of these structures relate to a vulnerable portion of views that are not considered to form part of the primary views/aspect of No. 71, as discussed above. The proposal is appropriately designed to minimise the resulting view impacts.

Based on the above assessment, the overall view impact is considered to be moderate. Given the extent and value of the affected views in comparison to the views that are retained, the proposal is supportable in this case.

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

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

Description of non-compliance

The control requires a front setback of 6m and side setbacks equivalent to 1/3 of the proposed wall height.

Front

The proposal includes breaches of the 6m setback control as follows:

- Garage - 1.7m - 2.6m
- Northern Terrace - 3.4m
- First Floor Balcony: 4.3m
- Dwelling: 5.8m

The proposed structures within the front setback area are indicated in the below plan excerpt.



Southern Side

The proposal includes breaches of the side setback control as follows:

- Bed 1, Study - Required 1.57m-2.4m, proposed 2.15m
- Ensuite - Required 1.67m, proposed 1.3m

Given the curved frontage and irregular shape of the site, the site is not considered to have a rear boundary.

Merit consideration:

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

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

Comment:

The proposal maintains and enhances the existing streetscape in relation to the desired spatial proportions, the street edge and landscape character. The proposed reconfiguration of retaining walls

and new landscaping will improve the appearance and landscape treatment in comparison to the existing site conditions.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed setback breaches will result in no unreasonable impacts in relation to privacy, solar access, views, streetscape character or traffic conditions. The visual and amenity impacts of the development are discussed under 3.4 Amenity.

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

Comment:

The subject site has a front boundary length of 34.025m and a total front setback area of 196.1m². Given that the front setback occupies 32% of the total site area, it is appropriate to consider flexibility in the siting of the building in this case. Further, the proposed southern side setback breaches are relatively minor in extent, being a maximum of 370mm.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides a compliant landscaped area and incorporates substantial new planting within the front setback.

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

Comment:

The proposal is accompanied by a bushfire report that indicates that adequate asset protection zones can be maintained. The application was referred to the NSW RFS and the recommendations are incorporated into the conditions of consent.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

4.1.8 Development on Sloping Sites

The site is mapped as Geotechnical Area G1 and a geotechnical investigation has been prepared in relation to the proposed development, the recommendations of which are incorporated into the conditions of consent.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.1 requires that:

- a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:*
- i) would not detract from the amenity or character of the neighbourhood; and*
 - ii) is a minimum distance from any side boundary equivalent to the height of the swimming pool*

The proposed swimming pool reaches a maximum height of 3.4m above ground level, exceeding the 1m control, and is not located an equivalent distance from the boundary. Notwithstanding these breaches, the proposed pool terrace is generally consistent with the existing pool coping, but is reduced in height by 300mm and set back by an additional 730mm from the southern boundary. The proposal is considered to provide a sufficiently improved and acceptable outcome in relation to the objectives of the control.

Merit consideration

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposal reduces the extent of the existing non-compliance and provides additional privacy measures. The pool terrace is set back 730mm to enable the provision of on-slab screen planting and incorporates a privacy screen that is located along the inner edge of the planter box to minimise visual impact. Given that the existing swimming pool is entirely unscreened at the southern boundary, the proposal is considered to be appropriately designed for privacy.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The swimming pool location is constrained by the sloping topography and corner location of the site. Further, the eastern side of Castle Circuit to the south of the site includes several examples of pools

within front setbacks, including the existing development on the subject site. The proposal remains consistent with these developments and will not adversely impact the streetscape or established character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The proposal integrates new landscaping to the south and west of the new pool in the form of planter boxes.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The proposed pool may be used as an emergency water resource in the event of a bush fire.

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

4.1.10 Fencing

Description of non-compliance

The proposed retaining wall at the front boundary ranges in height from 0.47m to 1.33m, and is therefore partially non-compliant with the 1m control.

Merit consideration

The non-compliance is relatively minor in extent and relates to a 10.5m length of the wall. Based on the existing site context and prevalence of front walls within the visual catchment, the proposal is considered to be acceptable.

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 \$19,003 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,900,345.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

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

Notwithstanding the proposed building height variation of 18.64%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

Three submissions were received in relation to the development, and are addressed within the report with suitable conditions imposed where necessary.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in

the context of the site, and is recommended for approval.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/1127 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 29 DP 200638, 69 Castle Circuit, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-01 Proposed Site Plan	Rev.0, 7 December 2021	Romeocad Design
A-02 Proposed Garage Floor Plan	Rev.0, 7 December 2021	Romeocad Design
A-03 Proposed Ground & First Floor Plan	Rev.0, 7 December 2021	Romeocad Design
A-04 Proposed Roof Plan	Rev.0, 7 December 2021	Romeocad Design
A-05 Proposed Elevations	Rev.0, 7 December 2021	Romeocad Design
A-06 Proposed Sections	Rev.0, 7 December 2021	Romeocad Design
A-07 Proposed Landscaping Retaining Wall Details	Rev.0, 7 December 2021	Romeocad Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1102813S_02	16 June 2021	Romeo Computer Aided Design Pty Ltd
Bushfire Assessment Report	11 June 2021	Building Code & Bushfire

		Hazard Solutions Pty Limited
Geotechnical Slope Stability Risk Assessment	23 June 2021	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
C1 Site Plan	Rev. D, 16 December 2021	Contour Landscape Architecture
C2 Planting Plan	Rev. D, 16 December 2021	Contour Landscape Architecture
C3 Planting Schedule	Rev. C, 30 June 2021	Contour Landscape Architecture
C4 Landscape Details	Rev. D, 16 December 2021	Contour Landscape Architecture

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW RFS	NSW RFS Determination	19 August 2021

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

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

3. Approved Land Use

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

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

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

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

4. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost

of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

waste/recycling centres.

- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$19,003.45 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,900,345.00.

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

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

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

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

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

7. Security Bond

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

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$1000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

9. **Amendments to the approved plans**

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

- Window WF-7 shall consist of frosted/translucent glazing;
- A privacy screen up to a minimum height of 1.6m above FFL shall be provided along the length of the southern elevation of the Bedroom 1 balcony. The screen shall either have a maximum transparency of 30% or be louvred so as to prevent overlooking of the adjoining property to the south.

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

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **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.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Gilcon, drawing number C01, C02, C03, C04, dated 1/2/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. OSD shall be provided in accordance with Council's Water Management for Development Policy Clause 9.0.

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

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

13. **Structural Adequacy and Excavation Work**

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

14. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

15. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to the existing Council pit in Castle

Circuit which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

16. **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.

17. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

- 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.

18. **Landscape Design**

Where there are discrepancies between the architectural drawings and landscape drawings with regard to the heights and locations of the proposed retaining walls, the architectural drawings shall prevail, and the landscape drawings shall be suitably amended.

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

Reason: To ensure consistency between the approved plans.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those

properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property: 67 Castle Circuit, Seaforth

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

21. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist

with minimum AQF Level 5 in arboriculture on site,

- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

22. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

23. **Road Reserve**

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

Reason: Public safety.

24. **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.

25. **Implementation of Geotechnical Recommendations**

All recommendations included in the Geotechnical Report referenced in Condition 1 of this consent are to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

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 68 are supervised by an appropriately qualified and practising Civil Engineer.

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

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

29. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 1N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

30. **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. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) substitute the proposed *Rhaphiolepis indica* 'Oriental Pearl' with a locally native alternative. Suggested species include: *Banksia spinulosa*, *Grevillea sericea*, or *Melaleuca nodosa*.

Plants are to be installed at minimum 1 metre intervals and be of a minimum container size of

200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

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

Reason: Environmental amenity.

32. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

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

Certification from a suitably qualified and practicing Geotechnical Engineer that all recommendations included in the Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the development shall be provided to the Principal Certifying Authority prior to the issue of a Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

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

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

35. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

36. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

37. **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.

38. **Separate Occupancy**

The lower floor of the dwelling, including a kitchenette, shall not be used as a separate occupancy.

Reason: To ensure that the use of the property is consistent with the approval.







STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed New Dwelling
with Swimming Pool

69 Castle Circuit,

Seaforth

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Statement of Environmental Effects

Proposed New Dwelling with Swimming Pool

69 Castle Circuit, Seaforth

Prepared under instructions from Kylie Riches

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June 2021

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ANNEXURE A: CLAUSE 4.6 VARIATION TO FLOOR SPACE RATIO DEVELOPMENT STANDARD

1 Introduction

This statement has been prepared as part of the supporting documentation for a Development Application in relation to the construction of a new dwelling development on the subject site. The works will require the demolition of the existing dwelling.

Particular attention has been given to ensuring that the proposed dwellings affords high levels of amenity for future occupants, whilst ensuring high levels residential amenity to adjoining properties are retained in relation to privacy, views and overshadowing. The proposal replaces an existing aging dwelling with a contemporary development of high architectural merit which maximises the sites development potential and provides additional housing stock in the locality.

A pre-lodgement meeting (PLM2021/0084) was undertaken with Northern Beaches Council and the resultant design has taken into consideration the comments arising from that meeting. We also note that a previous application was withdrawn (DA2020/0671) and the current scheme addresses the issues raised by Council in relation to that DA.

In addition to the Statement of Environmental Effects, the following also accompanies the application:

- Survey by TSS
- Stormwater Management Plans
- Landscape Plan
- Architectural Plans by Romeocad
- Geotechnical Report
- BASIX certificate

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979;
- Manly Local Environmental Plan 2013 and
- Manly Development Control Plan 2013

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The application has considered and satisfies the various relevant planning controls applicable to the proposed use and associated works.
- The site is assessed as suitable for the proposal, having regard to the relevant land use and planning requirements.

2 Background

The previous application that was withdrawn raised several issues that this application has sought to address. The table below outlines the issues raised by the previous application and how the current application has addressed those concerns.

Floor Space Ratio	<p>Council did not support the extent of the variation proposed with the previous application which had a gross floor area of 368.27m² which equated to 0.6:1 FSR.</p> <p>Discussions with Council have resulted in a reduction in gross floor area with the current proposal to having a GFA of under 300m² (0.49:1). This was based on the DCP provision for undersized lots which states that variations to the FSR control can be take into consideration based on a minimum lot size of 750m². A clause 4.6 has still been prepared in that regard and we note that 60 Castle Circuit (DA2020/1585) was recently approved with a variation to the FSR control which relied on the undersized lot provisions within the DCP as part of their justification. That application was approved with a GFA of 300m² or an FSR of 0.47:1.</p>
Wall Height	<p>The current scheme has considerably reduced its bulk and scale by reducing the floor space and deleting the previous third storey element of the withdrawn DA.</p> <p>The proposed wall heights vary with the slope of the topography. The wall heights proposed have been reduced from the previous application to be compliant with the control.</p>
Number of Storeys	<p>The previous application proposed a third storey which has since been deleted with the current scheme. The proposal is for a 2 storey dwelling with a lower level basement garage. This is consistent with development in the area as it responds to the sloping topography.</p>
Impact to Views	<p>View sharing was identified as a significant element with the previously withdrawn application. In particular to 71 Castle Circuit to the north-east of the subject site.</p> <p>Significant amendments to the plans to reduce the gross floor area, deletion of the third storey and reduction in wall heights to be compliant ensures a greater view sharing outcome. We also note that the proposal is significantly below the 8.5m height development standard, also. The views accessed by 71 Castle Circuit are across a side boundary which are considered harder to retain. A view loss assessment is provided as part of this statement.</p>



Privacy	The current proposal has taken into consideration the privacy concerns and is considered reasonable with regard to maintaining privacy amenity to the adjoining properties. This is discussed further within the DCP compliance table within this report.
----------------	---

3 Site Analysis

3.1 Site Description and Location

The site is identified as being within lot 29 in DP 200638. The site has an area of 611.3m² and is an irregular shaped allotment. An aerial location view is provided as figure 1 below.



Figure 1: Site Location Map (Source: Six Maps)

The subject site has a curved frontage and address to Castle Circuit of 34.025m, north-eastern side boundary of 25.45m, rear eastern boundary of 9.145m and southern side boundary of 29.455m. The topography of the site slopes up from Castle Circuit in an easterly direction. A number of trees are located on the site however none are prescribed trees. A survey extract is provided below.



The existing development on the site contains a 2 storey storey brick residence set with a swimming pool. Development in the local area contains predominately low density residential uses. Below are images of the current site.



Figure 3: Subject site as viewed from Castle Circuit



Figure 4: View from Castle Circuit

4 Description of Development

4.1 Details of the Proposed Development

The development proposes the demolition of the existing site structures and the construction of a new dwelling. The works are shown on the architectural plans provided by ROMEOCAD. Specifically, the works include:

Garage Level (FFL 28.000):

- 2 car integrated garage with storage areas and a plant room for the pool. OSD tanks and rainwater tank located at this level also.

Ground Floor (FFL 33.000)

- Rumpus room opening out to the terrace and pool area
- Media room
- Powder room
- Bedroom 4 with ensuite
- Separate living space with bedroom, sitting room and kitchenette. Access to a front facing balcony

First Floor (FFL 35.880)

- Master bedroom with walk-in-robe and ensuite. Access to a small front facing balcony. A separate study is located at the rear of the master suite.
- Laundry and powder room
- Open plan kitchen/living/dining space.
- Bedrooms 2 and 3 with a shared bathroom. A small balcony is located off bedroom 2.

The works will require a new driveway crossover to access the new garage location. A landscape plan and stormwater management plans have also been provided.

5 Statutory Planning Framework

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential environmental impacts are discussed below.

5.1 Manly Local Environmental Plan 2013

5.1.1 Zoning and Permissibility

The subject site is Zoned R2 Low Density Residential. The objectives of R2 Low Density Residential zone are as follows:

- *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.*

Dwelling houses are permitted with consent in the R2 zone and is not an impediment to the granting of consent.

5.1.2 Floor Space Ratio

Pursuant to clause 4.4 in the LEP, the site has a maximum floor space ratio (FSR) control calculated at 0.4:1. The objectives of the FSR control are as follows:

- a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The FSR proposed for each dwelling is calculated at 0.49:1 which does not strictly comply with the development standard and clause 4.6 request to vary the development standard has been provided as an annexure to this report.

5.1.3 Height of Buildings

Pursuant to clause 4.3 in the LEP the max building height is measured at 8.5m. The objectives of the control are as follows:

- a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- b) *to control the bulk and scale of buildings,*
- c) *to minimise disruption to the following:*
 - i. *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - ii. *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - iii. *views between public spaces (including the harbour and foreshores),*

As indicated on the elevations and section drawings provided the building will sit comfortably below the 8.5m development standard.

5.1.4 Earthworks

Pursuant to clause 6.2 of the LEP the objectives of the control are as follows:

- (a) *to ensure that earthworks and associated groundwater dewatering 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,*
- (b) *to allow earthworks of a minor nature without requiring a separate development consent.*

A preliminary geotechnical report has been provided and determines that the existing site conditions and details the extent of the excavation proposed to accommodate the dwelling. It is anticipated that the recommendations provided within the geotechnical report will form part of any approved consent.

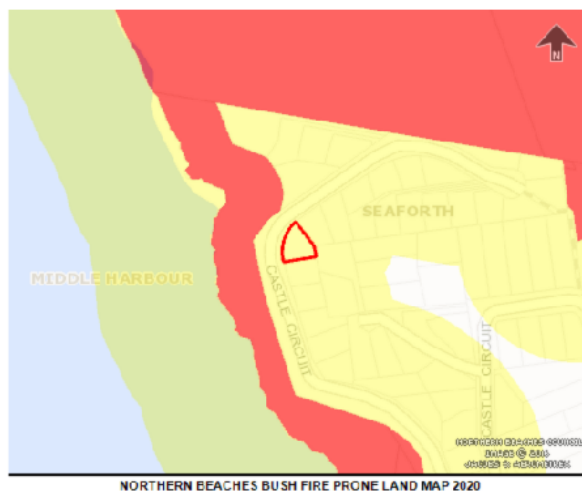
5.1.5 Foreshore Scenic Protection Area

Pursuant to clause 6.9 the subject site is located within a foreshore scenic protection area. The proposed dwelling will not result in any adverse impact to the scenic quality of the area or impact on the visual amenity of the Harbour foreshore. The proposed works are consistent with the scale of development existing on the site as well as with development generally in the

local area. It is considered that the proposal will not be seen as jarring or unsympathetic to the scenic quality of the foreshore area.

5.1.6 Bushfire Prone Land

The site is mapped as bushfire prone land as identified on the map below. A bushfire risk assessment has been undertaken and provided with this application.



5.2 Manly Development Control Plan 2013

The relevant provisions of the Manly Development Control Plan 2013 in relation the proposed works are detailed as follows:

Control	Requirement	Proposed	Compliance
Streetscape (Residential Areas) 3.1	Streetscape is defined and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant	The proposed dwelling is consistent within existing development in the streetscape which primarily consists of single dwellings. The design has ensured the development will be consistent with the scale of development in the area and utilises a range of materials and finishes that are	Yes

Control	Requirement	Proposed	Compliance
	streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.	complementary within the streetscape. No predominant architectural character dominates the area with a mix of older and newer styles of development present in the streetscape. It is considered that the proposal would not be antisymphathetic within the existing streetscape.	
Landscape Design 3.3.1	To encourage appropriate tree planting and maintenance of existing vegetation. To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.	A landscape plan has been prepared and accompanies this application. A range of plantings are proposed which complement the development and will provide increased amenity to the outdoor areas. The perimeter plantings will provide additional screening and softening of the built form and ensure the development sits within an enhanced landscaped setting.	Yes
Sunlight Access and Overshadowing 3.4.1	New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at	Shadow diagrams have been provided by ROMEOCAD and included within the architectural set of drawings. The shadow diagrams demonstrate that the neighbouring dwellings will	Yes

Control	Requirement	Proposed	Compliance
	<p>the winter solstice (21 June) ; or</p> <p>Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.</p>	receive compliant levels of solar access.	
<p>Privacy and Security</p> <p>3.4.2</p>	<p>To minimise loss of privacy to adjacent and nearby development by:</p> <ul style="list-style-type: none"> • appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; • mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings. <p>To increase privacy without compromising access to light and air.</p>	<p>The proposed development has been responsive to concerns regarding privacy to adjoining dwellings.</p> <p>Balconies and terraces have been designed to predominately face the front boundary and do not pose any significant risk to overlooking. Landscaping treatments to side and rear boundaries will assisting in providing additional privacy screening.</p>	Yes

Control	Requirement	Proposed	Compliance
	<p>To balance outlook and views from habitable rooms and private open space.</p> <p>To encourage awareness of neighbourhood security.</p>		
<p>Maintenance of Views</p> <p>3.4.3</p>	<p>To provide for view sharing for both existing and proposed development and existing and future Manly residents.</p> <p>To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).</p> <p>To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.</p>	<p>A view loss assessment has been prepared and can be found at the end of this compliance table.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
Stormwater Management 3.7	<p>To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.</p> <p>To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.</p>	<p>Stormwater Management Plans have been provided.</p>	<p>Yes</p>
Waste Management 3.8	<p>To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).</p> <p>Encourage environmentally protective waste management practices on construction and demolition sites</p> <p>Encourage the ongoing minimisation and management of waste handling in the future use of premises.</p>	<p>The development will require the demolition of the existing dwelling on the site. A detailed waste management plan can be provided at the construction certificate stage.</p> <p>The existing brick dwelling will be recycled and reused where appropriate. Commercial waste contractors will be utilised to dispose of the waste materials.</p> <p>Bin storage can be accommodated within the garage of dwelling.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
	<p>To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.</p> <p>To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.</p>		
Safety and Security 3.10	<p>To ensure all development are safe and secure for all residents, occupants and visitors of various ages and abilities.</p> <p>To ensure that the design process for all development integrate principles of 'Safety in Design' to eliminate or minimise risk to safety and security.</p> <p>To contribute to the safety and security of the public domain.</p>	<p>The design of the dwelling allows for the casual surveillance of the street with front facing windows.</p> <p>The vehicle crossing will have a clear line of sight for the protection of pedestrians.</p>	Yes
Wall Height	the maximum external wall height is calculated based on	The development will have varying wall heights reaching a maximum of 6.396m to the	Yes

Control	Requirement	Proposed	Compliance
4.1.2.1	the slope of the land under the proposed wall	south elevation and 6.543m to the northern elevation.	
Number of Storeys 4.1.2.2	2 storeys – where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards	2 storeys predominately with a lower level garage. The constraints of the site warrant the lower level garage which can be accessed directly from street level. This is consistent with development in the immediate vicinity.	Yes
Roof Height 4.1.2.3	Max 2.5m	Predominately flat roof with some butterfly form elements.	Yes
FSR 4.1.3	0.4:1	0.49:1	No – Clause 4.6 provided
Front Setback 4.1.4.1	Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.	The proposed front setback is consistent with the prevailing front setback of the neighbouring properties.	Yes
Side Setbacks 4.1.4.2	1/3 of wall height	The proposal provides for generous side setbacks of 2.15m to the southern	Yes

Control	Requirement	Proposed	Compliance
		boundary and 2.25m to the north-eastern side boundary.	
Rear Setback 4.1.4.4	8m	<p>The unusual geometry makes strict compliance with this clause challenging in this instance. The proposal has a varying rear setback of between 7.078m and 8.997m.</p> <p>The minorly non-compliant rear setback does not give rise any adverse amenity impacts with regard to privacy, view loss or overshadowing.</p>	No
Open Space and Landscaping 4.1.5	<p>60% Open Space</p> <p>40% Soft Landscaping</p>	The proposal provided for 63% of total open space of which 57.5% is provided as soft landscaping in compliance with this control.	<p>Yes</p> <p>Yes</p>
Parking Design 4.1.6.1	The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.	<p>The development proposes integrated 2 car garage at street level with access provided from Castle Circuit.</p> <p>The proposal will relocate the vehicle crossover and driveway to be adjacent southern boundary. The existing driveway is located on the corner of the street and presented safety issues. The new arrangement is considered to be a better</p>	Yes

Control	Requirement	Proposed	Compliance
		outcome within the streetscape.	
Development on Sloping Sites 4.1.8	<p>To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.</p> <p>To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.</p> <p>To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.</p>	<p>This application provides a preliminary geotechnical report.</p>	<p>Yes</p>

5.2.1 View Loss Analysis

Pursuant to clause 3.4.3 of the Manly DCP, the assessment of views is made subject to the planning principal for view sharing known as *Tenacity vs Warringah Council*. The previous

application received a submission from 71 Castle Circuit that raised concerns with the potential view loss. In this regard, a view loss assessment has been undertaken for 71 Castle Circuit.

Step 1:

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

An image was provided with the previous submission that showed the existing view accessed over the subject site and is provided below. The views take in water and land interface and is partially obscured with existing trees.



View from 71 Castle Circuit

Step 2:

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The submission received stated that the above image was taken from the terrace at the top of the site. No images were provided of the lower terrace pool showing the existing views accessed however is assumed the view is much more obscured by being lower down. The

view is access over the subject site and across a side boundary which is considered harder to retain. An aerial image identified the view aspect in question.



View corridor is access over the subject site and across a side boundary

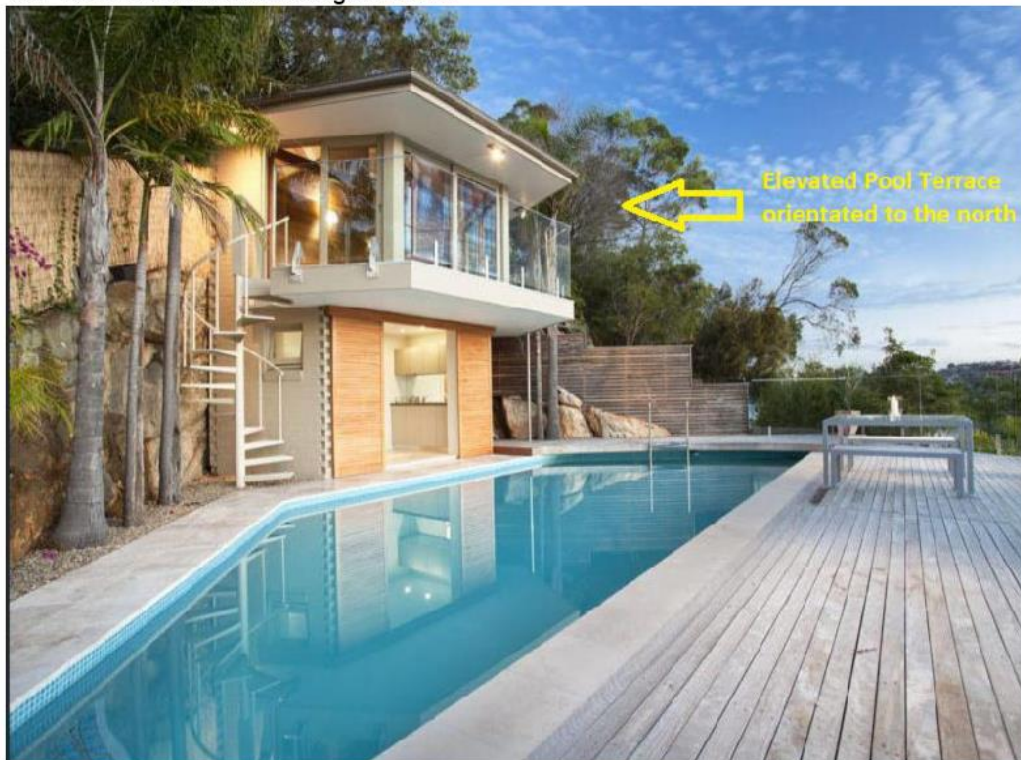
Step 3:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The existing dwelling has max roof ridge height at RL 39.73 as shown on the survey. The proposed development has a varying roof form and varying RL's to the roof ridges. The southern butterfly roof element includes max roof ridge at RL 40.51, the flat skillion section has an RL 38.513 and the northern butterfly roof element has an RL of 39.870 at its highest

points. With the proposed roof levels being a similar height to that of the existing dwelling it is considered that the impact on this view is minor and would retain much of the water and land interface view.

The view is accessed only via an upper level portion of terrace associated with their swimming pool cabana and not considered a balcony primarily used for entertaining considering its size. 71 Castle Circuit has an aspect towards the north and those views will be fully retained. All primary habitable spaces and private outdoor spaces are orientated to the north to capture that view and seen in the images below.



Pool and Terrace areas of 71 Castle Circuit



Primary habitable space of 71 Castle Circuit accessing their Primary Views to the North

Step 4:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The previous proposal included a third storey that has since been deleted with the current scheme. The dwelling will sit comfortably below the 8.5m height development standard, compliant with wall height control and is a 2 storey dwelling with a lower level basement garage, which is consistent with development within the locality given the sloping topography. The proposal is minorly non-compliant with the FSR development standard however is consistent with the undersized lot provisions within the DCP. In that regard, it is considered that the proposal is not unreasonable in terms of its bulk and scale with the floor space being reduced considerably from the previous scheme. The development proposes generous side setbacks and has a minor rear setback non-compliance which is not considered to contribute to any view loss and is reflective of the irregular geometry of the site.

In summation, the view in question is not considered one that has a reasonable expectation to retain considering it is a view across a side boundary, is taken from a small, elevated balcony

and is not the primary outdoor living space. The current scheme ensures greater compliance with the relevant controls and is considered reasonable in its context.

5.3 Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 as Amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(i) The provision of any planning instrument

The proposal is permissible and generally in conformity with the General, Development Type and Locality Specific Controls contained within Manly Development Control Plan.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

N/A

(iii) Any development control plan

Manly DCP applies.

(iiia) Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

N/A

(iv) The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

N/A

(v) Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)

N/A

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,

Context and Setting

i. What is the relationship to the region and local context in terms of:

The scenic qualities and features of the landscape

The character and amenity of the locality and streetscape

The scale, bulk, height, mass, form, character, density and design of development in the locality

The previous and existing land uses and activities in the locality

The proposed dwelling is entirely commensurate with that established by adjoining development and development generally within the sites visual catchment with no adverse residential amenity impacts in terms of views, privacy or overshadowing.

ii. What are the potential impacts on adjacent properties in terms of:

Relationship and compatibility of adjacent land uses?

sunlight access (overshadowing)

visual and acoustic privacy

views and vistas

edge conditions such as boundary treatments and fencing

These matters have been discussed in detail earlier in this report. The works have been designed such that potential impacts are minimal and within the scope of the built form controls.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

Travel Demand

dependency on motor vehicles

traffic generation and the capacity of the local and arterial road network

public transport availability and use (including freight rail where relevant)

conflicts within and between transport modes

Traffic management schemes

Vehicular parking spaces

Integrated double car garage is proposed and commensurate with surrounding development.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

Existing utility services will continue to service the dwelling house.

Flora and Fauna

N/A

Waste Collection

Normal domestic waste collection applies to the existing dwelling house.

Natural hazards

A geotechnical report and bushfire report has been provided.

Economic Impact in the locality

The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works.

Site Design and Internal Design

Is the development design sensitive to environmental considerations and site attributes including:

size, shape and design of allotments

The proportion of site covered by buildings

the position of buildings

the size (bulk, height, mass), form, appearance and design of buildings

the amount, location, design, use and management of private and communal open space

Landscaping

These matters have been discussed in detail earlier in this report. The potential impacts are minimal and within the scope of the general principles, desired future character and built form controls.

How would the development affect the health and safety of the occupants in terms of:

lighting, ventilation and insulation

building fire risk – prevention and suppression

building materials and finishes

a common wall structure and design

access and facilities for the disabled

likely compliance with the Building Code of Australia

The proposed development will comply with the provisions of the Building Code of Australia as required by Clause 98 of the Environmental Planning and Assessment Regulation 2000. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health and safety.

Construction

What would be the impacts of construction activities in terms of:

The environmental planning issues listed above

Site safety

The development will be carried out in accordance with the provisions of the Protection of the Environment Operations Act 1997. Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

Does the proposal fit in the locality

Are the constraints posed by adjacent development prohibitive

Would development lead to unmanageable transport demands and are there adequate transport facilities in the area

Are utilities and services available to the site adequate for the development

Are the site attributes conducive to development

The site is located in an established residential area. The adjacent development does not impose any unusual or impossible development constraints. The proposed development will not cause excessive or unmanageable levels of transport demand.

The site being of moderate grade, adequate area, and having no special physical or engineering constraints is suitable for the proposed works.

(d) Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

(e) The public interest

The architect has responded to the client brief to provide for a dwelling of design merit that provides a high level of amenity for the future occupants whilst appropriately addressing the sites setting and maintaining the amenity of the nearby residential properties. The development will provide a quality built form outcome on the site.

It is considered that the public interest is best served in providing certainty in the planning process through encouraging development of good design that satisfies the outcomes and controls contained within the adopted legislative framework. Accordingly, approval of the development would be in the public interest.

6 Conclusion

The proposed dwelling is permissible and consistent with the intent of the LEP and DCP controls as they are reasonably applied to the proposal. The proposed variation to the FSR development has been well founded and demonstrates sufficient environmental planning ground to warrant the minor variation.

It is considered that the proposal is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The application has considered and satisfies the various relevant planning controls applicable to the site and the proposed development.
- The proposed dwelling is compatible with the existing streetscape and development in the local area generally.
- The proposed dwelling will have a satisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as suitable for the proposal, having regard to the relevant land use and planning requirements.

It is considered that the public interest is best served in providing certainty in the planning process through encouraging development of exceptional design merit, that satisfies the outcomes and controls contained within the adopted legislative framework.

Having given due consideration to the matters pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

ANNEXSURE 1

RE: CLAUSE 4.6 REQUEST TO VARY THE FLOOR SPACE RATIO 69 CASTLE CIRCUIT, SEAFORTH

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of Manly Local Environmental Plan 2013 (MLEP) the floor space ratio control applicable to the site is 0.4:1. The objectives of this control are as follows:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposed gross floor area is calculated at 299.41m² representing an FSR of 0.49:1. This represents a non-compliance of 54.6m² or 22%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 FSR Development Standard.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the FSR provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) of MLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court

Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

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

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

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

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

4.0 Request for variation

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

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

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

Consistency with objectives of the Floor Space Ratio standard

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

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

Response: The dwelling have been designed to be consistent with the existing streetscape character. The design has been revised since a previously withdrawn application to delete the proposed third storey element to be more consistent with the scale of development in the area. The 2 storey form with lower level basement garage is consistent with the scale and character

of development in the locality. Development in the local area range in scale from 2 to 5 storeys due to the nature of the topography with architecture character varying in design.

We note that the dwelling will sit comfortably below the 8.5m height development standard.

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

This objective is achieved as the bulk and scale of development is entirely consistent with the existing and desired streetscape character.

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

Response: The proposal does not result in any obstruction of important landscape or townscape features. We note that the proposal is compliant with the 8.5m height development standard, wall heights, envelope and provides generous side setbacks. In this regard, it is considered that the non-compliance to FSR does not contribute to any unreasonable bulk and scale concerns.

The new dwelling will essentially maintain the existing scale of development on the site which is a 2 storey dwelling with the current proposal including a basement garage located where there is currently a large sandstone retaining wall. In this regard, a garage door will replace the sandstone wall and essentially maintain the existing bulk established by the sandstone retaining wall.

The proposal meets this objective.

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

Response: The development maintains an appropriate visual relationship with the character of development in the area. Landscaping treatments are proposed to provide a softening and screening of the built form while also providing additional privacy screening for the immediate adjoining neighbours. Furthermore, the dwelling has been designed to be highly articulated, and include generous side setbacks and modest wall heights to maintain an appropriate visual relationship.

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

Response: The works would not result in any impact on the use or enjoyment of adjoining land and the public domain. The proposal maintains appropriate levels of amenity with regard to view loss, overshadowing and privacy despite the FSR variation.

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

Response: N/A

Consistency with zone objectives

The subject site is zoned R2 Low Residential pursuant to MLEP 2013 with dwelling houses permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: The development relates to a new single dwelling which maintains the existing use.

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

Response: N/A

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

The non-compliant component of the development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

4.2 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying

out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds exist to justify the FSR variation. Specifically, the environmental planning grounds consist of the following:

- The proposal is consistent with the existing streetscape character by providing a dwelling that is 2 storeys with a basement garage. This is consistent with development in the vicinity. The proposal will sit comfortably below the 8.5m height development standard.
- The proposed FSR is reasonable within its context of the locality whilst the proposed built form is considered to be reasonable when compared to existing development within the streetscape. The subject site is consistent with the undersized lot provisions (cl: 4.4.3.1) with the Manly DCP which states that Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. In this regard, we note that the minimum lot size applicable is 750m² resulting in a maximum GFA of 300m². The proposed GFA is compliant with the 300m² control and this report has demonstrated consistency with the FSR and zone objectives within the LEP.
- The works have been designed to maintain a predominately 2 storey form which maintains view corridors over the subject site from 71 Castle Circuit. Again, we note that the proposal sits below the 8.5m height limit. Significant side setbacks to the ground and first floor provides relief from any visual impact with the proposed wall heights also being compliant. Total open space and landscaping are also compliant with the DCP control. Compliance with the numerical controls within the LEP and DCP is reflective of the considered design approach to limit any potential bulk and scale and visual impact concerns despite the FSR variation.
- The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. The concerns raised by Council with the previous application with regard to view loss of 71 Castle Circuit have been addressed by removing the third storey with the previous scheme. As outlined in the statement of environmental effects, views will be maintained over the subject site despite the view being accessed across a side boundary and the proposal being compliant with 8.5m height development standard.
- We note that Council has applied the FSR development standard flexibility in this locality and have approved variations provided that the undersized lot provisions within the DCP can be met. 60 Castle Circuit (DA2020/1585) most recently was approved for a new dwelling with an FSR of 0.47:1 and had a floor area of 300m², consistent with the DCP undersized lot provision.

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining

development and development generally within the site's visual catchment, and the fact that the existing GFA/FSR is reduced as a consequence of the works proposed.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought.

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

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

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

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

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

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

4.4 Secretary's concurrence

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

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

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

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

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the FSR standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and FSR standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

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

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a FSR variation in this instance.

ITEM 3.5	MOD2021/0872 - 29 SYDNEY ROAD MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA232/2010 GRANTED FOR CHANGE OF USE FROM BEAUTY SALON TO BAR/HOTEL AND FITOUT
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2022/091185
ATTACHMENTS	1 ↓Assessment Report

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2021/0872 for Modification of Development Consent DA232/2010 granted for change of use from beauty salon to bar/hotel and fitout on land at Lot A DP 318834, 29 Sydney Road MANLY, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0872
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot A DP 318834, 29 Sydney Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA232/2010 granted for Change of use from beauty salon to bar/hotel and fitout
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Cherie Helen Humel Michael Christian Clarke
Applicant:	Robinson Urban Planning Pty Ltd

Application Lodged:	11/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/11/2021 to 07/12/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is for modification of Development Application No. 323/2010, which was granted consent for change of use from beauty salon to bar/hotel and fitout on 18 October 2010. The aforementioned consent was granted by the former Manly Council Development Application Unit, which is the equivalent determination level as the Northern Beaches Development Determination Panel (DDP). As this application has been lodged pursuant to Section 4.55(2) of the EP&A Act 1979, the application is referred to the DDP in accordance with Council's delegation protocols.

This particular modification seeks to permanently increase the approved operational hours from 10:00am - 12:00am midnight Monday to Saturday and 10:00am - 10:00pm Sunday (**approved hours**) to 10:00am - 12:00am midnight Monday to Sunday (**proposed hours**). Furthermore, this application seeks to extend the operational hours to 10:00am - 2:00am Monday to Sunday on a 1 year

trial basis. The maximum number of patrons (85) will not be increased as part of this modification.

When considered on its merits, it has been concluded that the modified development will be consistent with relevant aims and requirements for late night venues within the Manly Town Centre precinct. Suitable conditions are recommended with this consent to ensure that a reasonable level of amenity is maintained to nearby residencies'.

The modified development was notified in accordance with the Northern Beaches Community Participation Plan and received zero (0) submissions.

It is recommended that the DDP approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 18 October 2010 under Development Application No. 323/2010 for change of use from beauty salon to bar/hotel and fitout.

This application has been lodged pursuant to Section 4.55(2) of the EP&A Act 1979 seeking to amend the development consent as follows:

- Extend the approved hours of operation from 10:00am - 12:00am midnight Monday to Saturday and 10:00am - 10:00pm Sunday (**approved hours**) to 10:00am - 12:00am midnight Monday to Sunday (**proposed hours**).
- Extended trading on a 1 year trial basis to 10:00am - 2:00am Monday to Sunday.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
Manly Development Control Plan - 4.2.5.4 Car Parking and Access
Manly Development Control Plan - 4.2.5.6 Late Night Venues

SITE DESCRIPTION

Property Description:	Lot A DP 318834 , 29 Sydney Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment with frontages to Sydney Road and Market Place, Manly. The site has an area of 195.3sqm.</p> <p>The site is located within the B2 Local Centre zone pursuant to Manly LEP 2013 and accommodates a two storey commercial building. The subject premises (Donny's Bar) fronts Market Place and occupies the ground and first floors.</p> <p>The site is devoid of landscaping and is level with no slope.</p> <p>The site does not contain a heritage item, however is located within the Town Centre Conservation Area.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by multi storey mixed use buildings, bars/hotels and a library.</p>

Map:



SITE HISTORY

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

- **Development Application No. 323/2010** for change of use from beauty salon to bar/hotel and fitout approved by Manly Council Development Assessment Unit on 18 October 2010.
- **Building Certificate No. 323.10.2010BC** for unauthorised works relating to Development Application No. 323/2010 issued by Manly Council on 19 October 2010.
- **Section 4.55(1A) Modification to modify Development Application No. 323/2010** approved by Manly Council on 11 August 2011.
- **Development Application No. 77/2016** for alterations and additions to existing commercial building for the use as a restaurant/cafe, consolidation of shops, addition of a new first floor, new mezzanine level, rooftop terrace, outdoor eating areas, extension to the hours of operation from Monday to Saturday 7.00am to 12.00am (indoor), Sunday 7.00am to 10.00pm, (indoor), Monday to Saturday 7.00am to 10.30pm (outdoor) and Sunday 7.00am to 10.00pm (outdoor) – Donny's Bar refused by the Northern Beaches Independent Assessment Panel (NBIAP) on 15 September 2016. The application was subsequently appealed in the NSW Land and Environment Court and an agreement was made between Council and the applicant pursuant to Section 34(3) of the Land and Environment Court Act 1979. The date of the court orders were issued on 24 October 2017. It is important to note that this consent has not been activated.

APPLICATION HISTORY

The Development Assessment planner examined the site and the surrounds on 18 January 2022.

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 Development Application No. 323/2010, 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	The development, as proposed, has been

Section 4.55 (2) - Other Modifications	Comments
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>found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under Development Application No. 323/2010 for the following reasons:</p> <ul style="list-style-type: none"> • The modified development will not alter the height and floor space of the existing building. • The modified development does not increase the number of patrons on the site. • The existing management and security operations are maintained. • The modified development does not alter the approved land use.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application Development Application No. 323/2010 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/11/2021 to 07/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	General Comments Donny's Bar proposes an increase in operating hours, extending until 2 am each day. Given the provided acoustical justification, and appropriate controls, we support the trial period of one year.
Property Management and Commercial	The proposal is for the extension of the operating hours of the indoor section of the premises. Property has no objections to the proposal as submitted, subject to the imposition of a condition that these hours apply to the indoor premises and not the outdoor dining.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	 The proposal has been referred to Heritage as the subject site is located within the C2 - Town Centre Conservation Area and in the vicinity of heritage items, listed in Schedule 5 of Manly LEP.
	Item I106 - Group of commercial buildings - All numbers, The Corso
	Item I108 - Group of commercial buildings - 41–45 The Corso
	Item I231 - Congregational Church - Sydney Road (corner of Whistler Street)
	Item I234 - Group of 5 commercial buildings - 39–47 Sydney Road
	Details of heritage items affected
	Details of the conservation area and the heritage items as contained within the Northern Beaches Heritage inventory are:
	C2 - Town Centre Conservation Area

Internal Referral Body	Comments
	<p><u>Statement of significance:</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p>Item I106 - Group of commercial buildings <u>Statement of significance:</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p>Item I108 - Group of commercial buildings <u>Statement of Significance:</u> The group is of major significance for its contribution to the streetscape of The Corso and as extant 19th century commercial architecture. <u>Physical Description:</u> Group of (originally) five two storey brick buildings with painted stone face and mixture of slate, iron and tiled roofs. The buildings were originally constructed as a symmetrical group: the two end buildings bearing paired gabled ends over first floor with mock Tudor design in timber and render on the western end and intaglio design on the eastern.</p> <p>Item I231 - Congregational Church <u>Statement of significance:</u> Congregational Church in Whistler Street is of significance for Manly area for its historical, aesthetic and social reasons, and for the rarity and representativeness of its qualities. The site has a long association with the local community for spiritual reasons, being a place of public worship since the 860s when the current building was created. The church building is a major landmark visible from the direction of Sydney Road and Whistler Street and makes an important contribution to the townscape character. The building is representative of stone churches of its date of creation, particularly of Victorian Rustic Gothic architectural style, which is rare in the local area context. It is believed to be "the oldest church in Manly".</p> <p>Item I234 - Group of 5 commercial buildings</p>

Internal Referral Body	Comments		
	<u>Statement of significance:</u> A fine representative and unified group of Federation Queen Anne style shops.		
	<u>Physical description:</u> Fine terrace of Federation Queen Anne style 2 storey shops, alternately brick and roughcast stuccoed, terminating in a 3 storey corner shop featuring a 2 storey oriel window.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for modifications to the terms and conditions of the approved consent - DA0232/2010. The property is not a listed heritage item, however it is located within the Town Centre Conservation Area and in the vicinity of a number of heritage items.		
	Given the proposal does not involve any works to the property, it is considered that, there will be no adverse impact upon the significance of the conservation area or the heritage items in the vicinity.		
	Therefore, no objections are raised on heritage grounds and no conditions required.		
	<u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
	Further Comments		
COMPLETED BY: Oya Guner, Heritage Advisor			
DATE: 17 November 2021			

Internal Referral Body	Comments
Traffic Engineer	No traffic objections to the proposal

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police – Crime Prevention Office (Local Command matters)	The application was referred to the NSW Police for comment. No response was provided within the prescribed 14 day period and therefore, it is assumed that no comments will be provided.
NSW Police – Licensing (Clubs, Hotels, Pubs)	The application was referred to the NSW Police for comment. No response was provided within the prescribed 14 day period and therefore, it is assumed that no comments will be provided.

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 commercial 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 commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

There are no applicable principal development standards.

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.21 Noise impacts—licensed premises	Yes

Detailed Assessment

6.21 Noise impacts—licensed premises

The application involves extending the proposed operational hours to 10:00am - 12:00am midnight Monday to Sunday on a permanent basis, including extended trading on a 1 year trial basis to 10:00am - 2:00am Monday to Sunday.

Clause 6.21 of Manly LEP 2013 requires as follows:

(2) Before granting development consent for development involving the use of land as licensed premises under the [Liquor Act 2007](#), the consent authority must consider the impact of any noise nuisance likely to be generated by the proposed development on residential accommodation in the vicinity of the proposed development.

Comment:

The application has been accompanied by an Acoustic Noise Impact Assessment (prepared by WSP, dated 13 October 2021) stating that the proposed extended operational hours would not detrimentally impact upon the amenity of nearby residencies within the town centre precinct. Council's Environmental Health Officer has reviewed this application and supported documentation and raises no objections to the increase in hours, subject to conditions. It is further noted that the extended hours are consistent with the operational hours for late night venues prescribed within Clause 4.2.5.6 of the Manly DCP 2013. Furthermore, the extended hours will not increase the maximum number of patrons permitted within the premises.

For these reasons, it is considered that the proposal is consistent with the requirements of Clause 6.21 of Manly LEP 2013, subject to conditions.

Manly Development Control Plan

Built Form Controls

There are no applicable Built Form Controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.2.5.6 Late Night Venues	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including

B6 Enterprise Corridor

Refer to Clause 4.2.5.4 for detailed assessment regarding onsite parking.

4.2.5.4 Car Parking and Access

Description of non-compliance

The Manly DCP 2013 off-street parking requirements for food and drink premises' are as follows:

- 1 parking space for every 40sqm of gross floor area of serviced area.

The site has an area of approximately 150sqm. There is insufficient information provided to determine the serviced area and hence, 150sqm will be applied to determine the number of off-street parking spaces required. Based on the above calculation, a total of 4 off-street parking spaces is required (rounded up to nearest number as per Manly DCP 2013 requirements).

The food and drink premises currently has no off-street parking and no off-street parking is proposed. Therefore, the modified development does not satisfy this requirement.

Merit consideration

The control does not have any objectives to refer to. However, when considering the proposal on merit, it is important to note that there is no existing vehicular access to the site and the provision of such access is impractical due to the site being located within the area of Market Lane that does not have a public road and is assigned for pedestrian use only. The modified development does not increase the number of patrons permitted on the site. Furthermore, the site is located within 100m from a Council carpark and is well serviced by public transport on nearby public roads. It is further noted that Council's Traffic Engineer has reviewed the application and raises no objections to the proposal.

For the reasons outlined above, Council can be satisfied that the proposal will not result in adverse traffic or parking.

4.2.5.6 Late Night Venues

The modified proposal (and the approved development) is considered to be a late night venue. Clause 4.2.5.6 of the Manly DCP 2013 sets out the following requirements for late night venues:

Intensity of Development

a) In order to provide diversity, it is proposed to limit the number of patrons which attend late-night licensed venues within the Entertainment Precinct. Within the Entertainment Precinct the total number of patrons capable of being accommodated within Late Night Venues must not exceed 8000 persons. Exceptions to this will only be granted where Council is satisfied that the existing levels of adverse impact will not be added to nor detract from opportunities to provide a diverse range of alternative entertainment activities.

Comment:

The modified development does not increase the maximum number of patrons permitted on the site, which is 85 persons.

Hours of Operating (maximum)

b) The maximum hours for hotels, nightclubs, restaurants & food outlets are as follows:

i) Hotels & Nightclubs: from 5am up to 2am (next day) and with a restricted entry policy for Nightclubs after 12.30am; and

ii) Restaurants & Food Outlets: from 5am up to 1am (next day).

Comment:

The proposed operational hours are consistent with the requirements set out above.

Noise Control

c) Requirements of this plan in relation to licenced premises at paragraph 3.4.2.4 d - g apply to apply to licensed Late Night Venues under this paragraph.

Comment:

Conditions have been included with this consent requiring the premises to adhere to requirements set out within the Plan of Management, which in turn, will ensure that a reasonable level of acoustical amenity is maintained to nearby residencies'. Council's Environmental Health Department have reviewed the proposal with respect to noise generation and raised no objections, subject to conditions.

Security

d) Proprietors of Late Night Venues must enter into arrangements with Council for the provision of late night security of the premises and the adjacent public areas.

Comment:

Condition No. ANS10 imposed under the previous Section 4.55 Modification requires a licensed security officer is to be provided from 9:00pm until close Fridays and Saturdays and from 7:00pm until close on Sundays where the following day is a public holiday.

Access to Public spaces

e) Frontages to public spaces must be designed to minimise conflict between customers within the establishments and public using the public spaces.

Comment:

Public access to the site is maintained via the Market Place frontage. The entrance is clear and will not result in conflict between use of the building, and use of the public domain.

Decks, Balconies & Roof Top Area

f) Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily.

Comment:

The proposal does not include any of the above areas and therefore, this requirement is not relevant.

g) Liquor Accord

Proprietors of the licensed premises must be a financial member of any applicable Liquor Accord and cc-social behaviour and adverse effects of excessive alcohol consumption.

Comment:

The premises has a liquor license to meet this requirement.

Design

h) Applications must demonstrate how the design and operation of licensed venues take into account best practice outlined in the document titled "Alcohol & Licensed Premises: Best Practice in Policing" S Doherty and A Roche 2003.

Comment:

The existing premises meets this requirement.

Conclusion

Based on the above assessment, it is concluded that the modified development satisfies the relevant requirements of this control, subject to conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

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

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

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

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

The modified development seeks to permanently increase the approved operational hours from 10:00am - 12:00am midnight Monday to Saturday and 10:00am - 10:00pm Sunday (**approved hours**) to 10:00am - 12:00am midnight Monday to Sunday (**proposed hours**). Furthermore, this application seeks to extend the operational hours to 10:00am - 2:00am Monday to Sunday on a 1 year trial basis. The maximum number of patrons (85) will not be increased as part of this modification.

When considered on its merits, it has been concluded that the modified development will be consistent with relevant aims and requirements for late night venues within the Manly Town Centre precinct. The proposed operational hours are consistent with surrounding late night venues within the precinct. Suitable conditions are recommended with this consent to ensure that reasonable levels of amenity are maintained to nearby residencies'.

Therefore, the application is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0872 for Modification of Development Consent DA232/2010 granted for Change of use from beauty salon to bar/hotel and fitout on land at Lot A DP 318834,29 Sydney Road, MANLY, subject to the conditions printed below:

Conditions to be Imposed under this Modified Development Consent

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

Condition 1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans/Documentation

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management for the Operations of Donny's Bar & Restaurant, Manly	October 2021	not specified
Acoustic Noise Impact Assessment Ref. PS126980	13 October 2021	WSP

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

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

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

Condition 32 - Compliance with the Plan of Management

At all times, operations are to comply with the Plan of Management approved as part of this development application determination.

Reason: Minimise amenity impacts on residential receivers, according to relevant guidelines and legislation.

Condition 33 - Acoustic Assessment of Noise Criteria Prior to Extension of Trading Hours Trial End

Prior to the end of the 12 month trial of extension of trading hours, a report of acoustic assessment is to be provided to Council demonstrating that the relevant project criteria in Section 2 of the document "Donny's bar extension of hours - acoustic noise impact assessment", referenced PSA126980, dated 13 October 2021 and prepared by WSP, are being met between the hours of 12:00am midnight and 2:00am.

The report must be prepared and conducted by a suitably qualified acoustic consultant.

Reason: Ensure that appropriate acoustic criteria are being met according to this development application determination.

Condition 34 - Hours of Operation

The hours of operation are to be restricted to:

- Monday to Sunday (inclusive of Public Holidays): 10:00am - 2:00am the following day.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

The increased hours modified by this condition are only approved on a trial basis for 1 year from the

date this modified consent is issued. Upon completion of this 1 year period, the operational hours will be confined to the following times:

- Monday to Sunday (inclusive of Public Holidays): 10:00am - 12:00am midnight.

Reason: To ensure that amenity of the surrounding locality is maintained.

Condition 35 - Change of operating hours does not apply to outdoor dining

The new hours of operation are applicable to the indoor section of the premises only and do not apply to outdoor dining. Any modification to outdoor dining shall be the subject of a separate application under Council's Outdoor Dining and Footpath Merchandise Policy.

Reason: To ensure outdoor dining is appropriately regulated under the provisions of the Roads Act 1993.

Conditions to be deleted from Development Application No. 323/2010

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

Condition 21(6BS01)

The hours of operation of the premises (i.e. hours open for business) must not exceed 10.00am to 12.00 midnight Monday to Saturday inclusive and 10.00am to 10pm Sunday without the prior approval of Council.

Reason: To ensure amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality.

Conditions to be Modified from Development Application No. 323/2010

GENERAL CONDITIONS RELATING TO APPROVAL

Condition ANS02 to be amended to read as follows:

ANS02

The use is restricted to the following:

- The use of the premises is to be in accordance with any relevant Liquor License issued under the *Liquor Act 2007*.
- The use of the premises is to be undertaken in accordance with the *Responsible Service of Alcohol* Guidelines.

Reason: To protect and ensure public safety and maintain the amenity of the area.

Condition ANS10 to be amended to read as follows:

ANS10

The premises are to be operated at all times in accordance with the Plan of Management dated October 2021. A licensed security officer is to be provided from 9:00pm until close Fridays and Saturdays and from 7:00pm until close on Sundays where the following day is a public holiday.

Reason: To ensure the premises are operated in a safe manner and minimise anti-social behaviour within and in the immediate vicinity of the premises.