AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 9 MARCH 2022



Ashleigh Sherry
Manager Business System and Administration

northern beaches council

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 23 FEBRUARY 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 23 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	**DA2021/1698 - 68 BOWER STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL, SPA AND GARAGE**
REPORTING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2022/126309**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. THAT Council as the consent authority **approves** Development Consent to DA2021/1698 for alterations and additions to a dwelling house including a swimming pool, spa and garage on land at Lot 12 DP 8075, 68 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1698

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 12 DP 8075, 68 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool, spa and garage
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Craig John Taylor The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney
Applicant:	Craig John Taylor

Application Lodged:	28/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/10/2021 to 26/10/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 18.4%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,160,997.00

EXECUTIVE SUMMARY

The application is for alterations and additions to a dwelling house which mainly relate to construction of a garage, cabana outbuilding, a new pool with spa, landscaping and works to selected private opens space areas. The proposal is referred to the Development Determination Panel as the proposal affects the floor space ratio (FSR) that currently exceeds 10% of the FSR development standard under Manly Local Environmental Plan 2013. The current FSR non compliance of 26.7% is reduced via the proposal to 18.4%.

The critical assessment issues for the proposal relate to the new garage and streetscape, FSR

considerations, landscaping works and foreshore considerations given the demolition of an existing pool. The applicant has addressed the FSR in terms of the current pattern of development on the site and merit considerations for the new work. Assessment concerns with regard to setbacks and the streetscape are addressed by minor amendments made to the plans in context of the ancillary structures only. The main structure of the existing house will remain unchanged.

The new work complies with the building height but not FSR. The proposal has some non-compliant elements associated with front and side setbacks and private open space. However, this is considered to be reasonable (with the minor plan revisions submitted) in circumstances where the site is section of Bower Street where the dominant pattern of housing, garages and landscaping along the eastern side of the road is similar. All internal referrals support the proposal subject to conditions. No outstanding issues are raised pursuant to notification of the proposal , amenity considerations, engineering or landscaping works (including bandicoot habitat area).

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site, subject to conditions to address streetscape and landscaping matters.

PROPOSED DEVELOPMENT IN DETAIL

The proposed works are alterations and additions to a dwelling house, including a new (replacement) swimming pool:

Specifically, the new works include:

- Majority demolition of an outbuilding (converted garage) and subfloor area and site preparation works.
- New double garage and re-instate driveway.
- Cabana / wet gear storage.
- Bin store (amended).
- New inground swimming pool with paved surround.
- New spa to be contained within an existing elevated retained area.
- Outdoor seating area.
- New landscaping within front (replace converted garage and fill subfloor).
- Landscaping and retaining walls in rear yard.
- Drainage, fencing and ancillary site works.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.5.5 Landscaping
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 5 Special Character Areas and Sites
Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 12 DP 8075 , 68 Bower Street MANLY NSW 2095
Detailed Site Description:	The land is 703.7 square metres (sqm) in area with at maximum dimensions of 47.38 metres (m) and 15.40m and is located on the eastern side of Bower Street. At the rear the land falls steeply toward the edge of the Manly-Shelly Beach walkway with a series of low retaining walls and low coastal vegetation along the escarpment. The site also contains an outbuilding in the front setback and a swimming pool at the rear (on the edge of the escarpment). The front and side boundaries are fenced with masonry / cement rendered walls. Vehicular access is available from Bower Street with the existing parking being a hardstand area The site is in a location with broad views of the ocean to the north and east and coastline to the north. Dwellings opposite the site on the western side of Bower Street have broad views over the site due to their higher elevated positions. There are no significant trees on the site, however the land is identified as potential habitat for threatened species (penguin / long nosed bandicoots). The existing structures on the site including masonry boundary walls / paving / glass fencing areas do not include any unique rock outcrops, major trees and natural bushland.

Map:



SITE HISTORY

Development Application No.556/03 for alterations and additions to a dwelling house including a first floor addition was approved by Council in 16.7.2004. This consent was subsequently modified on 6.12.2011.

Development Application No.21/2015 for alterations and additions to an existing dwelling house including lower ground floor additions, internal and external alterations was approved by Council on 28.10.2015.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was sought in terms of a clause 4.6 to address the MLEP, as it was noted the overall FSR, despite currently approved above the maximum FSR now reduced overall by way of amended plans dated 20.1.2022. The additional information was required for clarification of FSR elements to address DA requirements for Clause 4.4 and received on 8.2.2022. As part of that process minor changes were included for landscape and storage elements after the applicant had separate discussions with an adjacent owner to address an online submission. The plans changes could otherwise have been conditions but were mutually resolved and therefore the amended information / plans do not warrant renotification of the application pursuant to the *Community Participation Plan.* Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. This includes considerations of views, privacy, coastal environment, setbacks, access, site works, drainage, solar access, landscaping and the local amenity. The site has an existing stormwater scheme (prepared by *Partridge* Hydraulic Services from previous approved renovation work which the current proposal will connect into. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 Matters for Consideration'	Comments
	(iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 12/10/2021 to 26/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Noel Carroll Mrs Pauline Veronica Carroll	70 Bower Street MANLY NSW 2095

One submission was received during the notification period in relation to site levels along the boundary line. This was mutually resolved by the applicant with minor amendment / clarification on the plans and the submission was withdrawn. Conditions of consent still apply to ensure appropriate drainage, dilapidation management. Side boundary fencing issues associated with the (NSW) *Dividing Fences Act* are administered through the local court system and not Council.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	**Supported with conditions** <u>General Comments</u>

Internal Referral Body	Comments
	Environmental Health have been requested to provide comment on a fire place that is to be amended by a flue extension due to a roof extension as part of additions to the dwelling. Limited information is provided on the existing fireplace. Given the age of the dwelling and a review of the property file finding no "Section 68" application or development application for installation of a solid fuel heater, it is likely that the existing fireplace is a brick and mortar open fireplace as opposed to an enclosed solid fuel heater. Brick and mortar fireplaces provide a very inefficient burn with elevated particulates that pose a risk to public health and the environment. Environmental Health understand that historic fireplaces exist and will only require their removal if the smoke generated from them are found to be excessive or if they are amended as part of a development application. Given that an amendment to the flue is required for this development application, conditions requiring upgrade of the flue and solid fuel heater are required to ensure compliance with relevant Australian Standards.
Landscape Officer	**Supported with conditions.** The development application is for the alterations and additions to the existing dwelling comprising a new garage, swimming pool, spa pool and associated landscaping. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping The existing site contains paved areas, decks, small garden areas with existing palms within the frontage of the property, retaining walling, stairs, and lawn terrace at the mid rear area, and a steep in accessible embankment at the rear of the property containing undisurbed vegetation. The existing front setback has minimal landscape area and is covered by paved areas and a studio building and thus the proposal removes any opportunity for tree planting within the front setback. A Landscape Plan is submitted with the application indicating removal of two existing exempt palms not requiring Council consent, and additional landscape works to enhance the landscape setting. Should the Planner raise no merit concerns with the front setback, Landscape Referral raise no objections subject to the completion of landscape works.
NECC (Bushland and Biodiversity)	**Supported with conditions.** The application seeks approval for the alterations and additions to an existing dwelling including new garage, swimming pool and

Internal Referral Body	Comments
	associated landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: <u>Biodiversity Conservation Act 2016 (BC Act)</u> <u>State Environmental Planning Policy (Coastal Management) 2018</u> • Coastal Environment Area <u>Manly Local Environmental Plan (MLEP)</u> • Clause 6.5 (Terrestrial Biodiversity) <u>Manly Development Control Plan (MDCP)</u> • Clause 3.3.1. a) iv) Landscaping Design • Clause 5.4.2 Threatened Species and Critical Habitat Lands The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, the development is to be accompanied by a 'test of significance' prepared in accordance with Section 7.3 of the BC Act. An ecological impact assessment with test of significance for the endangered bandicoot population has been submitted with the DA and concludes that the proposal will not have a significant impact on the population. Given that the proposal is generally within the existing footprint, Council's Biodiversity referral body concur with this conclusion, subject to recommended conditions to maintain bandicoot access and mitigate construction-related impacts. As the proposal is located largely within the existing footprint, and does not require the removal of prescribed trees or vegetation, nor is it likely to impact on soft open space or nearby biodiversity values, the Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	**Supported with conditions.** This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 13, 14 & 15); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies.

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>The application is supported subject to conditions:
• Installation and maintenance of erosion and sediment controls (prior to commencement).</td></tr>
<tr><td>NECC (Development Engineering)</td><td>Supported with conditions.

Development Engineering has no objection to the application subject to conditions of consent.</td></tr>
<tr><td>Parks, reserves, beaches, foreshore</td><td>Supported with conditions.

The development application is for the alterations and additions to the existing dwelling comprising a new garage, swimming pool, spa pool and associated landscaping.

The property adjoins the Shelley Beach Reserve and Marine Parade walkway located downslope. All works adjoining this portion of land must ensure that sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from entering the Reserve and the Marine Parade walkway.

Parks referral raises no objections to the proposal.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>Supported without conditions.

<table>
<tr><td>HERITAGE COMMENTS</td></tr>
<tr><td>Discussion of reason for referral</td></tr>
<tr><td>This application has been referred as it is within the vicinity of a heritage item, being Item I168 - Ocean foreshores. There are 2 other heritage items nearby, but these are located more than 50 metres from the subject site (Item I167 - Fairy Bower Pool and Item I86 - 50 Bower Street)</td></tr>
<tr><td>Details of heritage items affected</td></tr>
<tr><td>Details of this heritage item in the vicinity, as contained within the Heritage Inventory, are:

Item I168 - Ocean foreshores
<u>Statement of Significance</u>
Natural landscape. Part of coastal zone east coast of Australia. Part entrance to Sydney Harbour. Listed due to its aesthetic, historic, and scientific significance to the area.
<u>Physical Description</u>
Ocean foreshores, mostly rocky edge and cliff or beach sand system. Natural environment. High scenic quality.</td></tr>
<tr><td>Other relevant heritage listings</td></tr>
<tr><td>
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td>Comment if applicable</td></tr>
<tr><td>Australian Heritage</td><td>No</td><td></td></tr>
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Internal Referral Body	Comments

Register		
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	No	

Consideration of Application

This application is for alterations and additions to the existing dwelling, including new garage, swimming pool and associated landscaping. The site is separated from the ocean foreshore by a public walkway and due to the nature of the land, the existing dwelling sits high above this pedestrian walkway.

None of the proposed works will impact upon the ocean foreshore. The proposed works are minor additions to the existing house and will not have an adverse visual impact upon the heritage item.

Consider against the provisions of CL5.10 of MLEP 2013:
Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? N/A
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? N/A

Therefore no objections are raised on heritage grounds and no conditions required.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to *Ausgrid* who provided a response received 3.11.2021 stating that the proposal is acceptable subject to compliance with the relevant powerline clearances and *Ausgrid Network Standards* and *SafeWork NSW Codes of Practice*. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	**Supported with conditions.** Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

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 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 alterations and additions involving a new parking structure, landscaping, pool area changes, outdoor awning and ancillary works to the dwelling.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A427452 dated 12.8.2021).

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

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

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. A referral response was received on 3.11.2021 and no objections are raised with *Ausgrid* standard requirements included.

Other Service Infrastructure Authorities
The proposal was not required to be referred to the *Roads and Maritime Service* and no other service infrastructure referral issues are raised pursuant to the SEPP. Sydney Water requirements and asset connections are administered through separate processes directly by Sydney Water.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

- *(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- *(b) coastal environmental values and natural coastal processes,*
- *(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- *(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- *(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- *(f) Aboriginal cultural heritage, practices and places,*
- *(g) the use of the surf zone.*

Comment:
In summary, the proposal is consistent with Clause 13 of SEPP Coastal Management (2108) including the "Coastal Use Area" and "Development in the Coastal Zone Generally" areas with no unreasonable impact with regard to SEPP coastal area considerations, including height, appearance, landscaping, site management and the like. The pool area works will be re-instated similar to the appearance existing with sandstone terraces and grassed areas with balustrades and steps.

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

- *(a)* the development is designed, sited and will be managed to avoid an adverse impact

referred to in subclause (1), or

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

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

Comment:
In summary, the proposal is consistent with coastal area considerations for design, including siting, height, appearance, landscaping, site management and the like. Conditions are applied to ensure site works are appropriately and safely managed.

14 Development on land within the coastal use area

(1)

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

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

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

Comment:
The site is subject to SEPP Coastal Management (2018) as the boundary extends along the Shelly Beach / Fairy Bower areas of Manly coastline. The site is visible from the foreshore or ocean area due to the density of surrounding development. The proposal is in close proximity to similar density development and various buildings in the vicinity that have an easterly outlook (to the ocean). The proposal has been considered in the context of the SEPP requirements. The pool area works will be re-instated similar to the appearance existing with sandstone terraces and grassed areas with balustrades and steps.

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

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

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

Comment:
The proposal is in a location that may be subject to rock slippage and therefore geotechnical and safety measures will be used for the landscaping works along the escarpment edge. This is addressed by conditions and detailed requirements outlined the supporting documentation by the applicant.

Manly Local Environmental Plan 2013

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

Principal Development Standards

-

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.0m Outbuilding	N/A	Yes (Existing house 9.6m)
Floor Space Ratio	FSR:0.45:1 (315.8sqm)	FSR: 0.537:1 (374sqm)	18.4%	No (Reduced from existing*)
Foreshore Building Line (aligned with "Marine Parade" in this location)	15m	43m	N/A	Yes

*The existing dwelling on the site presents a gross floor area of 401sqm or 0.571:1 being a current approved variation in the control of 85.14sqm or 26.7%.

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (315.8sqm)
Proposed:	0.537 (374sqm)
Percentage variation to requirement:	18.4%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The existing dwelling on the site presents a gross floor area of 401sqm or 0.571:1 or a variation in the control of 85.14sqm or 26.7%.*
  The proposed development will see minor decrease in the total gross floor area of 27sqm through the removal of redundant storage areas with a total proposed gross floor area of 374sqm or a FSR of 0.537:1. This presents a variation to the control of 58.14sqm or 18.4%.The new works maintain a bulk and scale which is in keeping with the extent of surrounding development.
- *The works will see a reduction in the total gross floor area with a modulated form of the new additions assisting in further reducing the visual bulk and scale of their proposal, with increased landscaped area end increased setbacks at the front boundary facing the public land.*
- *The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties. The works will not see any adverse impacts on the solar accesso enjoyed by adjoining dwellings.*
- *The general bulk and scale of the dwelling as viewed from the public areas in Bower Street from the surrounding private properties will be largely maintained.*

Comment:

Overall the total FSR is reduced to that previously approved and amended plans were provided to adjust the configuration of the garage and cabana to maintain a landscape setting. In this regard, the original garage building is to be demolished and the new garage is to be constructed on the existing hardstand area which allows for more landscaped open space. Due to the height and width of the main dwelling the general appearance of the dwelling remains the same in terms its floor space and layout. The proposal only affects ancillary elements of the property being the pool, landscaping, awnings, bbq area, garage and the like.

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 E3 Environmental Management zone (now known as C3). An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed façade of the cabana and new garage has a single storey appearance which is marginally above the existing front fence / front wall The general appearance is consistent with numerous other front setback on the eastern side of Bower Street. Whilst occupying approximately much of the width of the front boundary area the location of vehicle entry and pedestrian entry point remains the same. Elements of landscaping are to be retained along the front boundary wall and additional landscaping within the site will be provided due to the demolition of the original garage building.

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

Comment:

The proposed FSR does not diminish any harbour views or reduce overall landscaping on the site. The proposed garage and cabana positions do not dominate the subject site in that a similar appearance of the front setback area is being maintained and will allow for landscaping elements. The site does not have public views through the site to the water from street level. Landscape elements are distributed across within the front and rear areas consistent with adjacent land. The development results in a reduction in the total gross floor area and reduces the extent of the existing non-compliance with the FSR control from 26.7% to 18.4%.

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

Comment:

External materials and landscaping selections are selected to match the existing appearance of the house, including use of flat roof form, coastal palms for landscaping and materials to suit, or reinstate ancillary building elements. The building work is consistent with the pattern and character of housing along Bower Street and opens space landscaping elements.

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

Comment:

The FSR variation will not be responsible for any unreasonable loss of privacy, loss of water views or amenity since the building works involves ancillary changes to the dwelling associated carparking, private open space and landscaping elements. Details of solar access and natural light consideration have been made in direct consideration under the Manly DCP in terms of private land and the public domain, include foreshore areas.

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

Comment:

This objective is not applicable to the dwelling house as the land is not in a business zone.

Zone objectives

The underlying objectives of the zone are:

The underlying objectives of the E3 Environmental Management zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
  Comment:
  The FSR variation does not offend this objective of the zone as the habitable floor area does not encroach into the foreshore area and is set well back from the water edge / lower sections of the escarpment. A landscape setting will be maintained that is compatible with the height, density, and site constraints that influence the pattern of surrounding development.
- *To provide for a limited range of development that does not have an adverse effect on those values.*
  Comment:
  The current use of the site for a family home will remain and the proposal does not seek to introduce other forms of land use development.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
  Comment:
  The FSR variation does not offend this objective of the zone in that the use of the remains, for detached housing in a low density environment, and is provided within a landscape setting is maintained that is compatible with adjacent land and the foreshore environment. The proposal is consistent with surrounding development in being consistent with this objective.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
  Comment:
  The alterations and additions are situated well back from the foreshore area and excavation works involve existing areas of artificial fill and garden areas. The FSR variation does not evoke any negative impacts on geological cliff line features, the foreshore quality and remnant

bushland. No major trees are required to be removed.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
  Comment:
  The proposal includes some ground level works along the setback areas at the front, side and rear of the property including works on the foreshore slope and landscaping is provided to retain the scenic values of area, without excessive impact on natural rock features of the lower foreshore and providing suitable drainage to minimise sedimentation and maintain water quality to stormwater discharge points.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*
  Comment:
  The alterations and additions are generally confined to the main structure of the existing house with no adverse impact on foreshore natural rock area. Replacement landscape planting will be provided for the new landscape works. The building height and bulk and does not have any unreasonable impact on privacy, sunlight, vehicle access and natural runoff to surrounding land.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the 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).

6.9 Foreshore scenic protection area

Manly LEP clause 6.9 designates land in the Foreshore Scenic Protection Area as shown on the LEP Foreshore Scenic Protection Area Map to protect visual aesthetic amenity and views both to and from Sydney Harbour, the Pacific Ocean and the Manly foreshore. Development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place.

Impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,
(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:
In this case the foreshore scenic protection area covers most of the land along Bower Street, however the foreshore building line is located along the edge of "Marine Parade" that is adjacent a narrow foreshore reserve that borders the northern boundary of the site. The proposal seeks to replace the existing angled pool shape with a rectangular shaped pool as well as construct a spa 'grotto' beside the pool by excavating an existing grassed area of land fill. Overall the visual impact will be similar to the current structures as the new terraces walls will be clad in sandstone facing with the exception of the steps, pool plant access grille and 'grotto' opening. The coastal facing boundaries of properties along the northern side of Bower Street in this location exhibit numerous pools, retaining walls, stairs, terraces and glass fencing due to their escarpment edge and ocean outlook. In this case, the applicant has provided a detail landscape plan and geotechnical report to demonstrate the works will not create any long term instability and will be suitably integrated into the area below the existing house.



Image: New pool (replacement) and landscaping works at the rear of the house overlooking Cabbage Tree Bay.

The garage and cabana area are not readily visible from the coastal area due to the part 2 part 3 storey dwellings on adjacent land and within the site.

In summary, the proposal has been designed to retain the scenic qualities of the coast line by way of new landscaping works and utilizing "like for like" in various elements of the new retaining walls, fencing and site levels to be re-instated. The works proposed around the pool and spa will not have and adverse impact on the escarpment and require minimal removal of natural bedrock since the works seeks to replace the existing pool and utilize an area already backfilled with soil material. Geotechnical hazards will be appropriately managed during the site preparation and construction phase as per conditions and recommendations. The position of the retaining wall and structures maintain consistency with the existing private open space areas on adjacent land, or measures are applied to ensure noise openings face the ocean and not any side boundaries, to maintain reasonable outdoor visual privacy and acoustic privacy.

6.10 Limited development on foreshore area

The site is not affected by the foreshore building setback line or foreshore zone of the Manly LEP. The foreshore environment, coastal scenic area and coastal protection are addressed under the heading SEPP (Coastal Management) 2018 and relevant sections of the Manly DCP including Special character areas, within this report.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 699.1m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	7.1 m (Gradient 1:10 long axis)	6.0m to 3.0m	N/A	Yes.
4.1.2.2 Number of Storeys	2	1 storey Cabana and garage	N/A	Yes.
4.1.2.3 Roof Height	Height: 2.5m	0.6m	N/A	Yes.
	Pitch: maximum 35 degrees	2 degrees	N/A	Yes.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	**Bower Street:** Staggered garage alignment Garage wall 1.0m to 1.5m Cabana / store 0.4m to 2.0m	 On merit On merit On merit	 No No No (existing wall)
4.1.4 Walls within 0.9m of side boundary limited	35% of boundary	East 21% West 53%	N/A 18%	Yes No

4.1.4.2 Side Setbacks	West 1m (based on wall height)	Cabana 0.0m Pergola 0.0m Spa Grotto 0.0m	100% 100% 100%	No (replace existing wall) No No
	East 1m (based on wall height)	Garage 0.0m Pool structure 2.1m	100% N/A	No Yes
	Windows: 3m	No change (no new side windows)	N/A	No (As approved)
4.1.4.4 Rear Setbacks	6.0m	Pool 7.6m to 9.0m Spa Grotto 8.4m	N/A N/A	Yes Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (386sqm)	70% (493sqm)	N/A	Yes
	Open space above ground <25% (95sqm) of total open space	15% (61sqm)		
4.1.5.2 Landscaped Area	Landscaped area >35% (135sqm) of open space	47% (234sqm)	N/A	Yes
4.1.5.3 Private Open Space	18m	193sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Pool at existing level Spa Grotto below existing ground	N/A N/A	Yes Yes
	1.5m water side/rear setback	2.1m pool structure 0.0m Spa side wall Pool 7.6m to 9.0m to rear boundary Spa Grotto 8.4m	N/A 100% N/A N/A	Yes No Yes Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	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)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The Manly DCP seeks to ensure that streetscape 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 streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area. Pursuant to this part of the Manly DCP the following considerations apply:

- Garbage areas should not be visible off-site, be integrated into the building, be unobtrusive to front fences and walls, including consideration for the amenity of adjoining land. The proposal had located a new bin storage in front of the 'cabana' building and this has been deleted from the plans with the landscape space to be retained in front of the 'cabana wall'. There is sufficient space in the garage for convenient storage of bins.

- The Manly DCP seeks complementary design and visual improvement to the streetscape and it is noted that the proposal generally relies on the situation that properties along the northern side of Bower Street have "walled-out" their front setback areas with garages, high solid fencing and the like with limited landscaping. In this case the proposal is adding a further garage building in the front setback and while the existing outbuilding (that is the original converted garage is to be demolished and rebuilt as a cabana and lawn area. The applicant has amended the plans to provide a 1.0m setback with landscaping space that is consistent with the current frontage and removed proposed bin room from in front to maintain a similar appearance the existing frontage.

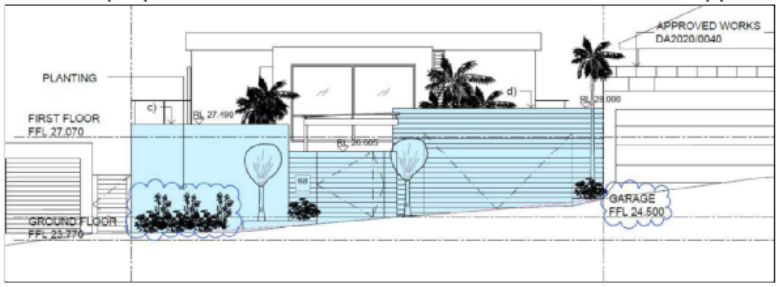


Image: Street elevation - minor revision to include similar planting setback.



Image: Existing street view toward site.

- The proposal will replace part of the front fencing for new garage structure and the cabana (replacing an existing outbuilding). The remaining front fencing / gate will remain the same and is of a suitable style to suit the dwelling house materials.

- Roof areas for the cabana and garage are of a flat style and therefore match the existing house and do not create any overshadowing or view impact concerns.

- The existing outbuilding / studio to be partly demolished part of the original (converted) garage area for the house and this is to be replaced for landscape lawn area and a cabana. The setback for both these structures has been adjusted (in discussions with the applicant) to allow for improved landscaping opportunities and maintain the "staggered" alignment of the building in consideration of the two structures now encroaching into the front setback area. It is noted that some properties along Bower Street have 2 garages and these commonly relate to dual occupancy or past development particular to the history of those properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.5.5 Landscaping

Specific landscaping requirements and objectives, pursuant to *Clause 3.5.5 Landscaping*, are considered as follows:

Merit Assessment Comments:

- Landscaping has been selected that includes suitable trees and vegetation that is adaptable to the site conditions, including the site of ground level open space, soil / sunlight conditions, slope, proximity to existing vegetation, building services and to provide amenity to the occupants. This includes the use of landscape setbacks and maintaining the frontage to Bower Street to complement the existing building style and streetscape.

- Detailed landscape referral assessment comments are provided under the heading "internal referrals" within this report. In summary, the landscaping is consistent with the objectives and requirement of this clause subject to conditions. This includes consideration for some where alternative tree planting where appropriate, including protecting (public) trees in the road reserve

(along Bower Street) and particular feature trees on site to maintain landscape amenity. While there is a minor non-compliance with the total open space the deep soil landscaping and new areas are to be re-landscaped with new planting and features to suit the private open space / living areas.

- Landscape planting will assist to provide screening and complement the height and scale of the building by using a mix of small, medium planting. The site is not appropriate for very large trees which would impact surrounding coastal outlook, light or potentially building elements over the long term. This is consistent with the pattern of surrounding development (including renewal and renovation of older dwellings) in the area in the boarder area near St Patrick's Estate.

- The use of native trees suitable for the local environment are slow growing and adapted for low water requirements and assist to provide habitat and food sources for insects, birds and arboreal animals such as Bandicoot habitat throughout Manly. The site is not within a bushfire zone that would limit certain tree species from selection.

- Landscape elements have been designed to complement the architecture of the building and provide amenity when viewed from public and private land. The proposal has been designed to retain the main landscape open space principally on the northern (side setback) and Bower Street frontage of the site and is convenient to the principal living areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3)

For the purposes of this clause the proposal complies with the MDCP requirement using the Area "I" (500sqm) which applies to any undersized lots in the subzone that may be less than 500sqm. In this case the site is 703.7sqm and therefore only the LEP requirement applies and the DCP exception to FSR is not applicable.

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

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

Walls located within 0.9m of any one of the side boundaries may be considered but must:
i) contain no windows;
ii) be constructed to one side boundary only;
iii) limit height to 3m;

iv) limit length to 35 percent of the adjoining site boundary;
v) submit a standard of finish and materials for external surfaces which complement the external architectural finishes of adjacent properties and/or the townscape character;
vi) obtain a right-of-way to provide access for maintenance; and
vii) satisfy the objectives for setback in this plan and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.

Merit Assessment Comments:

- The proposal seeks to demolish an existing outbuilding to create a landscape courtyard and construct a new garage over the existing hardstand parking area. The new garage is similar to the adjacent garages along the eastern side of Bower Street that front the road with some minor landscape components in front. The proposal is considered to be consistent with this existing development pattern of the street, the street edge (nature strip area) and the overall character in context of the dwelling. Landscaping and fencing work assist to maintain the character of the streetstcape for the corner setback location.

- The proposal is consistent with maintaining local amenity by the maintaining a very similar appearance to that currently showing and a staggered front wall line, timber garage door, and minor landscape elements. The existing non-compliance is restricted to single storey elements with flat roof forms and does not result in any unreasonable impact. The nil side setback proposed for the cabana, wet-store and garage is consistent with adjacent ancillary structures that have a single pedestrian entry point and do not require side access along the fence line. Landscaping is therefore concentrated in the central area in front of the dwelling house.

- The proposal is consistent with the DCP objective to allow for the flexibility in the siting of buildings while allowing for view sharing and maintaining opportunities for including views and vistas from private and public spaces, subject to landscape conditions to ensure planting is consistent with the landscaping plan schedule provided.

- Adequate side setbacks have been proposed to maintain natural features of landscaping including new deep soil zones and appropriate planting subject to conditions. The proposed setbacks for the new garage and living / master bedroom additions allow for compliance with the *Building Code of Australia*. The changes to the ancillary structures of the courtyard area, parking component has adequate access for maintenance, drainage work and streetscape considerations. The nature of development does not unduly detract from the context of the site and particularly in relation to road frontages and front and side setbacks including the context of neighbouring properties and the prevailing building lines in the immediate vicinity.

- While the Sydney Harbour National Park is nearby the site is not subject to NSW RFS *Planning for Bushfire Protection*.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance, subject to conditions.

4.1.9 Swimming Pools, Spas and Water Features

Clause 4.1.9 for Swimming pools and Spa baths require consideration with regard to Height, Location and Setbacks

Merit consideration

- The location of the pool is consistent with the placement of the adjacent pool in the rear private open space area and appropriate to the DCP. The pool is being replaced with a rectangular shape and has a minor variation to the DCP being positioned with a standard 0.9m (BCA type setback) to the southern side boundary. The setback to the southern side boundary is which is consistent with adjacent setbacks, despite the site being on steep terrain above the Manly to Shelly Beach walk. The setback to the escarpment is consistent with the existing in-ground pool.

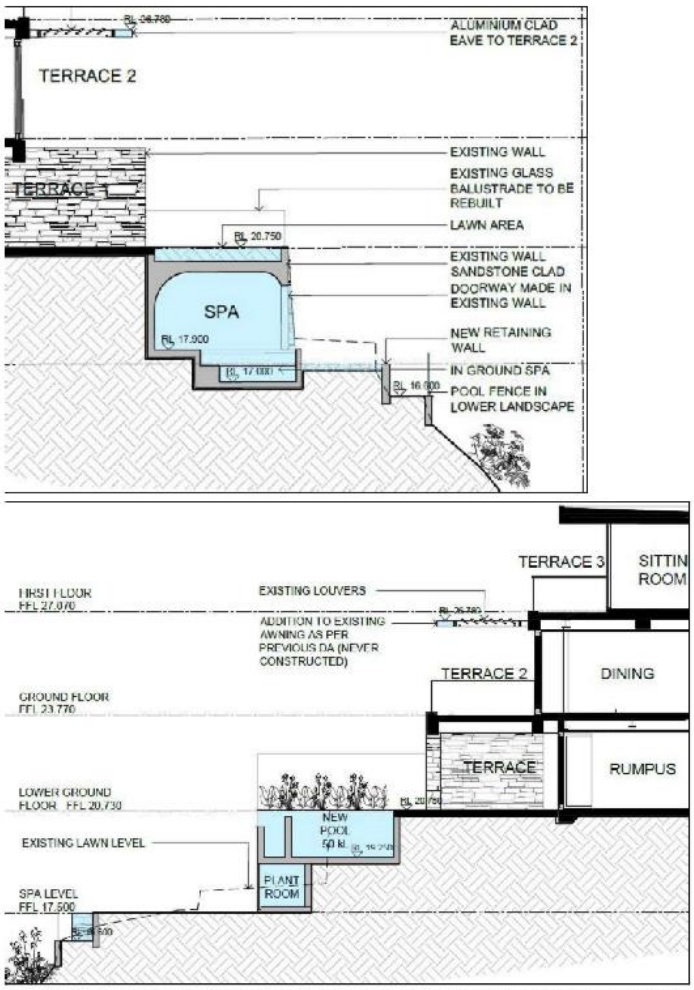


Image: Spa position with grassed roof to create 'grotto' and pool with plant area under with replacement retaining walls.

- The new pool replaces an existing pool which generally maintains the current relationship of privacy (visual and acoustic) to adjacent land, including the position of the plant equipment situated below the main living area terrace. The pool includes landscaping toward the northern setback and is integrated into the escarpment area which is consistent with the pattern of development in the vicinity of the site along Bower Street. The pool is not visible from Bower street and is partly screened from view along the public walkway of Manly to Shelly Beach due to the steep terrain. Landscaping works are outlined on the landscape plan which will reinstate with mixed and native shrubs and ground cover with a small grassed terrace.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

5 Special Character Areas and Sites

Special Character Areas and Sites is addressed under section 5.4.1 for Foreshore Scenic Protection Area including consideration for landscaping elements as part of the native habitat for the scenic protection area.

5.4.1 Foreshore Scenic Protection Area

Detailed matters of consideration under the MDCP for the foreshore protection area include considerations for the development with regard to:

i) minimise the contrast between the built environment and the natural environment;
ii) maintain the visual dominance of the natural environment;
iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;
iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;
v) locate rooflines below the tree canopy;
vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and
vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.

Comment:

- The principal changes to the front of the site associated with the demolition of the existing outbuilding, landscaping works and new garage area will create more landscaped open space on the southern side (Bower Street) of the dwelling and conditions are included for minor changes associated with streetscape and landscaping along the road frontage. Generally the works on the southern side of the house are consistent with the objectives of this clause.

- On the northern (coastal) side of the dwelling the change to the living area awning and replacement of the existing pool with a new spa have been designed to maintain a similar appearance to the existing structures and landscaping works in terms of the use of stair position, sandstone facing for retaining walls, low native coastal landscaping and transparent glass balustrades. The pool plant room and spa structures is hidden from view for adjacent neighbours and will not be readily visible from the foreshore area, "Marine Parade" or Shelly

Beach headland due to the escarpment height, existing landscape features and dominant form of existing development along Bower Street surrounding the site.



- Image: Pattern of development and structures along escarpment on northern side of site.

- New landscaping works are proposed that will re-instate lawn areas, native shrubs and ground covers to assist with the retention of wildlife corridors and habitat, including long-nosed bandicoot sites. The site is not readily accessible for fairy penguin habitat due to the vertical rock and ledges between the northern boundary and the ocean water line. A terrestrial biodiversity report has addressed native habitat consideration for the site, including recommendations to allow for wildlife movement within and between suitable points along the boundary. These outcomes for landscaping are addressed as standard conditions.

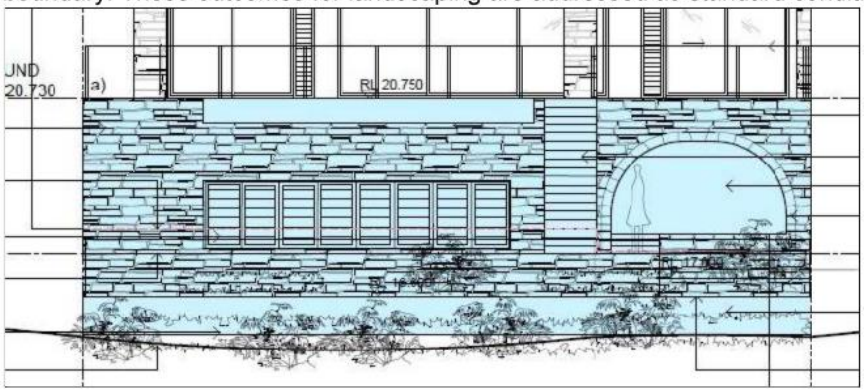


Image: Replacement sandstone wall, steps, spa 'grotto' and reshaped pool area with balustrades and associated landscaping.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $11,610 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,160,997.

CONCLUSION

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

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

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

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

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

That Northern Beaches Council as the consent authority vary clause 4.4 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.

In summary, a detailed assessment has been required for the following specific issues:

Consideration of a variation to the FSR in context of the alterations and additions that involve demolition of an outbuilding (originally a garage), construct a cabana with landscaping and minor works to dwelling open space areas, demolish and outbuilding and a pool including selected retaining walls with the construction of a new in-ground swimming pool, garage, cabana, a spa "grotto" and associated landscaping, fencing and site works. Overall the existing FSR is being reduced from 0.571:1 currently above the maximum FSR down to 0.537:1.

Building setbacks, height and amenity issues raised in submissions have been addressed by the applicant and minor changes to the plans to the address heritage considerations. The property is a

coastal edge site and in this regard the roof form, spatial separation, private open space and external materials are suitable for the surrounding environment, The residential building streetscape, foreshore areas, pattern of surrounding development, privacy (visual and acoustic), solar access, views and general amenity. Other construction related issues (erosion, dilapidation, site access and the like) are addressed by conditions. One submission received was withdrawn following mutual agreement between the relevant owners regarding landscaping and side fencing structures.

In conclusion, the principal issues in the assessment have been addressed by amended plans and conditions and the proposal is considered to maintain consistency with the objectives and requirement of the Manly LEP and DCP for the alterations and additions.

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

RECOMMENDATION

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.

Accordingly Council as the consent authority grant Development Consent to DA2021/1698 for Alterations and additions to a dwelling house including a swimming pool, spa and garage on land at Lot 12 DP 8075, 68 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A-002 C Site Plan	20.1.2022	Squillace Architects
A-100 A Spar Level Plan	23.7.2021	Squillace Architects
A-101 A Lower Ground Plan	23.7.2021	Squillace Architects
A-102 C Ground Floor Plan	20.1.2022	Squillace Architects

A-103 C Level 1 Plan	20.1.2022	Squillace Architects
A-200 A North Elevation (including materials and finishes)	23.7.2021	Squillace Architects
A-201 B South Elevation (including materials and finishes)	20.1.2022	Squillace Architects
A-202 B East Elevation	20.1.2022	Squillace Architects
A-203 C West Elevation	20.1.2022	Squillace Architects
A-300 A Pool Section	23.7.2021	Squillace Architects
A-301 C Garage Facade	20.1.2022	Squillace Architects
A-302 A Grotto Section	23.7.2021	Squillace Architects
A-303 C Cabana Section	20.1.2022	Squillace Architects
A-304 C Street Facing Section	20.1.2022	Squillace Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
L-01 Site / Sediment / Waste / Stormwater plan	25.8.2021	Site Design and Studios

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Waste Management Plan	Vaughan Milligan	13.9.2021
A-002 A Site Plan (Waste storage)	Squillace Architects	23.7.2021
BASIX Certificate A427452	Mabel Chow	12.8.2021
Geotechnical Investigation J3198A	White Geotechnical	31.8.2021
Terrestrial Biodiversity Report (Section 9)	GIS Environmental Consultants	2.9.2021

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**
L-02 Front Landscape Plan*	25.8.2021	Site Design and Studios
L-03 Rear Landscape Plan*	25.8.2021	Site Design and Studios
L-04 Planting Schedule	25.8.2021	Site Design and Studios

*Landscape plan areas are to conform to the stamped Site Plan.

Waste / Sediment Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
L-01 Site / Sediment / Waste / Stormwater plan	25.8.2021	Site Design and Studios

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	3.11.2021
Aboriginal Heritage Office	Response AHO Referral	7.10.2021

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

commence.

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $11,609.97 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 $1,160,997.00.

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

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

6. **Security Bond**

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

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

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

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

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

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

7. **Stormwater Disposal**
The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. **Compliance with Ecologist's Recommendations – Pre-construction**
All biodiversity-related measures specified in the submitted Terrestrial Biodiversity Report (GIS Environmental Consultant 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

9. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **Details of solid fuel heater to be installed**
Details of the solid fuel heater that is to be installed are to be provided to the principle certifying authority prior to the issue of the construction certificate.

Details shall include the make, model and specifications that demonstrate compliance with the testing methodology and emission standards of Australian Standard 4013:2014.

Reason: To ensure that the installed heater meets the emission standards under the Protection of the environment (Clean air) regulation.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Reason: To protect native wildlife.

14. **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 / Properties:
- 70 Bower Street, Manly
- 66 Bower Street, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage 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.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

Reason: Public safety.

17. **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.

18. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4 metres wide at kerb and 4.5 metres wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

19. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

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

20. **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

21. **Landscape Completion**
Landscape works shall be implemented in accordance with the approved Landscape Plan.

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.

22. **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.

23. **Compliance with Ecologist's Recommendations – Post Construction**
All biodiversity-related measures specified in the submitted Terrestrial Biodiversity Report (GIS Environmental Consultant 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with post-construction measures are to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

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

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

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

Reason: To preserve wildlife corridors.

25. **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.

26. **Geotechnical Certification Prior to Occupation Certificate**
The applicant is to demonstrate that the recommendations required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent have been implemented to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

27. **Upgrade of solid/fuel burning heaters**
Upgrade works must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

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

28. **Certification of solid fuel burning heaters**
Prior to any Occupation Certificate being issued, certification from an appropriately qualified

person indicating the system is compliant with all relevant legislation, Australian Standards, specifications and manufacturer requirements is to be submitted to the Principle Certifying Authority.

Reason: To ensure the system operates in a regulatory compliant manner.

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

29. **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.

30. **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.

31. **Control of Domestic Dogs/Cats**
Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife in accordance.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

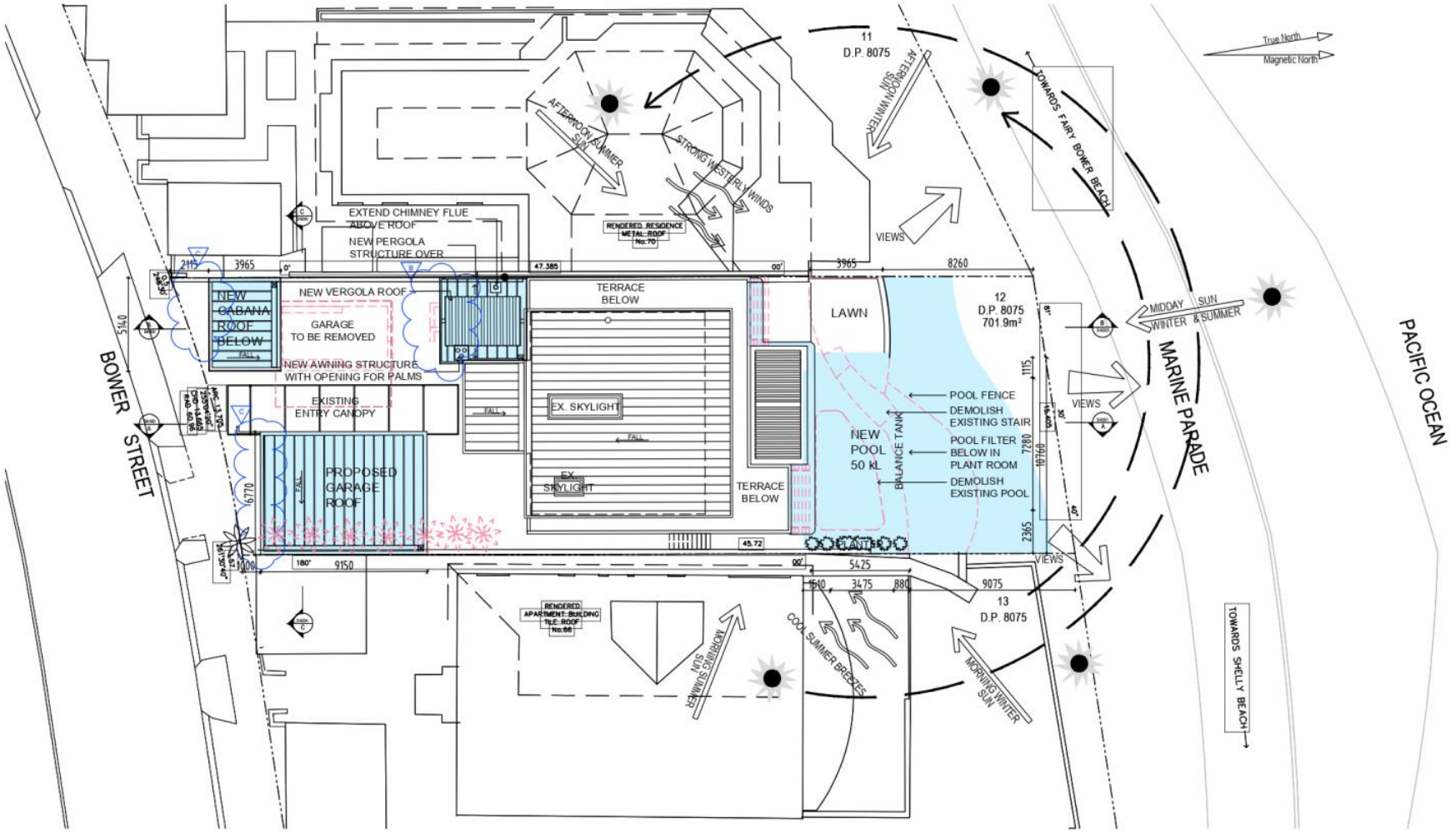
33. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

34. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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



01 SITE PLAN/ SITE ANALYSIS/ ROOF PLAN
scale - 1:200 @ A3

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ES	DATE	PURPOSE OF ISSUE
A	23/07/21	DEVELOPMENT APPLICATION
B	05/11/21	AMENDMENT TO DEVELOPMENT APPLICATION
C	20/01/22	REVISED DEVELOPMENT APPLICATION

NOTES
DENOTES GENERAL AREAS OF NEW WORK

PROJECT
TAYLOR RESIDENCE
68 BOWER STREET MANLY

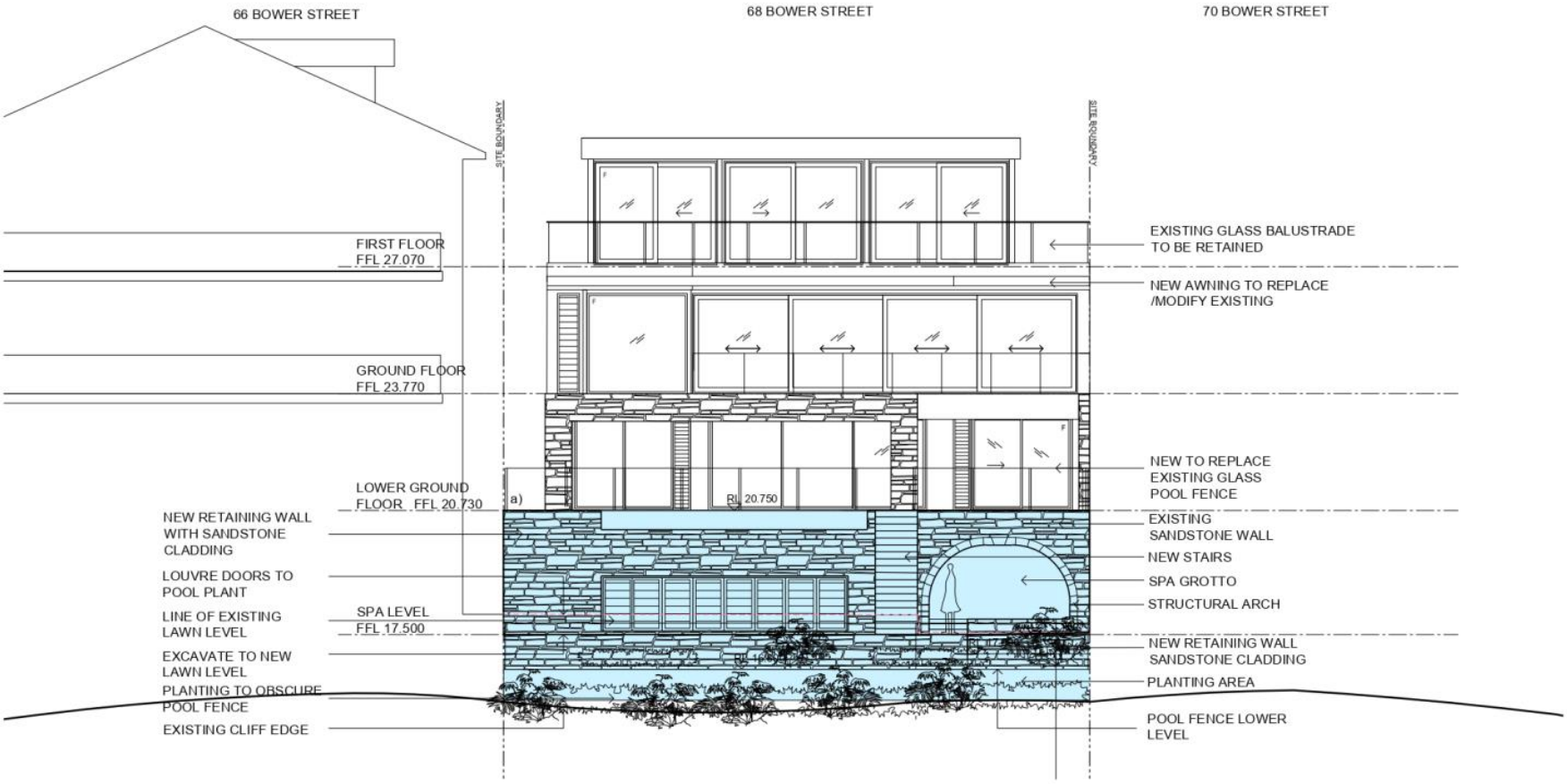
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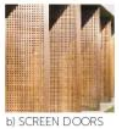
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ISSUE C
JOB NO. TAY2105
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CHECKED BY MC
SCALE 1:200@A3
DATE 01/2022
DRAWING TITLE SITE PLAN/ SITE ANALYSIS/ ROOF PLAN




a) SANDSTONE CLADDING


b) SCREEN DOORS


c) WHITE RENDER


d) WHITE TIMBER CLADDING

01 NORTH ELEVATION
scale - 1:100 @ A3

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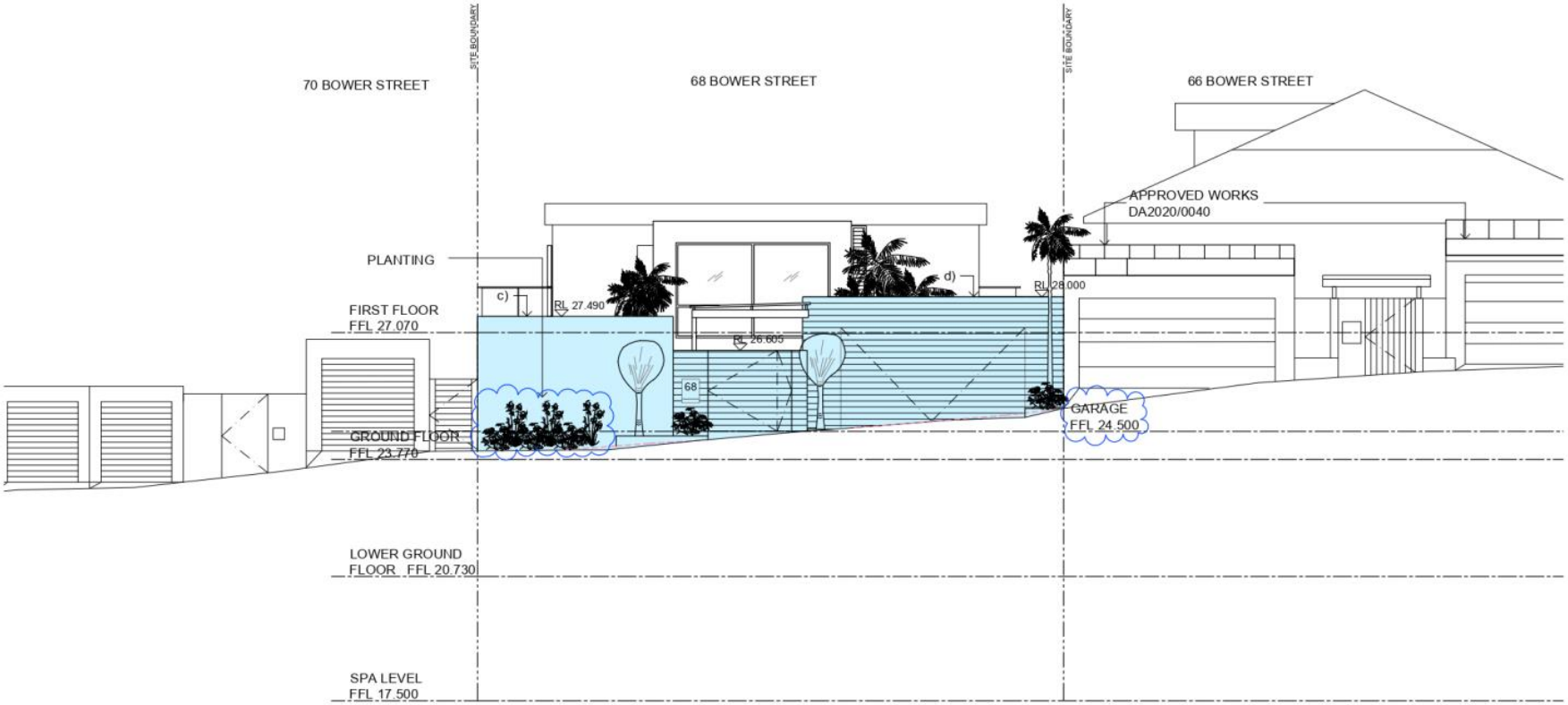
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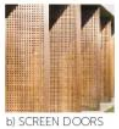
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ISSUE: A
JOB NO: TAY2105
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CHECKED BY: MC
SCALE: 1:100 @A3
DATE: 07/2021
DRAWING TITLE: NORTH ELEVATION




a) SANDSTONE CLADDING


b) SCREEN DOORS


c) WHITE RENDER


d) WHITE TIMBER CLADDING

01 SOUTH ELEVATION
scale - 1:100 @ A3

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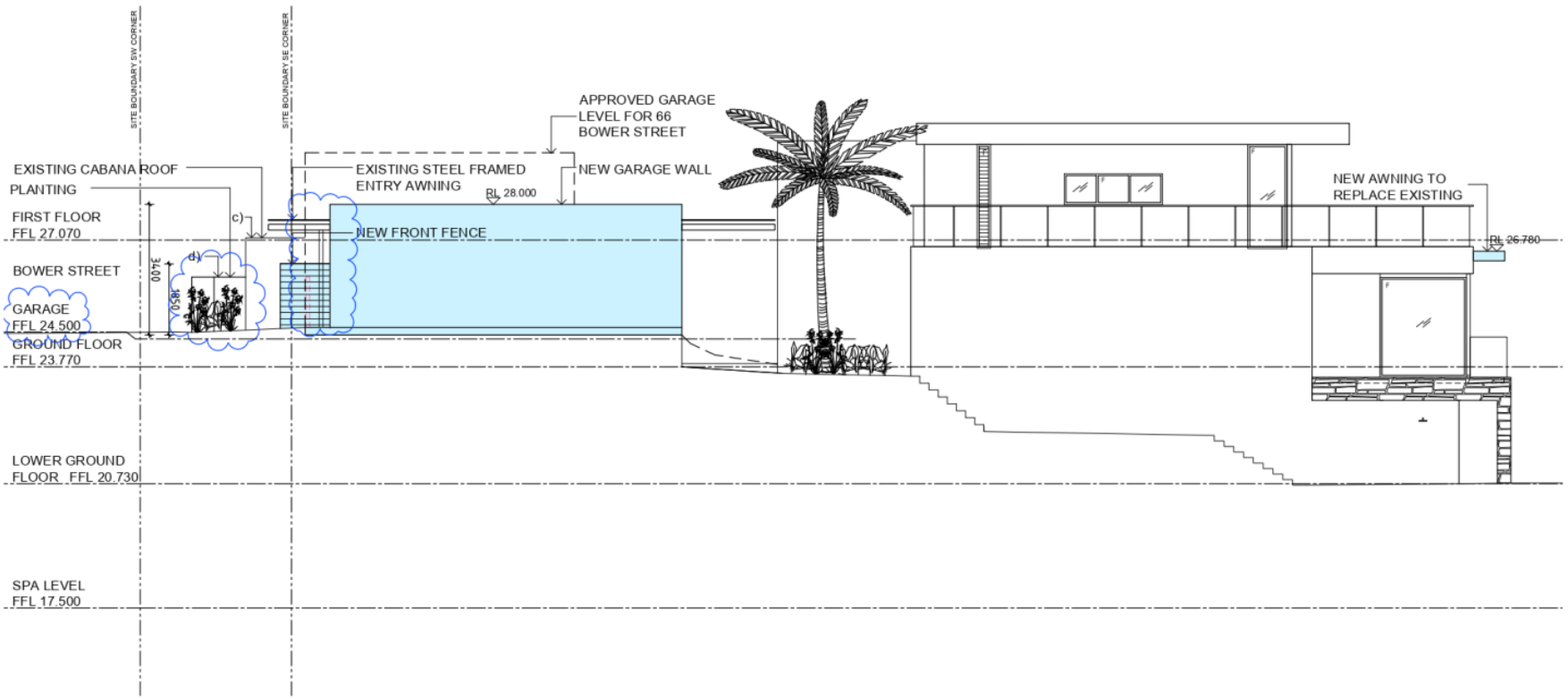
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DATE 01/2022
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a) SANDSTONE CLADDING


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c) WHITE RENDER


d) WHITE TIMBER CLADDING

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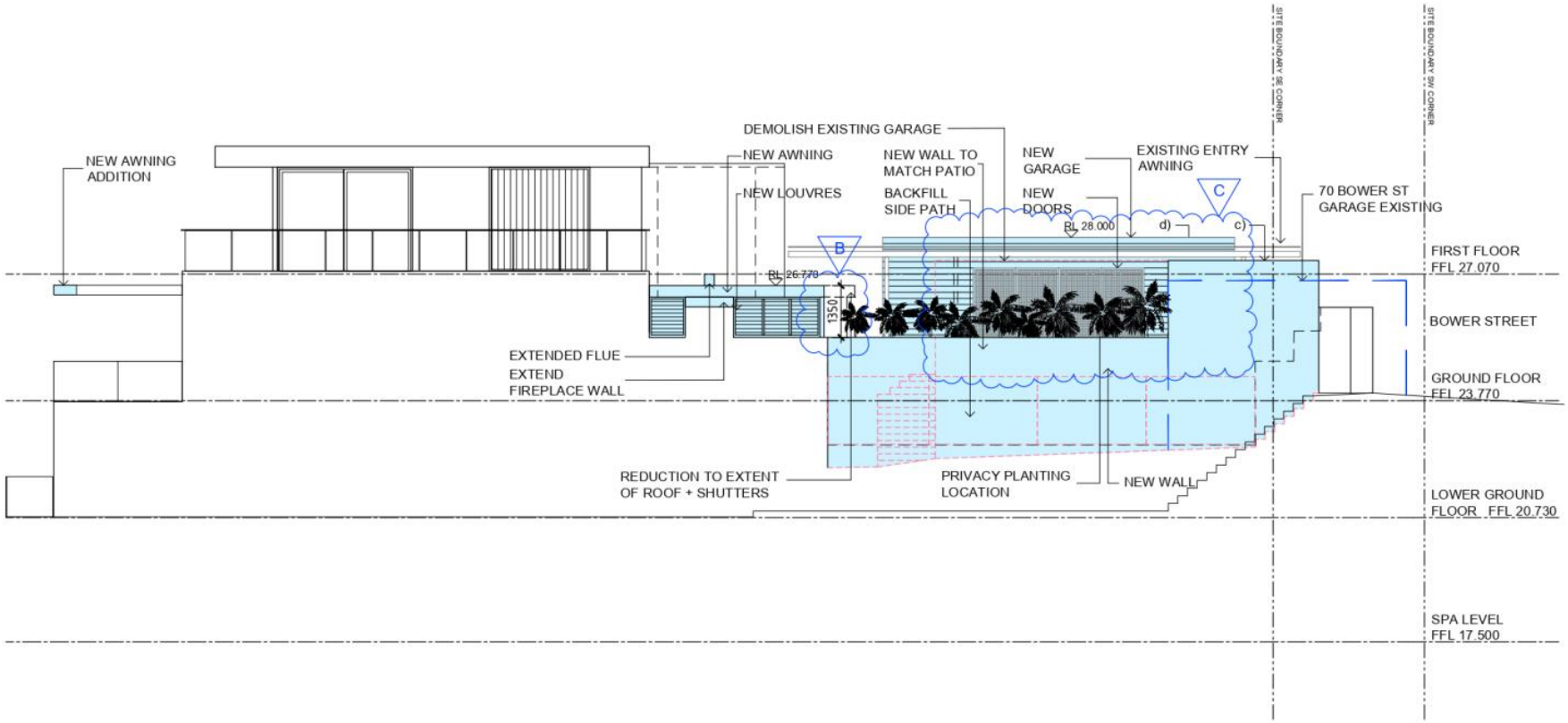
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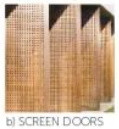
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JOB NO. TAY2105
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DATE 01/2022
DRAWING TITLE EAST ELEVATION




a) SANDSTONE CLADDING


b) SCREEN DOORS


c) WHITE RENDER


d) WHITE TIMBER CLADDING

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7288 (VIC), 3477 (QLD)

DRAWING NO: A-203
ISSUE: C
JOB NO: TAY2105
DRAWN BY: DC
CHECKED BY: MC
SCALE: 1:100 @A3
DATE: 01/2022
DRAWING TITLE: WEST ELEVATION

APPENDIX
CLAUSE 4.6 – FLOOR SPACE RATIO

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

68 BOWER STREET, MANLY

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING
VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S FLOOR SPACE RATIO CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For:	Additions and alterations to an existing dwelling
At:	68 Bower Street, Manly
Owner:	Craig Taylor
Applicant:	Craig Taylor C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Manly locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.45:1 or for this site with an area of 701.9m^2, the maximum gross floor area is 315.85m^2 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The existing dwelling on the site presents a gross floor area of 401m² or 0.571:1 or a variation in the control of 85.14m^2 or 26.7%.

The proposed development will see minor decrease in the total gross floor area of 27m² through the removal of redundant storage areas with a total proposed gross floor area of 374m^2 or a FSR of 0.537:1. This presents a variation to the control of 58.14m^2 or 18.4%.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.4 of MLEP a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act mean standards is fixed in respect of an aspect of the development and include:

"(d) the cubic content of floor space of a building."

(b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

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

4.0 Objectives of Clause 4.6

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.

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1 however as the proposal will see a reduction in the gross floor area through the removal of redundant enclosure storage spaces with the proposed development reducing the current FSR of 0.571:1 to 0.537:1, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

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

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

Clause 4.6(5) of MLEP provides:

(5) In deciding whether to grant concurrence, the Secretary must consider:

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

(b) the public benefit of maintaining the development standard, and

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

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

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause

4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C3(E3) Environmental Management Zone, which are noted as:

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

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

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

The proposal will not exceed the existing ridge level of the current dwelling.

The works will see a reduction in the total gross floor area from 401m² to 374m² with a modulated form of the new additions assisting in further reducing the visual bulk and scale of their proposal, with increased landscaped area end increased setbacks at the front boundary facing the public land. The new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Bower Street from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.

5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Manly of 0.45:1 or for this site, the allowable gross floor area is 315.85m^2.

5.3 The subject site has an area of 701.9m^2.

5.4 The existing dwelling has a gross floor area of 401m^2 or FSR of 0.571:1. The proposal has a calculable gross floor area of 374m^2 or FSR of 0.537:1. The proposal will see reduction in the total gross floor area by 27m^2.

5.5 The total non-compliance with the FSR control is reduced from 85.14m^2 or 26.7% to 58.14m^2 or 18.4%.

6.0 Relevant Caselaw

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

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
>
> *21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate*

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

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

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

1. Is clause 4.4 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 C3 (E3) 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?

7.0. Request for Variation

7.1 Is compliance with clause 4.4 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 FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.

The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

The development results in a reduction in the total gross floor area and reduces the extent of the existing non-compliance with the FSR control from 26.7% to 18.4%.

(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,

The proposal will not see the loss of any significant vegetation. The built footprint of the existing dwelling remains largely unchanged, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains the majority of the existing landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

(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 site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied*

under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

The proposed works will see a reduction in the total gross floor area and will reduce the extent of the existing non-compliance with the FSR control from 26.7% to 18.4%.

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

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g).

- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Bower Street which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new works which exceed the gross floor area control and FSR standard of 0.45:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.

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

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that

contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal which will result in a reduction in the extent of the existing non-compliance with the floor space ratio control from 26.7% to 18.4% will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the C3 (E3) Environmental Management 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 C3 (E3) Environmental Management zone and the reasons why the proposed development is consistent with each objective is set out below.

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

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

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

It is considered that notwithstanding the compatible form of the proposed additions which see a minor increase in the gross floor area of 6m², the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the C3 (E3) Environmental Management zone for the following reasons:

- ***To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The C3 (E3) Environmental Management Zone contemplates low density residential uses on the land, it is notable for its aesthetic values given its relationship to the escarpment and waterfront.

The relevant aspect of this objective which applies in this instance is that the area has aesthetic values that should be considered by a development.

The proposal results in a built form that minimises the visual presentation at the street and provides for an appropriate area of open space and landscaping that will protect and manage the aesthetic values of the area.

The proposed development will be compatible with the general height and form of the surrounding development and for this reason will protect and manage the aesthetic values of the area.

- ***To provide for a limited range of development that does not have an adverse effect on those values.***

As found in *Nessdee*, this second objective is considered to be declatory in that it outlines the range of development that is permitted with or without consent in the Land Use and is taken to be development that does not have adverse effect on the values, including in this instance, the aesthetic values of the area.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

In this instance, the proposal continues the existing single dwelling use and is considered to be an appropriate use for the site that will protect and improve the aesthetic values of the area. The form of the development stepping down the site will be compatible with adjoining development and which will not appear as out of character or jarring when viewed from the surrounding locality including Shelly Beach and Cabbage Tree Bay.

- ***To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.***

The proposal will not see the loss of any significant vegetation or tree canopy within the site.

The dwelling is well removed from the foreshore area and as result, will not have any adverse effects on the scenic qualities of the foreshore.

The form of development is consistent with the developed area of the C3 (E3) Environmental Management zone in Bower Street that sits above and looks down to the foreshore. The development because of its stepping form and proposed landscaping will not stand out but will fit in when viewed as part of the backdrop to the foreshore.

The extent of the landscaping to the rear and the compliant setback of the dwelling to the public recreation zone ensures that the proposal minimises impact on the natural environment.

When viewed by looking back from Shelly Beach towards the site, the proposal will not be a dominant feature when read in the context of its neighbours, which will further protect the natural scenic qualities of the foreshore.

Having regard to the above matters, it can be readily concluded that the proposal is a low impact residential use being a single dwelling house.

- ***To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.***

The proposal is well removed from the nearby foreshore and will not negatively impact on the Shelly Beach foreshore area.

The proposed works do not involve extensive site disturbance or excavation with no significant geological features to be affected.

The site is in a disturbed state with managed domestic gardens and with no significant remnant natural vegetation.

The extent of the landscaping to the rear and the compliant setback of the dwelling to the public recreation zone ensures that the proposal minimises impact on the natural environment, including the tree canopy within the public reserve.

All works are contained wholly within the site.

- ***To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.***

The proposal does not involve any works outside of the site boundaries and therefore the vegetation and rehabilitation of the foreshore is not an issue in this proposal.

The site will retain suitable landscaped area which will minimise which will minimise hard surfaces and reduce stormwater water quality issues, protecting

the ecological characteristics of the locality.

- ***To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.***

The proposal will not require the removal of any protected vegetation, remnant tree canopy or remove significant geological features or bushland.

The area of the building which does not comply with the maximum floor space ratio will not result in the loss of any existing significant or protected vegetation. The proposed alterations and additions reduce the extent of the existing non-compliance with floor space ratio.

The extent of soft landscaping within the front setback will be increased which visually softens a presentation of the site from Bower Street.

The proposal will not require the removal of any significant or protected vegetation. A comprehensive landscape plan has been prepared by Site Design Studios Designs which will see the managed replanting of the site with locally occurring species and a reintroduction of varied taller planting of up to 10 metres in height.

Impacts on local flora and fauna will be managed in accordance with the recommendations of the Terrestrial Biodiversity Report prepared by GIS Environmental Consultants.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area. The development does not have any unreasonable amenity impacts on its adjoining neighbours.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum floor space ratio, whilst maintaining consistency with the zone objectives.

The development will see a substantial reduction in the extent of the non-compliance with the FSR control by 27m^2.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

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

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

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

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

This development proposes a departure from the maximum floor space ratio control, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.537:1, which is a reduction from the existing non-compliance with a floor space ratio control of 0.571:1.

In this instance, the development presents a reduction in the gross floor area by 27m² which assists in minimising the bulk and scale of the development

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

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

Vaughan Milligan

VAUGHAN MILLIGAN
Town Planner

ITEM 3.2	**DA2021/1980 - 55 GRANDVIEW DRIVE NEWPORT - ALTERATIONS AND ADDITIONS TO DWELLING HOUSE AND CONSTRUCTION OF A DOUBLE GARAGE**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/126389**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2021/1980 for alterations and additions to dwelling house and construction of a double garage on land at Lot 28 DP 16029, 55 Grandview Drive NEWPORT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1980

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 28 DP 16029, 55 Grandview Drive NEWPORT NSW 2106
Proposed Development:	Alterations and additions to dwelling house and construction of a double garage
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:	Marc Maxwell Witham Kylie Jane Witham
Applicant:	Marc Maxwell Witham

Application Lodged:	27/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/11/2021 to 22/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 22.4%
Recommendation:	Approval

Estimated Cost of Works:	$ 703,482.00

EXECUTIVE SUMMARY

This application if for alterations and additions to the existing dwelling, including a rear addition and detached double garage structure on the front boundary.

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

The maximum height of the proposed development has been measured at 10.4m which represents a

variation of 22.4% to the prescribed 8.5m building height limit.

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

No submissions were received in response to neighbour notification.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site. Accordingly, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including the following works:

- Construction of a new lower ground level at the rear of the dwelling that includes additional bedrooms, a bathroom, a laundry, bar, rumpus and external deck.
- Construction of a detached double garage at the front boundary that incorporates a pedestrian entry, covered external stair to access the dwelling and passenger lift. A storage room is proposed beneath the garage. The undercroft area beneath the garage and storage room will include a courtyard and landscaping.
- New and remediated landscaping throughout the site

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 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 28 DP 16029 , 55 Grandview Drive NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Grandview Drive. The site is irregular in shape with a frontage of 10.67m along Grandview Drive and a maximum depth of 50m. The site has a surveyed area of 710.9m². The site is located within the C4 Environmental Living zone and accommodates a part two-storey residential dwelling and a detached double carport. The site falls approx. 23m from the north towards the south. The site and surrounds are significantly landscaped with several canopy trees and undergrowth vegetation. Some rock outcrops are found throughout the site. The site is identified as having significant biodiversity value. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings, within a bushland setting.

Map:



SITE HISTORY

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

Pre-lodgement Meeting **PLM2018/0163** was held on 19/07/2018 for construction of a garage and elevated driveway. The meeting concluded that the proposal could be supported, subject to some design changes.

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	Division 8A of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration	Comments
of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a Biodiversity Development Assessment Report and Clause 4.6 development standard variation request. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and

Section 4.15 Matters for Consideration	Comments
	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 08/11/2021 to 22/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***No objection, subject to conditions*** The development application is for alterations and additions incorporating new basement level, detached garage and storeroom, and associated landscape works. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D10 Newport Locality The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the E4 Environmental Living zone.

Internal Referral Body	Comments
	The application includes the removal of four trees, and a Arboricultural Impact Assessment is provided in support of this proposal. A Landscape Plan is submitted illustrating landscape works including tree and understorey replacement to enhance the landscape setting and maintain a landscape outcome consistent with the E4 Environmental Living Zone. The Landscape Plan provides landscape works including tree replacement and understorey planting and thus maintains the landscape outcome objectives of the E4 Environmental Living zone. Three Glochidion ferdinandi (Cheese Tree) typical of the Pittwater Spotted Gum Forest association are proposed as replacement canopy trees. The Natural Environment Referral Response - Biodiversity, is noted, including the requirement for a Biodiversity Development Assessment Report (BDAR), and concerns regarding the proposed removal of existing trees numbered 12 and 13. The Arboricultural Impact Assessment recommends the removal of four trees include: T2 Eucalyptus robusta, impacted by the proposed driveway; T7 Archontophoenix cunninghamiana, impacted by the proposed garage, and T12 and T13 Eucalyptus robusta, impacted by the new deck. The Arboricultural Impact Assessment notes that both T12 and T13 exhibit a poor canopy form due to canopy loss. In terms of landscape outcome and separate to biodiversity outcome, Landscape Referral raise no landscape merit concerns regarding the tree removals including T12 and T13 based on canopy form, age and vigour, and based on tree replacement. Landscape Referral raise no objections subject to protection of existing trees and vegetation retained, and the completion of landscape works.
NECC (Bushland and Biodiversity)	***No objection, subject to conditions*** Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **Biodiversity Conservation Regulation 2017** **Pittwater Local Environmental Plan (PLEP)** • 7.6 Biodiversity Protection **Pittwater Development Control Plan (PDCP)** • B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community **<u>Updated Recommendation - 12/01/2022</u>**

Internal Referral Body	Comments
	The submission of a Biodiversity Development Assessment Report (BDAR; Kingfisher 2021) is noted. The application seeks approval for the removal of approximately 0.02ha of vegetation, comprised of four trees: • Tree 2, 12 & 13 - *Eucalypus umbra* (misidentified as *E robusta* in Arborist Report) • Tree 7 - *Archontophoenix cunninghamiana* (exempt species) No objection is raised by Council's Biodiversity referral team over the proposed removal of T7, an exempt species that does not require approval for removal. The removal of all prescribed trees are addressed by the submitted BDAR, including mitigation measures (replanting and nest boxes) and retirement of biodiversity offset credits. The removal of three native trees (2, 12, 13) is considered acceptable in this circumstance given the native canopy that will continue to persist within the property post-construction. Subject to conditions the Natural Environment Unit - Biodiversity find the application to be consistent against relevant environmental controls. **Original Recommendation - 2/11/2021** Natural Environment - Biodiversity note that the development seeks to remove four (4) prescribed trees. Two (T12, 13) appear are located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values (BV) Mapping (added February 2021), available here: https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap. The submitted 'Assessment of Significance - Pittwater Spotted Gum Forest (EEC)' (Kingfisher 2021) was prepared in September 2020 prior to the property being added to the BV Map, and therefore the following finding is outdated: "*The proposal does not trigger the biodiversity offsets scheme threshold. It does not exceed the clearing area threshold nor is it located on the BV Map.*" Any native vegetation removal within these mapped areas requires the DA to be accompanied by a Biodiversity Development Assessment Report (BDAR) to be prepared by an Accredited Assessor: https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor. Any BDAR prepared for the site is required to include an assessment against the Serious and Irreversible Impact (SAII) guidelines for Pittwater Spotted Gum Forest, as well as to demonstrate how the principles of Avoid and Minimise have been demonstrated in

Internal Referral Body	Comments
	accordance with the Biodiversity Assessment Methodology 2020 (BAM 2020). Alternatively the design may be updated to retain Tree 12,& 13 and any other vegetation located within DPIE's BV Map. On receipt of the requested information, Council's Biodiversity Referral Unit can reassess the application.
NECC (Development Engineering)	***No objection, subject to conditions*** The submitted stormwater plan with the provision of OSD and connecting to the existing system is satisfactory. The survey plan indicates there is an electrical pillar within the road reserve that may be impacted by the proposed driveway. Hence a services plan shall be provided with Roads Act application for civil works on the road reserve as conditioned. No objections to approval subject to conditions as recommended.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A426279, dated 12/10/2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.4m	22.4%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Under subclause (2D), the building height may exceed 8.5m, but not more than 10m if—

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

As the proposed development includes elements that exceed the 10m maximum, the provisions of subclause (2D) do not apply to the proposed development. As such, an assessment of a request to vary a development standard under clause 4.6 is included in this report below.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.4m
Percentage variation to requirement:	22.4%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

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

The applicants written request argues, in part:

Although the part of the wall and balcony handrail exceed the 8.5m height limit, these both fall within the 10m height concession described in sub-Clause 2 (D). It is only part of the roof overhang that exceeds the 10m height and this non-compliance is only 180mm. Strict compliance could be achieved only by:

a) Removing the proposed roof overhang which would impact the shading benefit to the windows
b) Lower the proposed Garage floor level which would increase the gradient of the proposed driveway.

It would be unnecessary and unreasonable to proceed with either of these two options to accommodate such a minor non-compliance especially considering there are already greater non-compliances on the existing building.

Council's measurement of the building height of the new garage element from the submitted plans is 10.4m, thereby being slightly more than the applicant's assessment. Notwithstanding this discrepancy, Council generally agrees with the applicant that strict compliance with the building height development standard is unlikely to change the level of impact of the proposed development that would have otherwise occurred with a compliant design. As noted by the applicant, flow on impacts including driveway gradient compliance issues would occur if the building was required to be lowered. It is noted that parts of the existing dwelling already exceed the 10m building height concession under subclause (2D).

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:

As the ridge level of the garage and the dwelling is below that of Grandview Drive, the bulk and scale of the proposed development will not be readily perceivable from the public domain. The proposed works are not considered to impact upon the existing and desired streetscape character. While the proposal includes some significant numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties or the public domain given the geographical characteristics of the site and surrounds.

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

Comment:

The height and scale of the proposed garage and dwelling is generally consistent with that of similar structures and dwellings in the site vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

No views or vistas are expected to be unreasonable impacted as a result of the development.

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

Comment:

The proposed development is appropriately stepped to respond with the steep topography of the site while also ensuring functional residential development can be provided on the site.

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

Comment:

While some tree removal is required to facilitate the proposed development, majority of the existing trees and vegetation are to be retained. The existing canopy trees and vegetation on and around the site will soften the built form and its visual impact on the natural environment.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

  Comment:

  Through its design and siting, the proposed development is considered to have low impact on the ecological and aesthetic values of the site.

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

  Comment:

  The proposed development is not expected to cause adverse impacts to the ecological and aesthetic values on the site.

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

  Comment:

  The proposed development provides for a low density residential dwelling with ancillary structures that provide greater functionality than the existing conditions.

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

  Comment:

  Due to the elevated nature of the new built elements of the proposed development, it is not expected to cause unreasonable impact to wildlife corridors that the site may have.

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).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Nil	100%	No
Rear building line	6.5m	12.7m	N/A	Yes
Side building line	E - 2.5m	Garage - 1.4m	44%	No
		Dwelling - 1.2m	52%	No
	W - 1m	Garage - 1m	N/A	Yes
		Dwelling - 1.8m	N/A	Yes
Building envelope	E - 3.5m	Existing dwelling - Outside envelope	13.5%	No, existing
		Garage - Outside envelope	65%	No
	W - 3.5m	Existing dwelling - Outside envelope	49%	No
		Dwelling addition - Outside envelope	3.3%	No
		Garage - Outside envelope	120%	No
Landscaped area	60% (426.5m^2)	51.9% (369.4m^2)	13.4% (57.1m^2)	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
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
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D10.7 Front building line (excluding Newport Commercial Centre)

Description of non-compliance

The control requires all built structures to be setback 6.5m from the front boundary.

The proposed garage is to have a nil setback.

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 works are not considered to impact upon the existing and desired streetscape character. While the proposal includes some significant numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties or the public domain given the geographical characteristics of the site and surrounds. Therefore it is considered the desired future character of the Newport locality will be achieved.

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

  Comment:

  No views or vistas are expected to be unreasonable impacted as a result of the development.

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

  Comment:

  Not applicable, as the subject site does not adjoin a main road.

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

  Comment:

  While some tree removal is required to facilitate the proposed development, majority of the existing trees and vegetation are to be retained. The existing canopy trees and vegetation on and around the site will soften the built form. Replacement planting is also proposed to offset the removed trees.

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

  Comment:

  The proposed development provides two new onsite parking spaces. While forward vehicle manoeuvring cannot be achieved, the site is accessed via a slip road off Grandview Drive. This allows vehicles to enter and exit Grandview Drive in a forward direction. Council's Development

Engineer raises no objection to the proposed parking facilities, subject to condition.

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

  Comment:

  It is considered the development is of a scale and density that is in keeping with the height of the natural environment given the works are located beneath the ridge level of the existing dwelling and all canopy trees.

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

  Comment:

  The proposed works are not considered to detract from the street frontage or impact upon pedestrian amenity.

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

  Comment:

  Sufficient separation is provided between the works and existing surrounding development therefore it is considered the development responds to, reinforces and sensitively relatives to the spatial characteristics of the existing urban environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the relevant 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.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of non-compliance

The control requires built structures to be setback 2.5m from at least one side boundary and 1m from the other. For the purpose of this assessment, the eastern boundary is taken to be the 2.5m boundary and the western boundary is taken to be the 1m boundary.

The proposed garage is setback 1.4m from the eastern side boundary, which represents a variation of 44%. The garage has a compliant western side boundary setback of 1m.

The proposed dwelling additions are setback a minimum of 1.2m to the eastern side boundary, which represents a variation of 44%. The dwelling additions have a compliant western side boundary setback of at least 1.8m.

The existing decks of dwelling are partially non-compliant, however as no change to the decks are proposed, they are considered to be acceptable on merit.

Merit consideration

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

outcomes of the control as follows:

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

  Comment:

  The proposed works are not considered to impact upon the existing and desired streetscape character. While the proposal includes some significant numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties or the public domain given the geographical characteristics of the site and surrounds. Therefore it is considered the desired future character of the Newport locality will be achieved.

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

  Comment:

  While the proposed garage demonstrates considerable bulk and scale, the remainder of the proposed development generally complies with the built form control requirements and is considered to appropriately respond to the geographical characteristics of the site. Variety in finish materials and facade articulation assist in reducing the visual dominance of the bulk and scale of the development. The lightweight pier supports of the rear dwelling addition appropriately mitigate the bulk of the elevated structure. The proposed works are generally below the height of surrounding canopy trees. Existing and new vegetation is expected to soften the impact of the built form of the structure on adjacent properties and the public domain.

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

  Comment:

  No views or vistas are expected to be unreasonable impacted as a result of the development.

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

  Comment:

  As above, no views or vistas are expected to be unreasonable impacted as a result of the development. The new built elements are stepped with the site topography and impact to existing vegetation is expected to be minimal.

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

  Comment:

  The proposal ensures that adequate light, solar access and privacy is obtained between dwellings. The proposal complies with the requirements of the C1.4 Solar Access control and has been designed so that there are no unreasonable impacts on the adjoining or nearby properties. Adequate physical separation between the proposed development and habitable areas of the adjoining properties to protect privacy and amenity of the site and adjoining properties has been achieved.

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

  Comment:

  New vegetation is proposed to offset vegetation required to be removed. The vegetation adequately screens the development and provides for an attractive streetscape.

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

  Comment:

  No unreasonable amenity impacts are considered likely to arise as a result of the proposal. The current access arrangement is to be improved therefore satisfying this outcome.

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

  Comment:

  Majority of the existing vegetation is to be retained which will help to visually reduce the building bulk when viewed from the public domain and adjacent properties.

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

  Comment:

  Not applicable, the subject site does not adjoin a commercial zone.

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.

D10.11 Building envelope (excluding Newport Commercial Centre)

Description of non-compliance

The control requires a building envelope to be projected 45 degrees from a height of 3.5m above ground level at the side boundaries to the maximum building height.

The proposed garage encroaches into the building envelope along the east elevation to a height of 3.7m over a length of 5.2m and west elevation to a height of 5.4m over a length of 6.2m. This represents a variation of up to 38.6% and 120% respectively.

However, where the building footprint has a slope is situated on a slope over 16.7 degrees (i.e.; 30%), variation to this control will be considered on a merits basis. In this case, the building footprint of situated on a slope of 48.5%. As such, this variation applies to the proposed development.

Merit consideration

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

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

Comment:

The proposed works are not considered to impact upon the existing and desired streetscape character. While the proposal includes some significant numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties or the public domain given the geographical characteristics of the site and surrounds. Therefore it is considered the desired future character of the Newport locality will be achieved.

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

Comment:

The proposal will still have an appropriate scale when viewed from the street and adjoining properties given the non-compliant portions of the dwelling are appropriately set back from the front boundary. The proposed development compliments and enhances the existing and future built form of the locality. The development promotes a building scale and density that is below the surrounding tree canopy.

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

Comment:

Trees required to be removed to facilitate the proposed development are to be offset onsite with replacement plantings. It is considered the development responds to, reinforces and sensitively relates to the spatial characteristics of the existing natural environment.

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

Comment:

While the proposed garage demonstrates considerable bulk and scale, the remainder of the proposed development generally complies with the built form control requirements and is considered to appropriately respond to the geographical characteristics of the site. Variety in finish materials and facade articulation assist in reducing the visual dominance of the bulk and scale of the development. The lightweight pier supports of the rear dwelling addition appropriately mitigate the bulk of the elevated structure. The proposed works are generally below the height of surrounding canopy trees. Existing and new vegetation is expected to soften the impact of the built form of the structure on adjacent properties and the public domain.

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

Comment:

No views or vistas will be unreasonably impacted as a result of the proposed development.

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

Comment:

The proposal ensures that adequate light, solar access and privacy is obtained between dwellings. The proposal complies with the requirements of the C1.4 Solar Access control and has been designed so that there are no unreasonable impacts on the adjoining or nearby properties. Adequate physical separation between the proposed development and habitable areas of the adjoining properties to protect privacy and amenity of the site and adjoining properties has been achieved.

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

  Comment:

  Existing and new canopy trees and vegetation on the site will assist in softening the proposed built form.

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.

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The control requires a minimum of 60% (426.5m^2) of the site to be landscaped area.

The proposed development provides 51.9% (369.4m^2) of the total site area as landscaped area, which represents a variation of 13.4% (57.1m^2).

While not technically included in the landscaped area calculation, the proposal includes landscaped areas in the undercroft areas of the garage and rear dwelling addition. When including these areas, the total landscaped area is 60.1% (433m^2).

Provided the outcomes of this control are achieved, impervious areas less than 1 metre in width and up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only may be permitted on the landscaped proportion of the site.

When applying the above variations the total landscaped area (excluding undercroft areas) becomes 57.9% of site area.

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 works are not considered to impact upon the existing and desired streetscape character. While the proposal includes some significant numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties or the public domain given the geographical characteristics of

the site and surrounds. Therefore it is considered the desired future character of the Newport locality will be achieved.

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

  Comment:

  While the proposed garage demonstrates considerable bulk and scale, the remainder of the proposed development generally complies with the built form control requirements and is considered to appropriately respond to the geographical characteristics of the site. Variety in finish materials and facade articulation assist in reducing the visual dominance of the bulk and scale of the development. The lightweight pier supports of the rear dwelling addition appropriately mitigate the bulk of the elevated structure. The proposed works are generally below the height of surrounding canopy trees. Existing and new vegetation is expected to soften the impact of the built form of the structure on adjacent properties and the public domain.

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

  Comment:

  The proposal is not expected to cause any unreasonable privacy, amenity or solar access impact to adjacent properties. The provision of new landscaping and vegetation is expected to mitigate potential overlooking impacts caused by the proposal.

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

  Comment:

  Existing and new canopy trees and vegetation on the site will assist in softening the proposed built form.

- *Conservation of natural vegetation and biodiversity*

  Comment:

  The proposal includes the planting of native vegetation and trees. The conservation of natural vegetation and biodiversity will therefore be achieved.

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

  Comment:

  The proposal is not expected to unreasonably impact upon stormwater management on site. The reduction in landscaped area is minor to the existing conditions and there are sufficient portions of soft, permeable surfacing which will assist in stormwater runoff, preventing 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 and enhanced as a result of the proposed development through the planting of new native tree species.

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

  Comment:

  Sufficient permeable 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 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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $7,035 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $703,482.

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 P21 DCP has found that the proposed development does not strictly comply with the requirements of the applicable controls related to front and side building lines, building envelope and landscaped area.

Although the proposed development is non-compliant with several control requirements, it is considered that many of these are a consequence of the geographical characteristics 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 and a more functional dwelling.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1980 for Alterations and additions to dwelling house and construction of a double garage on land at Lot 28 DP 16029, 55 Grandview Drive, 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**
349/001 - Site Plan	October 2021	Stephen Grech and Associates
349/002 - Roof Plan	October 2021	Stephen Grech and Associates
349/003 - Garage Level Plan	October 2021	Stephen Grech and Associates
349/004 - Store Level Plan	October 2021	Stephen Grech and Associates
349/005 - Ground Level Plan	October 2021	Stephen Grech and Associates
349/006 - Lower Ground Level Plan	October 2021	Stephen Grech and Associates
349/007 - Basement Level Plan	October 2021	Stephen Grech and Associates
349/008 - Lower Garden Plan	October 2021	Stephen Grech and Associates
349/009 - North & South Elevation	October 2021	Stephen Grech and Associates
349/0010 - East Elevation	October 2021	Stephen Grech and Associates
349/011 - West Elevation	October 2021	Stephen Grech and Associates
349/012 - Section A	October 2021	Stephen Grech and Associates
349/013 - Section B	October 2021	Stephen Grech and Associates

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
2021-065 SW1	09/08/2021	Waterdesign Civil Engineers
2021-065 SW2	09/08/2021	Waterdesign Civil Engineers
2021-065 SW3	09/08/2021	Waterdesign Civil Engineers
2021-065 SW4	09/08/2021	Waterdesign Civil Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A426279	12/11/2021	Grech Architects

Arboricultural Impact Assessment	21/08/2021	Standfast Tree Services
Biodiversity Development Assessment Report	December 2021	Kingfisher Consultants Australia
Geotechnical Investigation (Ref: TGE22055)	23/12/2020	Taylor Geotechnical Engineering

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Landscape Plan Issue A01C	July 2021	Environment Peninsula

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	14/10/2021	Marc Witham

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	17/11/2021

(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. **Approved Land Use**
Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house*, as defined by the Pittwater Local Environment Plan 2014 Dictionary.

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

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

4. **No Approval for Secondary Dwelling**
No approval is granted under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Cooking facilities are not permitted to be installed or used at the bottom-most level of the dwelling house.

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. **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

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

A monetary contribution of $7,034.82 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 $703,482.00.

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

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

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

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

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

8. **Security Bond**

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

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

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

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

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

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

9. **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 Taylor Geotechnical Engineering dated 23/12/2021 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.

10. **Installation of Nest Boxes**
A minimum of 4 nest boxes suitable for microbats are to be installed in retained trees / throughout the trees within areas of retained native vegetation / on the site as recommended within the submitted Biodiversity Development Assessment Report (Kingfisher 2021).

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat.

11. **Amendment of Landscape Plans**
The submitted Landscape Plan is to be amended in accordance with the following:
   - Provision of at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community) in accordance with PDCP B4.7.

This may be achieved by replacing proposed *Howea spp*. with *Livistona australis*.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

the site.

12. **Notification of determination to which the Biodiversity Offset Scheme applies**
The applicant or Project Ecologist, on behalf of the applicant, must download and complete the "Biodiversity Offsets Scheme – Notification of Determination" form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to the LMBC Service Centre bam.support@environment.nsw.gov.au. The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the Certifying Authority must be copied into the notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning, Industry and Environment are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance.

13. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**
Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Certifying Authority prior to release of construction certification.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	**TEC**	**Number of ecosystem credits**	**Containing HBT**	**IBRA sub-region**	**Plant community type(s) that can be used to offset the impacts from development**
1214 - Pittwater Spotted Gum Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney	1	NO	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or	1214, 1589

	Basin Bioregion			Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

14. **Variation rule credit retirement conditions - Ecosystem credit retirement conditions**
Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 2 must be retired to offset the impacts of development.

Evidence of the retirement of credits in satisfaction of Table 2 requirements is to be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and the Certifying Authority prior to release of construction certification.

Table 2 Ecosystem credits required to be retired – variation rules

Impacted plant community type	Number of ecosystem credits	Containi
1214 - Pittwater Spotted Gum Forest	1	No

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

15. **Compliance with approved BDAR impact mitigation table to minimise impacts – Prior to Construction**

Chapter 10 of the approved Biodiversity Development Assessment Report (Kingfisher 2021) includes mitigation measures, which must to be implemented before, during and after construction to avoid and minimise the impacts of the proposal, including action, outcome, timing and responsibility.

All biodiversity-related measures are to be implemented prior to construction, as specified in the approved BDAR and these conditions of consent.

The Project Ecologist is required to provide details of compliance, including written and photographic evidence, and provide to the Certifying Authority and Council prior to issue of Construction Certificate.

Reason: To - compliance with the approved BDAR.

16. **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.

17. **Certification and Design of Elevated Parking Facility Work**
The Applicant shall submit a Structural Engineers' design and certificate certifying that the elevated parking facility is designed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: Safety and Compliance with this consent.

18. **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.

19. **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 Water Design Civil Engineers, job number 2021-065, drawing number SW1, SW2, SW3, dated 9/8/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers

Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
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.

20. **Submission Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular crossing and associated retaining structures in the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 6 meters wide to be constructed in accordance with Council's standard drawing A4/3330/3 NL.
2. Structural details of the elevated driveway, retaining walls, piers and slab designed by a Structural Engineer
3. Engineering long sections at both edges and center of the proposed driveway are to be included in the submission to demonstrate compliance with AS2890.1.
4. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
5. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided with the application.
6. Structural Engineer's certification of the design of all retaining walls, access stair, suspended driveway and safety barriers.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

21. **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.

22. **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.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:
i) works under section 4 - Tree Protection Plan for the following trees: T1, T3, T6, T8, T9, T10, and T11,
ii) any other works as determined necessary during construction to protected all existing trees within the site, within adjoining properties, and within the road reserve verge.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

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

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

Reason: Tree protection.

25. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):
i) T12 and T13 Eucalyptus robusta, subject to acceptance from Council's Natural Environment Referral - Biodiversity.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal, and this includes the proposed removal of T7 Archontophoenix cunninghamiana.

Reason: To enable authorised development works.

26. **Tree Removal Within the Road Reserve**
This consent approves the removal of the following tree within the road reserve (as recommended in the Arboricultural Impact Assessment):
• T2 Eucalyptus robusta.

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

Reason: Public liability.

27. **Compliance with Ecologist's Recommendations – During Construction**
All biodiversity-related measures are to be implemented during construction in accordance with Chapter 10 of the Biodiversity Development Assessment Report (Kingfisher 2021).

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

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

28. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

29. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites, unless otherwise determined by alternative methods by the Project Arborist where the slope of the land restricts fencing.

Any street tree protection shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge 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.

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

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

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

including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

31. **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.

32. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;

and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

33. **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.

34. **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.

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

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

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

36. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

37. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) all tree planting shall 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) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space or solar collectors, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

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

38. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans and these conditions of consent.

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

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

39. **Replacement of Canopy Trees**
At least 3 locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m (Angophora spp. Corymbia spp. Eucalyptus spp. or Syncarpia spp.) and be consistent with the Final Determination for Pittwater Spotted Gum Forest - endangered ecological community listing:

https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The%20Scientific%20Committee%2C%20established%20by,Schedule%201%20of%20the%20Act.

Replacement plantings are to be planted within the site, and must be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal

Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

40. **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.

41. **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.

42. **Certification Elevated Parking Facility Work**
The Applicant shall submit a Structural Engineers' certificate certifiying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

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

Reason: Public and Private Safety

44. **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.

45. **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

46. **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.

47. **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.

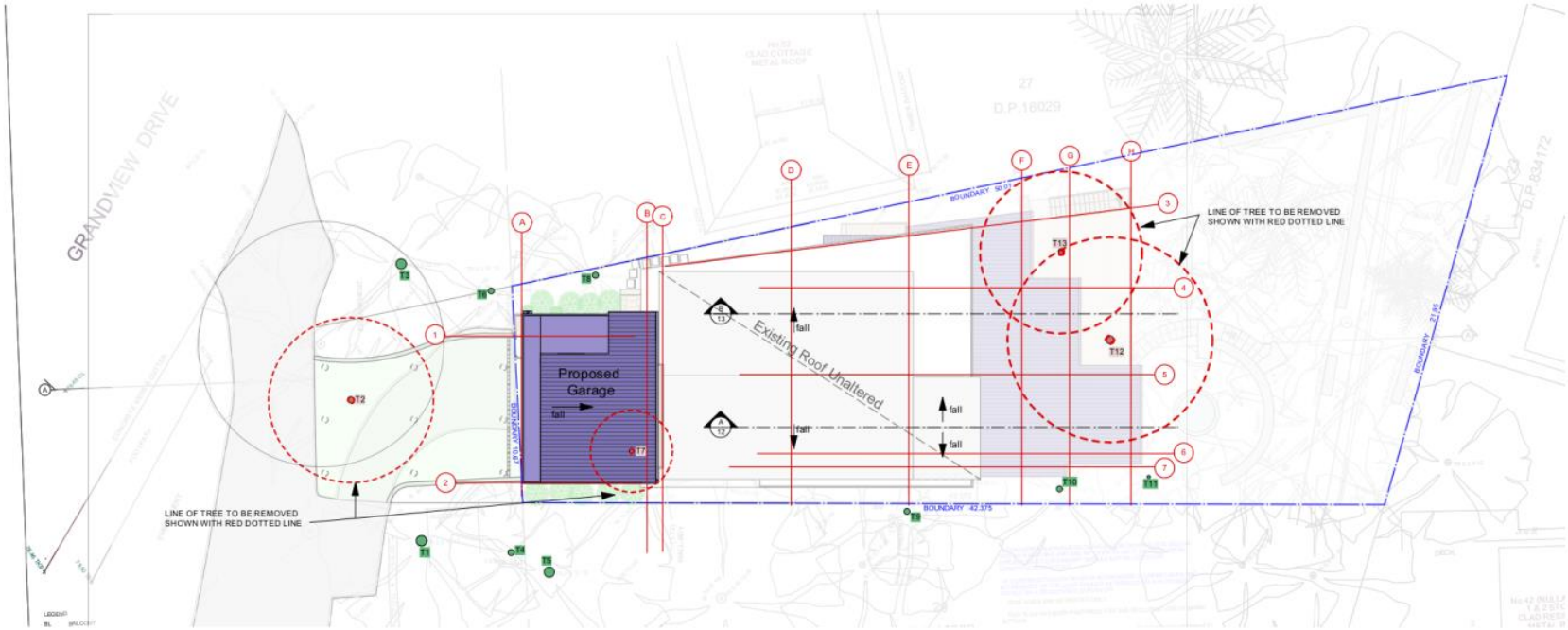
48. **Replacement of Canopy Trees**
Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

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

Reason: To ensure geotechnical risk is mitigated appropriately.



1 SITE PLAN
1:200

Grech Architects Pty Ltd
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trading as
Stephen Grech and Associates, Architects
tel 02 9953 8886 email info@grecharchitects.com.au
suite 7, 121 military road, neutral bay nsw
nominated architect -stephen grech - reg no 6259

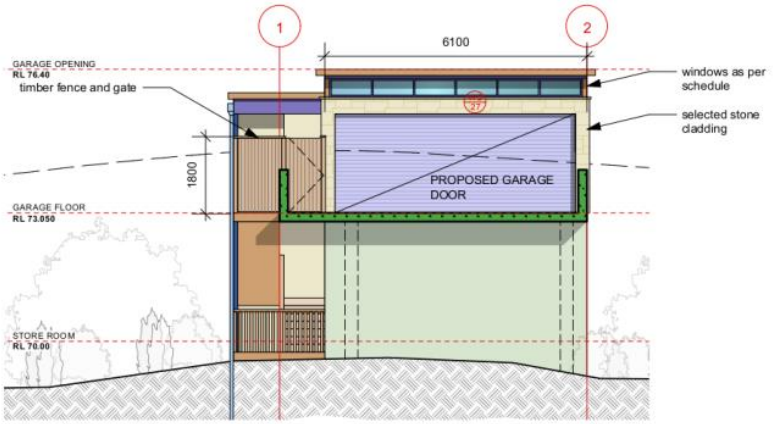
Proposed Alterations and Additions at
No 55 Grandview Drive, Newport

Builders Contractors shall verify job dimensions before any workcommences. All shop drawings shall be submitted to the Architect and manufacture shall not commence prior to the return of amended shop drawings. Figured dimensions shall take precedence over scaled. This drawing is copyright.

LOT 28, DP No 16029
Site Plan
For: Marc and Kylie Witham

Scale @ A3: 1:200

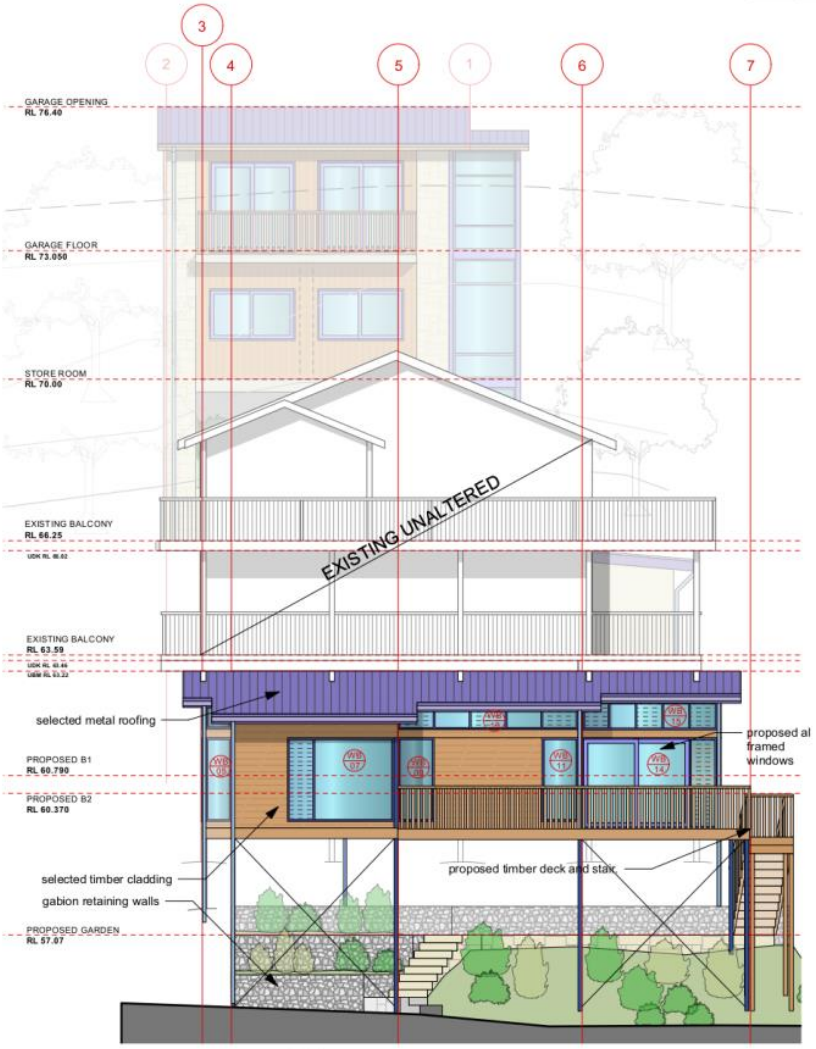
Drawing No: 349/001
Issue: DA Oct 21



1 NORTH ELEVATION
1:100



2 GARAGE SOUTH ELEVATION
1:100



3 SOUTH ELEVATION
1:100

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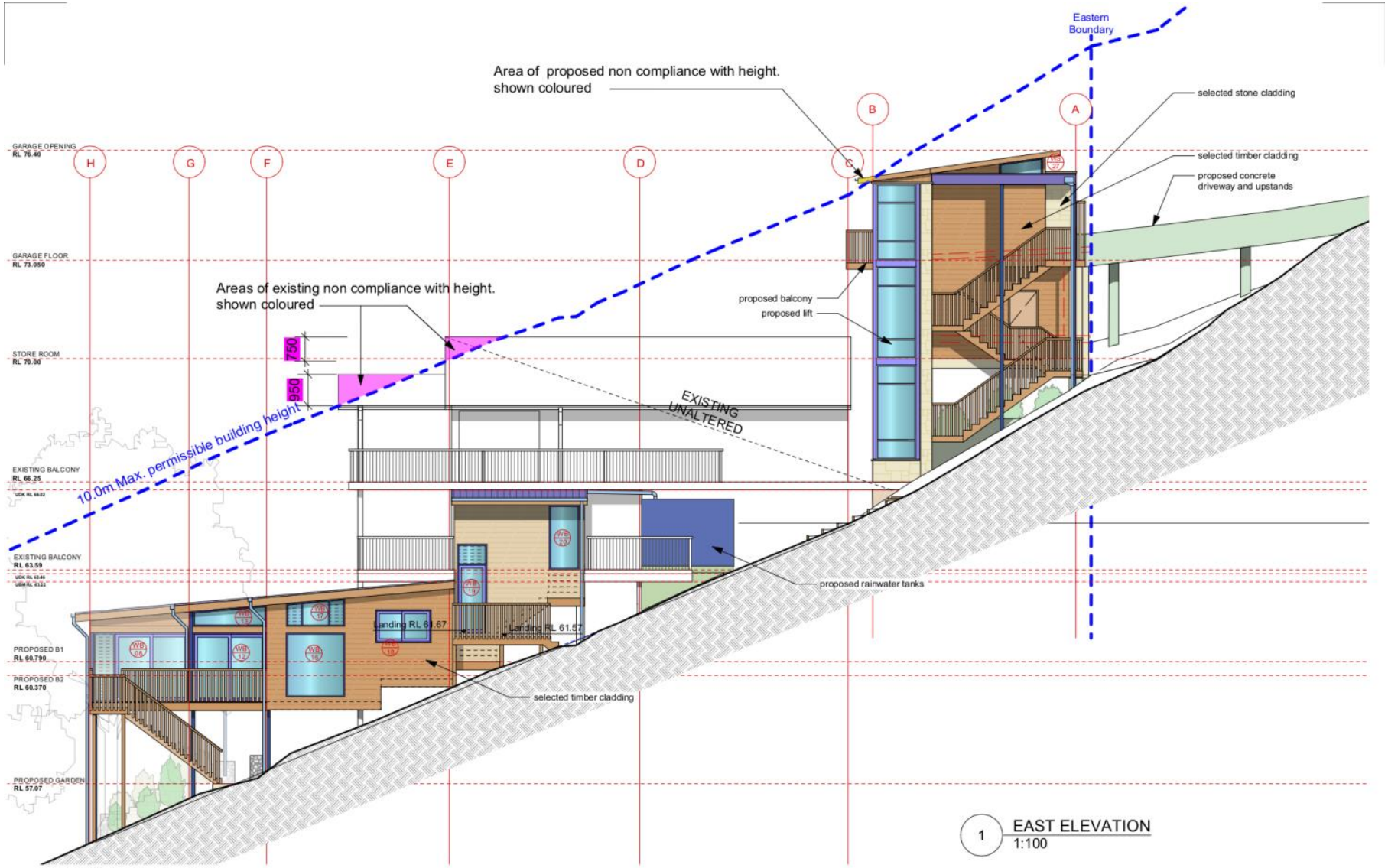
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LOT 28, DP No 16029
North & South Elevation
For: Marc and Kylie Witham

Scale @ A3: 1:100

Drawing No: 349/009
Issue: DA Oct 21



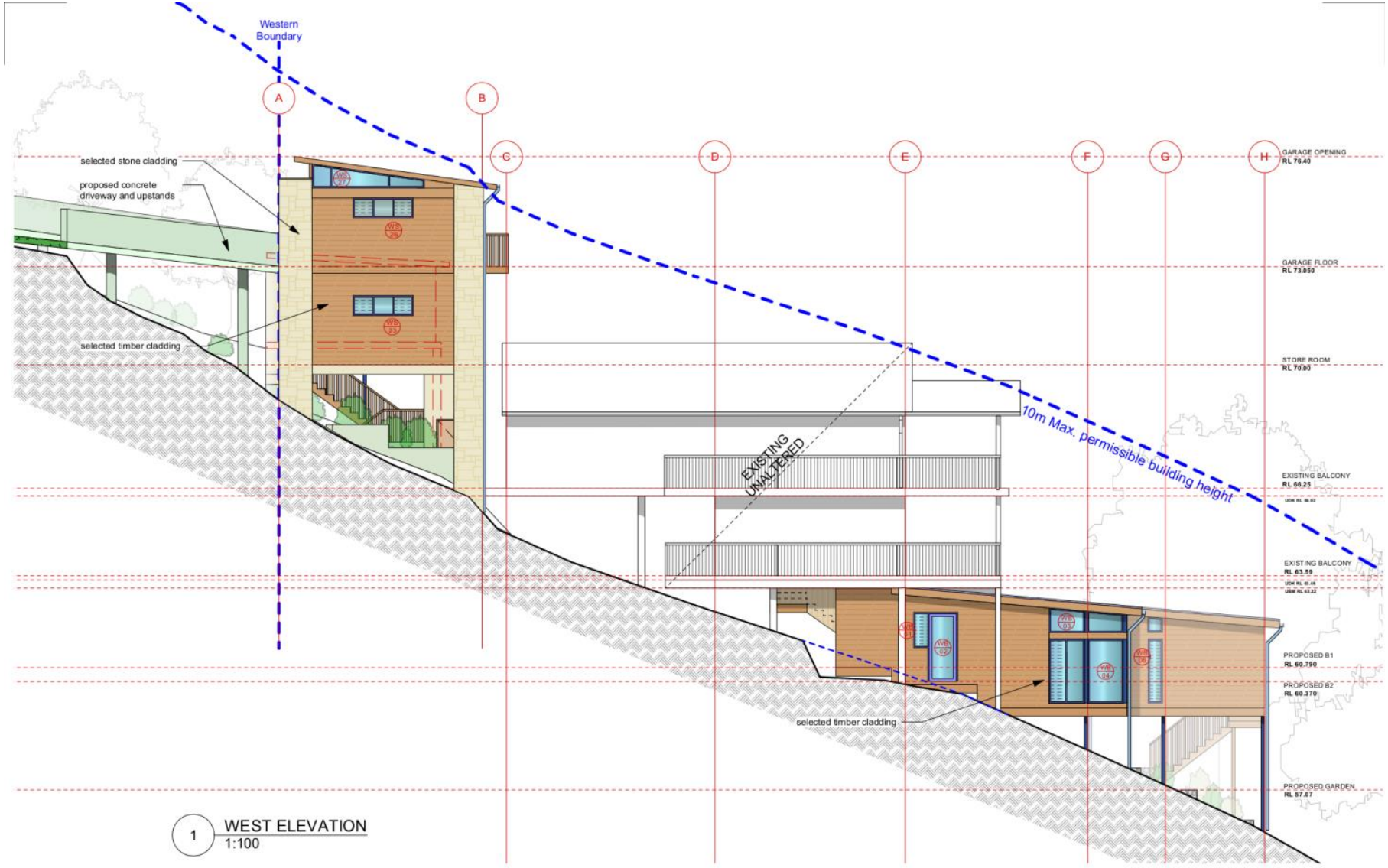
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Proposed Alterations and Additions at
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LOT 28, DP No 16029
East Elevation
For: Marc and Kylie Witham

Drawing No: 349/010
Scale @ A3: 1:100
Issue: DA Oct 21



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No 55 Grandview Drive, Newport

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LOT 28, DP No 16029
West Elevation
For: Marc and Kylie Witham

Scale @ A3: 1:100

Drawing No: 349/011
Issue: DA Oct 21

REQUEST TO VARY THE BUILDING HEIGHT STANDARD
Clause 4.6 of Pittwater LEP 2014

Alterations and Additions including new garage and storeroom to
55 Grandview Drive
Newport

Prepared by

stephen grech and associates, architects

December, 2021

Request to Vary the Buildings Height Standard

(Pittwater LEP 2014 Under Clause 4.6 Exception to Development Standards)

1) Introduction

This statement accompanies a development application for Alterations and Additions to an existing dwelling at No 55 Grandview Drive, Newport. It should be read in conjunction with the Statement of Environmental Effects submitted and drawings prepared by Stephen Grech and Associates, Architects.

Clause 4.6 of Pittwater LEP states:

4.6 Exceptions to development standards

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

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

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

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

(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.

2) Relevant Standard –
Clause 4.3 of Pittwater LEP defines the maximum permissible building height:

The LEP identifies the objectives of the height control as being:

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

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

Referring to Height of Buildings Map Sheet HOB_017 the site is identified as being within area "I" which has a permissible HOB of 8.5m



Height of Buildings Map - Sheet HOB_017

Maximum Building Height (m)

I 8.5

Clause (2D) of the LEP states

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

(b) the objectives of this clause are achieved, and

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Elsewhere, in the "Dictionary", the LEP includes the following relevant definitions

***"building height** (or **height of building**) means:*

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

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

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

***"ground level (existing)** means the existing level of a site at any point."*

3) Identifying the Non-Compliance

PLEP 2014 stipulates a maximum Height of 8.5m for the site and makes concessions for steeply sloping sites that allow a building height up to 10m.

Using the definitions included within the LEP, the HOB for the proposed wall of the garage building will exceed the height limit by up 1500mm on the east side of the building. In addition, a section of the balcony will exceed the 8.5m height limit by 450mm. These are both still compliant with Clause 2(D).

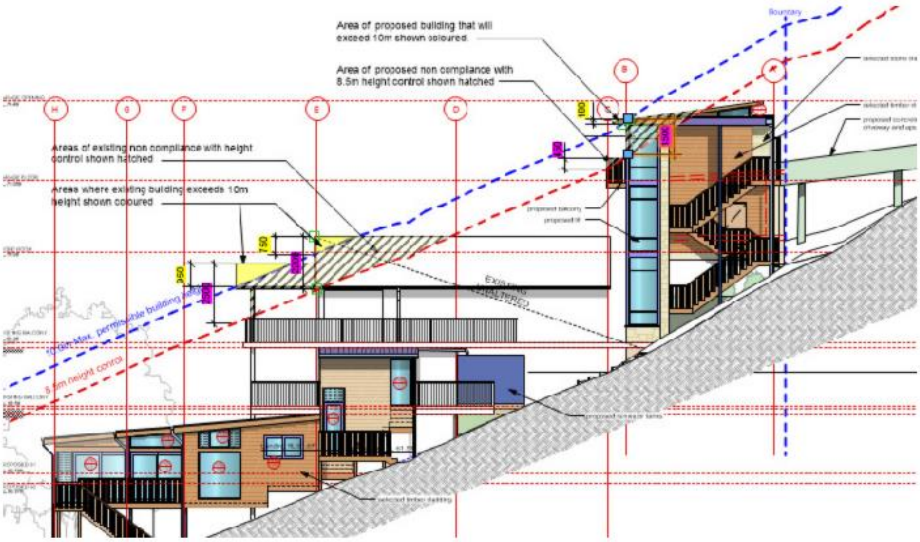


Figure 1 : Building height at east elevation – area of non-compliance shown hatched and in yellow.

Although the proposed wall and balcony balustrade are within the 10m height limit, the steep slope of the site causes the proposed roof overhang to exceed the 10m height limit by **180mm** as shown in the image below

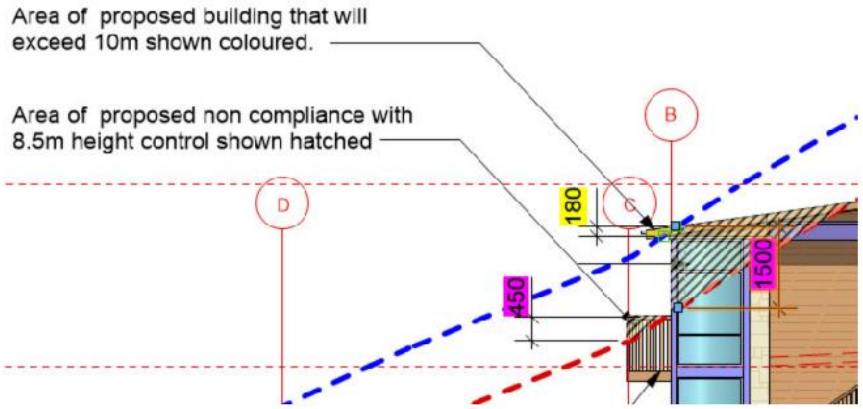


Figure 2 : Drawing demonstrating the extent of non-compliance for proposed new works. The red dotted line is the 8.5m height limit and the blue dotted line indicates the 10m height limit.

Parts of the existing roof also exceed the 8.5m height limit by up to 2.5m and exceed the 10m height limit, by up to 950mm as shown in the images below

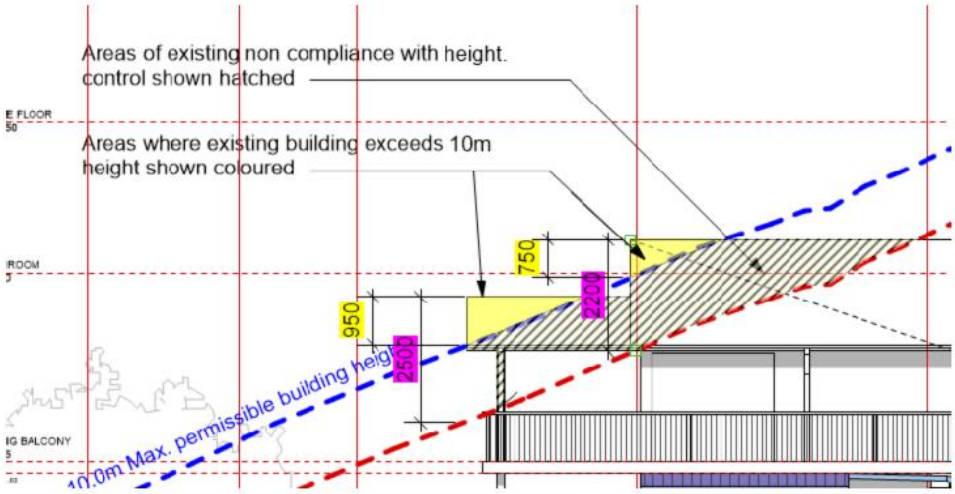


Figure 3 : Drawing demonstrating the extent of existing non-compliance.

4) How the proposal meets the objectives of the Standard

The LEP identifies the following relevant objectives for the standard:

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

The proposal addresses the objectives as follows

(a) The desired character of the locality is defined in the DCP as being:

"..a scale and density that is in scale with the height of the natural environment.."
"..buildings do not dominate the streetscape and are at a human scale"
"..buildings give the appearance of being two storey maximum"
"parking structures being a secondary component"

The proposed building is surrounded by tall trees and the highest point of the roof ridge is **below** the existing ground level at Grandview Drive. The proposal will therefore not dominate the streetscape and preserve the desired human scale. The proposal meets the objective of being a secondary component and appears well below the two storey maximum height limit when viewed from the street.

(b) Due to the private road, the proposed building will sit very low relative to Grandview Drive and significantly lower relative to the street than the nearby existing parking structures at Nos 39, 41, 43, and 49 Grandview Drive. The overall height (relative to the street level) is similar to the existing building at No 67 Grandview Drive. The proposal therefore is compatible with the height and scale of the nearby development.

(c) Shadow diagrams submitted demonstrate that the proposal does not significantly overshadow neighbouring properties.

(d) The only area of non-compliance is the overhang on the low side of the proposed roof in an area between the proposed parking structure and the existing house. This will therefore not have any impact on any existing views

(e) The proposal steps down the hill and responds to the topography. The site is very steep however the depth required to accommodate car parking results in a very minor non-compliance with the height control.

(f) The proposal sits below the street level and is surrounded by vegetation so will not have an adverse impact on the natural environment.

5) Reasons why compliance with the development standard would be unnecessary or unreasonable

Although the part of the wall and balcony handrail exceed the 8.5m height limit, these both fall within the 10m height concession described in sub-Clause 2 (D). It is only part of the roof overhang that exceeds the 10m height and this non-compliance is only 180mm. Strict compliance could be achieved only by:

a) Removing the proposed roof overhang which would impact the shading benefit to the windows
b) Lower the proposed Garage floor level which would increase the gradient of the proposed driveway.

It would be unnecessary and unreasonable to proceed with either of these two options to accommodate such a minor non-compliance especially considering there are already greater non compliances on the existing building.

Stephen Grech
Registered Architect No 6259

ITEM 3.3	**DA2021/1020 - 41 GURNEY CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2022/128998**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations
	3 ⇩Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 DA2021/1020 for alterations and additions to a Dwelling House on land at Lot 5 DP 1013813, 41 Gurney Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1020

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 5 DP 1013813, 41 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a Dwelling House
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Peter Alexander Coventry
Applicant:	Peter Alexander Coventry

Application Lodged:	07/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/07/2021 to 29/07/2021
Advertised:	Not Advertised
Submissions Received:	11
Clause 4.6 Variation:	4.3 Height of buildings: 13.7%
Recommendation:	Approval

Estimated Cost of Works:	$ 986,000.00

EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to the existing dwelling house.

Nine submissions were received in objection to the development raising concerns including building height, privacy, solar access, view loss, excavation and bulk and scale. Two submissions were received in support of the application.

The proposed application seeks a variation to the Height of Buildings development standard pursuant to Clause 4.6 of the Manly LEP 2013.

A detailed assessment has been conducted and the proposal is found to be consistent with the objectives of relevant standards and controls, with no matters that would warrant the refusal of the

proposed development.

The application proposes a variation to the Height of Buildings development standard of more than 10% (9.67m or 13.7%), as such the application is referred to the Development Determination Panel, with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling house.

The works incorporate the following:

- First floor extension;
- Ground floor extension and internal alterations, including;
    - Western terrace; and
    - Internal access.
- New lower ground floor terrace and access;
- 4 car garage;
- Internal lift;
- Associated landscaping; and
- Demolition.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.4.2 Alterations and Additions
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 5 DP 1013813 , 41 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Gurney Crescent, Seaforth. The site is irregular in shape with a frontage of 15.23m along Gurney Crescent and an average depth of 58.5m. The site has a surveyed area of 905.7m². The site is located within the R2 Low Density zone and accommodates a dwelling house. The site slopes up from the western boundary to the rear eastern boundary of approximately 12.96m. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development, typically dwelling houses.

Map:



SITE HISTORY

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

PLM2021/0017 - Alterations and additions to a dwelling house.

AMENDED PLANS
Following a preliminary assessment of the application Council wrote to the applicant on 6 October 2021 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to building height and floor space ratio non-compliance, bulk and scale, view loss, privacy, solar access and built form non-compliance. Following receipt of the letter the applicant advised that they intended to amend the development application. Council agreed to accept amendments to the application.

The applicant subsequently provided amended plans to address the concern raised on 2 November 2021. The proposed amendments included deletion of the rear terrace, reduction of ground floor terrace. The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in a significant reduced scaled development. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause

Section 4.15 Matters for Consideration	Comments
	is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to design amendment. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic 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	No matters have arisen in this assessment that would justify the

Section 4.15 Matters for Consideration	Comments
interest	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 Matthew Willis, dated 29 March 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 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 15/07/2021 to 29/07/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 11 submission/s from:

Name:	Address:
Mr Bill Tulloch Mrs Janet Ann Hassell Mr James Hassell	9 Barrabooka Street CLONTARF NSW 2093
Dr Pirooz Poursoltan Mahtabsadat Aghaeymaybody	35 A Gurney Crescent SEAFORTH NSW 2092
Mr John Rabbitts	17 Bligh Crescent SEAFORTH NSW 2092
Mr Richard Andrew Carey	27 Gurney Crescent SEAFORTH NSW 2092
Mrs Jean Nicholls	3 Bligh Crescent SEAFORTH NSW 2092
Ms Judith Anne Austin	47 Gurney Crescent SEAFORTH NSW 2092
Mrs Maureen Kathryn Fox	55 Gurney Crescent SEAFORTH NSW 2092
Mr Christopher John Pashley	53 Gurney Crescent SEAFORTH NSW 2092
James Andrew Wealleans	21 Gurney Crescent SEAFORTH NSW 2092
Dr Patrick Mehr	57 Gurney Crescent SEAFORTH NSW 2092
Mr Andrew John Lockwood	4 Bligh Crescent SEAFORTH NSW 2092

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

- **Building Height;**
- **Floor Space Ratio;**
- **Bulk and Scale;**
- **Solar Access;**
- **View Loss;**
- **Privacy (visual and acoustic);**
- **Built form non-compliance;**
- **Excavation;**
- **Drainage and landslide;**
- **Construction impacts on adjoining properties;**
- **Bushfire prone land;**
- **Extent of alterations (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187);**
- **Excessive parking;**
- **Cost of works;**
- **Artificial Turf.**
- **Streetscape.**

The matters raised within the submissions are addressed as follows:

- **Building Height**
  Comment:
  A number of submissions have received raise concerns with the height of the proposed development. As discussed with regard to clause 4.3 of MLEP 2013, the application seeks consent for a maximum height of 9.67m, representative of a 13.7% departure from the 8.5m height prescribed by MLEP 2013. The maximum height non-compliance is limited to the front facade of the upper floor, with the extent of non-compliance decreasing towards the rear of the site. The non-compliant portion of the development does not attribute to any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height of the proposal is supported in this instance.

- **Floor Space Ratio**
  Comment:
  Concern is raised in regards to the proposed non-compliance with the Floor Space Ratio development standard under clause 4.4 of the MLEP 2013. The amended proposed proposal is consistent with the Floor space ratio development standard the principal control of bulk and scale. The bulk and scale of the proposed development is not unreasonable in this residential setting, and doesn't warrant the refusal of the application.

- **Bulk and Scale**
  Comment:
  Concern is raised in regards to the overall bulk of the dwelling house. This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are considered to be appropriate in this residential context and satisfies the requirements and objectives of the Manly DCP 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **Solar Access**
  Comment:
  Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposed development is multi storey, will be excavated into the natural landform and the site has a east-west orientation. The revised shadow diagrams, detail the shadowing impacts upon No. 43 Gurney Crescent. A detailed assessment has been undertaken against the solar access provisions within this report. In summary, the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of Cl 3.4.1 of the Manly DCP.

- **View Loss**
  Comment:
  Concern was raised in regards to loss of water views from private open space from the adjoining northern property. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*' in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Privacy (visual and acoustic)**
  Comment:
  Concern was raised about privacy impacts (acoustic and visual) from the proposed dwelling particularly to outdoor living areas. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP, subject to conditions.

- **Built form non-compliance**
  Comment:
  Concern is raised in regards to the extent of built form (wall height, setbacks, open space) non-compliance proposed under this application. This matter is addressed in detail elsewhere within this report (refer 4.1 of Manly DCP 2013 section of this report). Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Excavation and Geotechnical report.**
  Comment:
  Concern was raised in regards to potential impacts from excavation works including vibration, soil stability and waste disposal. These matters have been considered under Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Further, the recommendations proposed under the Geotechnical report (prepared by Geotechnics dated 18 May 2021) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction.

- **Drainage and landslide**

Comment:
The application was referred to Council's Development Engineers for comment in regards to stormwater management. Suitable conditions have been imposed as part of this recommendation to ensure adequate stormwater management for the proposed dwelling and adjoining properties.

- **Construction impacts on adjoining properties.**
  Comment:
  Submissions have been received raising concern with regard to potential impacts to adjacent buildings during construction. A submission was also received from the operator of the adjoining petrol station, raising concern with regard to potential impacts upon underground infrastructure as a result of vibration during construction. Conditions of consent are recommended to require the preparation of pre and post construction dilapidation reports for all adjoining buildings and assets. Further conditions are also recommended to require further geotechnical assessment and the preparation of a detailed construction management plan, inclusive of vibration minimisation measures, prior to the issuance of any construction certificate.

- **Bushfire prone land**
  Comment:
  Concern is raised in regards to the suitability of the proposed bushfire report. The proposal was referred to the Rural Fire Service on the 13 July 2021. The recommended conditions of consent, included as part of the recommendation by the Rural Fire Service are included in the conditions of consent.

- **Extent of Alterations (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187)**
  Comment:
  A submission has been received in objection to the characterisation of the proposal as alterations and additions to an existing dwelling, with the submission noting that it should considered as a new dwelling or new development. As discussed in further detail with regard to clause 4.4.2 of MDCP 2013, the characterisation of the development is acceptable.

- **Excessive parking**
  Comment:
  Concern is raised in regards to the proposed 4 car space garage. The objection notes the proposed garage is of a excessive nature and not in keeping with the surrounding area. The proposed garage is deemed reasonable given that it will not cause any unreasonable amenity impacts on adjoining properties.

- **Cost of works**
  Comment:
  The application was accompanied by a cost summary report for the proposed works. The report has incorporated all aspects of the proposal and is deemed satisfactory.

- **Artificial turf**
  Comment:
  Concern has been raised in regards to the suitability of the proposed artificial turf on top of the proposed garage, with the submission noting that that the turf will release toxic fumes. There is no evidence put forth to suggest that the artificial turf will have no impact on health and safety of the occupants or neighbouring properties. If approved, all aspects of the application will need to meet the relevant Australian Standarda.

- **Streetscape**
  Comment:

Concern has been raised stating the proposed development will be inconsistent with the character of the street. The character of the streetscape and the wider catchment is varied, with no distinct or dominant type of dwelling. Gurney Crescent presents a range of dwelling houses with a variety of different sized dwelling houses. The proposal is not considered to be inconsistent with the character of the locality.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposed development is for alterations and additions to an existing dwelling. Council's Landscape Referral has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls: • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping No Landscape Plan nor Arboricultural Impact Assessment is provided with the application. The Statement of Environmental Effects identifies that the proposal will not require the removal of any significant vegetation, and the existing vegetation will be retained and continue to assist with softening the built form of the development. The site plans include references to landscape works including a 1m high planter along the terrace at the ground floor level (drawing A3), pavement to the garage roof, lawn and edge planting to the entry terrace area, and planting to the lower planter below over natural ground (drawing A4 and A5). Existing landscape features such as trees and vegetation not impacted by the works shall be retained and replaced if removed, and existing rock outcrops not impacted by the works shall also be retained. With the addition of two (2) new native trees as required under 4.1.5.2 Landscaped Area c) Minimum Tree Plantings, the proposed development is able to be integrated into the landscape setting. All new landscape planting shall be in accordance with section 7.6 of Planning for Bushfire Protection 2019, and shall comply with the principles of Appendix 4 and section 3.7 of Planning for Bush Fire Protection 2019. Landscape Referral raise no objectives to the development proposal subject to protection of existing trees and vegetation, and completion of landscape works.
NECC (Bushland and Biodiversity)	The application seeks approval for the construction of alterations and additions to an existing dwelling, including the construction of a new garage, with terracing above and improve landscaping throughout the site. The application also seeks to establish an Asset Protection Zone

Internal Referral Body	Comments
	(APZ) over the entirety of the site in perpetuity. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **Manly Local Environmental Plan (MLEP)** • Clause 6.5 (Terrestrial Biodiversity) **Manly Development Control Plan (MDCP)** • Clause 3.3.1. a) iv) Landscaping Design The vegetation within the site is largely managed, and is unlikely to require any additional vegetation removal for the establishment of an APZ. No tree or native vegetation removal is required to facilitate the application, nor is it considered likely to to impact upon nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The application was referred to the NSW Rural Fire Service 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.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

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. A378704_03 dated 1 July 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

Is the development permissible?	Yes

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.67m	13.7%	No
Floor Space Ratio	FSR: 0.40:1	FSR: 0.394:1 (357.2sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.67m
Percentage variation to requirement:	13.7%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

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

The applicants written request argues, in part:

- The proposed alterations and additions include modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g).
- The proposed new works will complement the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposal will provide for excellent amenity for the occupants within a built form which is compatible with the streetscape of Gurney Crescent which also promotes the orderly and economic use of the land (cl 1.3(c)).

Council's Assessment of the Clause 4.6 Request
The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed works to the ageing building is an orderly response to the development of the site;
- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwellings within Gurney Crescent.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

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

Comment:

The proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment:

Not applicable.

Zone objectives

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

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

  Comment:

  The proposed development retains the residential use of the site. It is considered that the development satisfies this objective.

  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:

  The dwelling house is for residential use.

  It is considered that the development satisfies this objective.

Conclusion:

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

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

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).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 905.7sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 7.9m (based on gradient 1:4.3)	7.7m	-	Yes
	South: 7.9m (based on gradient 1:4.3)	Ground floor - 6.2m - 7.8m First floor - 9.1m - 9.4m	- 18.99%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.9m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6m	18m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	(based on northern wall height) Ground floor - 1.33m - 2.53m First floor - 2.2m - 2.56m	Ground floor: 1.5m First floor: 1.5m - 2.7m	40.8% 32%	No
	(based on southern wall height) Ground floor - 2.06m - 2.33m First Floor -3.03m - 3.13m	Ground floor: 3m First floor: 1.4m - 5.1m	- 46%	No
	Windows: 3m	1.5m - 5.1m	50%	No
4.1.4.4 Rear Setbacks	8m	8.5m - 11.1m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (543.42sqm) of site area	53.99% (489sqm)	10.1%	No
	Open space above ground 25% (122.25sqm) of total open space	11.27% (55sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (195.6sqm) of open space	68.5% (335sqm)	-	Yes
	4 native trees	2 trees	50%	No
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2 <50%	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	4 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

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	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

Concern was raised with regard to the overshadowing impacts resulting from the development. Given the east-west orientation of the site, overshadowing is expected to occur to the southern adjoining site (No. 43 Gurney Crescent).

Clause 3.4.1 of the Manly DCP requires that for adjacent buildings with an east-west orientation, the

level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June). The proposal is compliant with this clause.

The proposed development eliminates more than one third of the existing sunlight accessing the private open space of adjacent properties (No. 43 Gurney Crescent, Seaforth) from 9am to 3pm on the winter solstice (21 June), inconsistent with Clause 3.4.1.1 a) of the Manly Development Control Plan.

A detailed assessment against the MDCP 2013 solar access provisions is provided below.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposal provides equitable access to sunlight for adjoining properties. It is important to note that the southern adjacent site is particularly vulnerable to further shadowing than what is currently experienced given the east-west orientation of the allotments along Gurney Crescent and the fact that the subject site currently accommodates a underdeveloped dwelling house. The proposed dwelling house complies with the floor space ratio development standard, with only a minor variation to the Height of Buildings development standard. The development complies with the rear setback control and the dwelling provides a varied first storey side setback of 1.5m - 2.7m from the southern boundary. Whilst the southern elevation involves 11.39% variation to the wall height provision, a compliant design would not result in a materially different impact upon solar access.

Concern has been raised with regard to non-compliance with the side setback control and the associated overshadowing arising from the portion of the proposal within this area. However, the setbacks of the proposal have been considered on merit, and the overshadowing impact associated with the portion of the development is not unreasonable. Furthermore, in most cases it should also be noted that the overshadowing occurs in portions of the site that are otherwise overshadowed by vegetation within the boundaries of the respective site. For these reasons, Council is satisfied that this objective is achieved.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

Whilst the impact to the adjoining property to the south is acknowledged, the dwelling will maintain sunlight to the ground floor living areas for reasonable portions of the day during mid-winter. Furthermore, occupants of the dwelling will have access to areas of private open space in direct sunlight throughout the entirety of the day.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The first floor extension has an increased side setback from the ground floor and complies with the Manly DCP 2013 side setback provision, which assists in reducing the shadowing impacts to the living room windows and principal outdoor living area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported , in this particular circumstance.

3.4.2 Privacy and Security

Description of non-compliance

Concern was raised in regards to the suitability of the proposed terraces and windows proposed under this application. Following Council raising concerns with the applicant in regards to privacy, amended plans (dated 21 October 2021) were lodged by the applicant which deleted the elevated terrace to the rear of the dwelling house and reduced the size of the ground floor terrace to the front of the dwelling with the terrace to the southern side of the dwelling deleted.

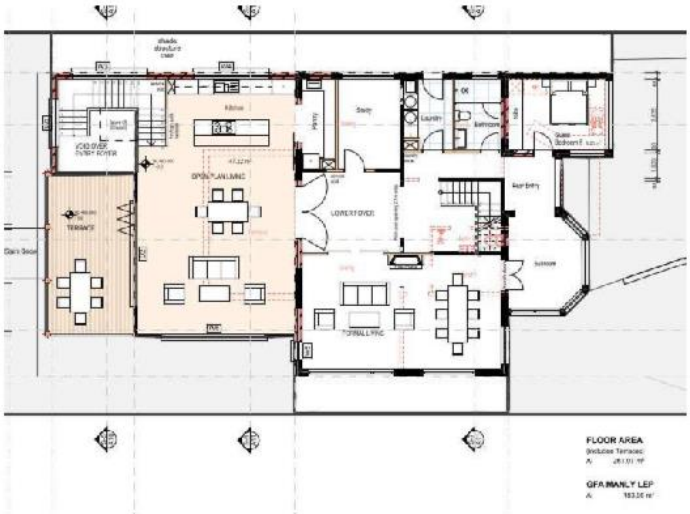


Image 1 - Amended ground floor plan.



Image 2 - Original superseded ground floor plan

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

Windows
Clause 3.4.2.1 of MDCP prescribes the use of narrow, translucent or obscured glass windows, where necessary, and that where close to boundaries, windows shall be off-set from those in the adjacent building. Further, clause 4.1.4.2 of MDCP requires windows to be setback 3m from a common boundary. Concern has been raised with regard to overlooking (visual privacy) arising from the proposal. Windows on the outer walls of the proposal are considered as follows:

- New windows along the northern elevation at ground and first floor level are highlight windows, which will mitigate direct overlooking of the adjoining northern property.
- W13 along southern elevation while setback 3m, is off the primary living room of the dwelling house and will directly overlook the private open space of No. 43 Gurney crescent. Therefore, a condition has been imposed to ensure the first floor south facing window labelled as Window 10 is to have a sill height of at least 1.6m above finished floor level, or be fixed and frosted below 1.6m.
- Windows along the southern elevation at first floor level (W14, W16 and W17) while orientated to the south, will have a direct outlook beyond that of the adjoining southern property. The use of screening or obscured glass for privacy is not necessary noting the use of the internal space (bedroom) and the setback and height of the addition above the adjoining southern property.

Terrace
Clause 3.4.2.2 of MDCP prescribes the need for architectural or landscape screens to balconies to limit

overlooking of nearby properties. The proposal incorporates a narrow balcony adjacent to the upper floor bedrooms that is located within 9m of private open space of the dwelling to the south at No. 43 Gurney Crescent. A condition of consent is recommended to require a screen along the southern end of the terrace.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposal, as amended, will not significantly detract from the internal amenity on the site.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise casual surveillance of the street from the property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received one submission from the occupants of No. 35A Gurney Crescent, Seaforth raising view loss as a concern.

Upon lodgment of the amended plans, height poles were requested on site. Height poles were erected on site and certification of the heights and position of the poles was provided to Council.

Merit consideration:

The development is considered against the Objectives of the Control:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

  Comment:

  The proposed development will result in a minor to moderate loss of view from neighbouring properties to Middle Harbour and the City. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

- *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).*

  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:

No. 35A Gurney Crescent, Seaforth
Views affected from this property are harbour and city views filtered through existing development as shown below.

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:

No. 35A Gurney Crescent, Seaforth
Existing views from this property are obtained from all areas facing south and west, including the ground living rooms and balconies and first floor bedroom and balconies from a standing position. Due to the elevation of the property, the views from the upper level primary living spaces are more wide ranging than those enjoyed on the lower level. The views that will be impacted by the proposed development are to the southern side boundary. Harbour views from the ground floor living rooms and private open space and first floor bedroom and balconies to the west remain unaffected from the proposed development.

3. Extent of impact

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

Comment to Principle 3:

No. 35A Gurney Crescent, Seaforth
The impact of the development upon harbour and city views is demonstrated in the images attached, below. No. 35A Gurney Crescent, Seaforth currently have substantial views to the Harbour and the City. Panoramic views are taken from the ground living rooms and balconies as well as the first floor bedroom and balconies. Views to the south from the ground living room and balconies and first floor living rooms and balconies will be lost to a severe extent. Qualitatively and in consideration of the

collective existing views available from 35A Gurney Crescent, the extent of view loss is moderate, noting that western views from the ground floor living room and principle private open space will be retained in full and harbour views looking south will still be available.



Photo 1 - View looking south from ground floor living room



Photo 2 - View looking south from ground floor balcony



Photo 3 - View looking south from first floor study.



Photo 4 - View looking south from first floor bathroom



Photo 5 - View looking south from first floor balcony.



Photo 5 - View looking south from rear bedroom.

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:

In consideration of the existing views it is noted that the views in question is severely vulnerable to any significant development of the subject site, with any ground and first floor extension to the front property boundary likely to disrupt existing water view. While it acknowledged that the proposed development breaches the Building Height development standard and side setback controls. The total severity of impacts upon water views is not considered to be unreasonable. A more skilful design is not likely to be able to achieve a reasonable scaled development while reducing view impacts to neighbouring properties.

Overall, the application has demonstrated that disruptions to views from adjacent development have been reasonably minimised, and view sharing between properties has been achieved.

- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

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

Clause 4.1.2 of Manly DCP permits a maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- Northern and southern elevation: 1:4:3 gradient, which permits a maximum wall height of 7.9m wall height.

The maximum wall height of the proposed dwelling house is as follows:

- Northern wall: 7.7m,compliant with the numeric control.
- Southern wall: 9.4m, which represents a 18.99% variation from the numeric requirement.

Clause 4.1.2 of the MDCP 2013 also limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement.

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.06m - 3.13m from the southern boundary, 1.33m - 2.56m from the northern boundary.

Clause 4.1.4.4 of the Manly DCP requires windows be setback 3m from side property boundaries.

The development proposes the following:
South side setback- 3m ground floor, 1.4m - 5.1m first floor (up to 46% variation to the numeric control).
North side setback- 1.5m ground floor, 1.5m - 2.7m first floor (up to 40.8% variation to the numeric control).
Windows- 01.5m - 5.1 (up to 50% variation to the numeric 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 maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed side setbacks are consistent with the existing development within the immediate vicinity, and introduces an improved landscape treatment to the front setback area. As such, the proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side and front setbacks.

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 development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will not lead to any loss of significant view. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwellings will not result in any unreasonable

impacts upon adjoining properties.

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:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape Architect the proposal complies with this clause.

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

Comment:

Subject to the conditions of consent recommended by the Rural Fire Service, the proposal satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the Manly DCP requires 60% or 543.42sqm of site area be total open space. The development proposes 53.99% or 489sqm of total open space, non-compliant with the numeric 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 retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposed development does not require the removal of any significant vegetation and demonstrates compliance with the landscaped area requirement. The development therefore adequately retains the landscape features of the site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage

appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposed works are consistent with the numerical control relating to Landscaped Open Space.

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

Comment:

The proposed dwelling maintains sufficient levels of amenity to adjoining properties

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

Comment:

Stormwater runoff is minimised by the proposed landscaped open space. The landscaped open space reduces the impermeable surface, which increases the potential for water infiltration on the site and minimises stormwater runoff.

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

Comment:

The proposed private open space is compliant with the numerical requirements under the Manly DCP. The proposed works do not unreasonably impact upon public open space. The proposed works will not lead to an increased spread of weeds.

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

Comment:

The proposal will not have any unreasonable impacts on wildlife habitats or existing wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The dwelling house responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the dwelling house. The recommendations included as part of this report have been included as part of the final conditions of consent.

4.4.2 Alterations and Additions

In a merit consideration of the proposal, consideration of the development has been given against the Land and Environment Court Planning Principle in relation to determining if a development application should be described as being for additions and alterations rather than a new development detailed under Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187- as follows:

Qualitative issues	
How is the appearance of the existing building to be changed when viewed from public places?	The application proposes to extend the existing ground floor and first floor of the dwelling and introduce a new garage to the front of the dwelling house. The works are setback significantly from the front boundary, and will not be readily visible from the street.
To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?	There is no major impact upon existing landscaped open space.
To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?	The subject site is not a heritage item.
What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?	A new garage will be proposed to the front of the property.
What is the extent, if any, of any proposed change to the use of the building?	The building retains a residential use.
To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?	There will be no major change to the streetscape of Gurney Crescent. The dwelling house is not readily visible from the street..
To what extent, if any, are the existing access arrangements for the building proposed to be altered	Access to the proposed garage which is ancillary to the dwelling house remains as existing.
To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?	With the obvious exception of the new outlooks available from the upper level, the outlook from within the dwelling will remain unchanged.
Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?	The majority of the demolition proposed does not have any material affect on the characteristics of the existing structure. The proposed extension will maintain the existing roof form
Quantitative issues	
To what extent is the site coverage proposed to be changed?	The works are largely within the existing building footprint, with the exception of the new garage and internal access.

To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?	The height of buildings numeric non-compliance will be increased by the proposed works.
To what extent is the building envelope proposed to be changed?	The building envelope will be be significantly altered.
To what extent are boundary setbacks proposed to be changed?	The envelope is to be increased as a result of the additional level and as a consequence of the increase to ceiling heights and the change to the roof form.
To what extent will the present numerical degree of landscaping on the site be changed	The numeric change to landscaping is minimal.
To what extent will the existing floor space ratio be altered?	The gross floor area will be increased, however the proposal is complaint with the numeric control.
To what extent will there be changes in the roof form?	The roof form of the dwelling house will not be changed.
To what extent will there be alterations to car parking/garaging on the site and/or within the building?	The existing parking arrangement will be replaced by a proposed 4 car garage.
To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?	The application proposes excavation to allow for new garage and internal lift access.
What relationship does the proportion of the retained building bear to the proposed new development?	While substantial works are proposed, the existing structure and overall shape of the existing building is mostly retained.

Having regard to the extent of the works proposed, consideration was given to the planning principle *Coorey v Municipality of Hunters Hill [2013]* NSWLEC 1187. An assessment against the matters set out in *Coorey v Municipality of Hunters Hill [2013]* NSWLEC 1187 determined that the application is correctly characterized as alterations and additions.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

Clause 4.4.5 of the MDCP 2013 states that natural and undisturbed ground level must be maintained within 0.9m of side and rear boundaries. The proposal involves excavation within 0.9m from the southern side boundary, which conflicts with the numerical requirement.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*

- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The proposed excavation is required for the construction of a garage and lift access. The proposal is supported by a Geotechnical Report, prepared by White Geotechnical (18 May 2021), which stipulates that the proposal will not have an reasonable impact upon existing ground and surface water flows. The report also states that no geotechnical hazards will be created, subject to works being undertaken in accordance with the recommendations made in the report. Imposed conditions will ensure that adequate sediment controls are installed prior to the commencement of any works. In addition, dilapidation reports have been conditioned to be undertaken pre and post construction to ensure the protection of neighbouring properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $9,860 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $986,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that:

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

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

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

Conclusion
The proposal seeks consent consent for alterations and additions to the existing dwelling house.

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is sympathetic of the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the 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 DA2021/1020 for Alterations and additions to a Dwelling House on land at Lot 5 DP 1013813, 41 Gurney Crescent, 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**
A1/ Roof Plan	29 October 2021	Sally Gardner Design and Draft
A2/ First Floor Plan	29 October 2021	Sally Gardner Design and Draft
A3/ Ground Floor Plan	29 October 2021	Sally Gardner Design and Draft
A4/ Entry	29 October 2021	Sally Gardner Design and Draft
A5/ Garage Roof	29 October 2021	Sally Gardner Design and Draft
A6/ Garage	29 October 2021	Sally Gardner Design and Draft
A7/ Elevation Sheet 1	29 October 2021	Sally Gardner Design and Draft
A8/ Elevation Sheet 2	29 October 2021	Sally Gardner Design and Draft
A9/ Sections Sheet 1	29 October 2021	Sally Gardner Design and Draft
A10/ Sections Sheet 2	29 October 2021	Sally Gardner Design and Draft
S1/ Site Plan and Calculations	29 October 2021	Sally Gardner Design and Draft
S2/ Site Management/ Sediment and Erosion control/ Stormwater Concept Plan	29 October 2021	Sally Gardner Design and Draft
N1/ Notes and Basix Commitments	29 October 2021	Sally Gardner Design and Draft

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Bushfire risk assessment	29 March 2021	Matthew Willis
Geotechnical Assessment Report	18 May 2021	White Geotechnical Group
BASIX Certificate No. A378704_03	1 July 2021	Sally Gardner Design and Draft

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	10 June 2021	Peter Coventry

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

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

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

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Response Ausgrid Referral	N/A
NSW Rural Fire Service	NSW RFS referral response	4 August 2021

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

(i) in the case of work for which a principal contractor is required to be appointed:
   A. the name and licence number of the principal contractor, and
   B. the name of the insurer by which the work is insured under Part 6 of that Act,

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $9,860.00 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 $986,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab as shown of the approved plans, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

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

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

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

- The proposed living room windows (Labelled as W13) is to have a sill height of at least 1.6m above finished floor level, or be fixed and frosted below 1.6m.
- A 1.8 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of the terrace located off the living room at ground floor level as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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 of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **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.

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

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

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

13. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Reason: To protect native wildlife.

16. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

17. **Clearing for Asset Protection Zones**

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.

Written certification of compliance is to be submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

18. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:
No. 43 Gurney Crescent, Seaforth
No. 35A Gurney Crescent, 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

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

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

20. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and

vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

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

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

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

Reason: Tree and vegetation protection.

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

Reason: Public safety.

22. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

23. **Geotechnical Requirements**
All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **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.

25. **Traffic Control During Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

26. **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

27. **Landscape Completion**
Landscaping is to be implemented in accordance with the landscape works as shown on approved plans A3, A4 and A5, inclusive of the following conditions:
i) the 1m high planter along the terrace at the ground floor level shall be planted with shrubs capable of attaining at least 1 metre in height,
ii) planting shall be incorporated along the site boundary of the garage to soften the built form and shall include planting 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,
iii) planting to the northern alignment of the lawn terrace and the western edge, as shown on the plans shall include planting 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,
iv) two (2) native trees capable of attaining 6 metres in height shall be incorporated within the site, with one each installed to the front and rear setbacks, and be installed at a minimum 75 litre container size, located within a 9m2 deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees, located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views, and shall be selected from Council's Native Plant Species Guide - Manly Ward.

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

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

Reason: Environmental amenity.

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/

28. **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.

29. **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.

30. **Post-Construction Dilapidation Report**
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

31. **Geotechnical Certification Prior to Occupation Certificate**
A suitably qualified geotechnical consultant is to provide confirmation that the development is consistent with the recommendations of the Approved Geotechnical referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

with the approved Plans 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.

33. **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.

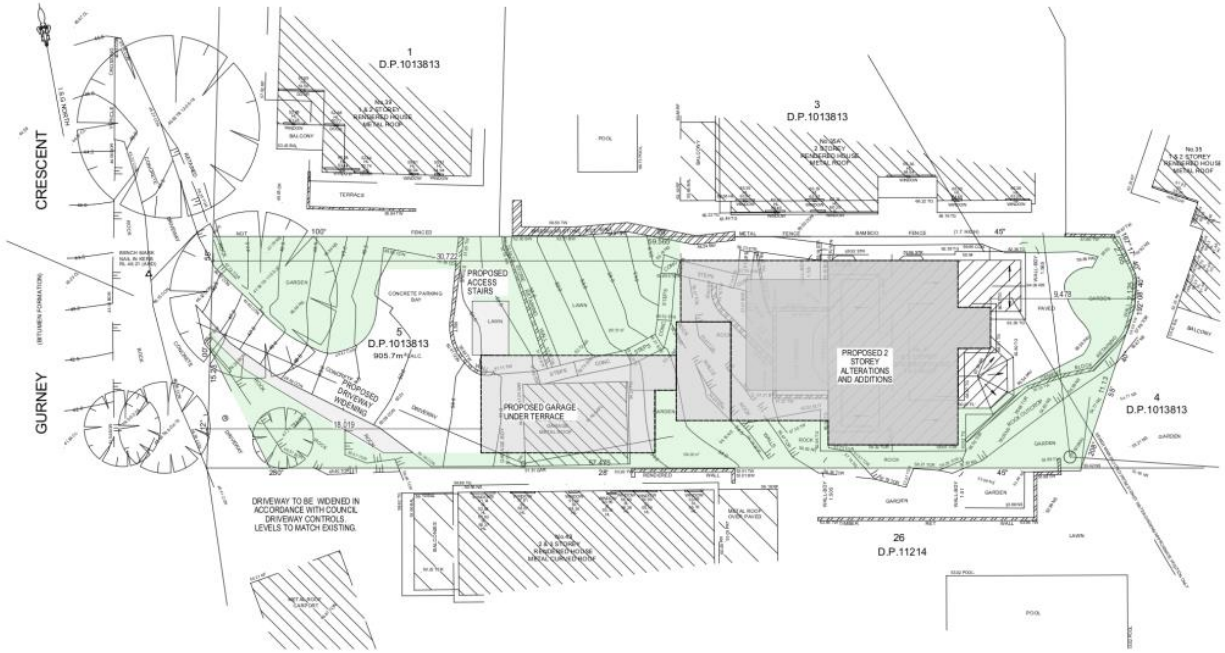
Reason: To protect wildlife habitat.

34. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.



SITE CALCULATIONS			NORTHERN BEACHES - MANLY COUNCIL					
Site Area 905.7 m2								
	EXISTING		PROPOSED			CONTROL	COMPLIANCE	COMPLIES
Floor Space Ratio (FSR)	0.21 :1		39.80 :1				0.40 :1	
Residence Floor Area	191.87 m2	21%	360.77 m2	39.83%				Yes
Building Height	9.50 m		9.43 m				8.5 m	No - refer sections
Front Setback	20.6 m	to garage	18.02 m	to garage			4.94 m	Yes
	40.5 m	to building	30.72 m	to building				
Rear setback	6.20 m		6.20 m				8.00 m	No - existing structure
Side setback - South	1.51 m		1.51 m			1/3x wall height	2.64 m	No - existing is non-compliant
Side setback - North	1.64 m		1.64 m			1/3x wall height	1.97 m	No - existing is non-compliant
Open Space	632.71 m2	70%	545.00 m2	60.17%		60%	543.42 m2	Yes
Soft Open Space	449.38 m2	83%	361.67 m2	66.55%		40% of 60%	217.37 m2	Yes
Private Open Space	623.00 m2		535.00 m2				18.00 m2	Yes
Car parking	2.00 spaces		4.00 spaces				2 spaces	Yes

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GENERAL REVISION /A 20/10/21

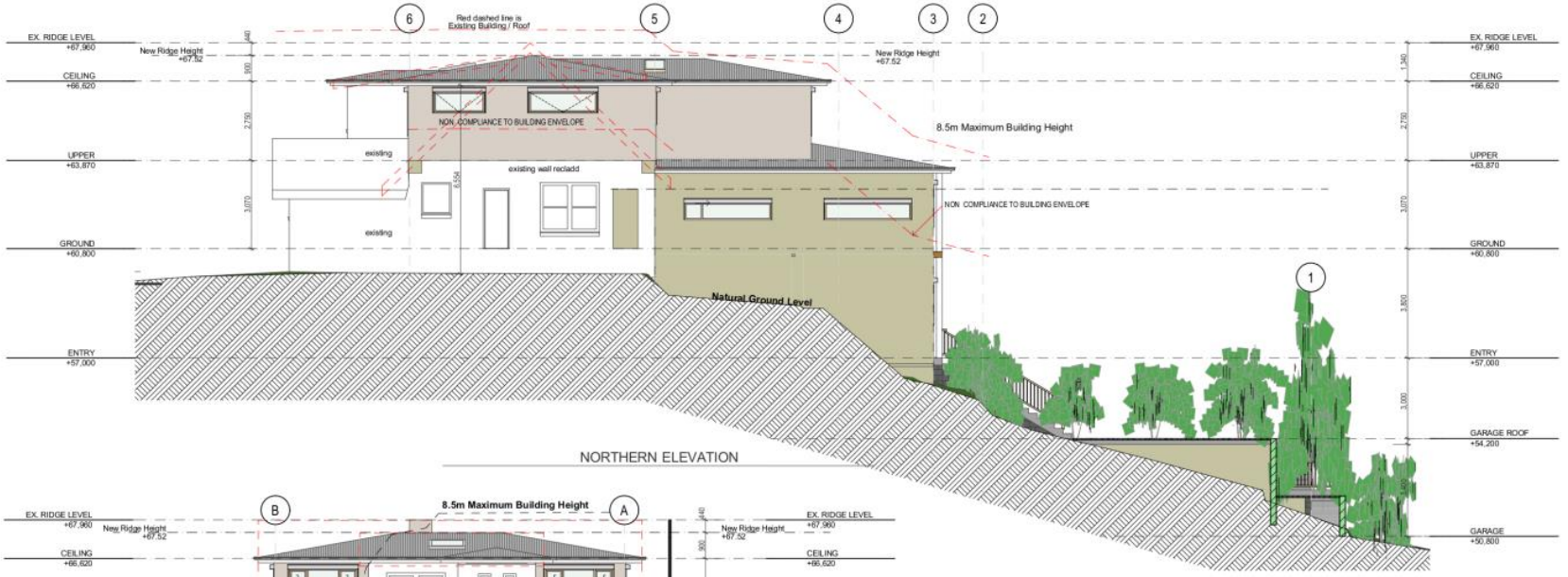
SURVEY DETAILS PROVIDED BY
CMS SURVEYORS of DEE WHY
reference 19176detail
BUSH FIRE PRONE LAND - BAL FZ

PETER and KATE COVENTRY

PROPOSED ALTERATIONS and ADDITIONS
41 Gurney Crescent SEAFORTH NSW 2092

SITE PLAN & CALCULATIONS

Scale 1:200 | Job Number 20-0214
Date Friday, 29 October 2021 | Drawn S.G. | Drawing No. S1 /A





GENERAL WINDOW AND DOOR NOTE:
All windows to be Timber Framed with fly screens.
Garage Doors; Automatic Panel lift and Solid core to side .
All other external doors to be Timber Framed.

EXTERNAL CLADDINGS:
A combination of UBIQ INEX Renderboard and rendered Masonry.
All claddings to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

ROOFING:
Lysaght colorbond Custom Orb roof Sheeting
All roofing to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

IMPORTANT NOTE:
Any proposed product changes after approval is to be immediatley notified to the PCA for concurrence.

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GENERAL REVISION /A 20/10/21

SURVEY DETAILS PROVIDED BY
CMS SURVEYORS of DEE WHY
reference 19176detail
BUSH FIRE PRONE LAND - BAL FZ

bdaa ACCREDITED BUILDING DESIGNER | SHAY GARDINER DESIGN AND DRAFT | SDS

Client: PETER and KATE COVENTRY

PROPOSED ALTERATIONS and ADDITIONS
41 Gurney Crescent SEAFORTH NSW 2092

Drawing Title: ELEVATION SHEET 1

Scale: 1:100 | Job Number: 20-0214
Date: Friday, 29 October 2021 | Drawn: S.G. | Drawing No.: A7 /A.



GENERAL WINDOW AND DOOR NOTE:
All windows to be Timber Framed with fly screens.
Garage Doors; Automatic Panel lift and Solid core to side .
All other external doors to be Timber Framed.

EXTERNAL CLADDINGS:
A combination of UBIQ INEX Renderboard and rendered Masonry.
All claddings to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

ROOFING:
Lysaght colorbond Custom Orb roof Sheeting
All roofing to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

IMPORTANT NOTE:
Any proposed product changes after approval is to be immediatley notified to the PCA for concurrence.



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GENERAL REVISION /A 20/10/21

SURVEY DETAILS PROVIDED BY
CMS SURVEYORS of DEE WHY
reference 19176detail
BUSH FIRE PRONE LAND - BAL FZ

PETER and KATE COVENTRY

PROPOSED ALTERATIONS and ADDITIONS
41 Gurney Crescent SEAFORTH NSW 2092

ELEVATION SHEET 2

1:100 | 20-0214 | Friday, 29 October 2021 | S.G. | A8 | /A

APPENDIX
CLAUSE 4.6 – HEIGHT OF BUILDINGS

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

41 GURNEY CRESCENT, SEAFORTH

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING

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

For: Proposed alterations and additions to an existing dwelling
At: 41 Gurney Crescent, Seaforth
Owner: Peter and Kate Coventry
Applicant: Peter and Kate Coventry
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

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

2.0 Background

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

The relevant maximum building height control in this locality is 8.5m. The current dwelling has a maximum building height of 9.50m. This will be reduced to 9.06m for most of the dwelling. However, due to the topography of the site, the proposed development presents a maximum of building height of 9.43m, and therefore presents a variation of 930mm or 10.9% to the control.

The area of the new works to the existing dwelling which breach the maximum building height control are as indicated in the Figure 15 over the page.

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

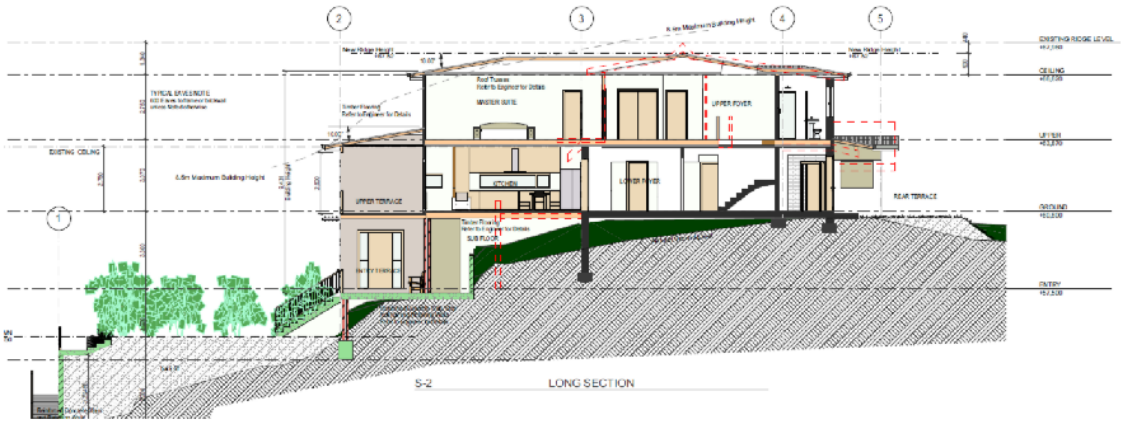


Fig. 13: Extract from the architectural design prepared by Sally Gardner Design and Draft to indicate the aspects of the development which exceed the 8.5m height control.

Is Clause 4.3 of MLEP a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of an application 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.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

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

4.0 Objectives of Clause 4.6

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.

Clause 4.6(2) of MLEP provides:

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

Clause 4.3 (the building height development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the building height development standard pursuant to Clause 4.3 of MLEP which specifies an building height of 8.5m, as the development will present a building height of up to 9.43m.

Notwithstanding the non-compliance of 10.9% with the building height control, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence

for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

(5) In deciding whether to grant concurrence, the Secretary must consider:

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

(b) the public benefit of maintaining the development standard, and

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

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

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

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential zone, which are noted as:

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

The proposal will provide for the construction of alterations and additions to an existing dwelling.

Notwithstanding the non-compliance with the maximum building height, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood.

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

The new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The development will not see any unreasonable impacts on view sharing, solar access or privacy.

5.0 The Nature and Extent of the Variation

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

5.2 Clause 4.3 of MLEP specifies an allowable building height for a site in this part of Seaforth of 8.5m.

5.3 The proposal has a maximum building height of up to 9.43m.

5.4 The total non-compliance with the building height control is 930mm or 10.9%.

6.0 Relevant Caselaw

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

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

compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

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

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

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

1. Is Clause 4.3 of MLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives for development for in the 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 MLEP?

7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The proposed developed is stepped to follow the sloping topography of the site. The majority of the development readily complies with the building envelope control, with the exception of the roof form over the western extremity of the proposed development.

The proposal is consistent with the bulk and scale of existing surrounding development, and is in keeping with the extent of existing development along the Gurney Crescent streetscape.

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

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

The proposal provides for the construction of alterations and additions to an existing dwelling, which provides for a built form which complements the size and scale of the surrounding development.

The contemporary building form with a low profile pitched roof and complementary external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the provision of generous side and rear setbacks and compatible external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

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

The subject and adjoining properties within the immediate vicinity receive views to the west towards Middle Harbour. The proposal is not considered to result in any unreasonable loss of views from public or private property.

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

The subject and adjoining properties within the immediate vicinity receive views to the west towards Middle Harbour. The proposal is not considered to result in any unreasonable loss of views from public or private property.

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

The site is not located within a recreation or environmental protection zone.

The site will not require the removal of any significant vegetation, and the site maintains a generous soft landscaped area.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

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

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

- The proposed alterations and additions include modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g).

- The proposed new works will complement the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposal will provide for excellent amenity for the occupants within a built form which is compatible with the streetscape of Gurney Crescent which also promotes the orderly and economic use of the land (cl 1.3(c)).

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 building height for future occupants whilst managing the bulk and scale and maintains views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the building height control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

7.3 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the R2 Low Density Residential Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe are made good by the development.

(b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

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

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

development specified is not inherently incompatible with the objectives of the zone".

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

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

  The proposal provides for the construction of alterations and additions to an existing dwelling including a new garage, which is in keeping with the desired outcomes of the R2 Zone.

  The contemporary building form with a low pitched roof and recessive external finishes are considered to suitably reduce the visual bulk of the dwelling.

  Further, the modulation of the front façade, together with the inclusion of generous setbacks and compatible excessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

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

  Stormwater from the site will be suitably managed to minimise potential runoff impacts within the locality.

  The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

  Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

  The proposed dwelling is considered to contextually appropriate in its bulk and scale, and readily complies with the statutory floor space ratio control.

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

  This provision does not relate to the subject residential development.

  Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

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

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

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

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

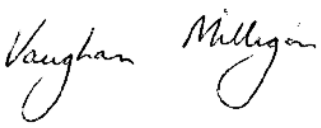
8.0 Conclusion

The proposed development will reduce the existing building height but in presenting a total building height of up to 9.43m, results in a noncompliance of 10.9% from the development standard stipulated under Clause 4.3 of MLEP 2012.

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

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

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



VAUGHAN MILLIGAN
Town Planner

ITEM 3.4	**MOD2021/0905 - 16 MCDONALD STREET, FRESHWATER - MODIFICATION OF DEVELOPMENT CONSENT DA2020/0842 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL**
REPORTING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2022/123615**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to MOD2021/0905 for modification of development consent DA2020/0842 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 15 DP22640, 16 McDonald Street FRESHWATER, subject to the conditions set out in the Assessment Report.

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DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	MOD2021/0905

Responsible Officer:	Ben Tesoriero Creative Planning Solutions Pty Limited
Land to be developed (Address):	16 McDonald Street, Freshwater NSW 2096
Proposed Development:	Modification of Development Consent DA2020/0842 granted for alterations and additions to a dwelling house including swimming pool
Zoning:	Warringah LEP 2011 - R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Richard Anthony Guerin
Applicant:	Richard Anthony Guerin

Application Lodged:	23/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Other
Notified:	02/12/2021 to 16/12/2021
Advertised:	Not Advertised
Submissions Received:	Two (2) correspondences received from the same objector constituting one (1) unique submission.
Recommendation:	Approval Pending Conditions

EXECUTIVE SUMMARY

Council is in receipt of a modification application MOD2021/0905, seeking to modify DA2020/0842, which was approved for alterations and additions to a dwelling house including swimming pool and carport at 16 McDonald Street, Freshwater (Lot 15 – DP22640).

The modifications proposed under MOD2021/0905 can be summarised as follows:

- Swimming Pool – Remove cabana.
- Lower Ground Floor – Minor internal wall reconfiguration, modify shape of Window 3, and new gas fireplace.
- Ground Floor – Lowered sill height for Window 16, Windows 6B and 6A change in shape and size, extend bathroom, new skylight.
- Front Setback – Remove carport roof and support posts, change front porch area, change exterior render of building to white.

The site is zoned R2 Low Density Residential under the Warringah Local Environmental Plan 2011 (WLEP 2011) and the proposed development is permissible with consent.



The Modification Application has been assessed by an external consultant, and is being referred to the Development Determination Panel, in accordance with Council procedures, due to the objector being a Council staff member involved in assessment of referrals for applications.

The application has been assessed against the EP&A Act 1979, Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs), and Council policies. The primary issue identified within the assessment relates to privacy/overlooking at Window 16 (Control D8 of the DCP). This issue is proposed to be addressed in the recommended consent conditions through inclusion of a privacy screen or a frosted glazing treatment to the window.

The application was notified for a period of 14 days in accordance with Council's Community Participation Plan and in response one (1) unique submission was received from the adjoining property owner to the south (14 McDonald Street). The submission objected to the enlargement of Window 16 on grounds of overlooking and loss of visual privacy.

Separate on-site discussions with the applicant and objector led to an agreement the objection could be resolved via the aforementioned consent condition.

Accordingly, it is recommended that the modification application (MOD2021/0905) be approved subject to conditions.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EP&A 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 EP&A 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 EP&A Act 1979, Regulations and relevant DCP;
- 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 ASSESMENT ISSUES

Warringah Development Control Plan – B7 Front Setback
Warringah Development Control Plan – B9 Rear Boundary
Warringah Development Control Plan – C3 Parking Facilities
Warringah Development Control Plan – D8 Privacy

SITE DESCRIPTION



Property Description:	Lot 15 DP 22640, 16 McDonald Street, Freshwater NSW 2096
Detailed Site Description:	The subject site is located on the eastern side of McDonald Street, and has a site area of 651.3m^2 by survey. The land is rectangular in shape, and has a 14.935m frontage to McDonald Street (western boundary). The site experiences a steady fall of 5.49m away from the western street frontage (RL63.30) towards the eastern rear boundary (RL57.81). The site, along with surrounding land is located within the R2 Low Density Residential zone under the WLEP 2011. The site does not contain a heritage item, is not within a heritage conservation area, and not in close proximity to a heritage item, with the nearest item being located approximately 200m to the east. Construction of the approved works under DA2020/0842 has commenced, but is not yet complete. **Detailed Description of Adjoining/Surrounding Development** The site is surrounded predominantly by low density residential accommodation on similarly sized allotments. However, there are a number of battle-axe subdivisions near the site, including four (4) battle-axe allotments adjoining to the rear. A residential flat building, containing 24 dwellings, is also located to the north-east of the site. The topography surrounding the subject site is relatively steep with land on either side of McDonald Street falling away from the street. A localised high point is located 50m to the south of the subject site. The local area contains relatively consistent vegetation cover within rear yards. The site and adjoining property to the south each contain a number of trees. Allotments on both sides of McDonald Street generally contain large front setback areas.

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Figure 1: Aerial view of the subject site outlined in red – 16 McDonald Street, Freshwater
Source: nearmap.com (December 2021)

SITE HISTORY

The land has been used for residential purposes for an extended period of time. The following recent applications are relevant to the subject modification:

- 9 December 2020 – Development Application (DA2020/0842) approved for alterations and additions to a dwelling house including swimming pool.
- 2 February 2021 – Modification Application (MOD2021/0031) approved to modify DA2020/0842 to an error with the finished level of the pool coping (modified to be RL58.8).
- 11 March 2021 – Modification Application (MOD2021/0088) withdrawn to modify alterations and additions to a dwelling house including swimming pool.

PROPOSED DEVELOPMENT IN DETAIL

The application has been made pursuant to Section 4.55(1A) of the EP& A Act 1979 and seeks to modify the existing development consent DA2020/0842.

The proposed modifications are as follows:

- Swimming pool
  - Cabana to be removed

- Lower Ground Floor
  - Window 3 to be changed in shape and size.
  - Minor internal wall alterations.
  - New gas fireplace in living room.

- Ground Floor
  - Window 16 to increase in size by lowering sill height.
  - Windows 6B and 6A to change in shape and size.
  - Extend bathroom towards the street, and align with façade.

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- New skylight added in roof above en-suite to master bedroom.

- Front Setback Area
  - Remove carport roof.
  - Remove carport supporting posts.
  - Changing front porch area.
  - Changing exterior render of building to white.
  - Change in size of kitchen window.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

The application has been assessed in accordance with the requirements of the EP&A 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 EP&A 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 acknowledges the previous assessment detailed in the Assessment Report for DA2020/0842, with amendments detailed and assessed as follows:

MODIFICATION APPLICATIONS

The relevant matters for consideration under Section 4.55(1A) of the EP&A Act 1979, are:

Section 4.55(1A) – 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 proposed modification is of minimal environmental impact and	The proposed modifications include additional cut and earthworks related to the lowering of the pool. The Development Engineering Referral response has not raised any objections to these additional works. It is therefore deemed that the modified works are of minimal environmental impact. The balance of works proposed to dwelling house are also considered of minimal environmental impact as they either pertain to removal of structures previously approved (i.e. carport and cabana) or minor changes to the approved dwelling house, such as window and wall reconfigurations. While the lowering of the sill height for Window 16 will give rise to overlooking opportunities and loss of visual privacy, this is to be addressed through inclusion of a consent conditions requiring obscure glazing or a privacy screen.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same	The development, as proposed, has been found to be such that Council is satisfied that the proposed development is substantially the same as those already approved under DA2020/0842.

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Section 4.55(1A) – Other Modifications	Comments
development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	
(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 EP&A Act 1979, Regulation, Warringah Local Environment Plan 2011 and Warringah Development Control Plan 2011.
(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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the EP&A Act 1979, in determining a modification application made under Section 4.55 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 EP&A 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	None of particular relevance to the proposed development on the subject site.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.



Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original 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 modified development on the natural and built environment are addressed elsewhere in this report. (ii) **Social Impact** The proposed modified development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed modified development will not have a detrimental economic impact on the locality considering the nature of the existing approval and historic land use of the site.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed modifications.
Section 4.15 (1) (d) – any submissions made	See discussion on “Notification & Submissions Received” in this report.

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Section 4.15 'Matters for Consideration'	Comments
in accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	The recommended modifications are not contrary to the public interest.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application. The land use is permitted with consent under the

NOTIFICATION & SUBMISSIONS RECEIVED

The subject modification application has been publicly exhibited in accordance with the EP&A Act 1979, Regulation, and the Development Control Plan.

As a result of the public exhibition process, Council is in receipt of one (1) unique submission, from:

Name:	Address:
Mr Joseph Tramonte	14 McDonald Street, Freshwater NSW 2096

The following matter was raised in the submission and has been addressed below:

Privacy concerns with the increased size of Window 16

Comment:

The submission raises concerns with the increasing size of Window 16. As demonstrated in ***Figure 2*** below, the DA was approved with a sill height of 1.8m, however the modification seeks consent for a sill height of 1.5m, as has been constructed and is shown in ***Figure 3*** and ***Figure 4*** below.

The submission objects to the overlooking opportunities this window presents to the living areas of the adjoining dwelling at 14 McDonald Street, and resultant loss of visual privacy.

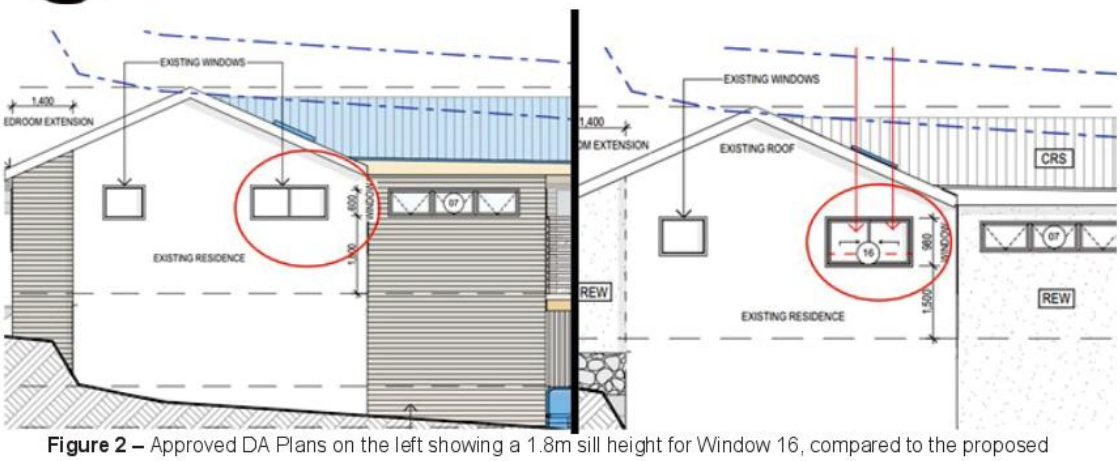


Figure 2 – Approved DA Plans on the left showing a 1.8m sill height for Window 16, compared to the proposed Window 16 as constructed on the right with a sill height of 1.5m.
Source: Stamped DA Plans (DA 2020/0842) and Proposed Architectural Plans



Figure 3 – View from inside Bedroom 3 out Window 16 southwards towards the adjoining property at 14 McDonald St.
Source: Site Visit (10.02.2022)

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Figure 4 - View from inside Bedroom 3 out Window 16 southwards towards the adjoining property at 14 McDonald St. Source: Site Visit (10.02.2022)

As can be seen in ***Figure 3*** and ***Figure 4***, there are direct lines of sight from the Bedroom 3 to the habitable room windows of the neighbouring property at 14 McDonald Street. During the site inspection of the objector's residence on 10 February 2022, it was confirmed that the windows overlooked from Bedroom 3 are a Living Room window (shown in ***Figure 3***) and a Home Office window (shown in ***Figure 4***).

The 1.8m sill height for Window 16 under DA2020/0842 sought to limit overlooking potential and ensure reasonable visual privacy was achieved between the two dwellings. The same objective may also be achieved through a condition that includes obscure glazing to a height of 1.8m or alternatively a fixed louvered privacy screen to redirect views away from the dwellings.

In separate on-site discussions, the potential for a condition requiring such privacy treatments to Window 16 was discussed with both the applicant and objector. Both parties were amenable, and as such the following condition is recommended:

> **Window 16.** Obscure glazing to a height of 1.8m above the finished floor level of Bedroom 3 is to be installed to Window 16 on the southern elevation of the building. Alternatively, an external privacy screen comprising of fixed louvers directing views away from the neighbouring dwelling at 14 McDonald Street is to be installed to Window 16.
>
> Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
>
> **Reason:** To limit overlooking and ensure visual privacy between neighbouring dwellings.



REFERRALS

External Referral Body	Comments
Development Engineer	Development Engineering support the proposed modifications, with no additional or modified conditions of consent recommended. The proposal is therefore supported.

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 (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:

This application was not referred to Ausgrid as the modifications to the proposal within the front comprise only of the carport deletion. Similarly, the modification to the swimming pool pertains only to reducing its scale through deletion of the cabana.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A381084_03, 2 November 2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the revised BASIX Certificate.

Warringah Local Environmental Plan 2011

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

Compliance Assessment

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

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1 Wall Heights	No change	No change
B3 Side Boundary Envelope	No change	No change
B5 Side Boundary Setbacks	No change	No change
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C3 Parking Facilities	No	Yes
D1 Landscaped Open Space	No change	No change
D2 Private Open Space	Yes	Yes
D8 Privacy	No	No (condition)
D11 Roofs	Yes	Yes
D13 Front Fences and Front Walls	No change	No change
D20 Safety and Security	No change	No change

B7 Front Setback and C3 Parking Facilities

The approved development was provided with a 4.67m front setback, short of the 6.5m required by Control B7. The proposal seeks to retain the same 4.67m front setback, while removing the approved carport roof and supporting structures associated with the carport.

The independent assessment of the initial DA had supported the front setback non-compliance on the basis that it was located "*only partly outside the setback and dwarfed by the dwelling*", and that "*the carport is not at odds with the streetscape, and diminished in impact due to the fall of the site*".

Based on the assessment of the original DA, the removal of the carport roof and posts are supported.

Additional changes to the front of the dwelling such as the bathroom extension, changes to shape and size of Window 6A and Window 6B, and the front porch extension are also deemed to comply with the B7 objectives as these changes will be largely indiscernible over that of the originally approved design.

The carport removal helps reduce the impact of structures in the front setback area, and delivers a front setback arrangement comparable with the neighbouring property at 18 McDonald Street.

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Accordingly, while the proposal does not comply with the controls in Section B7, C3 and D20 of the DCP, it satisfies the objectives of each section.

B9 Rear Boundary Setback

The discussion below considers both B9 and D8 Privacy.

The proposed pool is located entirely within the 6-metre rear setback. The site is constrained by the location of the sewer which restricts possible development opportunities in the central area of the rear yard. The topography of the site results in the setback area of the rear yard being reasonably private, with the exception of the southern boundary, which is elevated above the neighbouring site.

The current DA consent permits the pool within the rear setback, subject to the design amendments of Condition 17. With respect to privacy, the submitted plans have reduced the height of the development in accordance with the requirements of Condition 17 and there would not be expected to be additional privacy impacts to neighbouring properties.

The deletion of the cabana reduces structures within the rear setback area and is considered a positive outcome from the proposal.

D8 Privacy

The proposed modification seeks to increase the size of Window 16 by lowering the approved sill height from 1.8m to 1.5m (*refer to **Figure 2***). Consequently, this has meant the development is now non-compliant with the following privacy controls and objectives set in D8 of the DCP.

Objectives:

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

Requirements:

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.*

The proposed window enlargement does not comply with D8 of the DCP as there are multiple clear lines of site into the adjoining property to the south (*refer to **Figures 3** and **4***). Therefore, the modification to Window 16 is not supported.

As outlined earlier, the 1.8m sill height for Window 16 under DA2020/0842 sought to limit overlooking potential and ensure reasonable visual privacy was achieved between the two dwellings. The same objective may also be achieved through a condition that includes obscure glazing to a height of 1.8m or alternatively a fixed louvered privacy screen to redirect views away from the dwellings.

In separate on-site discussions, the potential for a condition requiring such privacy treatments to Window 16 was discussed with both the applicant and objector. Both parties were amenable, and as such the following condition is recommended:

> **Window 16.** Obscure glazing to a height of 1.8m above the finished floor level of Bedroom 3 is to be installed to Window 16 on the southern elevation of the building. Alternatively, an external privacy screen comprising of fixed louvers directing views away from the neighbouring dwelling at 14 McDonald Street is to be installed to Window 16.

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

Reason: To limit overlooking and ensure visual privacy between neighbouring dwellings.

Inclusion of the above condition achieves a good balance between maintaining amenity to Bedroom 3 with a reasonably sized window, while maintaining visual privacy between the dwellings.

The proposed modification also includes changes to:

- Window 3 to be changed in shape and size.
- Windows 6B and 6A to change in shape and size.

Window 3 is the ground floor kitchen window on the building's northern elevation. The proposal seeks to convert the kitchen window into a splashback window. Given their low height, splashback windows inherently do not give rise to overlooking. For the subject site, the ground floor is located significantly below the existing ground level of the neighbouring property at 18 McDonald Street, and as such, the outlook from the window is to the base of the boundary fence. Accordingly, not overlooking or loss of visual privacy will ensue from the proposed modification to Window 3.

Window 6A and 6B are located on the building's front elevation facing west toward McDonald Street. The proposed modification sees Window 6 being split into two tall narrow windows to match the new Window 15 adjacent for the internally modified bathroom – refer to ***Figure 5*** below.

Given these windows front the street, no overlooking or visual privacy issues arise. Window 15 will be treated with obscure glazing to maintain privacy to the bathroom.

The three vertically aligned windows add symmetry to the front elevation, and respond positively the window and door arrangement adjacent at the main entry.

Accordingly, the modifications to these windows are deemed satisfactory.

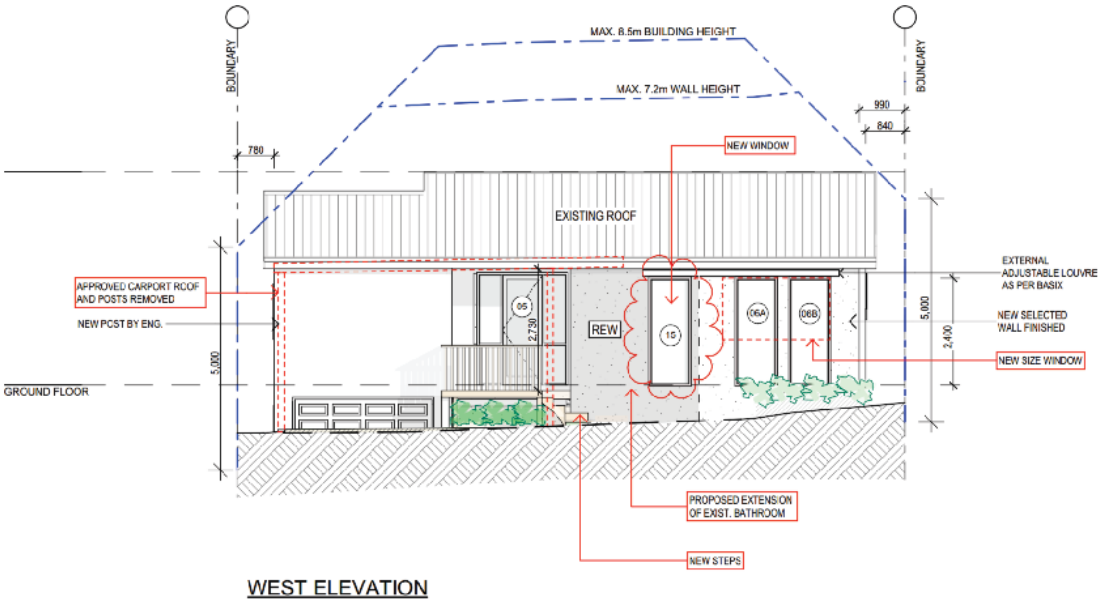


Figure 5 – Western elevation of the dwelling house presenting to McDonald Street. Noted is proposed changes to two taller narrow windows for Window 6A and 6B to match Window 15.
Source: Applicant's submitted West Elevation



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;
- 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 the recommended modifications do not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the recommended modifications are 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 recommended modifications are considered to be reasonable and appropriate for the subject site.

RECOMMENDATION

THAT Council as the consent authority grant part approval to Modification Application No. MOD2021/0905 for Modification of Development Consent DA2020/0842 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 15 DP 22640, 16 McDonald Street, Freshwater, as outlined below:

CONDITIONS

A. Modify Condition 1 Approved Plans and Supporting Documentation to read as follows:

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

a) Approved Plans

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA.01/Revision F	28 September 2020	JJ Drafting
DA.04/Revision F	28 September 2020	JJ Drafting

northern beaches council

DA.05/Revision E	28 September 2020	JJ Drafting
DA.06/Revision E	28 September 2020	JJ Drafting
DA.07/Revision E	28 September 2020	JJ Drafting
DA.08/Revision E	28 September 2020	JJ Drafting
DA.09/Revision F	28 September 2020	JJ Drafting
DA.10/Revision F	28 September 2020	JJ Drafting
DA.11/Revision F	28 September 2020	JJ Drafting

as modified by plans submitted with MOD2021/0905 as follows:

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA.01/Revision J	19 October 2021	JJ Drafting
DA.02/Revision J	19 October 2021	JJ Drafting
DA.03/Revision J	19 October 2021	JJ Drafting
DA.04/Revision J	19 October 2021	JJ Drafting
DA.05/Revision J	19 October 2021	JJ Drafting
DA.06/Revision J	19 October 2021	JJ Drafting
DA.07/Revision J	19 October 2021	JJ Drafting
DA.08/Revision J	19 October 2021	JJ Drafting
DA.09/Revision J	19 October 2021	JJ Drafting
DA.10/Revision J	19 October 2021	JJ Drafting
DA.11/Revision J	19 October 2021	JJ Drafting
DA.12/Revision J	19 October 2021	JJ Drafting
DA.13/Revision J	19 October 2021	JJ Drafting
DA.14/Revision J	19 October 2021	JJ Drafting

b)

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A381084_03	2 November 2021	JJ Drafting
Arboricultural Impact Assessment Report Report Ref No- 17520, as modified by Arboricultural Report. Ref No. 18921	22 October 2020 13 November 2021	Raintree Consulting
Geotechnical Report. Report No. J2778A	11 November 2021	White Geotechnical Group

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

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

In the event of any inconsistency between the remaining conditions of this consent and the drawings/documents referred to above, the remaining conditions of this consent will prevail. Further, the architectural plans are to prevail over landscape plans and any plans shown within approved reports.

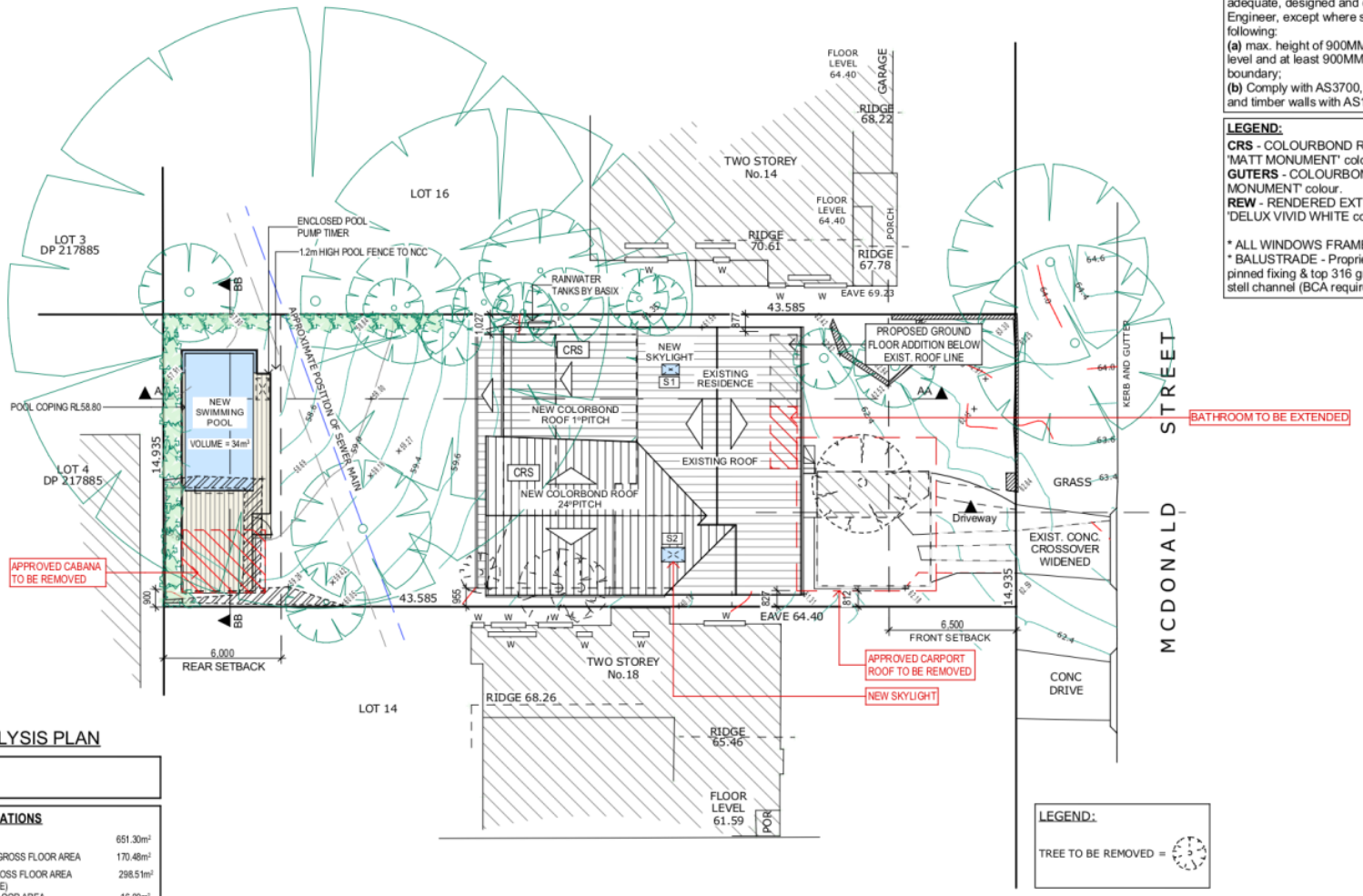
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add new Condition - Visual Privacy - to read as follows:

Window 16. Obscure glazing to a height of 1.8m above the finished floor level of Bedroom 3 is to be installed to Window 16 on the southern elevation of the building. Alternatively, an external privacy screen comprising of fixed louvers directing views away from the neighbouring dwelling at 14 McDonald Street is to be installed to Window 16.

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

Reason: To limit overlooking and ensure visual privacy between neighbouring dwellings.



NOTES:

- All retaining walls are to be structurally adequate, designed and certified by a Structural Engineer, except where site conditions permit the following:
(a) max. height of 900MM above or below ground level and at least 900MM from any property boundary;
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

LEGEND:

CRS - COLOURBOND ROOF SHEETING - 'MATT MONUMENT' colour.
GUTERS - COLOURBOND - 'MATT MONUMENT' colour.
REW - RENDERED EXTERNAL WALLS - 'DELUX VIVID WHITE colour

* ALL WINDOWS FRAMED TO BE BLACK.
* BALUSTRADE - Proprietary glazed with face pinned fixing & top 316 grade minimum, stainless stell channel (BCA requirement).

SITE ANALYSIS PLAN

LOT	15
DP	22640

AREA CALCULATIONS

SITE AREA	651.30m²
APPROX. EXISTING GROSS FLOOR AREA	170.48m²
PROPOSED NEW GROSS FLOOR AREA (EXCLUDING GARAGE)	298.51m²
APPROX. CABANA FLOOR AREA	16.00m²
APPROX. CARPORT FLOOR AREA	40.36m²

LEGEND:

TREE TO BE REMOVED =

TRUE NORTH:

NOTES (E & O.E.)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
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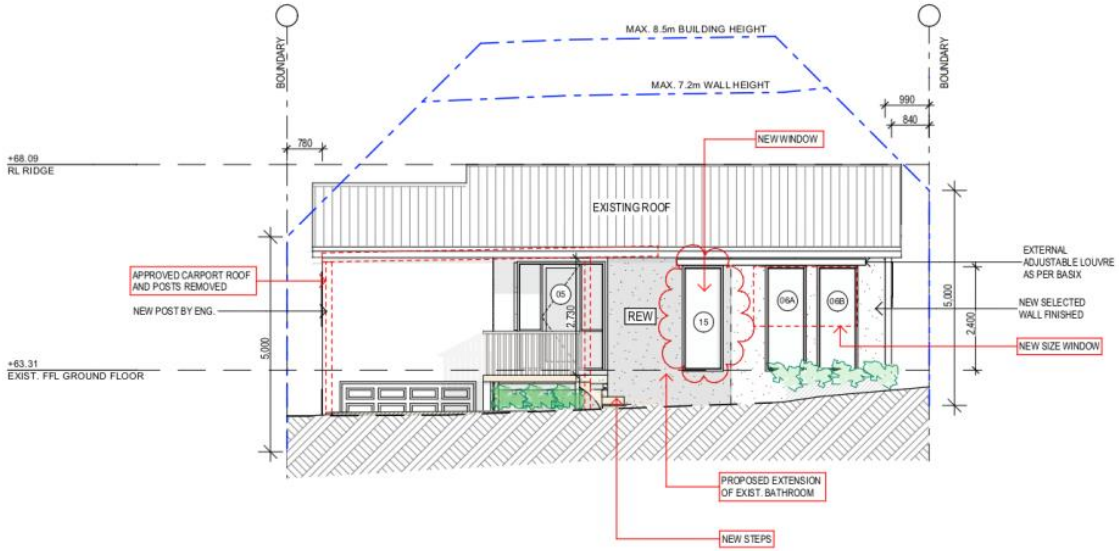
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H	16/03/21	SECTION 4.55 (DRAWINGS UPDATES)
I	18/03/21	DRAWINGS UPDATE
J	19/10/21	SECTION 4.55 (DRAWINGS UPDATES)

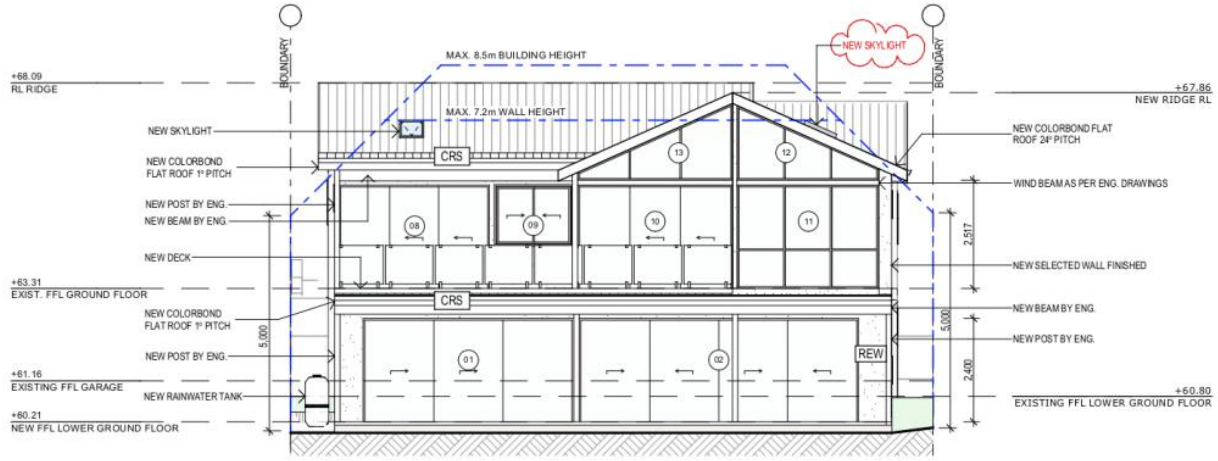
PROJECT DETAILS:
SECTION 4.55 TO PROPOSED ALTERATIONSAND ADDITIONS
16 Mc DONALD STREET - FRESHWATER

DRAWING TITLE:
SITE ANALYSIS PLAN

DATE:	DRAWN BY:	SCALE:
MAY/20	LB	1:200 @ A3
JOB No:	**CHECKED BY:**	**DRAWING No:**
799/20	JJ	**DA.01**



WEST ELEVATION



EAST ELEVATION

LEGEND:
CRS - COLOURBOND ROOF SHEETING - 'MATT MONUMENT' colour.
GUTERS - COLOURBOND - 'MATT MONUMENT' colour.
REW - RENDERED EXTERNAL WALLS - 'DELUX VIVID WHITE colour

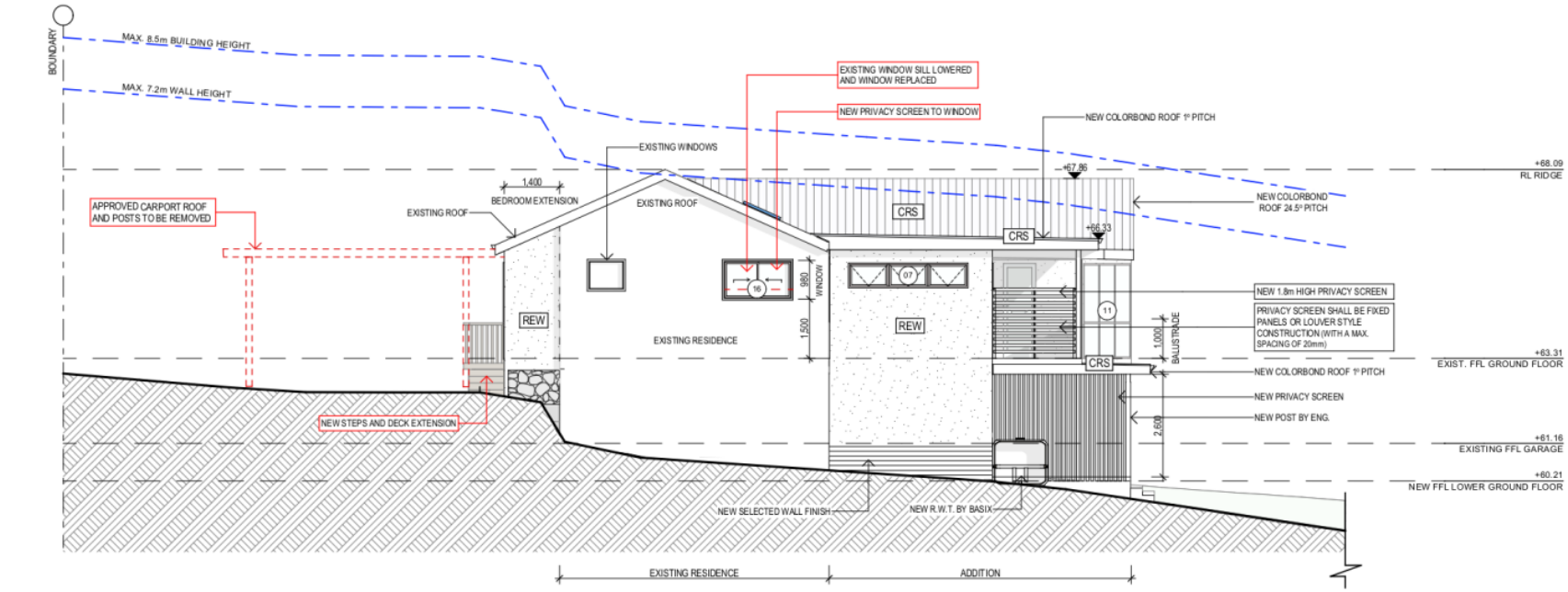
* ALL WINDOWS FRAMED TO BE BLACK.
* BALUSTRADE - Proprietary glazed with face pinned fixing & top 316 grade minimum, stainless stell channel (BCA requirement).

NOTES (E & O.E.)
- All structures including stormwater & drainage to engineer's details.
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- All dimensions are to be checked on site prior to starting work.
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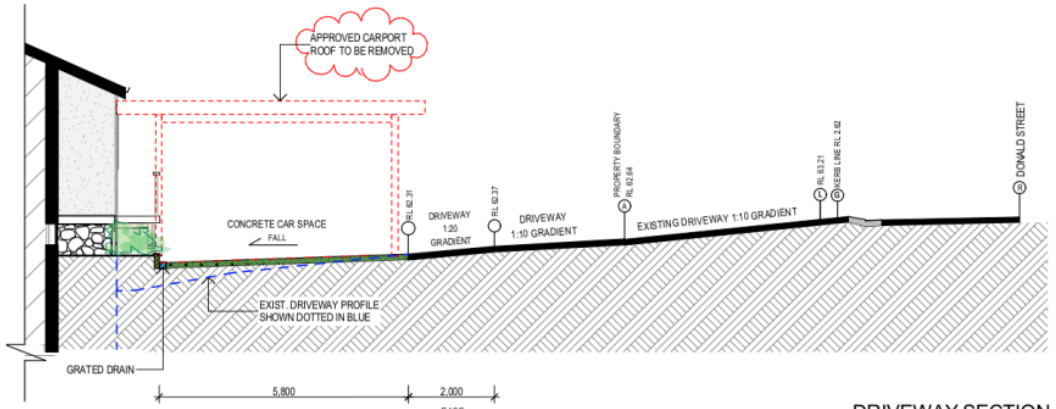
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PROJECT DETAILS: SECTION 4.55 TO PROPOSED ALTERATIONSAND ADDITIONS 16 Mc DONALD STREET - FRESHWATER	DATE: MAY/20	DRAWN BY: LB	SCALE: 1:100 @ A3
DRAWING TITLE: WEST AND EAST ELEVATIONS	JOB No: 799/20	CHECKED BY: JJ	DRAWING No: **DA.04**



SOUTH ELEVATION



DRIVEWAY SECTION

SET OUT		
	REMARKS	*LEVELS*
R	ROAD CENTRELINE	
G	INVERT OF GUTTER	
L	BACK OF LAYBACK	100 ABOVE 'G'
A	BOUNDARY	EASE REQUIRED AT GRADE CHANGE

LEGEND:
CRS - COLOURBOND ROOF SHEETING - 'MATT MONUMENT' colour.
GUTERS - COLOURBOND - 'MATT MONUMENT' colour.
REW - RENDERED EXTERNAL WALLS - 'DELUX VIVID WHITE colour

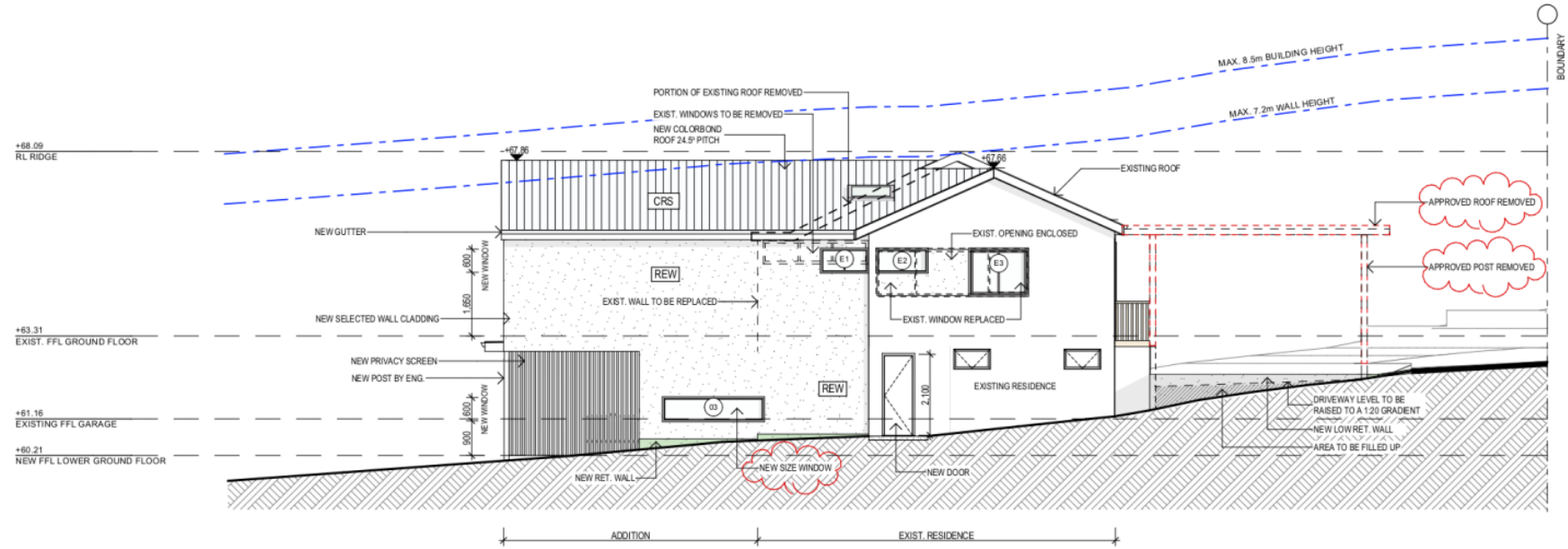
* ALL WINDOWS FRAMED TO BE BLACK.
* BALUSTRADE - Proprietary glazed with face pinned fixing & top 316 grade minimum, stainless stell channel (BCA requirement).

NOTES (E & O.E.)
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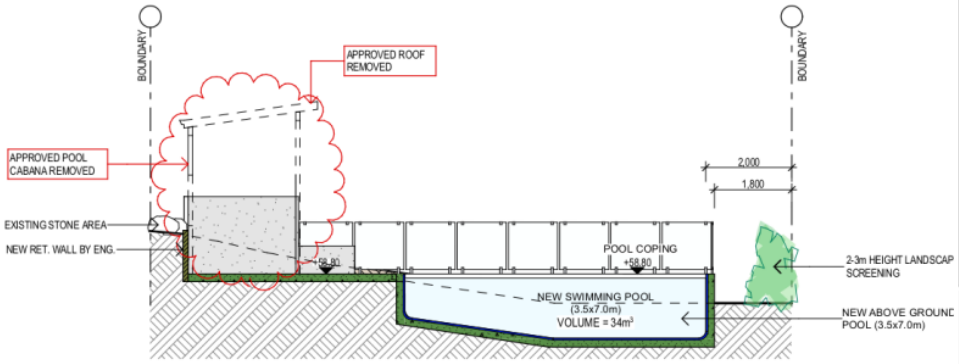
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PROJECT DETAILS: SECTION 4.55 TO PROPOSED ALTERATIONSAND ADDITIONS 16 Mc DONALD STREET - FRESHWATER	DATE: MAY/20	DRAWN BY: LB	SCALE: 1:100 @ A3
DRAWING TITLE: SOUTH ELEVATION & DRIVEWAY PROFILE	JOB No: 799/20	CHECKED BY: JJ	DRAWING No: **DA.05**



NORTH ELEVATION



POOL SECTION BB

BASIX REQUIREMENTS

BASIX INCLUSIONS FOR 16 MCDONALD STREET - FRESHWATER

LIGHTING

40% OF NEW OR ALTERED LIGHT FIXTURES TO BE FITTED WITH FLUORESCENT, COMPACT FLUORESCENT, OR LIGHT-EMITTING-DIODE (LED) LAMPS.

WATER

SHOWER RATING	MIN. 3 STARS
TAP RATING	MIN. 3 STARS
WC RATING	MIN. 3 STARS

INSULATION

CONSTRUCTION	ADDITIONAL INSULATION REQUIRED (R-VALUE)
Concrete slab on ground floor:	- NIL
Suspended floor with enclosed subfloor: Framed (R0.70)	- R0.60 down (or R1.30 including construction)
External wall: Framed (Weatherboard, fibro, Metal clad)	- R1.30 (or R1.70 including construction)
Raked ceiling, pitched/skillion roof; framed	- Ceiling R2.24 (up), roof foil backed blanket (55mm)

RAINWATER TANK

THE APPLICANT MUST INSTALL A RAINWATER TANK OF AT LEAST 1214LITRES ON THE SITE. THIS RAINWATER TANK MUST MEET, AND BE INSTALLED IN ACCORDANCE WITH, THE REQUIREMENTS OF ALL APPLICABLE REGULATORY AUTHORITIES.

THE APPLICANT MUST CONNECT THE RAINWATER TANK TO A TAP LOCATED 10METRES OF THE EDGE OF THE POOL.

GLAZING DOORS / WINDOWS/ SKYLIGHTS:

W1 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W2 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W3 - Standard aluminium, SINGLE PYROLYTIC LOW-E, (U-value: 5.7, SHGC: 0.47)
W4 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W5 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W6A - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W6B - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W7 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W8 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W9 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W10 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W11 - Standard aluminium, SINGLE PYROLYTIC LOW-E, (U-value: 5.7, SHGC: 0.47)
W12 - Standard aluminium, SINGLE PYROLYTIC LOW-E, (U-value: 5.7, SHGC: 0.47)
W13 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W15 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
W16 - Standard aluminium, SINGLE CLEAR, (U-value: 7.63, SHGC: 0.75)
S1 - Timber, LOW E / CLEAR EXTERNAL, (U-value: 2.5, SHGC: 0.456)
S2 - Timber, LOW E / CLEAR EXTERNAL, (U-value: 2.5, SHGC: 0.456)

NOTES:

- All retaining walls are to be structurally adequate, designed and certified by a Structural Engineer, except where site conditions permit the following:
(a) max. height of 900MM above or below ground level and at least 900MM from any property boundary;
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

LEGEND:

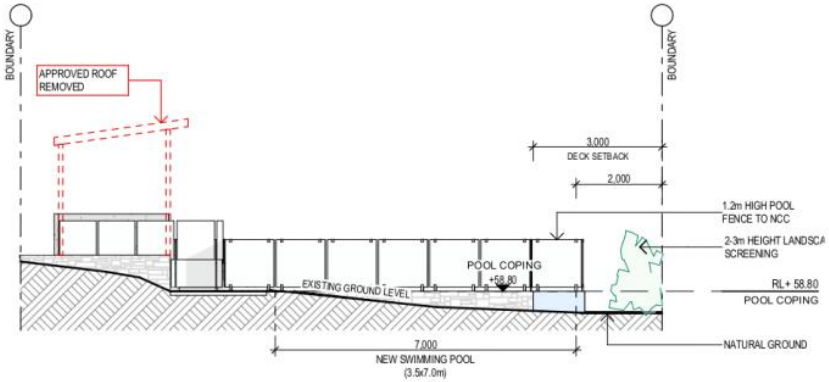
CRS - COLOURBOND ROOF SHEETING - 'MONUMENT' colour.
REW - RENDERED EXTERNAL WALLS - 'WHITE DELUX colour
* ALL WINDOWS FRAMED TO BE BLACK.
* BALUSTRADE - Proprietary glazed with face pinned fixing & top 316 grade minimum, stainless stell channel (BCA requirement).

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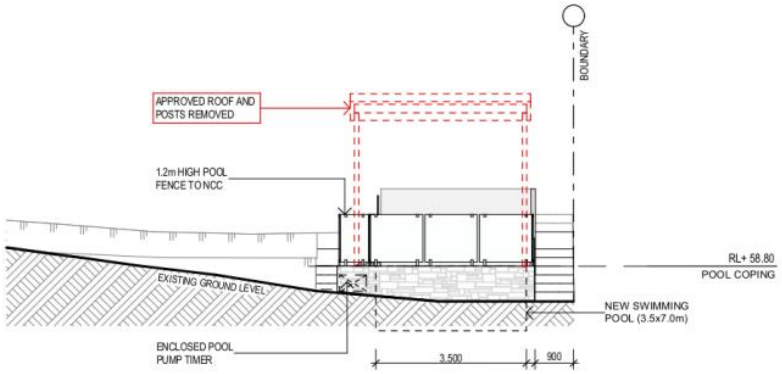
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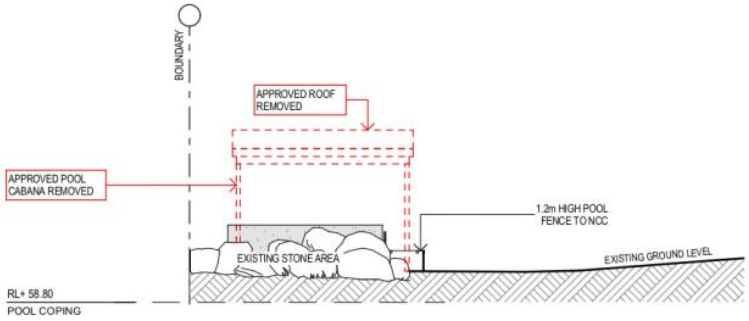
PROJECT DETAILS: SECTION 4.55 TO PROPOSED ALTERATIONSAND ADDITIONS 16 Mc DONALD STREET - FRESHWATER	DATE: MAY/20	DRAWN BY: LB	SCALE: 1:100 @ A3
DRAWING TITLE: NORTH ELEVATION & BASIX REQUIREMENTS	JOB No: 799/20	CHECKED BY: JJ	DRAWING No: **DA.06**



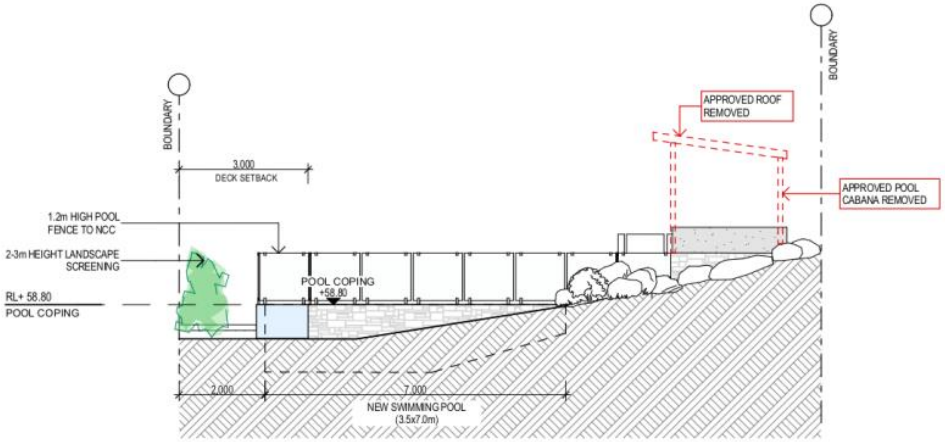
WEST ELEVATION - POOL



SOUTH ELEVATION - POOL



NORTH ELEVATION - POOL



EAST ELEVATION - POOL

NOTES (E & O.E.)
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DRAWING TITLE: POOL ELEVATIONS	JOB No: 799/20	CHECKED BY: JJ	DRAWING No: **DA.07**

ITEM 3.5	**MOD2021/0542 - 16 UPPER GILBERT STREET MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2018/1870 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING**
REPORTING MANAGER	**Tony Collier**
TRIM FILE REF	**2022/127995**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment and under the 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 Mod2021/0542 for modification of Development Consent DA2018/1870 granted for demolition works and construction of a residential flat building on land at Lot A DP 110371, 16 Upper Gilbert Street MANLY, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0542

Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot A DP 110371, 16 Upper Gilbert Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2018/1870 granted for demolition works and construction of a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gisona Pty Ltd David Brian Milton
Applicant:	Moorgate Property Pty Ltd

Application Lodged:	09/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/08/2021 to 01/09/2021
Advertised:	18/08/2021
Submissions Received:	5
Clause 4.6 Variation:	4.4 Floor space ratio: 28%
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to an approved residential flat building. The original development application (DA2018/1870) was refused by the Northern Beaches Local Planning Panel on 20 November 2020. The applicant commenced an appeal in Class 1 of the Land and Environment Court with the court directing the applicant and Council to attend a section 34 conciliation conference in the appeal. Amended plans were provided by the applicant which were considered to improve the original DA and resolve the issues raised by the Panel. Approval for the residential flat building was therefore granted by the NSW Land and Environment Court on 22 December 2022. Currently existing on the site is a single dwelling house.

The proposal results in a net increase to the gross floor area of the building by 2.2sqm. Whilst the actual increase to the residential flat building is minor, the existing development as a whole significantly exceeds the maximum FSR by 118sqm such that the additional floor area results in a variation to the FSR development standard of 28.1% for the building overall. The proposal does not result in an increase to the building height.

The development proposes to infill the approved alcoves at both the ground floor level and first floor level along the northern elevation creating a flush wall to the northern facade. The northern elevation of the second floor will not be modified as part of the proposal. The development proposes to retain the approved windows at ground floor (W14) and first floor (W11) where the alcoves are to be filled in and the approved screening modified. The development proposes to modify the screening to a reduced portion of the windows (W11 and W14). Council cannot support a reduction to the level of privacy provided to the northern elevation given the amenity impacts this would impose. A condition is imposed which will ensure the proposed screening to the subject windows (W11 and W14) do not form part of this consent.

The proposed increase to the floor area at ground level and first floor level along the northern elevation is considered acceptable. The retention of screening to the northern elevation will ensure the amenity of the neighbouring property at 14 James Street to the north will not be impacted.

The development proposes to replace the privacy screen at the eastern end of the breezeway at first floor with a fixed window and lourves (W.11 L1) to a portion of the window. Amendments to the screening of window (W.13 L1) to bedroom 01 Unit 03 along the eastern elevation is proposed and will result in a reduced potion of the window being screened. Council cannot support these proposed amendments, given these revisions were approved by the NSW Land and Environment Court in order to provide improved amenity to the adjoining properties to the east. A condition is imposed which will ensure screening to the proposed window (W.11 L1) and the approved window (W.13 L1) along the eastern elevation are to remain for the entire width.

The resultant variation to the floor space ratio exceeds 10% and the proposal is related to a residential flat building (Class 2). As such, the application is referred to Northern Beaches Local Planning Panel (NBLPP) for determination. The NBLPP can be satisfied that notwithstanding the variation to FSR, the proposal generally complies with the relevant controls contained within the Manly LEP and DCP. No objections have been raised from internal experts, subject to conditions. On balance, the proposal is recommended for approval having considered the relevant issues as part of the assessment of the plans submitted.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the following modifications:

Basement Plan

- The lowering of the floor level by 50mm,
- The expansion of the basement in a northerly direction to accommodate 2 additional parking spaces, and
- Modifications to the approved bin storage room and access ramp to comply with applicable accessibility provisions.

Ground Floor Plan

- Lowering of the floor level by 50mm,
- The removal of the alcove from the northern façade,

- A minor increase in the size of the Unit 01, Bed 2 ensuite to enhance layout efficiencies,
- A minor increase in the geometry of the south-east facing Unit 02 terrace, and
- The provision of doors to the central communal circulation space.

First Floor Plan

- The removal of the alcove from the northern façade,
- A minor increase in the size of the Unit 03, Bed 2 ensuite to enhance layout efficiencies,
- The provision of a window to the eastern end of the approved breezeway for weather protection, and
- The reconfiguration of Unit 04 including the partial enclosure of the approved breezeway.

Second Floor Plan

- An increase in the floor level by 50mm,
- The removal of a street facing window from bedroom 1,
- The reconfiguration of the northern alcove to improve internal layout efficiencies,
- The reconfiguring of the unit to incorporate a section of the approved breezeway, and
- The reconfiguration of the western and southern building facades to enhance amenity.

Roof Plan

- The reconfiguration of skylights, and
- Minor changes to the roof detailing to reflect the façade changes below.

The application also seeks to modify Condition 1 of the consent to reference the modified plans and supporting documentation. The application seeks to delete Conditions 17, 22 and 23 on the basis of the modified landscape and architectural plans accompanying this submission. The application also seeks to amend Condition 56 to reflect the amended car parking allocation.

In response to concerns raised by Council's Traffic Engineer, a revised Traffic Report and plans were submitted to Council on 21 October 2021. These issues have been addressed with appropriate conditions imposed. Parking and traffic issues are discussed in the report.

A revised Geotechnical Report was submitted to Council on 5 October 2021. The report by Crozier Geotechnical Consultants dated September 2021 was prepared to confirm the groundwater conditions and the unnecessary requirement to provide a tanked basement. The report and accompanying letter seeks to remove Condition 11 of the consent which includes the requirement for a permanently tanked basement.

Revised stormwater plans were received by Council on 28 January 2022 which propose to connect their stormwater into an existing pit outside 3A James Street by installing a new stormwater pit and pipe on James Street. Council's Development Engineer raised no objections subject to conditions.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision
Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot A DP 110371 , 16 Upper Gilbert Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern corner of Upper Gilbert Street and James Street. The site is irregular in shape with a frontage of 18.67m along Upper Gilber Street and 21.03m along James Street and a depth of 24.665m from Upper Gilbert Street. The site has a surveyed area of 565sqm. The site is located within the R1 General Residential zone and accommodates a single storey dwelling house with an attached garage fronting James Street. The site slopes from north to south and includes a crossfall of 3.8m. The topography of the site has been altered through the presence of retaining walls located along the northern and southern boundary.

	The site includes a number of small to large trees with a Norfolk Island Pine located in the south-eastern corner of the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by two and three storey residential flat buildings, semi-detached dwellings and dwelling houses.

Map:



SITE HISTORY

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

PLM2018/0125 - Pre-lodgement meeting was held on 12 June 2018 for the demolition of the existing dwelling and construction of a residential flat building.

DA2018/1870 - Demolition works and construction of 5 unit residential flat building. The DA was refused at Northern Beaches Local Planning Panel (NBLPP) as it was not satisfied that:

> *1) the applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 (Manly LEP) seeking to justify a contravention of Clause 4.4 Floor Space Ratio development standard 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 standards and the objectives for development within the zone in which the development is proposed to be carried out.

Following the Panel's refusal of the DA, the applicant lodged a Class 1 in the Land and Environment Court'. The Court directed the applicant to attend a Section 34 conciliation conference in the appeal, which took place on 16 November 2020. Fourteen (14) submissions were received from residents in response to the conciliation conference, which were provided to the court.

Amended plans were received by Council after the conciliation conference which included; amended landscape plans and an updated written request pursuant to clause 4.6 of the Manly LEP. The objectors were afforded the opportunity to comment on the revised documentation which were taken into consideration and assessed by Council's experts.

The revised changes were supported and were seen to considerably improve the application compared to the original DA and resolved the issues raised by the Panel as set out in the SOFC to the satisfaction of Council's expert planner. The appeal was upheld and the amended DA was approved.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	**Comments**
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1870. • The bulk and scale of the development is generally retained with any changes to the building envelope resulting in a discernible impact when viewed from adjoining and nearby properties and when viewed from a public space. • The amenity of the adjoining properties is not compromised with views and privacy as previously approved being generally maintained. • Solar access is retained and remains compliant as originally approved. • Reasonable view sharing is retained and remains compliant as originally approved. • The additional excavation towards the northern boundary will not alter the

Section 4.56- Other Modifications	Comments
	development as viewed from a public place.
(b) 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.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2018/1870.
(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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 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	None applicable.
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	Division 8A of the EP&A Regulation 2000 requires the

Section 4.15 'Matters for Consideration'	Comments
the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to Traffic and Parking. A revised Traffic Report and revised plans were submitted to Council for review and were supported subject to conditions. . Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original 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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) 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 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/08/2021 to 01/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Stephen Charles Cargill	1 / 2 James Street MANLY NSW 2095
Mr David Kenneth Dickson	14 James Street MANLY NSW 2095
Maggy Oehlbeck	5 James Street MANLY NSW 2095
Mrs Maria-Louisa Anna Grimmer	13 James Street MANLY NSW 2095
Mrs Zarli French	10 Upper Gilbert Street MANLY NSW 2095

The following issues were raised in the submissions:

- Bulk and Scale, overdevelopment and variation to the FSR development standard
- Privacy
- Traffic and Parking
- Excavation of basement level and construction impacts
- Heritage

The matters raised within the submissions are addressed as follows:

- **Bulk and Scale, overdevelopment and variation to the FSR development standard**
  Comment:
  Concern is raised in regard to the alterations and additions to the approved development and the increase in floor area to Unit 01 at ground floor and Unit 03 and first floor. The increase in floor area will result in an additional 7.2sqm which will increase the overall floor area from 535.2sqm (approved) to 542.4sqm (proposed). The overall height of the development is not altered from the approved height and will be located well below the 11.0m high limit prescribed for the site. Whilst the floor area is slightly increased over the ground and first floor, the overall bulk and scale of the development is not significantly altered. The development will maintain the articulated facade along the northern elevation at the second level which will continue to

alleviate the perceived bulk when viewed from a public place. The increased floor area and removal of the recesses will not be highly visible when viewed from a public place given it's central location along the northern facade.

- **Privacy**
  Comment:
  Concern is raised by the owners of the adjoining property to the north (No. 14 James Street) in regard to the window (W14) servicing the Living/Kitchen for Unit 3 at the first floor level and the window (W09) servicing Bedroom 3 in Unit 5 on the second floor level. Both windows were approved with privacy screens measuring the entire width of the window. The modification application has amended the screen to measure approximately two thirds of the window with an operable louvred screen located along the remainder of the window. Concern has been raised in regards to the potential overlooking that may occur as a result of the reduced screening. It is also noted that the window at first floor will be located a further 0.9m towards the northern elevation, therefore increasing the potential for increased overlooking towards the private open space, bedrooms and living areas of No. 14 James Street. To ensure the amenity of the occupants at 14 James Street is protected, the proposed reduction in privacy screening for W09 and W14 is not supported. The modification proposes the deletion of the louvred screen to the breezeway at Level 1 along the eastern elevation and for this to be replaced with a window. The window is supported, however an privacy screen as approved in the original consent is to remain. The modification also proposes to reduce the screen along the eastern elevation to Bedroom 1 of Unit 03. It is unreasonable to remove this screen given the building separation to No. 14 Upper Gilbert and therefore this screen is to remain as per the original consent. The retention of screening on the eastern elevation will ensure reasonable amenity to the neighbouring property to the east at 14 Upper Gilbert Street is maintained.

- **Traffic and Parking**
  Comment:
  Concern was raised in regard to the increased number of car parking spaces located in the basement carpark from 8 to 10 spaces and the traffic this will potentially generate. The application was referred to Council's Traffic Engineer for comment, who raised initial concern with the proposal. A Traffic Report was prepared by TTPA (dated 8 October 2021) and revised plans (Version B) prepared by Platform Architect (dated 22 September) were received by Council and reviewed by Council's Traffic Team. All concerns raised were addressed and satisfied, subject to conditions.

- **Excavation of basement level and construction impacts**
  Comment:
  The development proposes to lower the existing basement level by 50mm and to expand the basement area to the north to accommodate two (2) additional parking spaces. The modification application is accompanied by a Geotechnical Report (prepared by Crozier Geotechnical Consultants dated 6/09/2021). The report concluded that the proposed works will require an excavation of up to 4.2m depth to achieve the basement floor level and given the excavation will extend to the north and south boundaries, the report states that excavation support measures are required to to be installed prior to bulk excavation. Provided the recommendations outlined in the report are implemented, any potential risks can be maintained within acceptable levels and as such the site is considered suitable for the modified development.

- **Heritage**
  Comment:
  The development was referred to Council's Heritage Officer for comment. Concern was raised in

regard to the proposed modification to the northern facade of the development as a result of the increased floor area to both Unit 01 and Unit 03 and the proximity to the heritage item located located at 14 Camera Street (Item I92 - House). Whilst Council's Heritage Officer's comments were considered during the assessment process, it was concluded that the subject site and the item were of such a distance that would not warrant the redesign of the northern facade or retention of the approved design to maintain an articulated facade in response to the heritage significance of this Item. In regards to the existing stone wall along the southern boundary, a condition was imposed in the original consent to ensure the wall is to be retained where possible.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	All previous referral conditions advised in respect to DA2018/1870 are applicable to this MOD.
Landscape Officer	The application is for modification to the Land and Environment Court of New South Wales granted development consent (Proceedings 2020/00059581) for the demolition of the existing dwelling and the construction of a residential flat building and strata subdivision on the subject site (DA2018/1870). The modifications relevant to Landscape Referral can be summarised as follows: the reconfiguration and expansion of the basement in a northerly direction to provide 2 additional off-street parking spaces; and the removal of part of the planter boxes on the second floor to the eastern and northern façades. The application seeks the modification of Condition 1 of the consent to reference the modified plans and supporting documentation and the deletion of Conditions 17, 22 and 23 on the basis of the modified landscape and architectural plans accompanying this submission. The court approved Landscape Plans have been modified to reflect the architectural re-design as part of this modification application and Landscape Plans prepared by Paul Scrivener Landscape are submitted. The Landscape Plans have not strictly adhered to the landscape conditions through documentation as provided in 8. On slab landscape planting and associated works, and 17. Amended Landscape Plan, and as such the condition shall remain with relevant conditions imposed. The modification proposal to reconfigure the basement towards the northern boundary requires that the on slab planter along the boundary to be a suitable depth and width to support the planting as approved by the court, and as such condition 8. On slab landscape planting and associated works, shall be amended. The following landscape conditions shall remain unaltered: 27. Tree removal; 33. Tree and vegetation protection; 36. Landscape works; and 54. Landscape maintenance.

Internal Referral Body	Comments
	Subject to compliance with imposed landscape conditions, Landscape Planner Comment The applicant provided additional information on 11 October 2021 in re *v) the second floor planters at RL25.35 top of wall documente* The applicant argues that the proposed free standing planters sit wholl maintained the position that in-situ planters will ensure a more permane streetscape issues. To ensure the planters are retained at the second l and along the northern elevation privacy issues towards 14 Upper Gilbe
NECC (Development Engineering)	3rd Development Engineering referral The applicant proposed to connect their stormwater system into an existing pit outside 3A James Street by installing a new stormwater pit and pipe on James Street. Development Engineering has no objection to the proposal. The original condition 11 shall be deleted by replacing the following conditions of consent. 2nd Development Engineering referral The applicant proposed to amend the condition 11 of the consent to remove the tanking requirement in the proposed basement. The submitted geotechnical report indicated a constant seepage inflow into the proposed basement area. If the applicant decides to build the basement without tanking, the

Internal Referral Body	Comments
	seepage must be discharged to the Council's pipe/ pit in accordance with the section 4 of Council's Water Management For Development Policy. The nearest pipe/ pit is located outside No. 6 Upper Gilbert Street. As such, a kerb inlet pit and pipe shall be designed and connected from the subjected site to the pit outside No.6. Prior to amend the condition 11, an amended of internal stormwater plan and a pipeline plan and design must be provided to demonstrate the connection is achievable. In this regard, Development Engineering cannot support to remove the condition 11 in this stage. 1st Development Engineering The applicant proposed to extend the basement to provide two additional parking spaces with lowering leve. A supplementary geotechnical report has been provided to support the extension of the basement. Development Engineering has no objection to the application. No additional engineering condition is required.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the property is within proximity to heritage items, listed in Schedule 5 of Manly LEP 2013: **Item I2 - All stone kerbs** -Along Upper Gilbert Street **Item I92 - House -** 14 Camera Street Details of heritage items affected Details of the items as contained within the Northern Beaches inventory is as follows: **Item I2 - All stone kerbs -Along Upper Gilbert Street** Statement of significance: Stone kerbs are heritage listed. Physical description: Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight. **Item I92 - House** Statement of significance: Fine representative example of Federation Queen Anne style residence. Physical description:

Internal Referral Body	Comments
	Originally single storey Federation Queen Anne style brick and roughcast stucco residence with hipped and gabled slate roof featuring multiple gables and gablets. Features a return verandah with corner bay window and corner turret with terracotta finial, elaborate timber fretwork and turned timber spindle frieze to verandah. Original sandstone front fence.

Other relevant heritage listings		
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A	

Consideration of Application

The proposal seeks consent for alterations and additions to the existing dwelling, which is not a listed heritage item under Manly LEP 2013, however it is Federation cottages, that is considered to be a potential item.

It is noted that, the neighbouring dwelling is a very good example of Federation cottage, in an established garden setting with a sandstone retaining wall to the southern boundary. Heritage raises concerns regarding the proposed excavation extending to the northern boundary, as this may impact the stability of the historic building and its curtilage including the sandstone retaining boundary wall.

It is considered that the modifications do not improve the presentation to the streetscape by removing the articulation to the northern facade.

Therefore, Heritage does not support this modification to the northern facade and requires amendments to retain the approved recess to the northern facade.

Consider against the provisions of CL5.10 of Manly LEP 2013.
Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No

Further Comments

Internal Referral Body	Comments
	COMPLETED BY: Oya Guner, Heritage Advisor DATE: 15 September 2021 <u>Planner Comment:</u> Whilst is it is noted that the neighbouring dwelling to the north is a very good example of a Federation Cottage and could be considered a potential item, it is not a listed heritage item under Manly LEP. The modifications to the northern facade are considered minor and will have a minimal impact on the significance of the federation cottage at 14 James Street. The level of articulation along the northern facade is not altered to an extent whereby the design quality is impacted. The proposed modifications are not expected to be overly visible when viewed from Upper Gilbert Street and Camera Street. A Geotechncial Assessment prepared by Crozier Geotechnical Consultants dated 9th June 2021 supports the findings in the original Geotechnical Report (dated 18th September 2018 and prepared by Crozier Geotechnical Consultants) approved as part of DA2018/1870. The assessment states that *the proposed changes to the original design do not significantly alter the geotechnical aspects of the proposed development or the site from those on which the original report were based. Including the critical aspects of further geotechnical investigation and subsequent design and analysis of excavation support systems, most significantly at the northern end of the basement level.* The proposed modifications to the northern facade are therefore supported.
Traffic Engineer	Mod2021/0542 - 16 Upper Gilbert Street MANLY (Second version) **Proposal description:** Modification of Development Consent DA2018/1870 granted for demolition works and construction of a residential building. The response to the Request for Information – Traffic/Parking Matters prepared by TTPA dated 08 October 2021 and the plans for S4.55 lodgement (version B) prepared by Platform Architect dated 22.09.2021 have been reviewed by the Traffic team. All of the issues raised in the Traffic Referral Comments dated 08/09/2021 relating to the first version of the traffic report have been addressed. The only minor item is as follows:

Internal Referral Body	Comments
	• The design of the accessible parking space should be in accordance with the Australian Standard AS2890.6:2009 Parking Facilities-Off Street Parking for People with Disability. Spaces should be provided with a clear width of 2.4m and located adjacent to a minimum shared area of 2.4m. The width of accessible space number 1 is 2.385m which is slightly under the required width however given that a shared area in excess of the required 2400mm is available adjacent to the space the minor departure is acceptable. The transport team has no objection to the proposal in principle, and it can be supported subject to conditions.
Waste Officer	Waste Management Assessment - Amended Plans (21/10/21) Acceptable - subject to conditions. Ray Creer Waste Services Officer Waste Management Assessment Acceptable - subject to conditions. Ray Creer Waste Services Officer

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 65 - Design Quality of Residential Apartment Development

The original development application was assessed under the provisions of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) and the ADG.

The modifications proposed are relatively minor and do not alter the assessment made in the original development application, and the proposal remains consistent with the design principles of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 968072M_04, dated 22 July 2021).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	35	36

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 not referred to Ausgrid.

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	Approved	Proposed	% Variation	Complies
Height of Buildings	11.0m	8.5m	No Change	N/A	Yes
Floor Space Ratio	FSR: 0.75:1 (419.25sqm)	FSR: 0.957:1 (535.2sqm)	FSR: 0.96:1 (537.4sqm)	28.1%	**No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

The application proposes 7.2sqm of additional floorspace. The minor increase in floorspace is to Unit 01 on the ground floor and to Unit 03 on the first floor. The additional floorspace proposed increases the approved non-compliance from 535.2sqm or 0.947:1 to 542.4sqm or 0.97:1.

Despite the additional non-compliance, the additional floor space does not give rise to any inconsistency with the objectives of the floor space ratio control, as follows:

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

  Comment: Given the minor increase in floor space area is to two units over the ground floor ar

- 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 increase in the floor space ratio of the proposed development will not alter the

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

Comment: The visual impact of the development will remain compatible with surrounding deve

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

Comment: The development does not result in any adverse environmental impacts. The propo

- 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

The subject modification is not subject to the rigour of clause 4.6 of MLEP 2013. Nonetheless, the consent authority can be satisfied that the extent of the additional floor space proposed in the subject modification is relatively minor and does not detract from the development maintaining consistency with the objectives of the FSR development standard. Furthermore, the bulk and scale of the development is substantially the same as that embodied in the original approval.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 559sqm	**Requirement**	**Approved**	**Proposed**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/150sqm (4 dwellings)	1 dwelling per 112sqm (5 dwellings) - 20% variation	No change	**No - existing**
	Dwelling Size: 2 bedroom dwelling - 70sqm 3 bedroom dwelling 90 sqm +5sqm for additional bathrooms	4 x 2 bedroom 2 bathroom dwellings - 86.8sqm - 90.4sqm 1 x 3 bedroom 2 bathroom dwellings 139sqm	4 x 2 bedroom 2 bathroom dwellings - 84.2sqm - 97.1sqm 1 x 3 bedroom 2 bathroom dwellings 141sqm	Yes
4.1.2.1 Wall Height	E: 9.3m (based on gradient 1:20))	8.9m - 9.5m	No change	**No (approved)**
	W: 9.7m (based on gradient 1.9)	7.6m - 9.9	No change	**No (approved)**
4.1.2.2 Number of Storeys	3	3	3	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	No change	Yes

4.1.4.1 Street Front Setbacks	Upper Gilber Street - Prevailing building line Garages - Nil Balconies - 2m Building - 4m	Consistent with prevailing setback Garages - Nil Balconies - 2.0m Building Ground to first 3.4 - 4.7m	consistent with prevailing setback No change No change No change	Yes Yes Yes **No (as approved)**
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 3 - 3.2m (based on wall height)	E: 3m - 4.8m	No change	Yes
	W - secondary street frontage) Building - 2.5m - 3.2m Balconies 1.7m - 2.6m	W - secondary street frontage Building - 6.1m - 6.6m Balconies 1.2m - 3.4m	No change	**No (existing)**
4.1.4.4 Rear Setbacks	8.0m	3.0m	3.0m (no change)	**No (existing)**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (279.5sqm)	61% (238.3sqm at ground + 102.9sqm above ground = 341.2sqm)	No change	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (102.4sqm)	42.3% (144sqm)	32.4% (84.75sqm)	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	Unit 1 - 27.8sqm Unit 2 - 33sqm Unit 3 - 14sqm Unit 4 - 16.5sqm Unit 5 - 50.9sqm	Unit 1 - 120sqm Unit 2 - 78 sqm Unit 3 - 14sqm Unit 4 - 24.4sqm Unit 5 - 51sqm	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	4.2m	4.2m (no change)	Yes
Schedule 3 Parking and Access	Residential - 7 spaces Visitor - 2 spaces 1 resident parking space for each dwelling (irrespective of number of bedrooms), plus 0.2 resident parking spaces for each 2 bedroom dwelling, plus 0.25 visitor parking spaces for each dwelling (irrespective of number of bedrooms)	Residential - 7 spaces Visitor - 2 spaces	Residential - 9 spaces Visitor - 2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	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
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

The development proposes to remove part of the full width privacy screen along the northern elevation for both windows W09 and W14. The windows will also be extended to be flush with the northern wall

which will locate the windows a further 900mm towards the northern boundary. Concern is raised that the decreased setback along with the reduction in privacy screening will have adverse impacts towards the amenity of the adjoining dwelling at 14 James Street.

In addition, concern is raised that the new window replacing the screened breezeway to the eastern elevation will allow for overlooking towards the neighbouring windows located along the eastern elevation of 14 Upper Gilbert Street. Whilst the replacement of the screening with a window is supported, a privacy screen is to be located along the facade for the full height and width of the window to ensure the amenity of the neighbouring property at 14 Upper Gilbert Street is protected.

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The windows along the northern elevation at Level 1 (W14) and Level 2 (W09) are to maintain the privacy screening as per the approved plans for DA2018/1870. Whilst the windows are located 900mm towards the northern boundary, it is assessed that the 3.0m setback will maintain privacy screening for the entire width and height of windows W14 and W09 and will not give rise to adverse privacy impacts to 14 James Street. Overall, it is considered that the proposal maintains substantial spatial separation from the adjoining dwelling, which is consistent within the low density residential setting and preserves reasonable privacy between buildings.

The replacement of privacy screening to a fixed window servicing the breezeway along the eastern elevation at first floor level is considered to result in unreasonable privacy impacts towards the windows located along the western elevation of 14 Upper Gilber Street. However, no objection is raised to the proposed window provided appropriate screening is imposed on the window to ensure the amenity of the neigbouring property to the east is protected. Appropriate conditions are imposed to ensure sufficient privacy screening is imposed on windows W09 and W14 of the development.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

Given the above, the proposed development as conditioned retains adequate privacy for the adjoining residential developments to the north and east, while allowing sufficient access to light and air, and balancing of views.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise casual surveillance of the street from the property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Manly DCP 2013 permits 1 dwelling per 150sqm of site area, which allows for four (4) dwellings on the site. The subject modification does not alter the the number of dwellings approved as part of the original development application, being five (5). This non-compliance was addressed within the original report and was considered acceptable.

4.1.1.1 Residential Density and Dwelling Size

As discussed in the report, the number of dwellings (five) has been assessed against the objectives of Clause 4.1.1 Dwelling Density, Dwelling Size and Subdivision and is considered acceptable. The subject modification does not alter the number of approved dwellings under the original development application.

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

The modification application proposes to increase the height of the wall along the northern, eastern, southern and western elevation from RL25.90 to RL25.95 which is an increase of 50mm. This increase is considered not discernible when viewed from both Upper Gilbert Street and James Street and also from the adjoining properties at 14 Upper Gilbert Street to the east and 14 James Street to the north. The minor increase in wall height will not alter the overall approved building height and will not contribute to any additional bulk when viewed from surrounding public spaces and residential properties.

In assessing this particular Section 4.56 Modification, it is noted that the modified development does not exacerbate the numeric non-compliant wall heights along the eastern and western side elevations. Therefore, no further consideration of this control is required for the purpose of this assessment.

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

The approved development involved variations to the side setback provision along the northern, southern and western side elevations. Despite this, the proposal was supported on merit due to it being consistent with the objectives of this control.

In assessing this particular Section 4.56 Modification, it is noted that the modified development does not worsen the numerically non-compliant side setbacks along the northern and southern side elevations. Therefore, no further consideration of this control is required for the purpose of this assessment.

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The works proposed as part of the modification application are supported and that the proposed changes to the original design do not significantly alter the geotechnical aspects of the proposal or the site from those on which the original report were based.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

Clause 4.4.5 of the MDCP 2013 states that natural and undisturbed ground level must be maintained within 0.9m of side and rear boundaries. The proposal involves excavation within 0.9m from the northern boundary, which conflicts with the numerical requirement.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, "cut and fill" and other earthworks;
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The proposed excavation extends the approved basement a further 2.6m towards the northern boundary to provide for the two (2) additional parking spaces. The proposal is supported by a Geotechnical Report, prepared by Crozier Geotechnical Consultants (September, 2021), which stipulates that the proposed modification will not significantly alter the geotechnical aspects of the proposed development of the site from those on which the original report were based, including the critical aspects of further geotechnical investigation and subsequent design and analysis of excavation of support systems, most significantly at the northern end of the basement level.

The applicant has requested the deletion of Condition 11 "Tanking of Basement Level". The Geotechnical Report prepared by Crozier Geotechnical Consultants concluded that tanking of the basement is not considered critical as the majority of groundwater seepage was identified below the base of the excavation level.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and 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

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

Summary of Conclusions

The application seeks modifications to an approved DA for alterations and additions to an existing residential flat building. The key planning issues considered within the assessment are the proposed variations to the Floor Space Ratio development standard and privacy concerns.

The proposed floor space ratio variation is 28.1% and is supported for the reasons discussed above. The approved privacy screening along both the northern and eastern elevations is required to remain. The modified development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

Conditions are imposed to ensure that there are no amendments to the approved screening along the eastern and northern elevations which will adequately protect the amenity of the adjoining residential properties.

Five (5) submissions were received in relation to the proposed development. 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 Council as the consent authority grant approval to Modification Application No. Mod2021/0542 for Modification of Development Consent DA2018/1870 granted for demolition works and construction of a residential flat building on land at Lot A DP 110371,16 Upper Gilbert Street, MANLY, subject to the conditions printed below:

A. Add Condition No.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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A0.01 - Rev B - Site Plan	22 September 2021	Platform Architects
A1.01 - Rev B - Basement Plan	22 September 2021	Platform Architects
A1.02 - Rev B - Site Plan - Ground Floor Plan	22 September 2021	Platform Architects
A1.03 - Rev B - First Floor Plan	22 September 2021	Platform Architects
A1.04 - Rev B - Second Floor Plan	22 September 2021	Platform Architects
A1.05 - Rev B - Roof Plan	22 September 2021	Platform Architects
A2.01 - Rev B - West Elevation	22 September 2021	Platform Architects
A2.02 - Rev B - South Elevation	22 September 2021	Platform Architects
A2.03 - Rev B - East Elevation	22 September 2021	Platform Architects
A2.04 - Rev B - North Elevation	22 September 2021	Platform Architects
A3.01 - Rev B - Section 1-1	22 September 2021	Platform Architects
A3.02 - Rev B - Section 2-2	22 September 2021	Platform Architects
A3.03 - Rev B - Section A-A	22 September 2021	Platform Architects
External Finishes Schedule - Rev B	22 September 2021	Platform Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
SW301 Issue P1	January 2022	Erbas
SW302 Issue P1	January 2022	Erbas
SW303 Issue P1	January 2022	Erbas

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Report Issue 01	6 September 2021	Crozier Geotechnical Consultants

Carpark, Ramp and Driveway Certification - N1815967A (Version 2a)	July 2021	ML Traffic Engineers

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Dwg 1 of 2 Issue G - Landscape Plan	12 July 2021	Paul Srivener Landscape
Dwg 2 of 2 Issue G - Planting Plan	12 July 2021	Paul Srivener Landscape

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

B. Delete Condition 11- Tanking of Basement Level

C. Delete Condition 22 - Waste Storage area access

D. Delete Condition 23 - Storage

E. Add Condition 7A - Construction, Excavation and Associated Works Bond (Drainage works) to read as follows:

The applicant is to lodge a bond of $ 50,000 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.

F. Add Condition 7B - Construction, Excavation and Associated Works Bond (Maintenance for civil works) to read as follows:

The developer/applicant must lodge with Council a maintenance bond of $ 10,000 for the construction of stormwater drainage . The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

G. Add Condition 7C - Submission Roads Act Application for Civil Works in the Public Road to read as follows:

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of new stormwater pipe and pits connect to Council's stormwater asset which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:
1) a minimum 375 diameter RCP (class 2) shall be installed and connected to a Council's existing stormwater pit. The pipe shall be designed in accordance with Council's specification.
2) an on grade gully pit with 1.8 m long lintel shall be installed outside of the property. The pit shall be designed in accordance with Council's specification.
3) all utility services on affected areas must be plotted on the plan and cross- section plan. All cost related to any relocation of utility service shall be borne by the applicant.
4) a detailed construction management plan and report must be submitted.
5) a design certificate shall be provided.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

H. Add Condition 25A - Amendments to the approved plans to read as follows:

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

- The privacy screening approved for W09 and W14 along the northern facade of the development is to be maintained as approved in DA2018/1870;
- The privacy screening approved for Bedroom 1 of Unit 03 along the eastern facade of the development is to be maintained as approved in DA2018/1870;
- Fixed louvre screening in keeping with the design of the privacy screens as approved for the development under DA2018/1870 are to be provided to the entire window (W.11 L1) along the eastern elevation.

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.

I. Add Condition 25B - Amended Landscape Plan to read as follows:

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:
i) the northern boundary planter at RL19.50 top of wall shall be a continuous planter, be a minimum 900mm depth, and shall be a minimum 1200mm in width internally,
ii) the nominated Acmena smithi within deep soil along James Street shall be nominated as a pre-ordered 200 litre container, and located centrally within the deep soil area,
iii) the nominated Cupaniospsis anarcadioides within deep soil along James Street shall be deleted as this is a self-seeding species known to spread into bushland, and shall be replaced with either Glochidion ferdinandi or Banksia integrifolia nominated as a pre-ordered 200 litre container, and located centrally within the deep soil area,
iv) the nominated Livistona australis shall be installed at a minimum size of 3m clear trunk, and located centrally within the deep soil area,

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

J. Add Condition 25C - Waste and Recycling Requirements to read as follows:

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.

K. Add Condition 35A - Implementation of Construction Traffic Management Plan to read as follows:

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.

L. Add Condition 35B - Waste/Recycling Requirements (Materials) to read as follows:

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.

M. Add Condition 53A - Disabled Parking Spaces to read as follows:

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

Confirmation from an access consultant that the disabled parking space has been constructed consistent with Australian Standard requirements are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

N. Add Condition 53B - Shared Zone Bollard to read as follows:

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.

O. Add Condition 53C - Garbage and Recycling Facilities to read as follows

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.

P. Add Condition 53D - Waste and Recycling Facilities Certificate of Compliance to read as follows

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.

Q. Add Condition 53E - Waste/Recycling Compliance Documentation to read as follows

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.

R. Add Condition 53F - Positive Covenant for Council ad Contractor Indemnity to read as follows

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.

S.Add Condition 53G - Authorisation of Legal Documentation Required for Waste Services to read as follows

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.

T. Modify Condition 8 On slab landscape planting and associated works to read as follows:

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following planter requirements shall be adhered to:
i) the northern boundary planter at RL19.50 top of wall shall be a minimum 900mm depth and shall be a minimum 1200mm in width internally,
ii) the second floor planters at RL25.35 top of wall shall be provided with soil depth as per the Paul Schrivener Landscape detail PSLA 17 - On structure planter detail,
iii) all other landscape areas on structure shall receive the following minimum soil depths: 300mm for groundcover planting; 600mm for shrubs and accents; and 1 metre for any tree planting.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

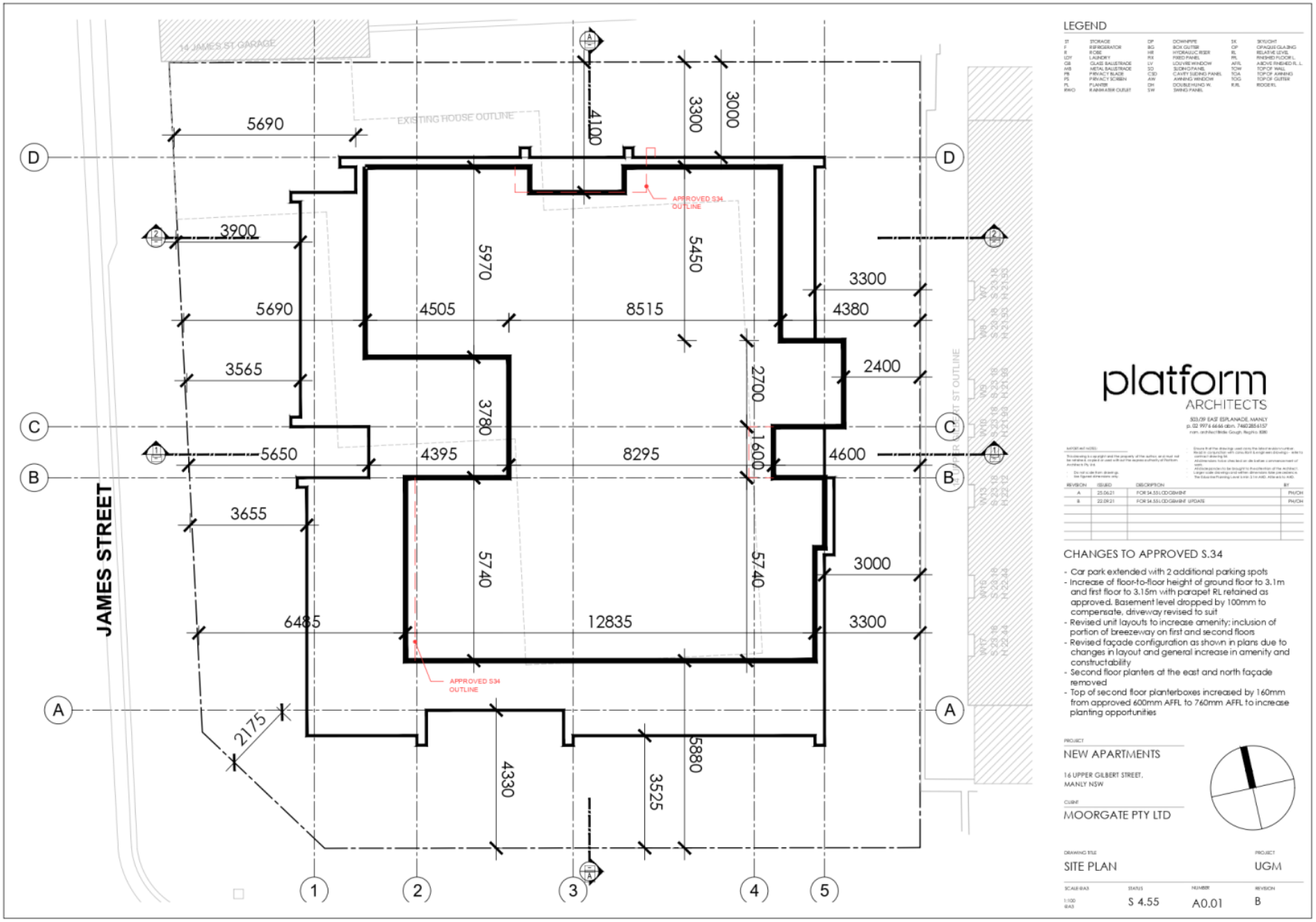
U. Modify Condition 56 Allocation of Spaces to read as follows:

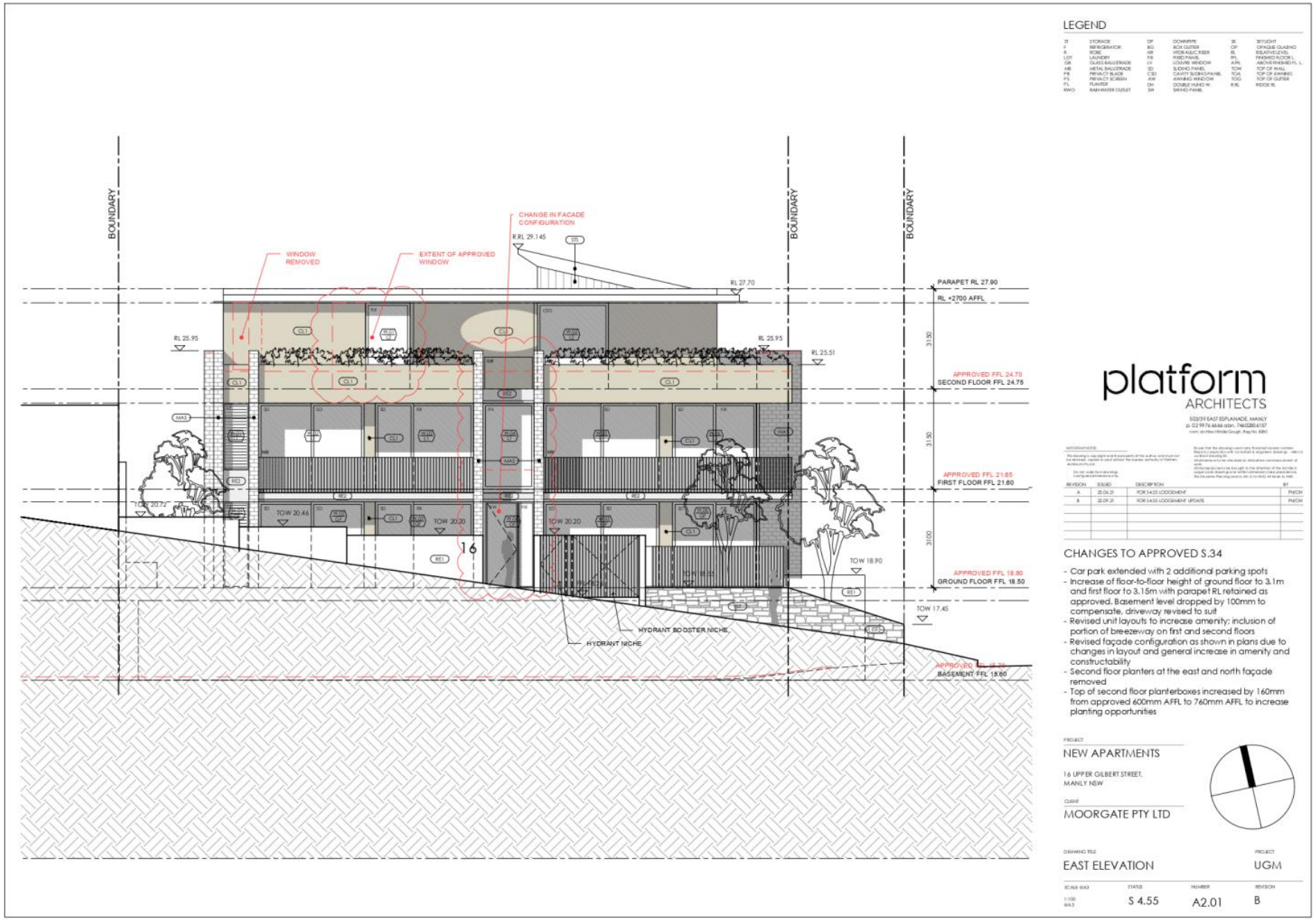
A minimum of one car parking shall be allocated to each two (2) bedroom unit and a minimum of two to each three bedroom unit. The accessible parking space must be allocated to the adaptable Unit 03.

Each car parking space allocated to a particular unit shall be line marked and numbered or signposted to indicate the unit to which it is allocated.

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 that adequate parking facilities to service the development are provided on site.


JAMES STREET
14 JAMES ST GARAGE
EXISTING HOUSE OUTLINE
APPROVED S34 OUTLINE
APPROVED S34 OUTLINE
5690
4100
3300
3000
3900
5970
5450
3300
5690
4505
8515
4380
3565
2700
2400
3780
5650
4395
8295
1600
4600
3655
5740
5740
3000
6485
12835
3300
2175
4330
3525
5880
A
B
C
D
1
2
3
4
5
LEGEND
platform
ARCHITECTS
CHANGES TO APPROVED S.34
- Car park extended with 2 additional parking spots
- Increase of floor-to-floor height of ground floor to 3.1m and first floor to 3.15m with parapet RL retained as approved. Basement level dropped by 100mm to compensate, driveway revised to suit
- Revised unit layouts to increase amenity; inclusion of portion of breezeway on first and second floors
- Revised façade configuration as shown in plans due to changes in layout and general increase in amenity and constructability
- Second floor planters at the east and north façade removed
- Top of second floor planterboxes increased by 160mm from approved 600mm AFFL to 760mm AFFL to increase planting opportunities
PROJECT
NEW APARTMENTS
16 UPPER GILBERT STREET,
MANLY NSW
CLIENT
MOORGATE PTY LTD
DRAWING TITLE
SITE PLAN
PROJECT
UGM
S 4.55
A0.01
B



LEGEND

platform ARCHITECTS

503/39 EAST ESPLANADE, MANLY
p. 02 9976 6666 abn. 74602856157

REVISION	ISSUED	DESCRIPTION	BY
A	25.06.21	FOR S.4.55 LODGEMENT	PHOH
B	22.09.21	FOR S.4.55 LODGEMENT UPDATE	PHOH

CHANGES TO APPROVED S.34

- Car park extended with 2 additional parking spots
- Increase of floor-to-floor height of ground floor to 3.1m and first floor to 3.15m with parapet RL retained as approved. Basement level dropped by 100mm to compensate, driveway revised to suit
- Revised unit layouts to increase amenity: inclusion of portion of breezeway on first and second floors
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PROJECT
NEW APARTMENTS

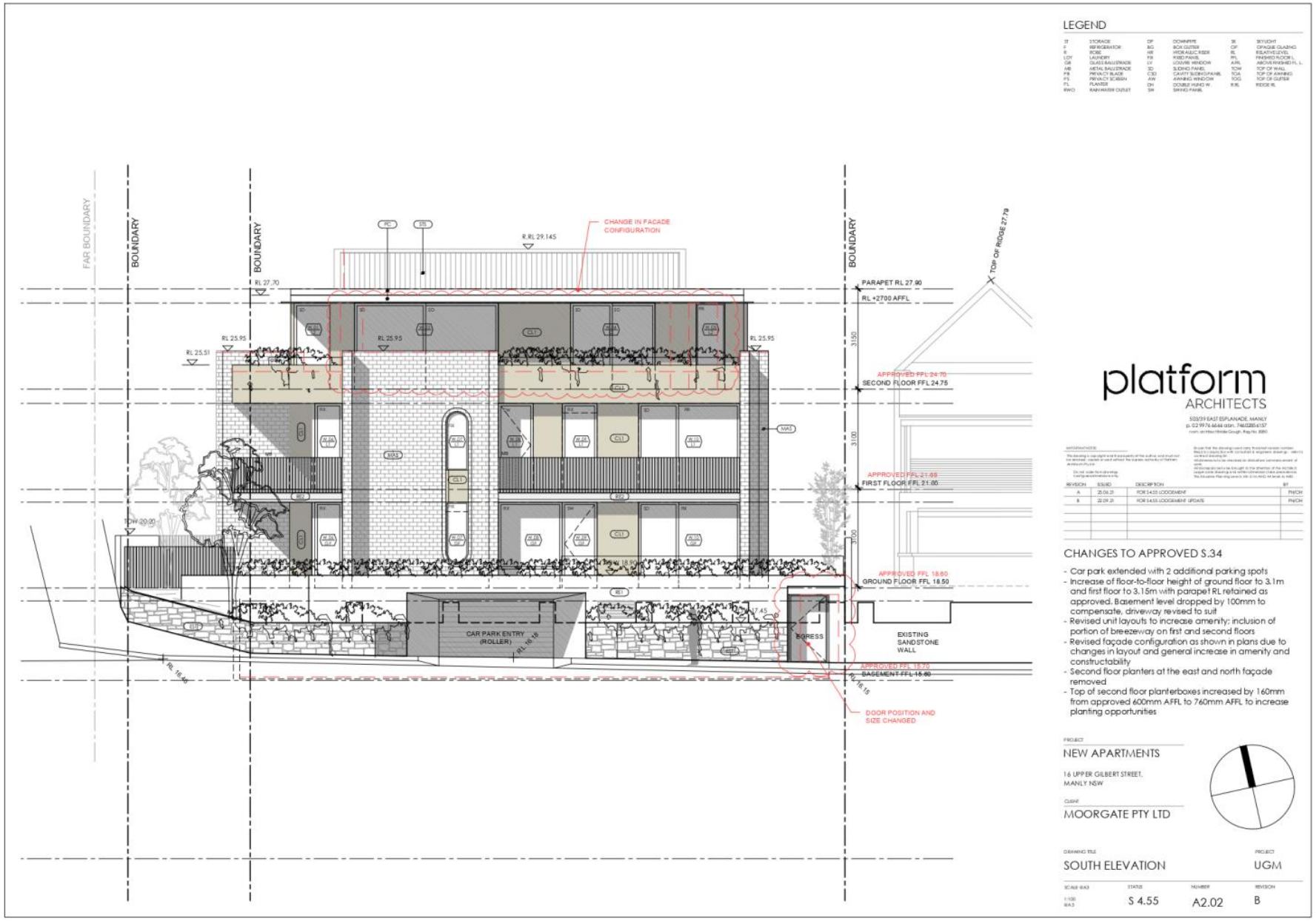
16 UPPER GILBERT STREET,
MANLY NSW

CLIENT
MOORGATE PTY LTD

DRAWING TITLE
EAST ELEVATION

PROJECT
UGM

SCALE @ A3	STATUS	NUMBER	REVISION
1:100	S 4.55	A2.01	B



LEGEND

platform ARCHITECTS

503/39 EAST ESPLANADE, MANLY

REVISION	ISSUED	DESCRIPTION	BY
A	25.06.21	FOR S.4.55 LODGEMENT	PHOH
B	22.09.21	FOR S.4.55 LODGEMENT UPDATE	PHOH

CHANGES TO APPROVED S.34

- Car park extended with 2 additional parking spots
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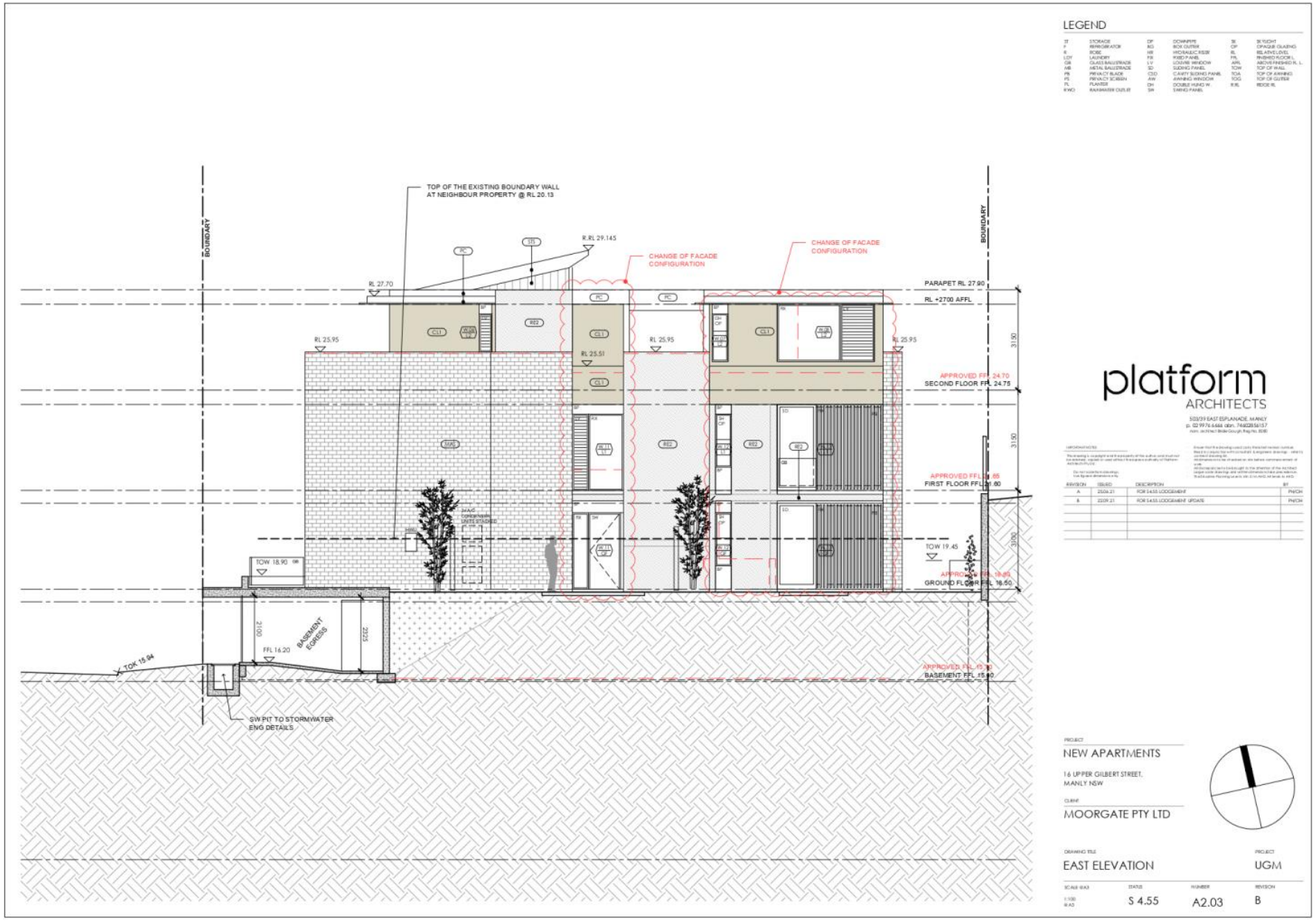
PROJECT
NEW APARTMENTS
16 UPPER GILBERT STREET, MANLY NSW

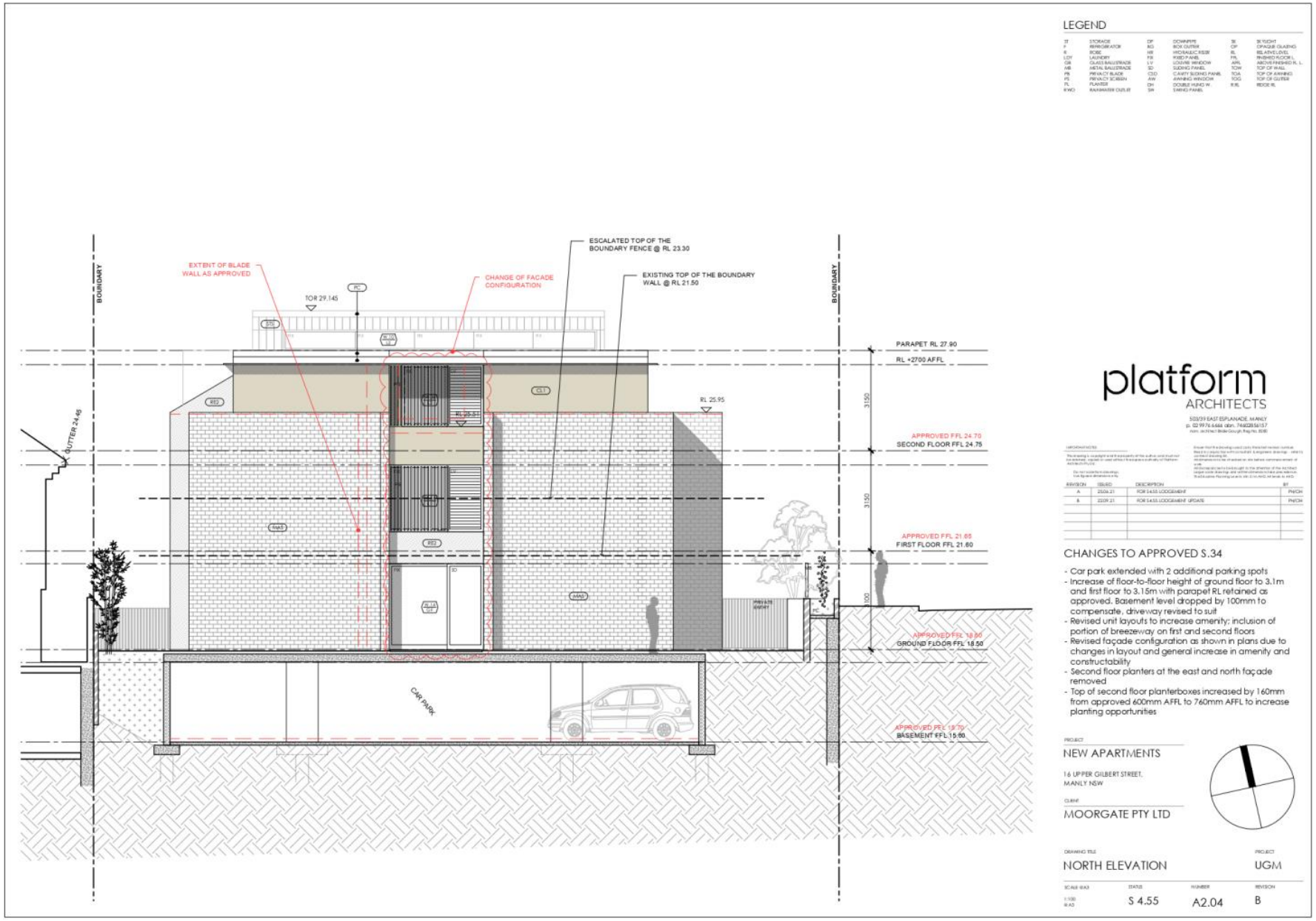
CLIENT
MOORGATE PTY LTD

DRAWING TITLE
SOUTH ELEVATION

PROJECT
UGM

SCALE @ A3	STATUS	NUMBER	REVISION
1:100	S 4.55	A2.02	B


LEGEND
BOUNDARY
TOP OF THE EXISTING BOUNDARY WALL AT NEIGHBOUR PROPERTY @ RL 20.13
R.RL 29.145
CHANGE OF FACADE CONFIGURATION
CHANGE OF FACADE CONFIGURATION
BOUNDARY
PARAPET RL 27.90
RL +2700 AFFL
RL 27.70
RL 25.95
RL 25.51
RL 25.95
RL 25.95
APPROVED FFL 24.70
SECOND FLOOR FFL 24.75
APPROVED FFL 21.85
FIRST FLOOR FFL 21.80
TOW 19.45
APPROVED FFL 19.85
GROUND FLOOR FFL 19.80
TOW 18.90
2100
BASEMENT EGRESS
2325
FFL 16.20
TOK 15.94
APPROVED FFL 15.90
BASEMENT FFL 15.90
SW PIT TO STORMWATER ENG DETAILS
3150
3150
3100
platform
ARCHITECTS
503/39 EAST ESPLANADE, MANLY
p. 02 9976 6666 abn. 74602856157
nom. architect Bridie Gough, Reg No. 8080
REVISION | ISSUED | DESCRIPTION | BY
A | 22.04.21 | FOR S4.55 LODGEMENT | PHOH
B | 22.09.21 | FOR S4.55 LODGEMENT UPDATE | PHOH
PROJECT
NEW APARTMENTS
16 UPPER GILBERT STREET,
MANLY NSW
CLIENT
MOORGATE PTY LTD
DRAWING TITLE
EAST ELEVATION
PROJECT
UGM
SCALE @ A3
1:100
@ A3
STATUS
S 4.55
NUMBER
A2.03
REVISION
B



LEGEND

platform ARCHITECTS

503/39 EAST ESPLANADE, MANLY

CHANGES TO APPROVED S.34

- Car park extended with 2 additional parking spots
- Increase of floor-to-floor height of ground floor to 3.1m and first floor to 3.15m with parapet RL retained as approved. Basement level dropped by 100mm to compensate, driveway revised to suit
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- Top of second floor planterboxes increased by 160mm from approved 600mm AFFL to 760mm AFFL to increase planting opportunities

PROJECT
NEW APARTMENTS

16 UPPER GILBERT STREET, MANLY NSW

CLIENT
MOORGATE PTY LTD

DRAWING TITLE
NORTH ELEVATION

PROJECT
UGM

SCALE @ A3	STATUS	NUMBER	REVISION
1:100	S 4.55	A2.04	B

ITEM 3.6	**DA2021/2017 - 5 BASSETT STREET MONA VALE - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE AND SECONDARY DWELLING INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/127956**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/2017 for demolition works and construction of a dwelling house and secondary dwelling including a swimming pool on land at Lot 29 DP 7236, 5 Bassett Street MONA VALE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2017

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 29 DP 7236, 5 Bassett Street MONA VALE NSW 2103
Proposed Development:	Demolition works and construction of a dwelling house and secondary dwelling including a swimming pool
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew Norman Smith Angela Monique Smith
Applicant:	Site Specific Designs

Application Lodged:	29/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	09/11/2021 to 23/11/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,070,400.00

EXECUTIVE SUMMARY

The application seeks consent for the demolition of the existing dwelling and the construction of a two (2) storey dwelling house, attached secondary dwelling and swimming pool. The application is being referred to the DDP as three (3) submissions have been received and the cost of development exceeds $1 Million. The submissions raise issues with the height, bulk, scale and massing of the dwelling, impacts on neighbouring amenity in terms of visual and acoustic privacy, overshadowing, smoke pollution from the fire pit and construction impacts.

With the exception of the breaches of the envelopes and the side setback to the western boundary, the proposal, as amended, generally complies with the built form controls. Given the context of the site and the existing three (3) storey residential flat building to the immediate east, the breach of the envelope to

the east elevation is assessed as being acceptable, noting that there are no unreasonable amenity impacts. The amended design includes high level windows, obscure glazing and privacy screens to windows and decks and the proposal complies with the solar access provisions.

In relation to the envelope breach on the western side, a condition is recommended requiring part of the first floor to be setback a further 500mm from the western boundary in order to ensure that the proposal achieves the desired future character of the locality and provides a suitable visual transition to the part one/part two storey dwelling to the west. A condition also requires the deletion of the fire pit to ensure there is no pollution to neighbours as a result of smoke. The cabana has been removed to ensure compliance with the landscape open space provisions. The Norfolk Pine tree and mature planting along the boundaries will be retained to help screen the development and reduce any perceived visual impact in terms of the bulk and scale of the dwelling.

On balance, the proposal is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal, as amended, seeks consent for the demolition of all structures and construction of a two storey detached dwelling with attached secondary dwelling.

In detail the proposal involves:

Dwelling Ground Level RL4.90

- Double garage
- Games Room
- Open plan kitchen, dining and living
- Guest bedroom with ensuite
- Entry
- Laundry
- Bath 2
- Outdoor deck to the rear and BBQ area

Dwelling Level 1 RL8.20

- Four (4) bedrooms, including the master with an ensuite, WIR and deck
- Bathroom
- Stair access

Roof RL (ridge RL12.73)

- Skylights
- Solar panels

Secondary dwelling (attached)

- Ground level - living, dining and kitchen and stair and deck
- Level 1 - Two (2) bedrooms 1 with a deck, bathroom and stair

External

- Pool (8m x 4m) and spa (2.5m x 2m) and pool deck
- Gravel car parking space for secondary dwelling

- Suspended concrete driveway

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

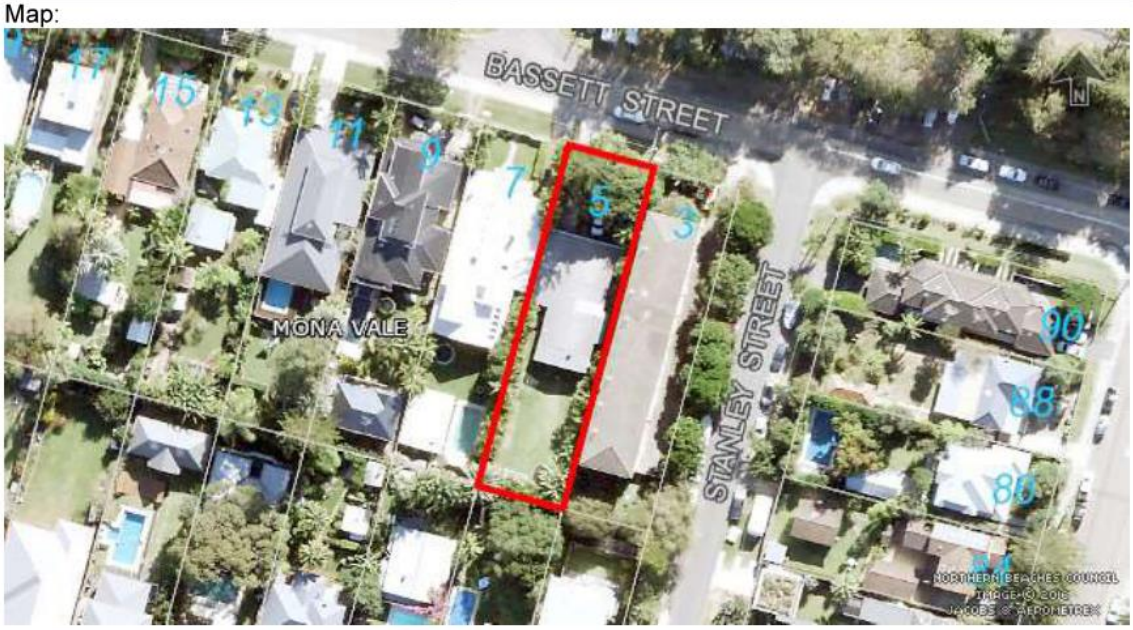
Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings
Pittwater 21 Development Control Plan - C1.13 Pollution Control
Pittwater 21 Development Control Plan - D9.3 Building colours and materials
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 29 DP 7236 , 5 Bassett Street MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Bassett Street. The site is regular in shape with a frontage of 15.24m along Bassett Street and a depth of 60.96m. The site has a surveyed area of 923.2m². The site is located within the R2 Low Density Residential zone in the PLEP and accommodated a detached single storey dwelling with a car port to the frontage. There is a slight rise in the level of the site to the rear. The

	site features a mature Norfolk Pine tree within the frontage with planting around the perimeter including mature palms. In addition, a pailing fence provides the boundary treatment along the south, east and west. The site is mapped as being flood afffected. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mixture of low density and medium density residential. A three (3) storey brick residential flat building is located to the immediate west which dates back to the 1960s. A two storey detached dwelling is located to the immediate west which is characteristic of the Locality which generally comprises detached one and two storey dwellings. Mona vale Beach is located approximately 150m to the east.

Map:



SITE HISTORY

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

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

History and Background to Current DA

On 25 November, an amended landscape plan was submitted showing the retention of the Norfolk Pine tree.

On 22 December 2021, a letter was sent to the applicant raising issues with regards to visual privacy, the secondary dwelling, the side and rear building line, building envelopes, the landscape area and acid sulfate soils.

On 21 January 2022, the applicant submitted amended plans which included the following modifications:

- The windows sill heights have been raised to 1.7m or frosted on both the east and west elevations.
- The additional toilet to the secondary dwelling has been removed.
- The first floor level has been lowered by 100mm the east first floor setback has been increased by 240mm and the west facing first floor setback increased by 120mm to reduce the extent of the building envelope breach.
- The cabana has been deleted to increase the rear setback and retain additional landscape open space.
- The pool has been reduced to a maximum depth of 1.8m to address issues relating to acid sulfate soil.

The amendments do not result in any new environmental impacts, therefore, pursuant to the Community Participation Plan, the application is not required to be re-notified.

The review of the revised plans revealed that the extent of reduction in the western side boundary envelope breach was not sufficient to address the concerns and an additional setback to the first floor level is required, which is addressed in detail in the relevant sections of this report. A special condition has been imposed in this regard.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to privacy / building separation, building envelopes, the swimming pool and landscaping. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
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 09/11/2021 to 23/11/2021 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 Alison Irene Lockhart	17 The Avenue BALMAIN EAST NSW 2041
Luke Daniel Mitchell	4 / 3 Bassett Street MONA VALE NSW 2103
Mrs Carol Barbara Riley	3 / 3 Bassett Street MONA VALE NSW 2103

The following issues were raised in the submissions:

- **Excessive Height and Scale**
- **Spatial Separation/Privacy**
- **Solar access**
- **Landscape**
- **Noise**
- **Fire pit**
- **Construction Impacts**

The matters raised within the submissions are addressed as follows:

- **Excessive Height and Scale (too many bedrooms, plus granny flat and cabana)**
  Comment:
  Clause 4.3 (2C) of the PLEP allows the Height of Buildings to exceed the 8.5m height limit on land affected by flooding. The site is located in Area 3 and is flood affected, due to the flood planning levels, the building has been raised to comply. The proposal has a maximum height of 8.9m, however, it is below the 8.5m height limit above the Flood Planning Levels and therefore

complies with the height development standard.

The principle dwelling has five (5) bedrooms including a guest room which is not unreasonable and the controls allow for a secondary dwelling. Furthermore, as the proposal generally complies with the built form controls, the scale of the development is acceptable subject to a condition requiring a 500mm setback of Bedroom 1 to the west. The cabana has been deleted, and a condition requires Bedroom 1 and the associated deck on Level 1 to be setback a further 500m from the western boundary. Subject to this condition, the the proposal generally complies with the built form controls with the exception of a breach in the side envelope control on the eastern elevation and the side setback control at ground level in respect of the garage. In summary, the density, built form and scale of the development is acceptable.

- **Spatial Separation/Privacy**
  Comment:
  As noted above, a condition requires Bedroom 1 and the associated deck to be setback a further 500mm from the western boundary in order to allow a suitable visual transition/separation to the neighbouring dwelling house and to respect the desired future character of the Locality.

  The proposal complies with the side setback to the east and provides for obscure glazing and privacy screens to windows, the rear deck and front balcony to the secondary dwelling to ensure there there will be no unreasonable impacts on neighbouring amenity in terms of overlooking/privacy.

- **Overshadowing**
  Comment:
  Shadow diagrams have been submitted with the application which confirm that the proposal is consistent with the provisions and outcomes of Clause C1.4 (Solar Access) and will not result in unreasonable impacts on solar access to solar access mid-winter.

- **Landscape - Palm trees will further impact on solar access and there is insufficient planting to part of common boundary**
  Comment:
  The palm trees are existing and sufficient additional planting is proposed along the side boundary to help screen the development.

- **Noise from granny flat, cabana and media room**
  Comment:
  It is not anticipated that there will be any adverse acoustic impacts from the use of the media room within a private dwelling which is noted to be located in a central position on the ground floor. Likewise, there is no evidence to suggest that the occupation of the secondary dwelling will cause unreasonable acoustic impacts. As noted above, the cabana has been deleted from the proposal.

- **Smoke Pollution from Fire Pit**
  Comment:
  It is agreed that the fire pit may result in smoke impacts to neighbouring properties which cannot be controlled. As such, a condition requires the deletion of the fire pit.

- **Construction Impacts**

Comment:
Conditions are included in the recommendation to ensure that there are no unreasonable impacts during the construction of the development.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**SUPPORTED** The proposal is supported.
Landscape Officer	**SUPPORTED** *updated comments:* The updated Arboricultural Impact Assessment provides data from a tree sensitive root investigation to support the location of driveway and hardstand near the existing Norfolk Island Pine. The investigation encountered five woody roots >50mm in diameter that are expected to provide essential structural support to the Norfolk Island Pine, and the report recommends the retention of the tree subject to the construction of the proposed driveway primarily suspended above the tree protection zone. It is recommended that isolated piers are utilised to avoid structural roots within the structural root zone and a Project Arborist is to be engaged to review the pier layout produced by the Structural Engineer and provide recommendations for change if required. Conditions of consent shall be imposed. The updated Landscape Plan has not provided a proposal for canopy tree planting to soften the built form and integrate the building into a landscape setting, with the proposal indicating the use of planting generally under 5 metres at maturity and thus able to be removed under the 5 metre exemption rule. Pittwater DCP control C1.1 Landscaping requires a total of three canopy trees within a property to soften the built form . It is considered that with the retention of the Norfolk Island Pine, two additional canopy trees capable of attaining at least 6 metres in height will suffice within the property to satisfy C1.1 and conditions shall be imposed. It is noted that existing boundary planting is proposed for retention on the amended landscape plan, however all such planting may be removed under the exemption rule by future occupants. Subject to conditions for the protection of existing trees and vegetation, and the completion of landscape works the subject of imposed conditions, Landscape Referral raise no further concerns. *previous comments:* The development application is for demolition of an existing dwelling and the construction of a new dwelling, secondary dwelling, swimming

Internal Referral Body	Comments
	pool and cabana, landscape works, front fence and a new driveway. Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.11 Secondary Dwellings and Rural Workers Dwellings • D9 Mona Vale Locality The site contains one prominent existing Norfolk Island Pine at the front boundary, and otherwise contains existing palms and garden planting along the boundaries. The Statement of Environmental Effects considers the existing Norfolk Island Pine should be removed as it is an environmental weed based on a written article. However it is not known to self seed to any extent to include this as an environmental weed, and it is not included in any NSW Department of Primary Industries weed list. A Arboricultural Impact Assessment is submitted and does not recommend either retention or removal of the Norfolk Island Pine and instead recommends that, as the proposed driveway and hardstand areas within the front setback substantially encroach upon the structural root zone and tree protection zone of the existing Norfolk Island Pine, "a non-destructive root investigation in accordance with clause 3.3.4 (a) of the AS 4970-2009 must be conducted. Upon findings it can then be determined what course of action is to be undertaken". Landscape Referral require that this information shall be provided prior to determination as such investigation will determine the viability of the Norfolk Island Pine, and will establish critical setback distances that may require re-design of the driveway and hardstand construction or otherwise increased building setbacks. A Landscape Plan is provided however the landscape outcome does not satisfy the DCP control C1.1, where canopy tree planting is required to be incorporated into the landscape scheme. The current landscape proposal is not supported, and a non-destructive root investigation is required to assess the retention viability of the Norfolk Island Pine.
NECC (Development Engineering)	**SUPPORTED** The proposed development does not require OSD as the site is affected by flooding. Stormwater from the site is to be connected to the kerb which has been conditioned. The proposed driveway crossing and internal grade is acceptable. The submitted Geotechnical report addresses the relevant DCP controls.

Internal Referral Body	Comments
	Development Engineering support the proposal subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	**SUPPORTED** This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The proposed stormwater system satisfy the riparian and water management requirements, subject to conditions for construction and operation stage.
NECC (Stormwater and Floodplain Engineering – Flood risk)	**SUPPORTED** The proposed DA generally complies with the flood controls in the LEP and DCP. A new dwelling is proposed to be constructed at the FPL (4.87m AHD). The max 1% AEP level is 4.45m AHD and PMF level is 4.92m AHD. The second storey provides shelter in place. No reduction in flood storage is proposed due to an open sub floor. The garage is set at the 1% AEP level (RL 4.45m AHD) and the pool is proposed to be inground with coping set at RL 4.00m AHD.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Note: SEPP ARH was repealed in November 2021, and was replaced by State Environmental Planning Policy (Housing) 2021. The gazettal of SEPP (Housing) 2021 however occurred following lodgement of the subject DA; pursuant to clause 2(a) within Schedule 7 of SEPP ARH, the former provisions of that repealed SEPP therefore continue to apply to the proposal.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

(a) the erection of, or alterations or additions to, a secondary dwelling,
(b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling."

Comment:

The use of the proposed development is defined under PLEP 2014 as a '*dwelling house'* and a '*secondary dwelling'*.

A '*dwelling house*' is defined as:
dwelling house means a building containing only one dwelling.

A '*secondary dwelling*' is defined as:
secondary dwelling means a self-contained dwelling that—
(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling.

Clause 20: Land to which this Division applies:

Requirement:

This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if development for the purposes of a dwelling house is permissible on the land:
(a) Zone R1 General Residential, or
(b) Zone R2 Low Density Residential, or
(c) Zone R3 Medium Density Residential, or
(d) Zone R4 High Density Residential, or
(e) Zone R5 Large Lot Residential. Consistent.

Comment:
Consistent - The site is located within the R2 low density residential zone and, as such, the proposed use is permissible with consent under PLEP 2011.

Clause 21: Development to which this Division applies

Requirement:
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.

Comment:
Consistent. The development involves the construction of a dwelling and an attached secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement:
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.

Comment: The proposal will include a principal dwelling and secondary dwelling.

(3) A consent authority must not consent to development to which this Division applies unless:

(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and

(b) the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area. The PLEP permits a maximum 60sqm or 25% of the total floor area of the principle dwelling, whichever is greater.

Comment: The Proposed GFA: is 63.6m2 which is less than 25% of the total floor area of the principle dwelling.

(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:

(a) site area if:
(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or

(ii) the site area is at least 450 square metres.

(b) parking if no additional parking is to be provided on the site.

Comment: The site area is 929 m2

The secondary dwelling is attached to the principle dwelling. Two car parking spaces are available for the principle dwelling and one for the secondary dwelling.

In summary, the proposal is consistent with the provisions of Part 2, Division 2 of the SEPP ARH.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1268425S 17 December 2021).
The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	35

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections subject to condition. The recommendations of Ausgird have been included as a condition of consent.

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	8.9m (7.8m above the Flood Planning Level)	N/A	Yes

* Clause 4.3 (2C) of the PLEP allows the Height of Buildings to exceed the 8.5m height limit on land affected by flooding. The site is located in Area 3 and is flood affected. Due to the flood planning levels the building has been raised to comply. The proposal has a maximum height of 8.9m, however, it is below the 8.5m height limit above the Flood Planning Levels and therefore complies with the height development standard and a Clause 4.6 Variation is not required.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(9) Secondary dwellings requires:

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

60 square metres,
25% of the total floor area of the principal dwelling.

Comment

The proposed secondary dwelling has a GFA of 63.3sqm which represents less than 25% of the total floor area of the principle dwelling.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m	7.0m	N/A	Yes
Rear Building Line	6.5m	6.5m	N/A	Yes
Side Building Line	West 2.5m	Ground 1.0m to garage 1.8m to laundry 2.7m - 4.7m to rear First 1.8m to bedroom 1 2.7m - 6.4m	 60% 28% N/A 28% N/A	 **No** **No** Yes **No** Yes
	East 1.0m	Ground 1.0m - 1.8m First 1.4m - 1.8m	 N/A N/A	 Yes Yes
Building Envelope	West 3.5m	Outside envelope	Refer to detailed discussion	**No**
	3.5m	Outside envelope	Refer to detailed discussion	**No**
Landscaped Area	50%	55.2% (456.8sqm (49.2%) + 6%	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 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	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	No	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	No	Yes
D9.10 Landscaped Area - General	Yes	Yes
D9.12 Fences - General	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

Clause C1.5 requires:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Comment:

Windows in the east elevation are sited between 1.0m - 1.7m from the boundary. The east facing ground level windows to the media room, bathroom, kitchen and living room are treated with obscure glazing. It is noted that the existing timber fence along the eastern boundary also provides a screen to these windows. The addition of obscure glazing will help avoid direct overlooking caused by the existing Level 1 west facing windows in the adjoining residential flat building looking down on the subject site. The rear deck is located 2.0m from the eastern boundary a 1.8m high wall/privacy screen is proposed along the western edge of the rear deck to ensure that there are no privacy issues.

The east facing upper floor bedroom windows to Bedroom 3 have been amended to high level windows with a sill height of 1.7m above the Finished Floor Level (FFL). The east facing upper floor windows to Bedroom 2 in the the secondary dwelling sit 1.35m above the FFL, external privacy screens and have been added to these windows. The east facing bedroom windows to Bedroom 1 are high level windows that sit 1.7m above the FFL. In addition, a screen is proposed along the eastern edge of the upper floor balcony to the secondary dwelling and the existing dense golden palm planting adds as an extra screen.

Windows in the west elevation are sited 1.8m - 6.4m from the western boundary. The west facing ground floor window to the guest bedroom overlooks the carport to No. 7 Bassett Street and the windows to the living room and the rear deck are screened by existing dense golden palm planting.

The narrow west facing upper floor windows to Bedroom 1 have obscure glazing and the windows to Bedroom 2 and 4 have a separation distance of more than 9.0m from the upper floor windows to No. 7 Bassett Street.

In summary, the proposal, as amended, is generally consistent with the privacy control and meets the following objectives

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*
- *A sense of territory and safety is provided for residents.*

C1.6 Acoustic Privacy

Concern has been raised in submissions regarding the acoustic impacts associated with the use of the cabana, the secondary dwelling and the media room. The cabana has been deleted from the proposal and it is not anticipated that there will be any unreasonable acoustic impacts from the use of the media room or secondary dwelling. Conditions are recommended requiring noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

C1.11 Secondary Dwellings and Rural Worker's Dwellings

The amended proposal deletes the second bathroom in the secondary dwelling in accordance with the provision of the control.

C1.13 Pollution Control

Clause C1.3 requires:

Residential development must be designed, constructed, maintained and used in a proper and efficient manner to prevent air, water, noise and/or land pollution.
Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.

Comment:

Concerns have been raised in submission regarding negative impacts of smoke from the fire pit. In order to ensure that the proposal is consistent with the provisions and outcomes of the Pollution control, a condition requires the deletion of the fire pit.

D9.3 Building colours and materials

Clause D9.3 requires:

External colours and materials shall be dark and earthy tones.

Variation: Council may consider lighter coloured external walls (excluding white) only for residential development within Area 3 on the Landscaped Area Map, and for non-residential development in areas that are not visually prominent.

Comment:

The external finishes and colours include the following:

Cladding and external walls - colour Resene - "Barely There"
Decking and doors - timber
Doors and windows - aluminium (white)
Roof Colourbond and gutters (dune)
Cladding - sandstone



Comment:
Resene "Barley-There" is a grey-white. The grey-white external walls and cladding will be soften with the use of the earthy materials including the timber garage door, windows and doors and the sandstone cladding. Given the context of the site the proposed light earthy external tones are assessed as acceptable as the development achieves the outcomes of the control in that it compliments the visual character of the streetscape and achieves the desired future character of the Mona Vale Locality.

D9.7 Side and rear building line

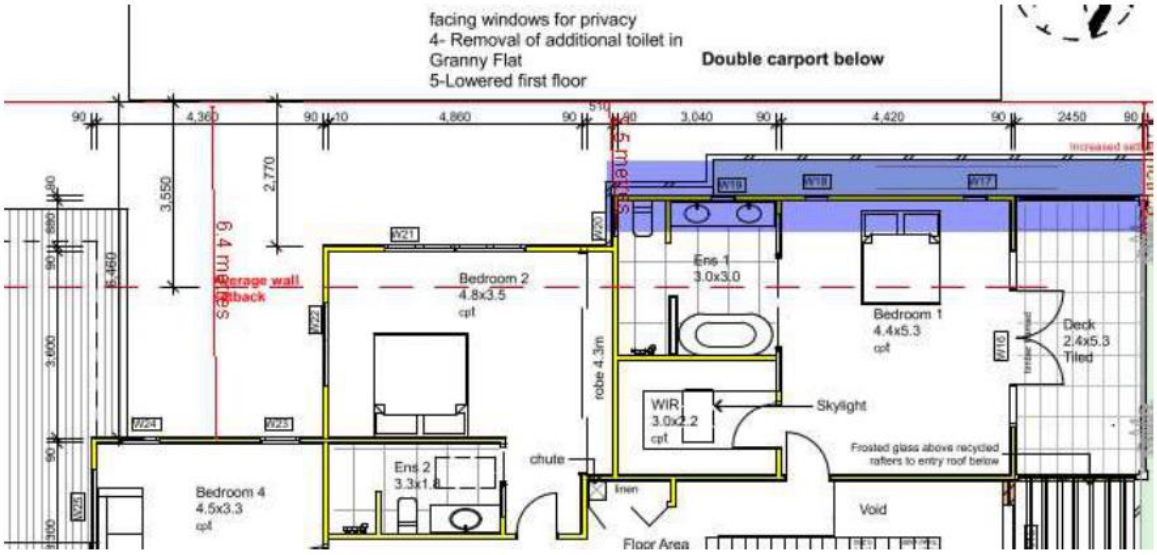
Clause D9.7 requires:

Side setbacks to be at least 1.0m to one side and 2.5m on the other side.

Comment:
The proposal complies with the 1.0m side setback to the east with a proposed varying setback of between 1.0m to 1.8m at ground level and 1.4m to 1.8m to the first floor.

The side setback to the west varies between:

1.0m, 1.8m, 2.7m and 4.7m at ground level and 1.0m to the planter, 1.8m (to the western wall of the master bedroom), 2.7m and 6.4m to bedrooms 2 and 4 at first floor.



Part of first floor plan showing the breach of the side setback to the west.

The breaching elements at ground floor level relate to the double garage and laundry and represents a 60% breach of the control. It is noted that the proposed side setback to the western boundary is consistent with the line of the existing dwelling and will not result in any unreasonable impact to the neighbouring dwelling at No. 7 Basset Street, as it aligns with the carport of the adjoining property.

The breaching element to the first floor relates to the master bedroom and represents a 28% breach of the control to the western wall of the dwelling.

A merit assessment of the proposal against the outcomes of the side setback control is provided below.

To achieve the desired future character of the Locality.

Comment:
The neighbouring property to the west presents as a single storey dwelling-house. In order to ensure that the development respects the desired future character of the locality, it is recommended that a condition be included requiring the setback of Bedroom 1 and the adjoining deck on Level 1 be increased 0.5m from the western boundary. Subject to this condition, there will be an appropriate transition between the proposed two storey dwelling and the adjoining dwelling to the west which is consistent with the desired future character of the Locality.

The bulk and scale of the built form is minimised.

Comment:
Refer above, subject to a condition requiring an additional setback of Bedroom 1 and its deck on Level 1 of 500mm from the western boundary, the bulk, scale and built form will be minimised to respond the existing streetscape.

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

Comment:
The proposal will not have an adverse impact on views.

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

Comment:
As noted above, the proposal will not impact on views.

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

Comment:
The breaching elements will not impact on privacy or solar access, refer to detailed discussion under Clause C1.5 (Privacy).

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

Comment:
Existing mature planting will be retained, including the Norfolk Pine tree within the frontage. The proposal presents an attractive streetscape frontage and the condition requiring an increase in the western side setback to the front section of Level 1 will ensure that the development further respects the character of the Locality.

Flexibility in the siting of buildings and access.

Comment:
The siting of the dwelling is assessed as being acceptable, noting the increased setback to the west to respect the low density scale of the dwelling at No. 7 Bassett Street. The condition requiring an additional setback of part of the first floor to the west will provide further benefits in terms of the relationship with No. 7 Bassett Street.

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

Comment:
As noted above, the existing mature vegetation is retained and enhanced in order to help reduce the visual impact of the built form.

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

Comment:

This outcome is not relevant as the site does not buffer a commercial zone.

In summary, subject to a condition requiring a 500mm increase in the setback of part of the first floor to the western boundary, the proposal meets the outcomes of the control and is acceptable.

D9.9 Building envelope

Clause D9.9 requires:

Buildings are to be sited within an envelope that measures 3.5m from the boundary and 45 degrees.

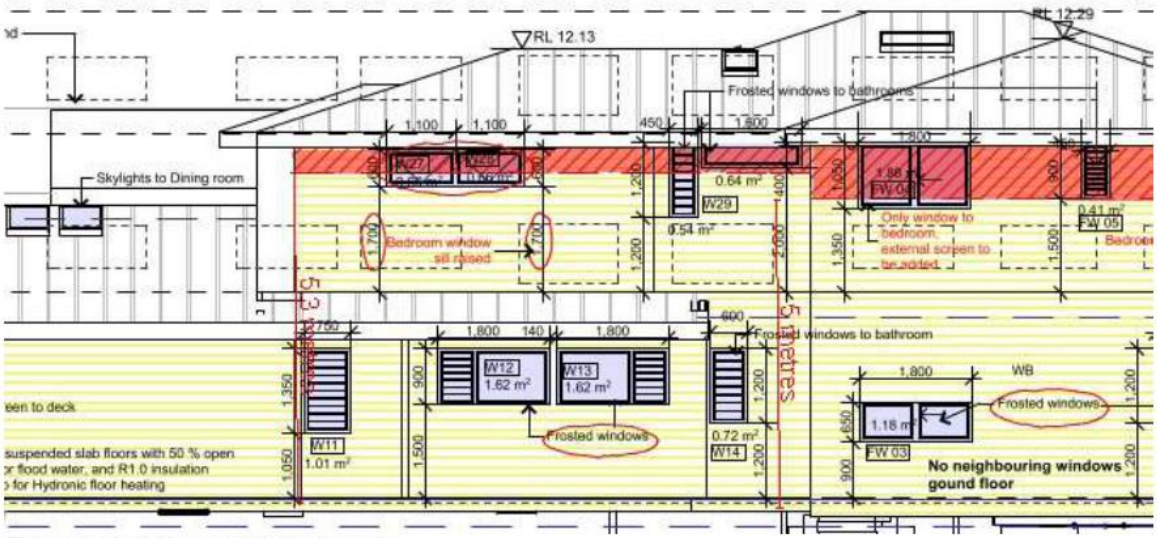
Variation: Where subject to Estuarine, Flood & Coastline (Beach) Hazard Controls, the building envelope shall be measured from a height above the minimum floor level requirement under the Estuarine, Flood and Coastline (Beach) Hazard Controls.

Comment:

The proposal breaches the building envelope along the eastern elevation in two areas which measure 0.4 in height x 8.1m in length and 0.8m in height x 8.1m in length refer to image below.

The proposal breaches the envelope along the western elevation for a length of 7.7m x 0.3m in height. A condition is proposed to address the western side setback control, which requires an additional 500mm setback of Bedroom 1 to the west, which will in turn address the envelope breach to the west. Refer to discussion above under Clause D9.7.

***Note:** In accordance with the variation, the envelope is measured above the Flood Planning Level.



Eastern elevation envelope breach

The proposal is assessed on merit against the outcomes of the envelope control.



Western elevation

The proposal is assessed on merit against the outcomes of the control:

To achieve the desired future character of the Locality.

Comment:
The breach of the envelope along the western elevation will not be visible from the street and will not impact on the ability of the development achieving compliance with the desired future character of the Mona Vale 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 dwelling sits below the height of the existing street trees which includes a mature Norfolk Pine tree located within the front setback. The height, scale and density of the development is considered to be appropriate in the streetscape noting the context of the site directly adjacent to a large residential flat building.

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

Comment:
The proposal responds to the spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised.

Comment:
The breach on the western elevation allows for some additional articulation of the facade and in context to the neighbouring residential flat building the bulk and scale of the built form is considered to be

appropriate.

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

Comment:
The proposal will not impact on views and vistas to and/ or from public/private places.

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

Comment:
The proposal will not result in unreasonable impacts on neighbouring amenity. Obscure glazing and privacy screens are proposed to windows and decks. Refer to discussion under clause C1.5 and the proposal complies with the provisions of clause C1.4 (Solar Access) and will not result in unreasonable shadow impacts mid-winter.

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

Comment:
The existing mature vegetation, including the mature Norfolk tree will be retained which will help soften the visual impact of any perceived bulk and provide for screening for privacy.

In summary, the breach of the envelope control will not result in any unreasonable visual impacts on the Locality or amenity impacts to neighbours. The proposal meets the outcomes of the control and is supported.

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 $10,704 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,070,400.

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

Summary of Conclusions on Main Planning Issues

Height, Bulk and Scale

The proposal generally complies with the built form controls with the exception of the side boundary envelope and side setback to the west. Subject to a condition requiring a 500mm increase in the setback of Bedroom 1 on Level 1 to the western boundary, the bulk, scale and massing of the development is assessed as acceptable and will provide a satisfactory visual transition to the adjoining property and achieve the desired future character of the locality.

Amenity

The amended design includes high level windows, obscure glazing and privacy screens to windows and deck to ensure that there are no unreasonable privacy impacts. The proposal complies with the solar access provisions of the P21DCP and a condition requires the deletion of the fire pit to ensure there are no impacts to neighbours in terms of smoke pollution.
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 DA2021/2017 for Demolition works and construction of a dwelling house and secondary dwelling including a swimming pool on land at Lot 29 DP 7236, 5 Bassett Street, MONA VALE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

   a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA01 Rev B Site Plan, Roof Plan and Perspective	23.01.2021	Site Specific Plans
DA02 Rev B Ground Floor Plan	23.12.2021	Site Specific Plans
DA03 Rev B First Floor Plan	23.12.2021	Site Specific Plans
DA04 Rev B Sections	23.12.2021	Site Specific Plans
DA05 Rev B Elevations (East and South)	23.12.2021	Site Specific Plans
DA06 Rev B Elevations (North and West)	23.12.2021	Site Specific Plans
DA07 Rev B Pool Plan	23.12.2021	Site Specific Plans
SD01 Demolition Plan	19.10.2021	Site Specific Plans
External Colours and Finishes schedule	September 2021	Site Specific Plans

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
SW01 Rev A General Notes	14.06.2021	Greenwood Consulting Engineers
SW02 Rev A Site Drainage Plan	14.06.2021	Greenwood Consulting Engineers
SW03 Rev A Lower and Upper Roof Drainage Plan	14.06.2021	Greenwood Consulting Engineers
SW04 Rev A Details	14.06.2021	Greenwood Consulting Engineers
SW05 Rev A Details	14.06.2021	Greenwood Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Report Ref J3501	28.06.2021	White Geotechnical Group Pty Ltd
Flood Risk Report Rev A Ref 202116	17.09.2021	Greenwood Consulting Engineers
*Arboricultural Impact Assessment	02.10.2021	Complete Arborcare
Root Investigation letter	22.11.2021	Complete Arborcare
BASIX Certificate	17.12.2021	Calare Civil

*The Norfolk Pine tree is to be retained

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

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

Landscape Plans		

Drawing No.	Dated	Prepared By
*L01 Rev B Landscape Concept Plan	06.05.2021	Site Specific Plans

* Note: The cabana is not approved

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	Sharalee Hogan	11.10.2021

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	1 December 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 $10,704.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $1,070,400.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Isolated Piers Near Trees to be Retained**
Isolated piers shall be utilised for the proposed driveway and hardstand within the tree protected zone of the existing Norfolk Island Pine and is subject to co-ordination between the a Arborist with AQF minimum Level 5 qualifications in arboriculture and a qualified Structural Engineer.

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

The Arborist shall submit certification to the Certifying Authority that the locations of the isolated pier layout are acceptable prior to the issue of a Construction Certificate.

Reason: Tree protection.

8. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this

development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Bassett St on the low side of the proposed driveway crossing in the section of kerb between the existing layback and the neighbor's layback.

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.

9. **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 28 June 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.

10. **Flooding**
In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2
There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 4.45m AHD.

Building Components and Structural Soundness – B1
All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2
All new development must be designed to ensure structural integrity up to the Probable Maximum Flood (4.92m AHD), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1
New floor levels within the development shall be set at or above the Flood Planning Level of 4.87m AHD.

Floor Levels – C3
The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

Car parking – D5
The floor level of the proposed garage shall be set at or above the 1% AEP flood level of RL 4.45m AHD.

Fencing – F1
New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1
Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Recommendations

The development must comply with the recommendations outlined in the Flood Risk Report For Proposed New Dwelling At 5 Bassett Street, Mona Vale prepared by Greenwood Consulting Engineers dated 17/9/2021.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval

prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

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

(a) Level 1 - Bedroom 1 and the associated deck shall be set back a further 500mm from the western boundary.

(b) The fire pit is not approved and does not form any part of the consent.

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.

13. **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.

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

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

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

Reason: To provide public and private safety.

15. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:
i) the construction of the proposed driveway near the Norfolk Island Pine primarily suspended above the tree protection zone,
ii) review the isolated pier layout and provide recommendations for change if required.

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.

Reason: Tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Tree and Vegetation Protection**
as shown on the LAndscape Plan
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site as shown on the approved Landscape Plan, 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.

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

Reason: Public safety.

19. **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 construction certificate approved 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.

20. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

21. **Geotechnical Requirements**
All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **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.

23. **Vehicle Crossings**
The Applicant is to reconstruct the vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

24. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

i) two (2) native canopy trees capable of attaining at least 6 metres at maturity shall be installed within the rear of the property, selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide, with the following suggestions to be considered: Banksia integrifolia, Backhousia myrtifolia, and Syzygium smithii,
ii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, 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 metres from buildings, and at least 2 metres from common boundaries,
iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be 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.

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/

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

Reason: Tree protection.

26. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

27. **Certification Elevated Parking Facility Work**
The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Safety and Compliance with this consent.

28. **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.

29. **Environmental Reports Certification**
Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Geotechnical Report Ref J3501 dated 28.06.2021 prepared by White Geotechnical Group Pty Ltd
(b) Flood Risk Report Rev A Ref 202116 dated 17.09.2021 prepared by Greenwood Consulting Engineers
(c) Arboricultural Impact Assessment dated 02.10.2021 prepared by Complete Arborcare
(d) Root Investigation letter dated 22.11.2021 prepared by Complete Arborcare
(e) BASIX Certificate dated 17.12.2021 prepared by Calare Civil

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

Reason: To ensure compliance with standards.

30. **House Number**
The house 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

31. **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.

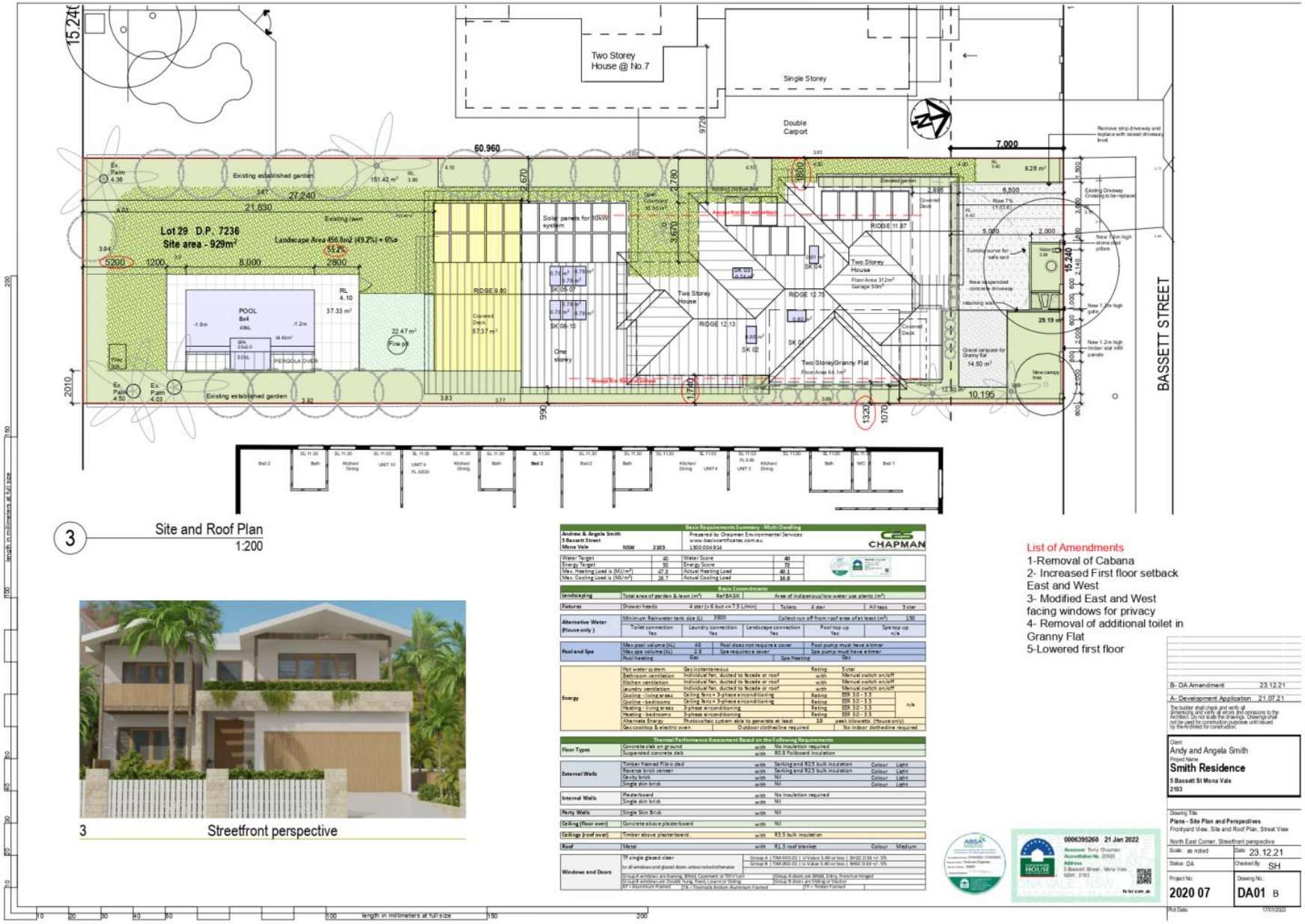
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.

32. **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.



3 Site and Roof Plan
1:200

3 Streetfront perspective

Basix Requirements Summary (Multi Dwelling)

Andrew & Angela Smith
5 Bassett Street
Mona Vale NSW 2103

Prepared by Chapman Environmental Services
www.basixcertificates.com.au
1300 004 934

CHAPMAN

Water Target	40	Water Score	40
Energy Target	50	Energy Score	72
Max. Heating Load is (MJ/m²)	47.8	Actual Heating Load	40.1
Max. Cooling Load is (MJ/m²)	36.7	Actual Cooling Load	16.8

Facts Commitments

Landscaping	Total area of garden & lawn (m²)	Ref/BASIX	Area of indigenous/low water use plants (m²)		
Fixtures	Shower heads	4 star (> 6 but <= 7.5 L/min)	Toilets	4 star	All taps 5 star
Alternative Water (House only)	Minimum Rainwater tank size (L)	3500	Collect run off from roof area of at least (m²)		150
	Toilet connection Yes	Laundry connection Yes	Landscape connection Yes	Pool top up Yes	Spa top up n/a
Pool and Spa	Max pool volume (kL)	48	Pool does not require a cover	Pool pump must have a timer	
	Max spa volume (kL)	2.8	Spa requires a cover	Spa pump must have a timer	
	Pool heating	Gas	Spa Heating	Gas	
Energy	Hot water system	Gas instantaneous	Rating	5 star	
	Bathroom ventilation	Individual fan, ducted to facade or roof	with	Manual switch on/off	
	Kitchen ventilation	Individual fan, ducted to facade or roof	with	Manual switch on/off	
	Laundry ventilation	Individual fan, ducted to facade or roof	with	Manual switch on/off	
	Cooling - living areas	Ceiling fans + 3-phase airconditioning	Rating	EER 3.0 - 3.5	n/a
	Cooling - bedrooms	Ceiling fans + 3-phase airconditioning	Rating	EER 3.0 - 3.5	
	Heating - living areas	3-phase airconditioning	Rating	EER 3.0 - 3.5	
	Heating - bedrooms	3-phase airconditioning	Rating	EER 3.0 - 3.5	
	Alternate Energy	Photovoltaic system able to generate at least	10	peak kilowatts (House only)	
	Gas cooktop & electric oven	Outdoor clothesline required		No indoor clothesline required	

Thermal Performance Assessment Based on the Following Requirements

Floor Types	Concrete slab on ground	with	No insulation required	
	Suspended concrete slab	with	R0.8 Polyboard insulation	
External Walls	Timber framed Fibro clad	with	Sarking and R2.5 bulk insulation	Colour Light
	Reverse brick veneer	with	Sarking and R2.5 bulk insulation	Colour Light
	Gravity brick	with	Nil	Colour Light
	Single skin brick	with	Nil	Colour Light
Internal Walls	Plasterboard	with	No insulation required	
	Single skin brick	with	Nil	
Party Walls	Single Skin Brick	with	Nil	
Ceiling (floor over)	Concrete above plasterboard	with	Nil	
Ceilings (roof over)	Timber above plasterboard	with	R3.5 bulk insulation	
Roof	Metal	with	R1.3 roof blanket	Colour Medium
Windows and Doors	TF single glazed clear	Group A | TIM-001-01 | U-Value 5.40 or less | SHGC 0.56 +/- 5%		
	to all windows and glazed doors unless noted otherwise	Group B | TIM-002-01 | U-Value 5.40 or less | SHGC 0.69 +/- 5%		
	Group A windows are Awning, SHGC Casement, or TIM-Turn	Group A doors are SHGC Entry, French or Hinged		
	Group B windows are Double Hung, Fixed, Louvre or Sliding	Group B doors are Sliding or Stacker		
	AF = Aluminium Framed	TB = Thermally Broken Aluminium Framed	TF = Timber Framed	

List of Amendments
1-Removal of Cabana
2- Increased First floor setback East and West
3- Modified East and West facing windows for privacy
4- Removal of additional toilet in Granny Flat
5-Lowered first floor

B- DA Amendment 23.12.21
A- Development Application 21.07.21

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

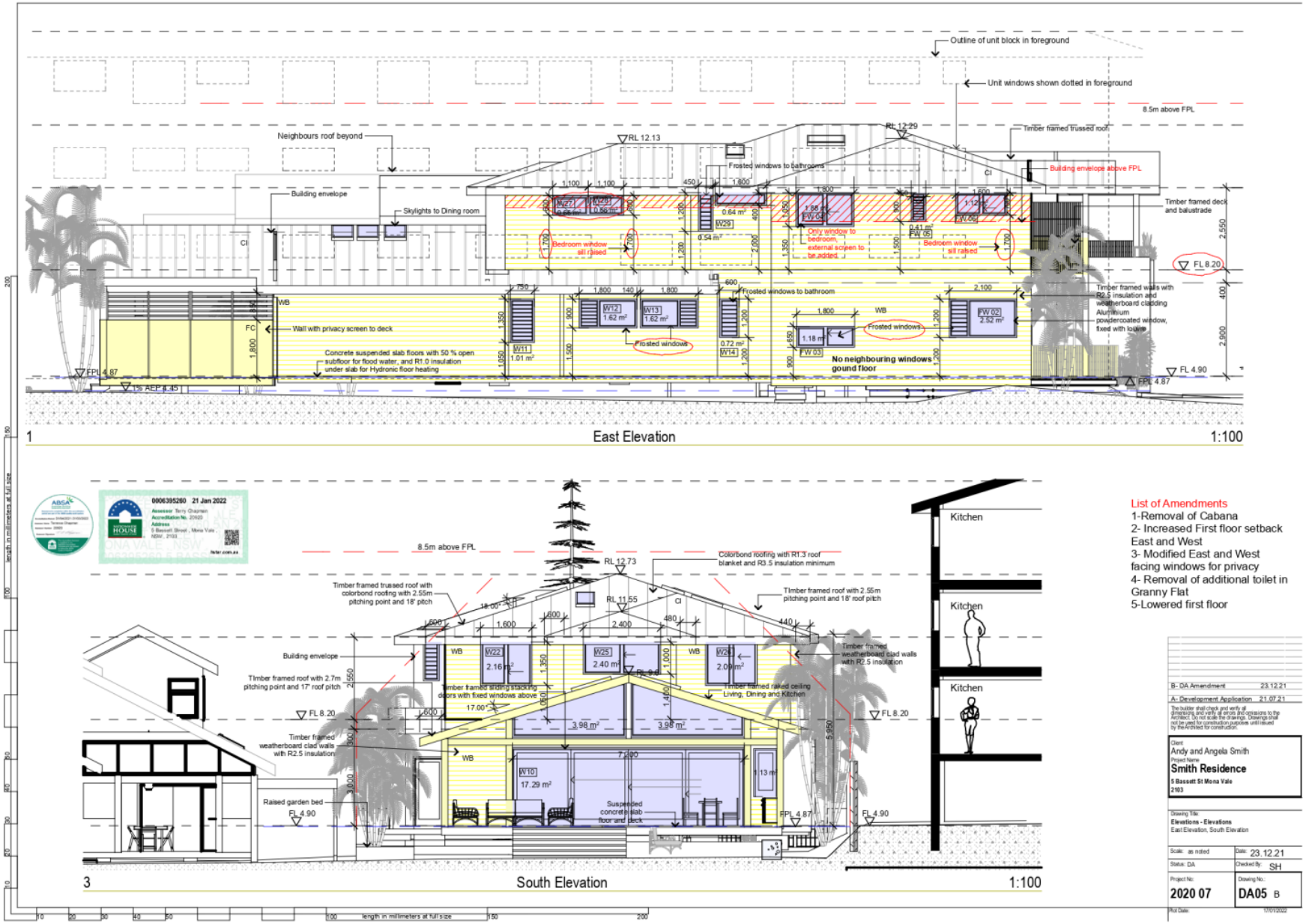
Client
Andy and Angela Smith
Project Name
Smith Residence
5 Bassett St Mona Vale
2103

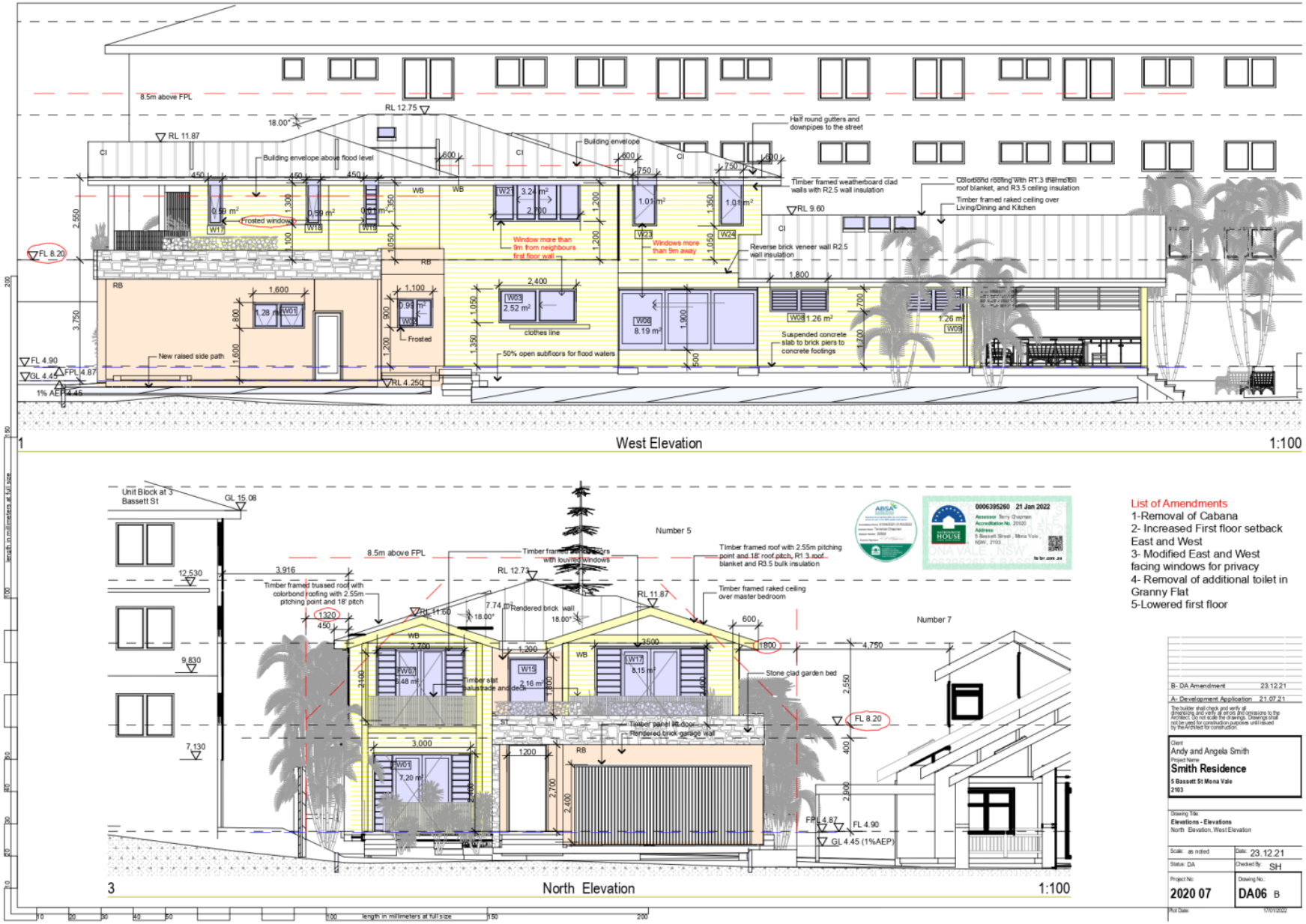
Drawing Title
Plans - Site Plan and Perspectives
Frontyard View, Site and Roof Plan, Street View
North East Corner, Streetfront perspective

Scale: as noted	Date: 23.12.21
Status: DA	Checked By: SH
Project No: **2020 07**	Drawing No.: **DA01** B

Plot Date: 17/01/2022

000639260 21 Jan 2022
Assessor Tony Chapman
Accreditation No. 20920
Address 5 Bassett Street , Mona Vale NSW, 2103


Outline of unit block in foreground
Unit windows shown dotted in foreground
8.5m above FPL
Neighbours roof beyond
RL 12.13
RL 12.29
Timber framed trussed roof
Frosted windows to bathrooms
Building envelope above FPL
Building envelope
Skylights to Dining room
Timber framed deck and balustrade
Bedroom window sill raised
Only window to bedroom, external screen to be added.
Bedroom window sill raised
FL 8.20
Timber framed walls with R2.5 insulation and weatherboard cladding Aluminium powdercoated window, fixed with louvre
Frosted windows to bathroom
Wall with privacy screen to deck
Concrete suspended slab floors with 50 % open subfloor for flood water, and R1.0 insulation under slab for Hydronic floor heating
Frosted windows
No neighbouring windows gound floor
FPL 4.87
5% AEP 8.45
FL 4.90
FPL 4.87
1
East Elevation
1:100
8.5m above FPL
RL 12.73
Colorbond roofing with R1.3 roof blanket and R3.5 insulation minimum
Timber framed trussed roof with colorbond roofing with 2.55m pitching point and 18° pitch
RL 11.55
TImber framed roof with 2.55m pitching point and 18° roof pitch
Kitchen
Kitchen
Kitchen
Building envelope
TImber framed roof with 2.7m pitching point and 17° roof pitch
Timber framed sliding stacking doors with fixed windows above
Timber framed raked ceiling Living, Dining and Kitchen
Timber framed weatherboard clad walls with R2.5 insulation
FL 8.20
FL 8.20
Timber framed weatherboard clad walls with R2.5 insulation
Raised garden bed
FL 4.90
Suspended concrete slab floor and deck
FPL 4.87
FL 4.90
3
South Elevation
1:100
List of Amendments
1-Removal of Cabana
2- Increased First floor setback East and West
3- Modified East and West facing windows for privacy
4- Removal of additional toilet in Granny Flat
5-Lowered first floor
B- DA Amendment 23.12.21
A- Development Application 21.07.21
Client
Andy and Angela Smith
Project Name
Smith Residence
5 Bassett St Mona Vale
2103
Drawing Title
Elevations - Elevations
East Elevation, South Elevation
Scale: as noted
Date: 23.12.21
Status: DA
Checked By: SH
Project No: 2020 07
Drawing No.: DA05 B
Plot Date: 17/01/2022


West Elevation
1:100
North Elevation
1:100
List of Amendments
1-Removal of Cabana
2- Increased First floor setback East and West
3- Modified East and West facing windows for privacy
4- Removal of additional toilet in Granny Flat
5-Lowered first floor
Smith Residence
5 Bassett St Mona Vale 2103
Andy and Angela Smith
DA06 B
2020 07

ITEM 3.7	**DA2021/2267 - 42 HILLCREST AVENUE MONA VALE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/122755**
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 DA2021/2267 for alterations and additions to a dwelling house on land at Lot A DP 103352, 42 Hillcrest Avenue MONA VALE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2267

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot A DP 103352, 42 Hillcrest Avenue MONA VALE NSW 2103
Proposed Development:	Alterations and additions to a dwelling house
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:	Susan Margaret Donald Tony Gordon Donald
Applicant:	Susan Margaret Donald

Application Lodged:	24/11/2021
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:	0
Clause 4.6 Variation:	4.3 Height of buildings: 11.76%
Recommendation:	Approval

Estimated Cost of Works:	$ 561,000.00

EXECUTIVE SUMMARY

The proposal is for alterations and additions to an existing dwelling. The proposal involves a variation to the Height of Building development standard under the Pittwater Local Environment Plan 2014 from 8.5m to 9.5m, which is a 1.0m non-compliance or a variation of 11.76%. Despite the non-compliance, the proposal is not considered to result in unreasonable bulk, scale or unreasonable amenity impacts to the adjoining or surrounding properties.

The proposed development also results in technical non-compliances with the Front Building Line, Side Building Line, Building Envelope, Landscaped Area and Fences under the Pittwater 21 Development Control Plan. However, these non-compliances do not result in adverse impacts and are consistent with the objectives of the control and are therefore supported.

The application is referred to the Development Determination Panel for determination as the proposal exceeds the prescribed Height of Buildings Development Standard by more than 10%.

The application was notified for 14 days and no submissions were received.

This assessment finds despite the variation to the Height of Buildings development standard and several breaches to the prescribed built form controls, the proposal will modernise and improve the character and built form of the dwelling and is compatible and consistent with surrounding residential development.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to a existing dwelling. The works include the following:

Lower Floor Level

- Alterations and additions to lower level and garage,
- Replacement garage door,
- Drainage remediation to rumpus, and
- Re-fit of existing laundry.

Mid Floor Level

- New balustrade to front balconies,
- New doors to existing study,
- New door and window openings,
- Gas fire place,
- Privacy screening to rear terrace, and
- Steps to rear yard.

Upper Floor Level

- Extension to bedroom,
- Study nook,
- Alterations to existing bathroom,
- Replacement of bedroom 2 door,
- New linen cupboard,
- Extension of robe and ensuite to existing master bedroom,
- Alterations to front balcony with steel frame pergola structure,
- New balustrade,
- Privacy screen and open pergola structure,
- New balustrade and pergola to rear balcony with south-east facing privacy screen, and
- New roof gardens.

External Works

- Spa within footprint of existing pool,
- Pool fence,

- Sliding Front gate and gate pocket,
- Retaining wall within front yard, and
- Increase in height to retaining walls within the Road Reserve.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
Pittwater 21 Development Control Plan - B3.4 Coastline (Bluff) Hazard
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D9.6 Front building line
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.9 Building envelope
Pittwater 21 Development Control Plan - D9.11 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D9.12 Fences - General

SITE DESCRIPTION

Property Description:	Lot A DP 103352 , 42 Hillcrest Avenue MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of one allotment located on the north-eastern side of Hillcrest Avenue. The site is irregular in shape with an angled frontage of 13.62m along Hillcrest Avenue and a depth of 45.11m along

	the north-western boundary and 38.25m along the south-eastern. The site has a surveyed area of 505.8m². The site is located within the C4 Environmental Living zone and accommodates a three storey dwelling with garage beneath and swimming pool to the rear. The natural slope rises from the south-west property boundary before easing at the crest of the slope on the north-east side of the house. The slope then drops away at the rear of the site before dropping vertically at the sea cliff some 30m. The site has no significant vegetation with lawn area at the front and rear and garden beds around the boundaries. There are no known threatened species on the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by irregular shaped allotments within natural settings with a mix of low density residential developments that are designed to reflect the sloping terrain and ocean vistas. To the rear of the site is Newport Beach Reserve and ocean. **Site Inspection** A site inspection was carried out 25 January 2022.

Map:



SITE HISTORY

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

Application A420/67 for new dwelling. Approved 29/05/1967.

Application 2583/91 for alterations - patio cover. Approved 27/11/1991.

Application N0359/02 for Alterations and additions to an existing dwelling. Approved 28/10/2005.

Application N0473/07 for Sandstone retaining walls to the front of the dwelling. Approved 19/09/2007.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The application seeks approval for minor alterations and additions to an existing dwelling. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

Internal Referral Body	Comments
	Biodiversity Conservation Act 2016 (BC Act) **State Environmental Planning Policy (Coastal Management) 2018** • Coastal Environment Area **Pittwater Development Control Plan (PDCP)** • B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	The application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. ***Coastal Management Act 2016*** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Coastal Management) 2018** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2021 and Coastal Engineering Advice by Horton Coastal Engineering Pty. Ltd. dated 16 November 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Internal Referral Body	Comments
	Pittwater LEP 2014 and Pittwater 21 DCP **Coastline Bluff Hazard Management** The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site. A Geotechnical Investigation Report by White Geotechnical Group dated 17 November 2021 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. An impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Coastal Engineering Advice by Horton Coastal Engineering Pty. Ltd. dated 16 November 2021 has been appended with the Geotechnical Report. The report assessed that the base of the cliff is ~30m seaward of the property. However, the rock platform continues seaward at the base of the cliff over a distance of ~15m and Horton Coastal Engineering has provided a 7 to 12mm/year allowance for erosion of the cliff. As such, the cliff is not a significant risk to the property for well over 100 years. This level of risk is 'ACCEPTABLE'. As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP. **Development on Foreshore Area** A section at rear of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes, among others, new pool fencing located in the foreshores area. This proposed work is consistent with Clause 7.8(2)(b). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2021 and Coastal

Internal Referral Body	Comments
	Engineering Advice by Horton Coastal Engineering Pty. Ltd. dated 16 November 2021, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. No objection to the application, subject to conditions.
Road Reserve	The additional courses to the sandstone block wall are noted. No objection is raised to this work. The area between the top of the wall and the property boundary may only be maintained as a garden bed. Under no circumstances shall this area be fenced off and incorporated into the front yard for private open space.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A431103 dated 9 September 2021).

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

SEPP (Infrastructure) 2007

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

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

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

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

(b) coastal environmental values and natural coastal processes,

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

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

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

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

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

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

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

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

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

The existing access arrangements to the foreshore from the site will be largely maintained. Therefore, the proposed development will not preclude access to or along the foreshore area, nor will the development impact the use of the surf zone.

14 Development on land within the coastal use area

(1)

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

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

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

Comment:
The proposal will not impact Aboriginal Cultural Heritage, practices or places or preclude access to or along the foreshore.

The proposal will not result in overshadowing of the foreshore area. Furthermore, the works are

appropriately scaled and sited to prevent wind funnelling or significant view impacts to or from public places.

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

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

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

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

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

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

Comment:
The proposed development has been adequately designed to respond to the environmental constraints of the site, such that it can be stated that the proposed development is not likely to cause increased risk of coastal hazards within the locality.

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	9.5m	11.76%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development Standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.5m
Percentage variation to requirement:	11.76%

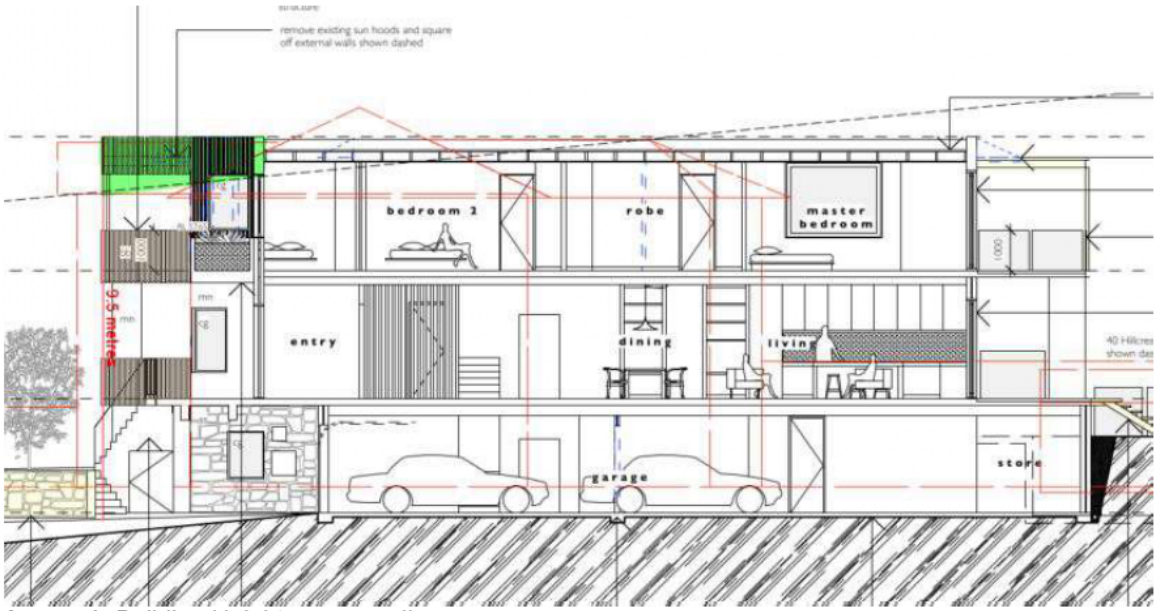


Image 1: *Building Height non-compliance*

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

Clause 4.6 Exceptions to Development Standards:

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

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

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

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

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

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

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

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

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

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.*
- *The proposal will retain the ridgeline of the existing dwelling, and compliance is constrained by the siting of the existing dwelling and the sloping topography of the site.*
- *The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.*
- *Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.*
- *The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.*
- *The works will not see any unreasonable adverse impacts on the solar access enjoyed by adjoining dwellings.*
- *The general bulk and scale of the dwelling as viewed from the public areas in Hillcrest Avenue*

and the wider public view of the site, together with from the surrounding private properties, will be appropriate.

The proposed development maintains consistency with the height and scale of existing surrounding development. Compliance with the height control is made difficult due to the constraints imposed by the sloping topography of the site and nature of the existing development. The development is considered appropriate and compatible within the locality and is therefore worthy of support.

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

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

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

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

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

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

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

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

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
Comment:
The surrounding area is predominantly characterised by two to three storey development, the form of which is influenced by the sloping terrain of the land. The proposal seeks to modernise the existing dwelling by increasing the size of the front facing balconies to make them more usable and to modernise the facade of the existing dwelling. The scale of the resulting development will remain consistent with that of nearby dwellings and is consistent with the desired character of the locality.

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

Comment:
As noted above, the proposal is consistent with the height and scale of nearby development along Hillcrest Avenue.

c) to minimise any overshadowing of neighbouring properties,
Comment:
The proposal provides sufficient setbacks and ensures that the development complies with the requirements under C1.4 Solar Access of the P21DCP.

d) to allow for the reasonable sharing of views,
Comment:
The location of the works at the front of dwelling will not unreasonably impact on the views enjoyed from the adjoining properties and public domain.

e) to encourage buildings that are designed to respond sensitively to the natural topography,
Comment:
The alterations and additions to the dwelling are generally within the existing building footprint or over existing hardstand area. The proposal is also designed to retain the majority of significant vegetation onsite and it is considered that the proposal responds appropriately to the 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 design provides reasonable articulation, visual interest in the use of different materials and colours and is sufficiently setback from the boundaries to minimise any adverse visual impact on the natural environment, heritage conservation areas and heritage items. Landscaping at the front of the site is to be retained and enhanced and along with the new roof gardens, will continue to soften and filter the new built form. Therefore, the proposal will be sufficiently integrated into the existing landscaped setting and contribute to the scenic quality of the bush environment.

Zone Objectives
The underlying objectives of the C4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
  Comment:
  The extent of the proposed works to the existing building are relatively minor and easily fit into the category of low-impact residential development. The proposal does not require any earthworks and is mostly within the existing building footprint or over hardstand area. The existing landscaping at the front of the site is to be retained and enhanced.

- *To ensure that residential development does not have an adverse effect on those values.*
  Comment:
  The proposal has been considered against controls contained within the PLEP. The proposal has been reviewed by Council's Biodiversity officer and Coast and Catchments officers and found to be designed and sited in a way that avoids significant adverse impacts to natural environment, including vegetation.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
  Comment:
  The proposed works are alterations and a additions to a three storey dwelling. The works are

mostly within the existing building footprint or over hardstand area and will maintain the land form or landscape of the site.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
  Comment:
  The proposed works do not have an adverse impact upon riparian and foreshore vegetation or wildlife corridors.

Conclusion:
For the reasons detailed above, the proposal is considered to be consistent with the objectives of 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).

7.7 Geotechnical hazards

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

(a) site layout, including access,
(b) the development's design and construction methods,
(c) the amount of cut and fill that will be required for the development,
(d) waste water management, stormwater and drainage across the land,
(e) the geotechnical constraints of the site,
(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:
The proposed development is supported by a Geotechnical Risk Assessment, architectural plans, Coastal Engineering advice, and stormwater management plans that demonstrate all geotechnical risks have been taken into account.

Development consent must not be granted to development on land to which this clause applies unless:
(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:
The proposed development is supported by a Geotechnical Risk Assessment and stormwater

management plans that demonstrate waste water, stormwater and drainage are suitably managed on site.

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

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

7.8 Limited development on foreshore area

A section at the rear of the subject property is within the foreshore building line and the new pool fencing is located in the foreshore area. This proposed work is consistent with Clause 7.8(2)(b).

On assessment and as assessed in the Statement of Environmental Effects (SEE) prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2021 and Coastal Engineering Advice by Horton Coastal Engineering Pty. Ltd. dated 16 November 2021, the application satisfies the objectives and requirements of Part 7, Clause 7.8 of the PLEP 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	5.8m	10.8%	**No**
Rear building line	6.5m	Dwelling - 12.4m Spa - 12.4m	N/A	Yes
Side building line	S - 2.5m	0.93m	62.8%	**No**
	N - 1m	0.85m	15%	**No**
Building envelope	3.5m	Outside envelope	N/A	**No**
	3.5m	Outside envelope	N/A	**No**
Landscaped area	60%	38.75% 196m^2	35.5%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	No	Yes
B3.1 Landslip Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.4 Coastline (Bluff) 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
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	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
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
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	No	Yes
D9.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D9.12 Fences - General	No	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The proposed development includes three storeys, where the locality calls for two storey development. However, the existing development includes three storeys, being lower, mid and upper floors. The proposed development involves minimal environmental impact, is set below the general tree canopy height, is lower than the existing ridge height , includes building modulation to minimise bulk, and provides an appropriate balance between respecting the landform and encouraging development. As

such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

B3.4 Coastline (Bluff) Hazard

A Geotechnical Investigation Report by White Geotechnical Group dated 17 November 2021 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the application. An impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Coastal Engineering Advice by Horton Coastal Engineering Pty. Ltd. dated 16 November 2021 has been appended with the Geotechnical Report. The report assessed that the base of the cliff is ~30m seaward of the property. However, the rock platform continues seaward at the base of the cliff over a distance of ~15m and Horton Coastal Engineering has provided a 7 to 12mm/year allowance for erosion of the cliff. As such, the cliff is not a significant risk to the property for well over 100 years. This level of risk is 'ACCEPTABLE'.

As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the PLEP and P21 DCP.

C1.5 Visual Privacy

The control requires private open space, recreation areas and living rooms within 9.0m of a development to be suitably protected to limit the effects of direct overlooking.

New windows are proposed along the north and south elevation. Privacy screening is provided to a number of the side-facing windows and the rear mid-floor and first floor balconies, which minimises opportunities for overlooking to the southern neighbour.

The existing pool will be retained in its current location, with a new spa to be incorporated into the pool. The site also has a 1.8m high boundary fence along the side boundaries which will further maintain privacy between properties.

The proposal is therefore considered to maintain suitable privacy for the adjoining neighbours.

C1.23 Eaves

Description of non-compliance
The control requires dwellings to incorporate 450mm wide eaves on all elevations. The proposed alterations and additions to the dwelling does not include eaves as part of their design, which fails to meet this requirement.

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

- *Housing that reflects the coastal heritage and character of Pittwater.*
- *Optimise roof forms.*
- *Appropriate solar access and shading is achieved.*

  Comment:
  It is considered that the overall design reflects a coastal theme and is aesthetically pleasing in its built form. The design incorporates a flat roof to aid in minimising bulk and scale of the

development. The BASIX Certificate received demonstrates appropriate solar access and shading will be achieved, with the application accompanied by compliant shadow diagrams.

Having regard to the above assessment, it is concluded 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.

D9.6 Front building line

Description of non-compliance
The control requires a 6.5m front boundary setback line for buildings and built structures. The proposed alterations to the dwelling will have a minimum setback of 5.6m to the front boundary and the access stairs are set back a minimum of 4.13m to the front boundary , which represents a variation of 13.85% and 36.47% from the stipulated control.



Image 2: *Front building line encroachment*

Merit consideration
With regard to the consideration of a variation, the proposed 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 consistent with the requirements of Clause A4.9 Mona Vale Locality, which outlines the desired future character of the site and surrounds.

- *Equitable preservation of views and vistas to and/or from public/private places.*
  Comment:
  An examination of the site and the surrounds has concluded that the proposed alterations and additions to the front of the dwelling will not unreasonably disrupt significant view lines from public or private places.

- *The amenity of residential development adjoining a main road is maintained.*
  Comment:
  Not applicable. The subject site is not located on a main road.

- *Vegetation is retained and enhanced to visually reduce the built form.*
  Comment:
  The proposed development does not require removal of any significant vegetation. Landscaping will be retained at the front of the site which will soften the development when viewed from the street frontage.

- *Vehicle manoeuvring in a forward direction is facilitated.*
  Comment:
  The proposal will be retaining the existing carparking arrangements on the site.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
  Comment:
  The proposed development does not increase the existing height of the dwelling house, and retains a built form of a scale and density that is in keeping with the height of the natural environment.

- *To encourage attractive street frontages and improve pedestrian amenity.*
  Comment:
  The proposed development provides an update to the existing dwelling facade and landscaping, thereby providing an attractive street frontage. The proposed development does not impact upon pedestrian amenity.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*
  Comment:
  The proposed development responds to, reinforces, and sensitively relates to the spatial characteristics of the existing urban environment in that its height, bulk and scale are consistent with the existing site and surrounding development. The site would retain sufficient landscaped open space and would not be visually dominant as viewed from the street or surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes 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.

D9.7 Side and rear building line

Description of non-compliance
Clause D9.7 of the Pittwater 21 DCP requires development be setback at least 2.5m from the northern side boundary and 1.0m from the southern side boundary. The development proposes the following:

Northern side setback - 1.0m (alterations to existing swimming pool to include a spa pool). The spa pool will maintain the established setback to the northern side boundary.
Western side setback - 0.9m (Addition to front balcony)

The proposal complies with the 6.5m rear setback control.

Merit Consideration

- *To achieve the desired future character of the Locality.*
  Comment:
  The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality.

- *The bulk and scale of the built form is minimised.*
  Comment:
  The proposed alterations and additions to the dwelling follow the side setbacks of the existing dwelling and reduces the existing building height. The non-compliant elements proposed along the northern and southern boundary are primarily open structures of minimal bulk and scale. Along with articulation and landscaping, there will be no unreasonable visual impact caused by bulk or scale of built form.

- *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:
  No unreasonable view loss was identified. The proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

- *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 and it is considered no unreasonable privacy impacts would occur as a result of the development. Existing boundary fencing and proposed landscaping will ensure adequate privacy is maintained between neighbours.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*
  Comment:
  The proposed development does not involve the removal of any significant vegetation and vegetation and landscaping at the front and rear of the site is retained. The proposed development will be softened by existing landscaping as seen from the street, and adjoining properties. As such the proposal will maintain landscaping and an attractive streetscape.

- *Flexibility in the siting of buildings and access.*
  Comment:
  The proposed development is sited with varying setbacks, which ensure appropriate articulation and modulation along both side elevations. 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:
  Existing vegetation is retained that will assist in reducing the visual impact of the proposed built form.

- *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.

D9.9 Building envelope

Description of Non-compliance
The DCP requires that the building is to be within a building envelope measured at 45 degrees from 3.5m above the side boundary line.

The proposal has a non-compliance to the building envelope on the northern and southern elevation. It is noted that the existing dwelling does not comply with the side boundary envelope on both the north and south elevations. The extent of the new building envelope non-compliance is shown in the figures below (highlighted in green):

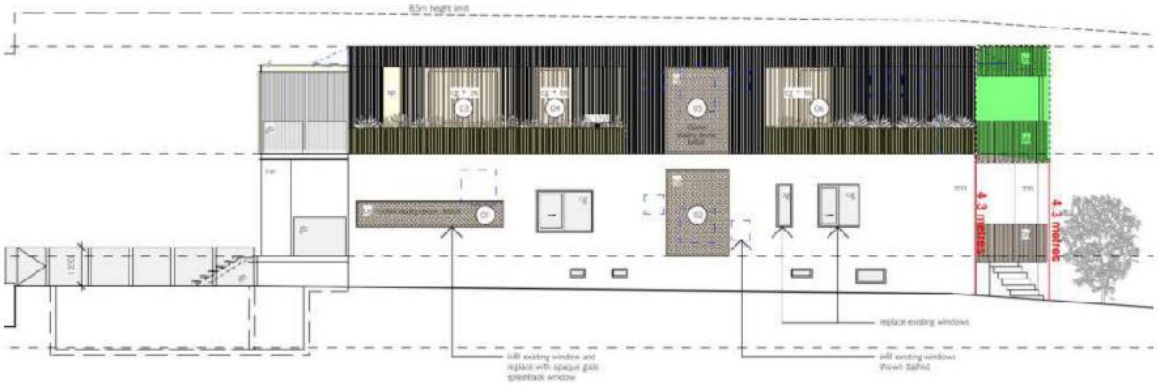


Image 3: *North elevation side boundary envelope encroachment*

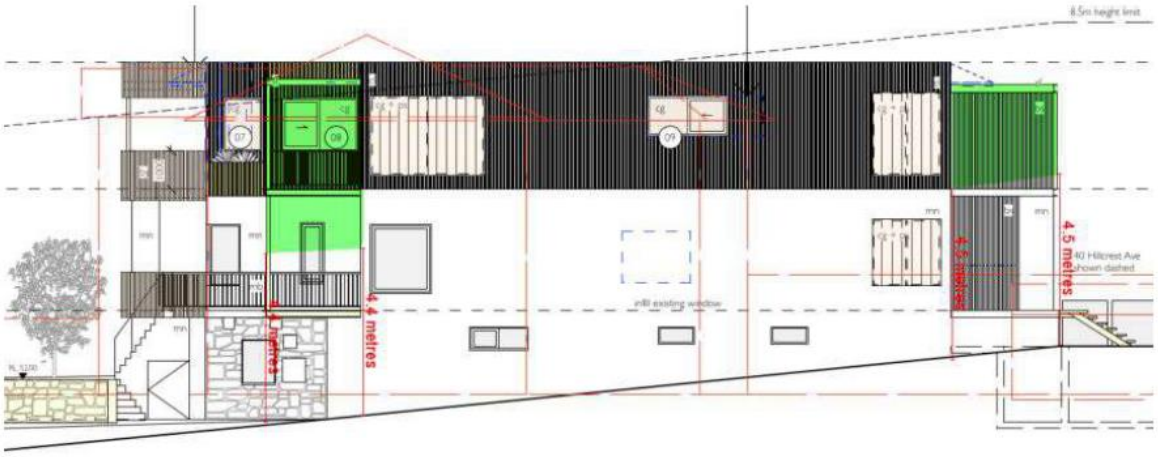


Image 4: *South elevation side boundary envelope non-compliance*

Merit Consideration
In assessing the non-compliance, the proposal is considered against the outcomes 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 surrounding development in the locality and generally in keeping 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 proposed amendments are more consistent with the contemporary seaside-style of buildings surrounding the site, and when combined with the existing landscaping, the resultant development will enhance the existing streetscape setting. Furthermore, the scale and density of the proposal is consistent with surrounding and nearby development, and the resultant

dwelling will be maintained at a height well below surrounding canopy trees.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
  Comment:
  The proposed development provides setbacks and a built form that is generally consistent with the development of the existing site and the prevailing pattern of surrounding development. The proposed dwelling additions will largely be sited within the footprint of the existing building and hardstand areas and will not require the removal of significant vegetation to facilitate the development. The proposed development is considered to be an appropriate response that works to retain as much of the existing structure, whilst providing a contemporary dwelling.

- *The bulk and scale of the built form is minimised.*
  Comment:
  The proposed development is well-articulated, and compatible with surrounding development. The proposal uses balconies, roof gardens and changes in materials to break up built form. Furthermore, the proposal will retain and enhance the landscaping at the front of the site, along with the roof garden, will help to minimise the visual impact of the development from adjoining properties and the public realm. Overall, it is considered the bulk and scale is consistent with the built form of the existing site and surrounding locale.

- *Equitable preservation of views and vistas to and/or from public/private places.*
  Comment:
  No unreasonable view loss was identified. The proposal is considered to equitably preserve the available views and vistas to and/or from public and private places

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*
  Comment:
  Whilst the proposed building envelope non-compliance will result in additional overshadowing, the impact is not considered to be unreasonable, as the adjoining property will maintain compliant levels of solar access throughout the year. Further, the proposal does not result in any unreasonable impacts with regard to privacy or amenity.

- *Vegetation is retained and enhanced to visually reduce the built form.*
  Comment:
  The development does not require the removal of significant vegetation. The existing landscaping on the site is to be retained and enhanced. The existing and proposed landscape treatments, including the roof gardens are sufficient and ensure the site is not dominated by the built form. It is considered that remaining and proposed vegetation will adequately reduce the visual impact of the built form.

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.

D9.11 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance
The proposal provides 35.5% (196m^2) of the site as landscaped area.

The control requires a minimum of 60% of the total site area as landscaped area.

Provided the outcomes of this control are achieved, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only. Therefore, when applying variations the proposal provides 43.29% (219m^2) of the site as landscaped area.

The existing landscaping provision (including variations) is 44.87% (227m^2).

Merit Consideration
With regard to the consideration for a variation, the development is considered against the underlying outcomes of the control as a merit assessment.

- *Achieve the desired future character of the Locality.*
  Comment:
  The proposed development is consistent with the requirements of Clause A4.9 Mona Vale Locality, which outlines the desired future character of the site and surrounds.

- *The bulk and scale of the built form is minimised.*
  Comment:
  The proposed development is well-articulated, and compatible with surrounding development. The proposal uses balconies, roof gardens and changes in materials to break up built form. Furthermore, the proposal will retain and enhance the landscaping at the front of the site, along with the roof garden, will help to minimise the visual impact of the development from adjoining properties and the public realm. Overall, it is considered the bulk and scale is consistent with the built form of the existing site and surrounding locale.

- *A reasonable level of amenity and solar access is provided and maintained.*
  Comment:
  The proposed additions will result in additional minor overshadowing to neighbouring properties, the impact is not considered to be unreasonable, as the adjoining property will maintain compliant levels of solar access throughout the year. Further, the proposal does not result in any unreasonable impacts with regard to privacy or amenity.

- *Vegetation is retained and enhanced to visually reduce the built form.*
  Comment:
  The existing landscaping on the site is to be retained and enhanced. The existing landscaping along with the roof gardens will help to visually reduce and softening the built form.

- *Conservation of natural vegetation and biodiversity.*
  Comment:
  No natural vegetation and biodiversity is proposed to be removed or disturbed as a result of the the proposed development. The existing landscaping at the front of the site is to be retained and enhance and along with the roof gardens will enhance natural vegetation and biodiversity

on the site.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*
  Comment:
  The proposal will be conditioned with the relevant condition(s) to ensure stormwater runoff is managed appropriately.

- *To preserve and enhance the rural and bushland character of the area.*
  Comment:
  The site has minimal existing native vegetation. The proposed landscape plan with a mixture of trees, shrubs and grasses will enhance the rural and bushland character of the area.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*
  Comment:
  The proposed soft surface is considered sufficient to provide infiltration to the water table, minimise run-off and assist with stormwater management as the increase in impervious area is minimal and will not negatively impact stormwater management on site.

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.

D9.12 Fences - General

Description of non-compliance
The control requires front fences within the front building line to not exceed 1.0m above existing ground level, should be compatible with the streetscape character, be constructed of open, see-through, dark-coloured materials, and should incorporate landscaping to screen the fence on the roadside.

The proposed front vehicular and pedestrian sliding gate and sandstone gate pocket are 1.5m in height. The gate component of the proposal is see-through and constructed of dark material. Located on the road reserve is a 1.3 -1.1m high retaining wall with landscaping above and in front.

The application includes an increase in the height of the retaining wall on the road reserve to link up with the proposed gate and gate pocket. The north-eastern side of Hillcrest Avenue has retaining walls on the road reserve running parallel to the footpath. These retaining walls vary in height and materials. However, they are mostly constructed of sandstone coloured blocks. The retaining wall located on the road reserve in front of the subject site was approved under development application N0473/07, is setback closer to the front boundary than that of the adjoining properties. The proposed change to the retaining wall will not be out of character for the area or cause any unreasonable impacts to the adjoining or surrounding properties. The application was also referred to Councils Road Reserve team to review and was considered acceptable subject to conditions.

Merit Consideration
Further consideration of non-compliance will be given in accordance with the outcomes of the control, as below.

- *To achieve the desired future character of the Locality.*
  Comment:
  The proposed development will be generally consistent with the desired future character of the Mona Vale Locality.

- *To ensure fences compliment and conserve the visual character of the street and neighbourhood.*
  Comment:
  The proposed height of the sliding gate is compatible with existing front gates and fencing along the north-eastern side of Hillcrest Avenue. The use of dark colours and natural materials will compliment and conserve the visual character of the street and neighbourhood.

- *To define the boundaries and edges between public and private land and between areas of different function.*
  Comment:
  The proposed fencing will define the front boundary of the site and will delineate the edge of public and private land and areas of different function.

- *To contribute positively to the public domain.*
  Comment:
  The proposed gate and gate pocket will be of a height and design that will not dominate the streetscape of Hillcrest Avenue. The location of the gate behind the existing retaining wall and vegetation along with the use of natural materials and dark colours ensures the gate associated works contribute positively to the public domain.

- *An open streetscape that allows casual surveillance of the street.*
  Comment:
  The proposed sliding gate comprises of an open design which allows a sufficient level of casual surveillance of the street. The articulation of the gate also functions to reduce the appearance of a 'closed in' streetscape.

- *Fences, where provided, are suitably screened from view from a public place.*
  Comment:
  The car and pedestrian gate is see through and retaining wall has planting in front and on top, which will suitably screen the gate pocket.

- *Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians.*
  Comment:
  The existing site lines to the road reserve and street will be maintained.

- *Unhindered travel for native animals and pedestrians.*
  Comment:
  The pedestrian gate and vehicle gate will allow for access to the site.

- *To ensure heritage significance is protected and enhanced.*
  Comment:
  The subject site is not an identified heritage item, is not located within close proximity to any identified heritage items and is not located within a heritage conservation area, therefore this outcome is not applicable.

- *To ensure an open view to and from the waterway is maintained.*
  Comment:
  The propose fence and gate will not impact on any views to and from a waterway.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $5,610 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $561,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

In summary, the proposed development does not comply with Clause 4.3 Height of Buildings and a formal request via Clause 4.6 Exceptions to Development Standard was lodged by the applicant and assessed. The accompanying Clause 4.6 written request was considered acceptable in this instance, having regard to the development being consistent with the height, bulk and scale of surrounding development within the locality.

The proposal also includes a variation to clauses C1.23 Eaves, D9.6 Front Building Line, D9.7 Side and Rear Building Line, D9.9 Building Envelope, D9.11 Landscaped area - Environmentally Sensitive Land, and D9.12 Fences - General of P21 DCP. These non compliances have been assessed and are considered acceptable.

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

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RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/2267 for Alterations and additions to a dwelling house on land at Lot A DP 103352, 42 Hillcrest Avenue, MONA VALE, 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**
DH-01-DA - Site Analysis Plan	15.09.21	Rachel Hudson Architect
DH-04-DA - Site Plan	15.09.21	Rachel Hudson Architect
DH-05-DA - Lower Floor Plan	15.09.21	Rachel Hudson Architect
DH-06-DA - Mid Floor Plan	15.09.21	Rachel Hudson Architect
DH-07-DA - Upper Floor Plan	15.09.21	Rachel Hudson Architect
DH-05-DA - Roof Plan	15.09.21	Rachel Hudson Architect
DH-09-SD - North Elevation	15.09.21	Rachel Hudson Architect
DH-10-SD - South Elevation	15.09.21	Rachel Hudson Architect
DH-11-SD - East Elevation	15.09.21	Rachel Hudson Architect
DH-12-SD - West Elevation	15.09.21	Rachel Hudson Architect
DH-13-DA - Section AA	15.09.21	Rachel Hudson Architect
DH-13-DA - Section BB	15.09.21	Rachel Hudson Architect
DH-16-DA - Schedule of External Finishes	15.09.21	Rachel Hudson Architect

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Basix Certificate Certificate No. A431103	9 September 2021	Rachel Hudson
Coastal Engineering Advice on 42 Hillcrest Avenue Mona Vale	16 November 2021	Horton Coastal Engineering
Geotechnical Investigation: Alterations and additions at 42 Hillcrest Avenue, Mona Vale J3848	17th November 2021	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement

Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
DH-03-DA - Landscape Plan	15.09.21	Rachel Hudson Architect

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
DH-02-DA - Sediment / Erosion Control Waste Management Plan	15.09.21	Rachel Hudson Architect
Waste Management Plan	22/9/2021	Susan & Tony Donald

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 Response Referral	16/12/2021

(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. **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 $5,610.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $561,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

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

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

Reason: Protection of the receiving environment.

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

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

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction

Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

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. **Coastal Bluff Engineering Assessment Implementation**
The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Horton Coastal Engineering Pty. Ltd. dated 16 November 2021, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

13. **Coastal Bluff Engineering Assessment Implementation**
All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

14. **Engineers Certification of Plans**
The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

15. **Design Impact on Coastal Processes and Public/Private Amenity**
All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public

foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

19. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;

and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

20. **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.

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

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

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

22. **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.

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

24. **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

25. **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.

26. **Maintenance of Stormwater Treatment Measures**
Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

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

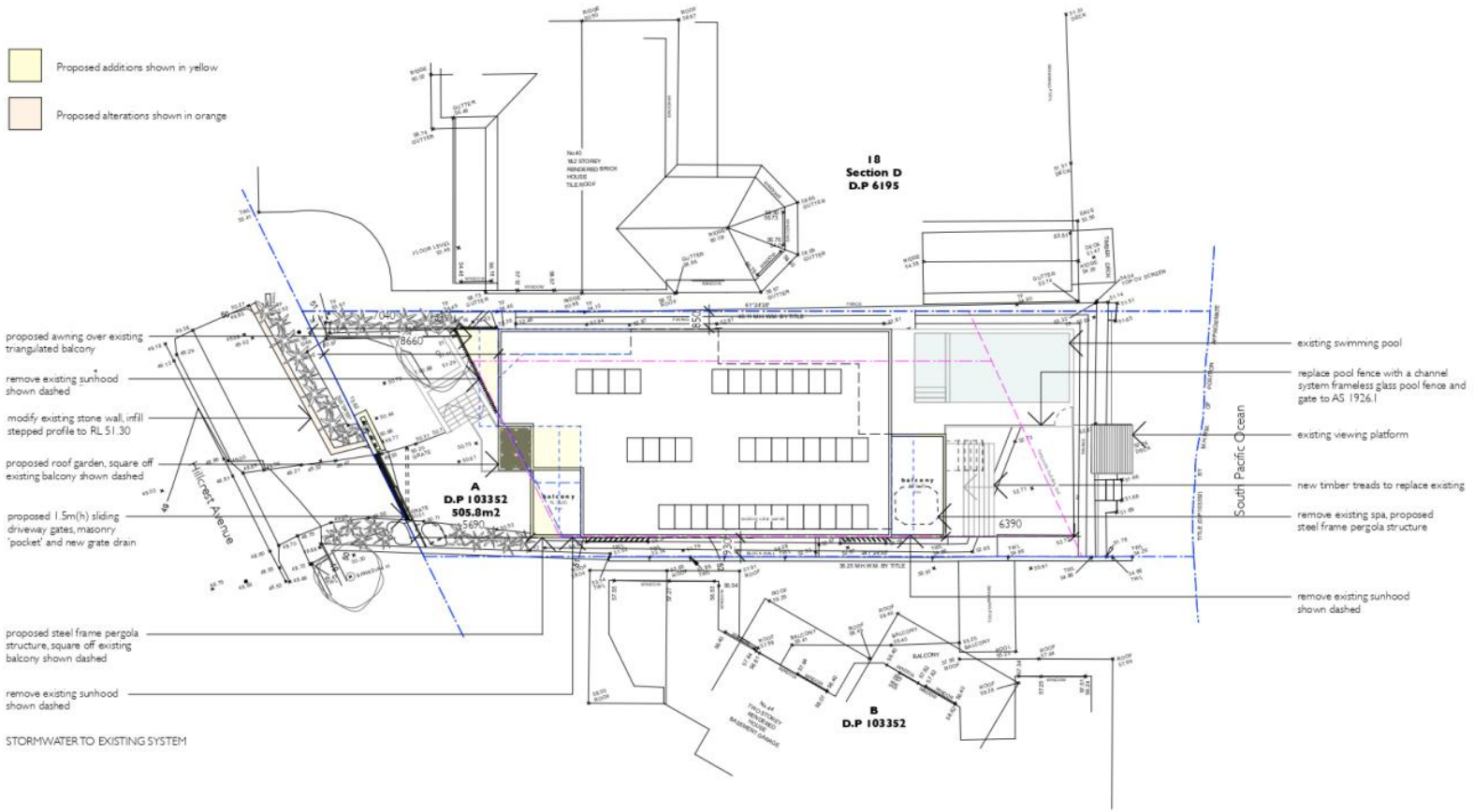
Reason: To ensure geotechnical risk is mitigated appropriately.

28. **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.

29. **Retaining wall within the road reserve**
The area between the top of the road reserve retaining wall and the property boundary may only be maintained as a garden bed. Under no circumstances shall this area be fenced off and incorporated into the front yard for private open space.

Reason: To enable the long term retention of the desired streetscape character.



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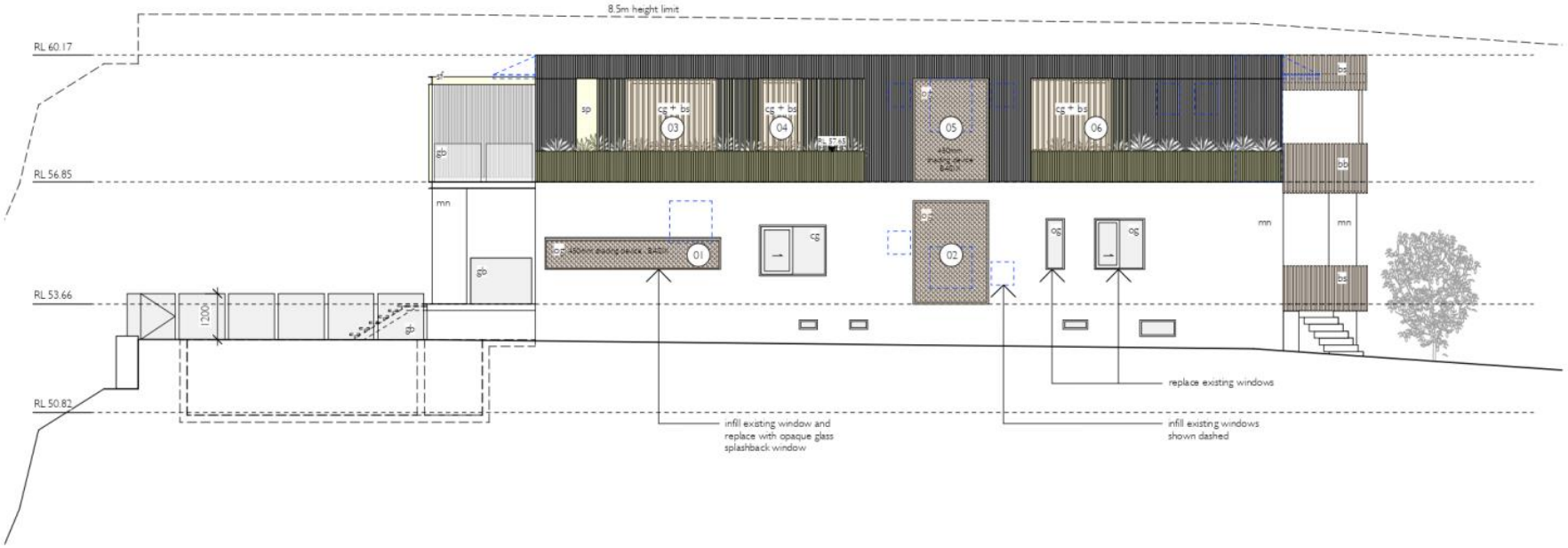
DONALD HOUSE
Sue & Tony Donald
42 Hillcrest Avenue
Mona Vale NSW 2103

DWG DH-04-DA
DATE 15.09.21
ISSUE A
JOB # 121
SCALE 1:200 @ A3

SITE PLAN

MATERIALS LEGEND

mn - masonry
cn - concrete
cr - cement render
cg - clear glass
og - opaque glass
mt - metal roof
sf - steel frame
sb - steel balustrade
bb - batten balustrade
sp - steel plate
ss - sandstone
cl - cladding
bs - batten screen



Proposed additions shown in yellow

Proposed alterations shown in orange

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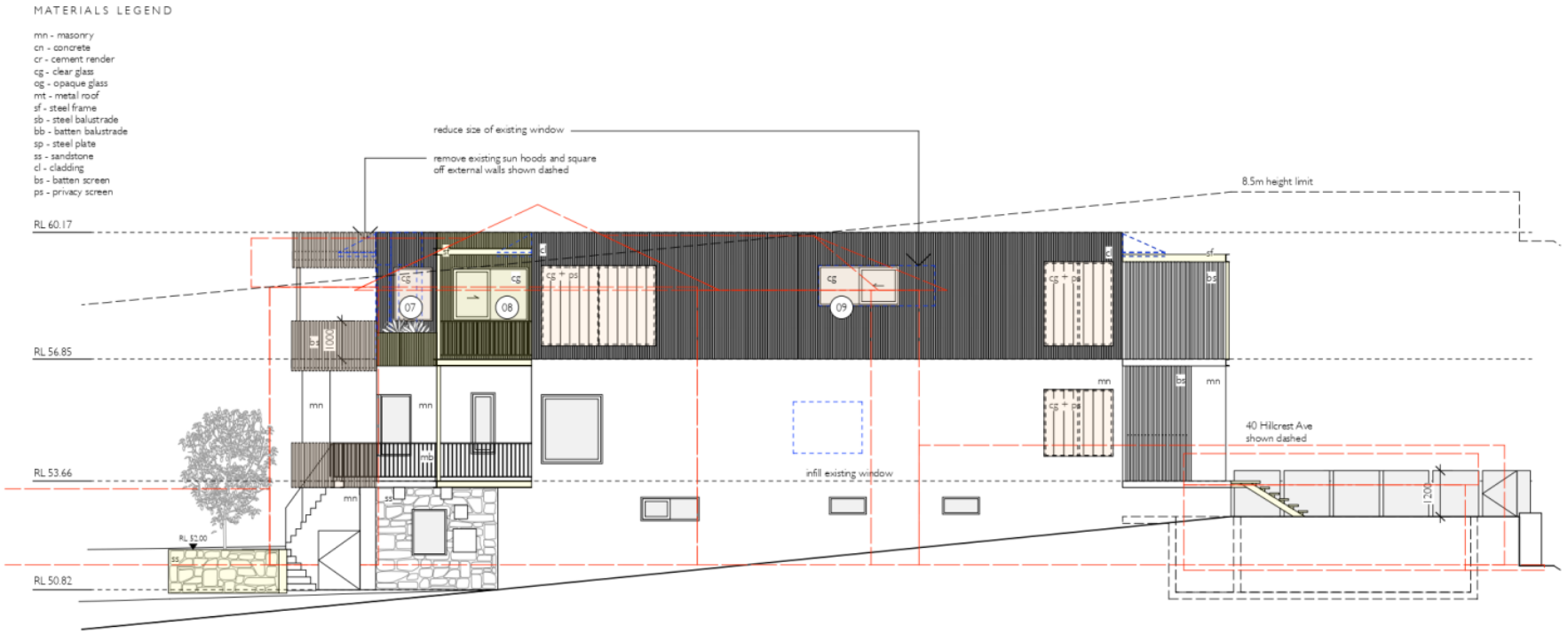
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DATE 15.09.21
ISSUE A
JOB # 121
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NORTH ELEVATION



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DONALD HOUSE

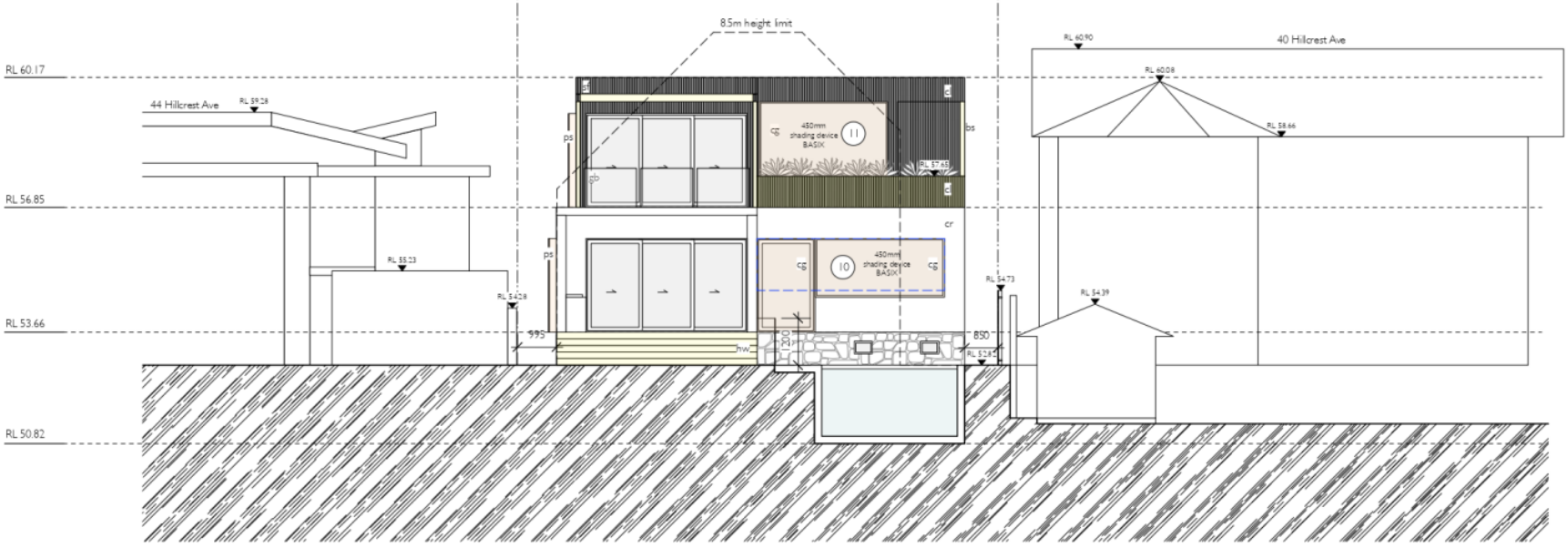
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DATE 15.09.21
ISSUE A
JOB # 121
SCALE 1:100 @A3

SOUTH ELEVATION

MATERIALS LEGEND

mn - masonry
cn - concrete
cr - cement render
cg - clear glass
og - opaque glass
mt - metal roof
sf - steel frame
sb - steel balustrade
bb - batten balustrade
sp - steel plate
ss - sandstone
cl - cladding
bs - batten screen
ps - privacy screen



Proposed additions shown in yellow

Proposed alterations shown in orange

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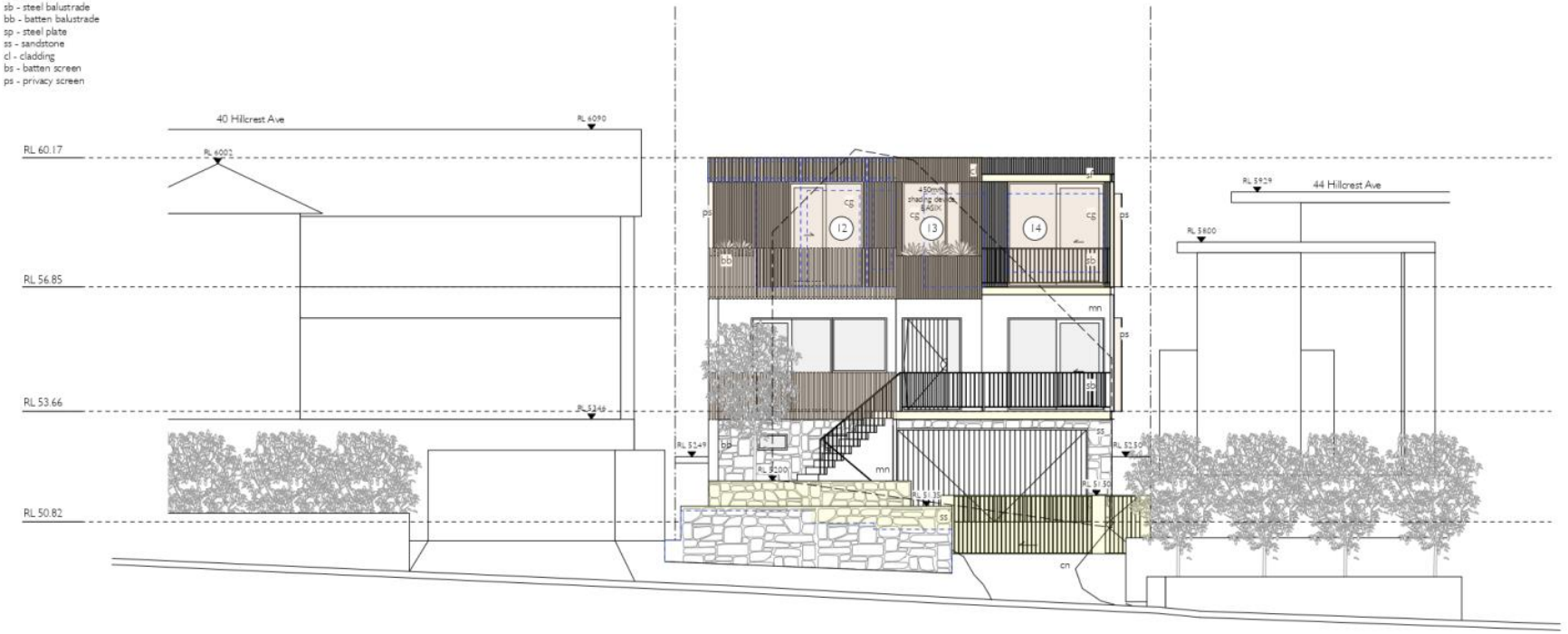
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Mona Vale NSW 2103

DWG DH-11-SD
DATE 15.09.21
ISSUE A
JOB # 121
SCALE 1:100 @A3

EAST ELEVATION

MATERIALS LEGEND

mn - masonry
cn - concrete
cr - cement render
cg - clear glass
og - opaque glass
mt - metal roof
sf - steel frame
sb - steel balustrade
bb - batten balustrade
sp - steel plate
ss - sandstone
cl - cladding
bs - batten screen
ps - privacy screen



Proposed additions shown in yellow

Proposed alterations shown in orange

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DONALD HOUSE
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DWG DH-12-DA
DATE 15.09.21
ISSUE A
JOB # 121
SCALE 1:100 @A3

WEST ELEVATION

APPENDIX 2
CLAUSE 4.6 – HEIGHT OF BUILDINGS

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

42 HILLCREST AVENUE, MONA VALE

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING

For:	For proposed construction of alterations and additions to an existing dwelling
At:	42 Hillcrest Avenue, Mona Vale
Owner:	Sue & Tony Donald
Applicant:	Sue & Tony Donald C/- Vaughan Milligan Development Consulting

1.0 Introduction

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

2.0 Background

Pittwater LEP 2014 – Clause 4.3 prescribes a maximum building height for the subject site of 8.5m in this portion of Mona Vale. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed alterations and additions to the existing dwelling will provide a height of 9.45m above natural ground level which exceeds Council's maximum building height by 0.95m or 11.1% and therefore does not comply with this control. The proposal will retain the ridgeline of the existing dwelling, and compliance is constrained by the siting of the existing dwelling and the sloping topography of the site.

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

Is clause 4.3 of PLEP 2014 a development standard?

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

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

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

3.0 Purpose of Clause 4.6

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

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

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

4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

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

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

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

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

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

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

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

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.
Clause 4.6(2) of the LEP provides:

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

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

Clause 4.6(3) of PLEP provides:

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

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

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

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Mona Vale. The additions to the existing dwelling will result in a maximum building height of 9.45m or exceed the height control by 0.95m or 11.1%.

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

Clause 4.6(4) of PLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

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

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

Clause 4.6(5) of PLEP provides:

(5) In deciding whether to grant concurrence, the Secretary must consider:

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

(b) the public benefit of maintaining the development standard, and

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters

in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

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

The specific objectives of Clause 4.6 are as follows:

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

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

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The non-compliance with the height control arises as a result of the site's sloping topography and siting of existing development.

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

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

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

The works will not see any unreasonable adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Hillcrest Avenue and the wider public view of the site, together with from the surrounding private properties, will be appropriate.

5.0 The Nature and Extent of the Variation

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

5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Mona Vale.

5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 9.8m, which exceeds the height control by 1.3m or 15.3%.

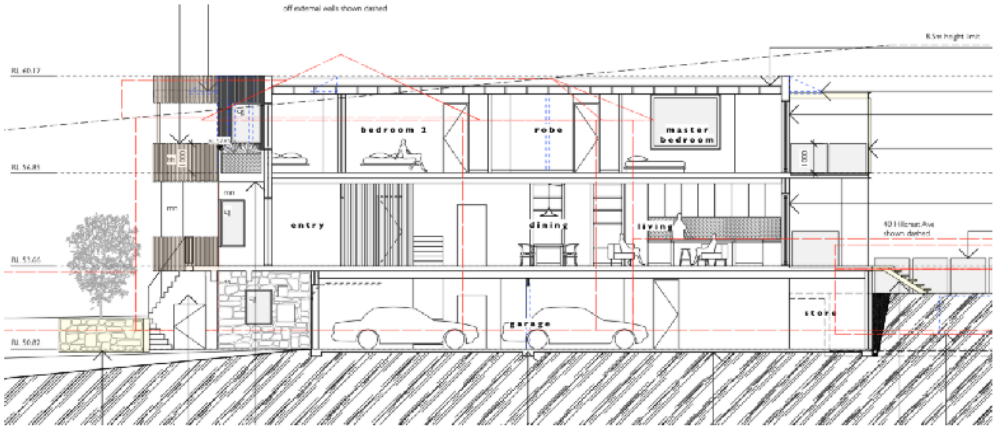


Fig 1: View of area breaching maximum building height control as noted in Section AA prepared by Rachel Hudson Architect

6.0 Relevant Caselaw

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

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

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

1. Is clause 4.3 of PLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 zone?

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

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

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

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

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

The proposal seeks to accommodate the additions within a compatible building form, with the slope of the site and siting of existing development resulting in a portion of the roof being up to 9.8m in height.

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

The proposed height of the dwelling maintains consistency with the siting of surrounding development. The proposal maintains the existing maximum ridge height of the new roof form of RL 60.17m, and the proposal will not substantially alter the bulk and scale of the existing dwelling.

The proposed alterations and additions present a modest, modulated façade to Hillcrest Avenue. The proposed development is considered to be compatible with the bulk and scale of surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

The proposal is accompanied by Shadow Diagrams (Drawing No. DH-15-DA) which demonstrate that the proposal will see any unreasonable diminution of the existing solar access currently received by neighbouring properties.

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

As the proposal retains the existing ridge height, the proposal is not considered to result in any unreasonable view impacts on uphill properties. The existing rear setback is maintained, which will ensure that the neighbouring properties to the north and south maintain their views.

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

The low profile form of the development will continue to suitably respond to the sloping topography of the site.

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

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

The proposal will maintain the existing two and three storey presentation to Hillcrest Avenue.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Northern Beaches area.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the*

> *written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

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

- The proposed additions will maintain the general bulk and scale of the existing development together with surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of Hillcrest Avenue which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new development is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

- The aspect of the development which exceeds the maximum building height control is related to the roof form over the upper floor balcony and western bedrooms. The variation to the height control is considered to be reasonable in this instance as it will achieve the object of the act particular in relation to Objective 1.3(h) in that the design will promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

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

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in

cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

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

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

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

It is considered that notwithstanding the modest breach of the maximum building height by 1.3m at the south-western extremity of the dwelling, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living Zone for the following reasons:

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

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The E4 Environmental Living contemplates low density residential uses on the land.

The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form which will respect the predominant bulk and scale of the surrounding dwellings.

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

The proposal will continue to present as a modest two and three storey development to Hillcrest Avenue, in keeping with the extent of existing development.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Pittwater area.

The compatible form and scale of the proposed development will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

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

  This control is not relevant to the subject residential development.

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

  This control is not relevant to the subject residential development.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

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

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

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

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new building to provide for a height of up to 9.45m, which exceeds the maximum height control by 0.95m or 11.1%.

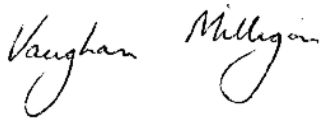
This variation occurs as a result of the sloping topography of the site and siting of existing development. The proposal will retain the existing ridge height of the dwelling and will not see any substantial change to the bulk and scale of the existing dwelling.

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met.

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

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



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