

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 23 MARCH 2022



Ashleigh Sherry
Manager Business System and Administration

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

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 9 March 2022	
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3.2	DA2021/2139 - 34 A Beatrice Street CLONTARF - Alterations and additions to a dwelling house including a swimming pool	51
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 9 MARCH 2022

RECOMMENDATION

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

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/2278 - 36 RIVIERA AVENUE AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Phil Lane
TRIM FILE REF	2022/157938
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 DA2021/2278 for alterations and additions to a dwelling house including a swimming pool on land at Lot 119 DP 30509, 36 Riviera Avenue AVALON BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2278
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 119 DP 30509, 36 Riviera Avenue AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kanako Paton
Applicant:	Jo Willmore Designs
Application Lodged:	26/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/12/2021 to 11/01/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 22.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 680,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. 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.

Submissions received during the notification period generally expressed support for the proposed development. However, one submission included concerns relating to tree pruning and questioned

whether views would be impacted by the proposal.

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.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including a swimming pool and an attached double garage.

The alterations and additions to the dwelling includes the following elements:

- Removal of existing garage
- Removal of roof to existing house
- Addition of new living area to existing house level
- Internal layout and window changes
- New front entry Porch
- New upper floor decks
- New low pitched skillion and flat roofs over new and existing
- Infill of existing undercroft area to provide three bedrooms, extra living space, new bathroom and laundry area
- New decks to lower level directly below new upper decks
- New driveway and car stand area
- Open storage area to basement area below new decks

ASSESSMENT INTRODUCTION

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

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

proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope

SITE DESCRIPTION

Property Description:	Lot 119 DP 30509 , 36 Riviera Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northeastern side of Riviera Avenue. Access to the site is achieved via a private road shared with Nos. 38, 40, 42 and 44 Riviera Avenue.</p> <p>The site is irregular in shape with a battle-axe frontage of 1.83m along Riviera Avenue and a maximum depth of 122m. The site has a surveyed area of 5,348m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates single storey residential dwelling and a detached single garage.</p> <p>Excluding the access handle, the site falls approx. 62m from the southwest towards the northeast.</p> <p>Most of the site contains natural features, vegetation and canopy trees on the northeastern side of the dwelling. Ornamental vegetation and gardens are located in the dwelling curtilage.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings, within a bushland setting.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of

Section 4.15 Matters for Consideration	Comments
(EP&A Regulation 2000)	<p>consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 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 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 - Bush Fire Planning Services, dated 25/08/2021). The report stated that the bushfire attack level of the site is “Flame Zone”.

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 06/12/2021 to 11/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Matthew Martin Shand	6 Jesmond Avenue VAUCLUSE NSW 2030
Mr Rodney Bernard Wakefield	30 Riviera Avenue AVALON BEACH NSW 2107

Two submissions received outlined general support for the proposed development. However, one submission raised the following issues and each have been addressed below:

- Tree overhanging proposed pool
- View impact

The matters raised within the submissions are addressed as follows:

- *Concern is raised that an existing tree may overhang the proposed pool and cause safety issues. It is requested the tree be pruned or removed.*

Comment:

The applicant has submitted an Arboricultural Impact Assessment outlining the impact of the proposed development on nearby trees and provides recommendations on how to mitigate impact on significant trees. Council's Landscape Officer has reviewed the findings and recommendations of the arborist report and what impact the proposed development may have on nearby trees. No concern from the Landscape Officer regarding trees in the vicinity of the swimming pool has been raised. As such, no tree pruning or removal conditions are recommended to be imposed.

- *A submission questioned whether the proposed development will have an impact upon existing view corridors.*

Comment:

The impact of the proposed development on existing view corridors was considered as part of the assessment of the application. The resident was contacted during assessment to understand whether potential view loss was a significant concern. The resident confirmed that the primary concern of the submission related to the tree issue discussed above.

This assessment finds that the proposed development will not result in unreasonable view loss to adjacent and nearby properties. This is due to the altered roof form to a low profile skillion form, reduction in roof ridge level compared to the existing roof and change of the ridge orientation from east-west to north-south.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to an existing dwelling, including new decks and pool.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>No Landscape Plan is submitted and the proposed works occur over</p>

Internal Referral Body	Comments
	<p>the existing upper developed portion of the site, with the lower portion of the site unchanged and supporting trees and vegetation typical of the Pittwater Spotted Gum Forest association, thus satisfying C4 zone objectives and DCP landscape controls.</p> <p>An Arboricultural Impact Assessment is submitted and identifies two existing Sydney Red Gum trees within five metres of development works and concludes that the impact is negligible and able to be managed, and conditions shall be imposed. Other vegetation within five metres proximity of the works are non-protected under the DCP by exempt provisions (either species type or by height).</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and addition to existing house including new garage, new driveway, new decks and new pool. The application also seeks to establish an Asset Protection Zone (APZ) to 10m or the property boundary (whichever is closer) from the proposed facade.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Biodiversity Conservation Regulation 2017 Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> B4.7 Pittwater Spotted Gum Forest <p>The rear (northeast) of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values Mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS). As the proposed APZ does not extend into DPIE's BV Mapping nor does the proposal require tree removal to facilitate construction (Complete Arborcare 2021) which is supported by the submitted architectural plans (Jo Willmore Designs 2021); the BOS is not triggered.</p> <p>It is noted that the site currently benefits from the 10/50 clearing eligibility, and the proposed APZ would extend only 3m beyond the existing 10m clearing eligibility, therefore no objection is raised subject to conditions.</p>
NECC (Development Engineering)	<p>23/02/2022:</p> <p>The application seeks approval for alterations and addition to existing house including new garage, new driveway (within site), new decks and new pool.</p> <p>Access</p>

Internal Referral Body	Comments
	<p>It is a battle-axe block of irregular shape with access to site from also at its north-east boundary from Cannes Drive. Vehicle access is via right of carriageway from Riviera Avenue.</p> <p>No changes are proposed to the access driveway/crossover (ROW) which serves a number of properties.</p> <p>A new paved driveway, car stand area with turning area and double garage is proposed within the site.</p> <p>Stormwater This is a low level site. Stormwater Drainage plans - prepared by NITMA Consulting Pty Ltd, dated 16th November 2021 area satisfactory.</p> <p>Geotech Property is classified as Geotechnical Hazard H1, Geotechnical Assessment - prepared by Ascent Geotechnical Consulting, Ref: AG 20259, Dated 25th August 2021 is provided.</p>

External Referral Body	Comments
NSW Rural Fire Service – local branch (s4.14 EPAA)	The NSW Rural Fire Service has considered the information submitted and raises no objection to the proposed development, subject to conditions.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP 55 - Remediation of Land**

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A423626, dated 01/10/2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Coastal Management) 2018

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

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The proposed development is not expected to cause adverse impact to the natural integrity of the nearby littoral rainforest.

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 is not expected to cause an increased risk of coastal hazards on the site or

surrounding land.

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

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
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—

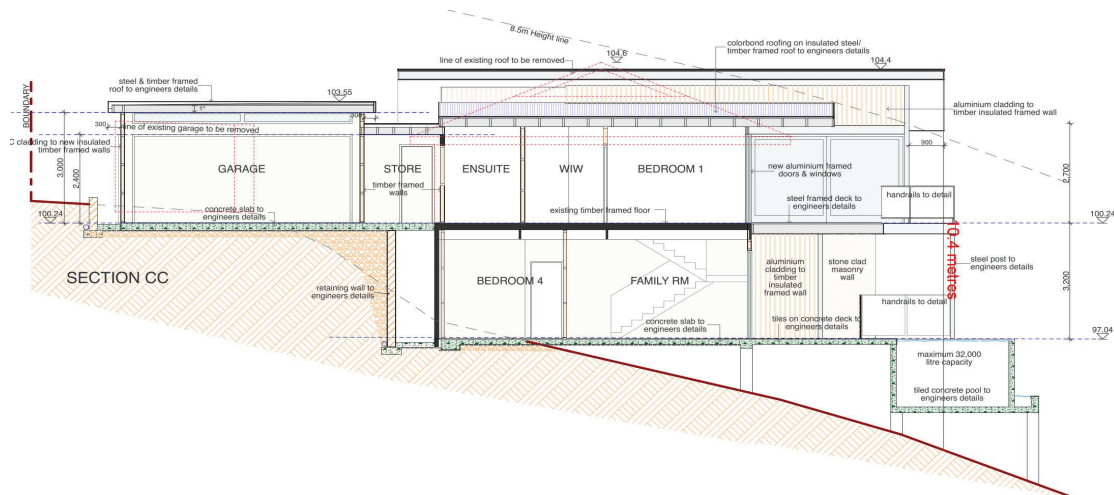
- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (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 there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The non compliance with the 8.5m height control is attributed to the existing floor level and steepness of the site. Variation to this control is permitted under Clause 4.3 (2D) if the proposed breach is minor, the maximum height not exceeding 10m, the objectives of the clause have been met and the building footprint is situated on land with a slope in excess of 16.7 degrees. Though the breach does exceed 10m for a small section of roof all other prerequisites have been met, we feel that strict compliance is both unreasonable and unnecessary.

Strict compliance could be achieved by either lowering the roof pitch or reducing the length of the roof however this would result in less cover to the proposed deck and northeast facing windows, lessening the amenity for the residents.

With no impact from the proposed works or breach in the height control on the amenity of surrounding neighbours in terms of view loss, privacy or increased overshadowing or as none of the works will be visible or impact on public spaces and is consistent with the desired future character of the area there are sufficient environmental planning grounds to justify contravening the development standard.

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.

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:

While the proposal includes some 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, given the geographical characteristics of the site and surrounds. The proposed development will not impact upon the existing and desired streetscape character as the dwelling is sited behind existing dwellings of Riviera Avenue and cannot be seen from the street.

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 unreasonably 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:

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).

7.10 Essential services

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

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	>6.5m	N/A	Yes
Rear building line	6.5m	82m	N/A	Yes
Side building line	E - 2.5m	2.5m	N/A	Yes
	W - 1m	1.8m	N/A	Yes
	S - Merit	0.9m	N/A	Acceptable
Building envelope	E - 3.5m	Outside envelope	1.4%	No
	W - 3.5m	Within envelope	N/A	Yes
Landscaped area	60% (3,208.8m ²)	89.7% (4,795m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
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	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

D1.9 Side and rear building line

The proposed development demonstrates compliance with the side setback requirement of 2.5m to one side and 1.0m to the other side. Due to the irregular shape of the lot, the boundary adjacent to the southwest elevation of the garage is taken to be a side boundary. The garage has a minimum setback of 0.9m to this boundary. It is considered that due to the garage structure being one storey and having a siting similar to that of the existing garage, the proposed setback achieves the outcomes of the control and is acceptable on merit.

D1.11 Building envelope

Description of non-compliance

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

The proposed development encroaches into the side boundary envelope along the southeast elevation to a height of 0.1m, representing a maximum variation of 1.4%.

Where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis. The proposed development is situated on land with a slope of approximately 36.2%.

Merit consideration

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

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

Comment:

The proposed development is considered to be consistent with the desired future character of the Avalon Beach locality.

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

Comment:

The setbacks of the proposed development to the side boundaries assists in mitigating the scale of the dwelling. The proposal includes adequate vegetation in order to screen the built form of the proposed development. The proposed development is generally set below the height of the trees on site and in the locality.

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

Comment:

The proposed development is primarily sited within the footprint of the existing dwelling. The extension of the dwelling towards the northeast is not considered to cause unreasonable impact

to the spatial characteristics of the natural environment. Some areas of excavation are required, but the extent is considered acceptable in the context of the site and locality. The proposal includes comparable setbacks, and bulk and scale to existing and approved developments in the locality. As such, the proposal provides an adequate response and relationship to the spatial characteristics of the existing natural environment.

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

Comment:

As discussed, the proposed development is of comparable building bulk and scale to existing and approved developments in the locality. The proposal demonstrates a compliant setbacks to the northwest and southeast side boundaries. The proposed development appropriately responds to the topography of the land. Existing trees and vegetation are retained that assist in mitigating the bulk and scale of the proposed development.

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

Comment:

The proposed development adequately preserves views and vistas to and from public and private places.

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

Comment:

The proposed development is appropriately designed so as to provide a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites.

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

Comment:

Existing trees and vegetation are retained that assist in mitigating the built form of the proposed development.

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

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 \$6,800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$680,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

The assessment of the proposal against the provisions of P21 DCP has found that the proposed development does not strictly comply with the requirements of the applicable controls related to side

building lines and building envelope.

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 DA2021/2278 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 119 DP 30509, 36 Riviera Avenue, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01	August 2021	Jo Willmore Designs
DA-02	August 2021	Jo Willmore Designs
DA-03	August 2021	Jo Willmore Designs
DA-04	August 2021	Jo Willmore Designs
DA-05	August 2021	Jo Willmore Designs
DA-06	August 2021	Jo Willmore Designs
DA-07	August 2021	Jo Willmore Designs
DA-08	August 2021	Jo Willmore Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
4904H Sheet 1 of 5 Issue A	16/11/2021	Nitma Consulting
4904H Sheet 2 of 5 Issue A	16/11/2021	Nitma Consulting

4904H Sheet 3 of 5 Issue A	16/11/2021	Nitma Consulting
4904H Sheet 4 of 5 Issue A	16/11/2021	Nitma Consulting
4904H Sheet 5 of 5 Issue A	16/11/2021	Nitma Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	07/09/2021	Complete Arborcare
BASIX Certificate No. A423626	01/10/2021	Jo Willmore Designs
Bushfire Risk Assessment	25/08/2021	Bush Fire Planning Services
Geotechnical Assessment (Ref: AG 20259)	25/08/2021	Ascent Geotechnical Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	30/10/2021	Jo Willmore Designs

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	Referral - RFS - DA2021/2278 - 36 Riviera Avenue Avalon Beach	20/12/2021

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site 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 beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewered areas in a manner

- that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$6,800.00 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 \$680,000.00.

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.

7. Security Bond

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

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

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Ascent Geotechnical Consulting, Ref: AG 20259, Dated 25th August 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

10. **Delineation of Asset Protection Zones**

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

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

Reason: To protect native vegetation and wildlife.

11. **Boundary Identification Survey**

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

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

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

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

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT for DEVELOPMENT POLICY and generally in accordance with the concept drainage plans prepared by NITMA Consulting Pty Ltd, Project No. 4904H, Drawing number 1 to 5, ISSUE A, Dated 16th November 2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i) OSD to be provided in accordance with Clause 9.0 of Council's Water Management for Development.
- ii) Dispersion Trench to be at least 3m away from any site boundary
- iii) Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

13. **Vehicle Driveway Gradients**

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

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

Reason: To ensure suitable vehicular access to private property.

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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

15. **Compliance with Standards**

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

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

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

16. **Sydney Water "Tap In"**

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

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

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

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

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

17. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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:

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

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

21. **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.

22. **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.

23. **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.

24. **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, Heritage NSW and the Metropolitan Local Aboriginal Land Council.

Reason: Aboriginal Heritage Protection.

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

25. **New Vegetation Planting**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Final Determination for Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion:

<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Scientific-Committee/Determinations/2013/pittwater-wagstaffe-spotted-gum-forest-nsw-scientific-committee-final-determination.pdf?la=en&hash=95E95CC5FFA86592227BE0A6B42614F597BCE468>

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

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

26. **Clearing for Asset Protection Zones**

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

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

Reason: To protect native vegetation and wildlife.

27. **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.

28. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

The Applicant shall lodge a Legal Documents Authorisation Application (for On-site Stormwater system of main dwelling and for Cabana at rear) 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' final certification and photographic evidence for the completed onsite stormwater detention system works. A guide to the process can be found on Council's website using the following link:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdfforms/legaldocumentsa-on-site-stormwater-detentionsystems/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/pdfforms/legaldocumentsa-on-site-stormwater-detention-systems/4023-legal-documentsauthorisationoct19.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 disposal system is maintained to an appropriate operational standard and not altered.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

32. **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.

33. **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.

34. **Geotechnical Recommendations**

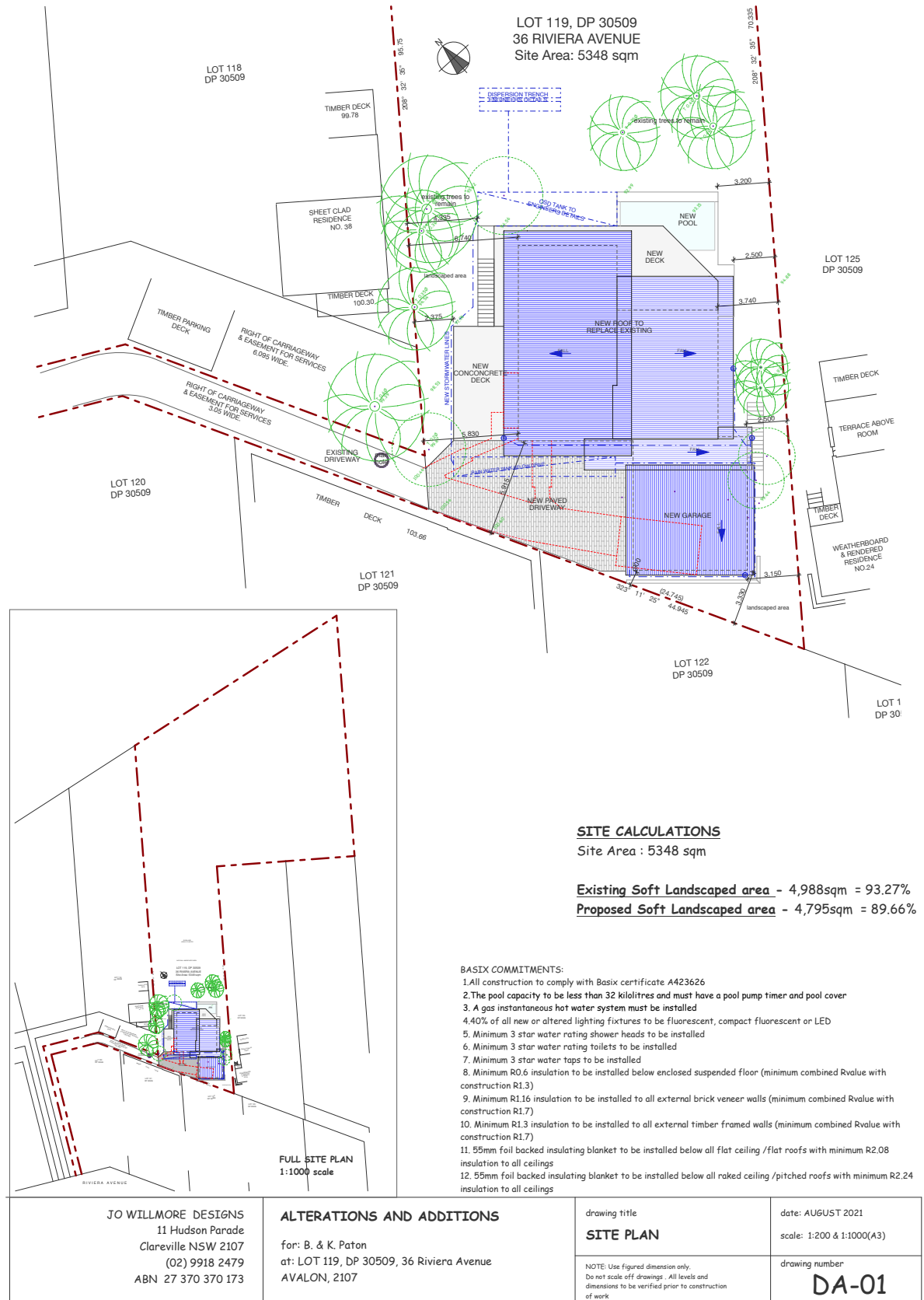
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

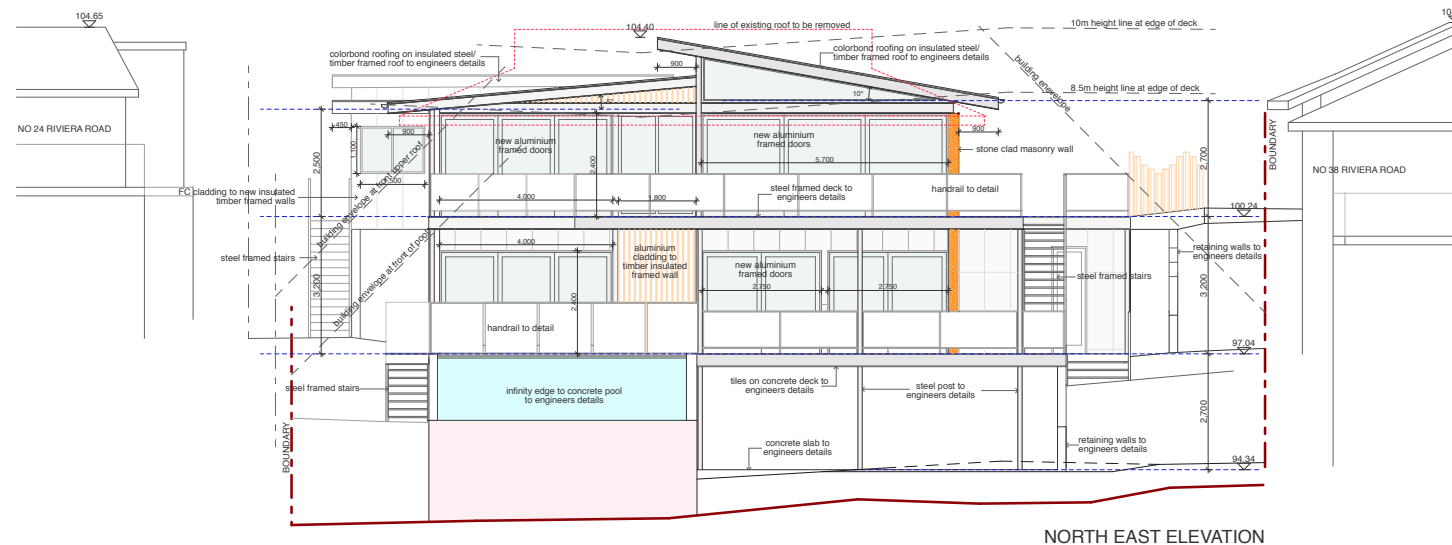
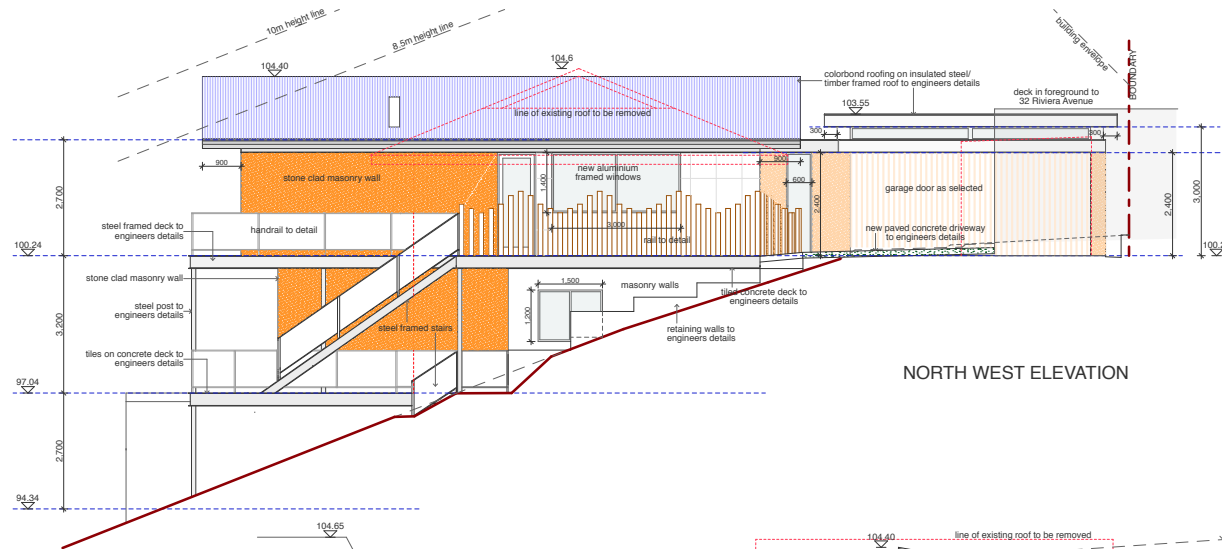
Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Swimming Pool/Spa Motor Noise**

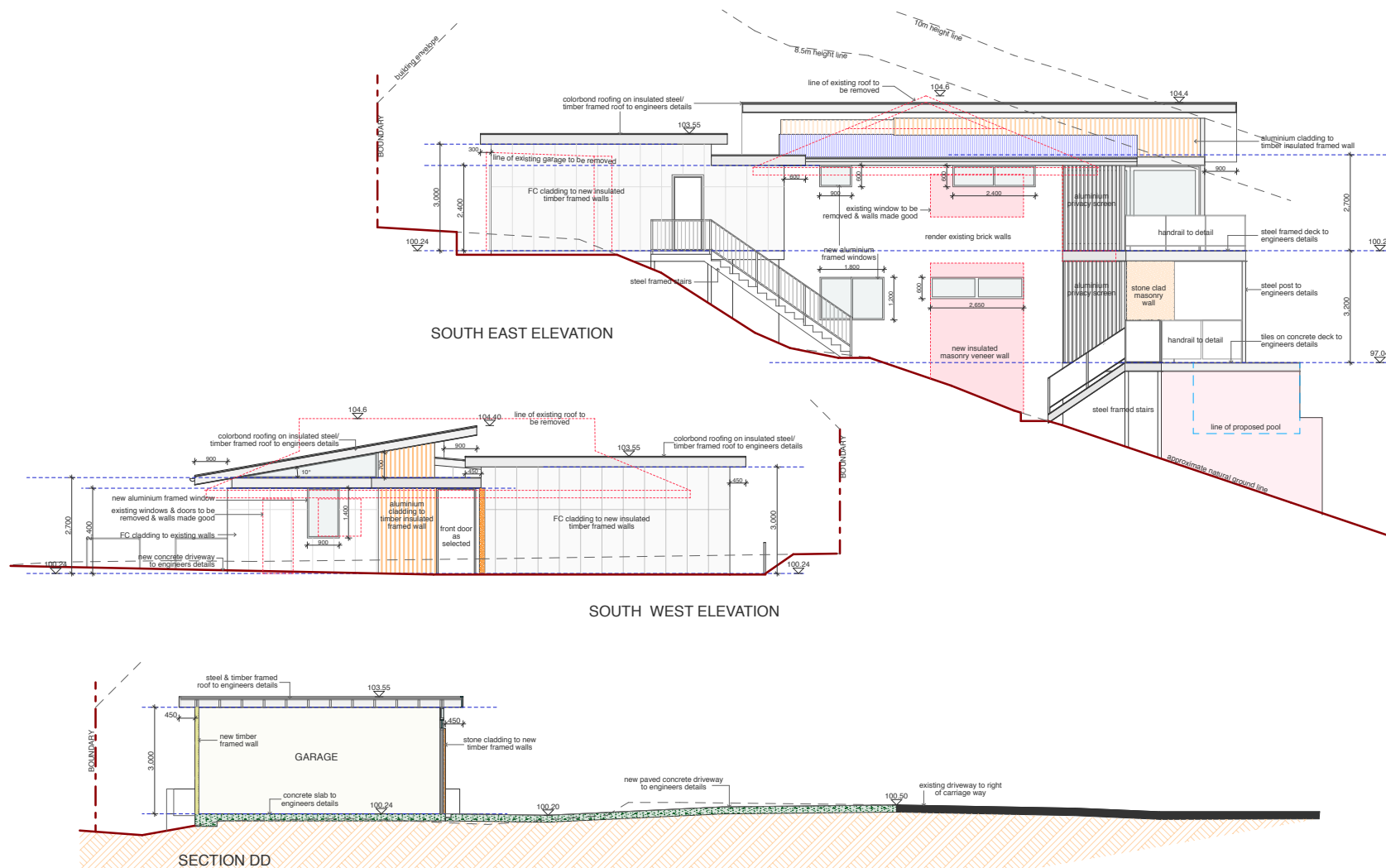
The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

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





<p>AMENDMENTS</p>	<p>JO WILLMORE DESIGNS 11 Hudson Parade Clareville NSW 2107 (02) 9918 2479 ABN 27 370 370 173</p>	<p>ALTERATIONS AND ADDITIONS for: B. & K. Paton at: LOT 119, DP 30509, 36 Riviera Avenue AVALON, 2107</p>	<p>drawing title ELEVATIONS NOTE: Use figured dimension only. Do not scale off drawings. All levels and dimensions to be verified prior to construction of work</p>	<p>date: AUGUST 2021 scale: 1:100 (A3) drawing number DA-05</p>
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**REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS
UNDER
CLAUSE 4.6 PITTWATER COUNCIL LEP 2014**

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APPLICANTS NAME : Jo Willmore Designs

PROPERTY ADDRESS : 36 Riviera Avenue, Avalon

PROPOSED DEVELOPMENT : Alterations and additions to existing house

DATE : 1st November 2021

DEVELOPMENT STANDARD : Clause 4.3 of PLEP 2014 Height Of Buildings

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INTRODUCTION

Pursuant to Clause 4.6 of Pittwater Council Local Environmental Plan 2014 we are seeking approval to vary Clause 4.3 Height of Buildings development standard of Pittwater Council Local Environmental Plan 2014. As required this document forms part of the Development Application and outlines why compliance with Clause 4.3 Height of Buildings is both unreasonable and unnecessary in this circumstance.

PROPOSAL

New works are proposed to the existing house at 36 Riviera Avenue, Avalon. These include alterations and addition to the existing floor including removal of the existing roof and replacing with low pitched skillion and flat roofs, new lower floor level to existing understory, new pool, new decks, new garage and driveway. The home remains a low scale dwelling with the new roof being approximately 200mm lower than the existing. However due to the steepness of the site, which is in excess of 20 degrees, and the realigning of the roof to run southwest to northeast part of the roof will at its northeastern end breach the 8.5m height plane. At its highest point the new roof will be approximately 10.4m above natural ground which is a breach of 1.9m or 22%, though this will only occur for a small length and area of the roof at its north east end with the majority of other works well below the maximum height plane. Pittwater LEP 2014 does provide for a variation within Clause 4.3 for land that is in excess of 16.7

degrees up to a height of 10m. The proposed roof for a very minor section will also breach this 10m control by a maximum of 400mm however as all works comply with all the objectives of the development standard as set out below and with no impact on neighbouring properties amenity or surrounding environment we feel there are sufficient grounds to justify contravening the development standard.



Perspectives illustrating section of roof that exceeds the 8.5m Height Control

DEVELOPMENT STANDARD TO BE VARIED - Clause 4.3 HEIGHT OF BUILDINGS

As per Clause 4.3(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

Maximum height shown on Height of Buildings Map for 36 Riviera Avenue,
Avalon is 8.5m.

However

Clause 4.3(2D) states that 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.*

The maximum height for the proposed works above natural ground is 10.4m. Though this exceeds slightly the variation allowed in roof height as per Clause 4.3 (2D) the proposed breach is minor and occurs for only 1.5m length of the roof. The objectives of the clause have also been met (please see compliance with objectives below) and the building footprint is situated on land with a slope in excess of 16.7 degrees (the slope of land is approximately 20 degrees). The existing house floor level has been maintained and extend slightly with the significant existing understory utilised as a lower level minimising the need for cut and fill providing for a home that can step down the site.

OBJECTIVES of Clause 4.3 Height of Buildings

- (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.*

COMPLIANCE WITH THE OBJECTIVES of Clause 4.3 Height of Buildings

Following outlines full compliance of the proposed works with the objectives of Clause 4.3

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

The proposal including the non compliance is consistent with the desired Character of Avalon Beach locality. It will not alter the use from existing residential, and will result in a two storey dwelling that reflects the scale of neighbouring homes maintaining the low density of the area. The proposed works will not be visible from the street and with significant setbacks to boundaries will have minimal visual impact on neighbouring properties. The inclusion of modulated facades and numerous roof forms which are lower in pitch and well below the maximum allowed building height lessens the scale of the built form and allows for the natural landscape setting to dominate, retaining the landscaped character of the site with the built form all being below the existing tree canopy and blending with the natural environment. The proposed works will maintain a home that is low density, integrated with landscaping and therefore compatible with E4 zoning and the desired future character of the locality.

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

The new roof will be 200mm lower than the existing roof of the house and with the non compliance being minor in scale and at the centre of the house there will no increase to bulk and scale remaining compatible with that of neighbouring homes and well below the existing tree canopy.

(c) to minimise any overshadowing of neighbouring properties

As seen in the submitted shadow diagrams the proposed works will have minimal impact in terms of increased overshadowing of neighbouring properties during midwinter and due to its positioning at the centre of the house the non compliant section of roof will not have any impact on overshadowing of neighbouring properties.

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

As discussed above the realigning of the roof in the opposite direction than the existing and being slightly lower than the existing roof which is below the existing tree canopy results in there being no negative impact on any views presently experienced by neighbouring properties.

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

The position and design of the proposed works is such that no natural landforms will be impacted. The existing building platform is extended slightly with the existing under storey utilised to provide increased floor area and amenity for the residents that minimises any disturbance to existing ground levels and responds sensitively to the natural topography. The works maintain a home that is compatible in scale to neighbouring homes, is below the existing tree canopy and does not dominate the natural environment.

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

The proposed works to the existing house will result in the home having a bulk and scale comparable with neighbouring homes. It is not visible from the street and with all of existing trees to remain the house will be screened from the surrounding area having minimal impact on the natural environment or any heritage/conservation items.

COMPLIANCE WITH CLAUSE 4.6 of PLEP 2014 EXCEPTION TO DEVELOPMENT STANDARDS

Clause 4.6 of PLEP 2014 provides for variation to Clause 4.3 Height of Buildings development standard to be approved

(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.*

Due to the existing slope of the land which is approximately 20 degrees part of the proposed new roof will breach Clause 4.3 Height of Buildings development standard of Pittwater Council Local Environmental Plan 2014 with a height of 10.4m, 1.9m above the maximum height allowed of 8.5m. Variation to this standard will provide for a better outcome to both the occupants and surrounding properties.

(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 Height of Buildings of Pittwater LEP 2014 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.*

The non compliance with the 8.5m height control is attributed to the existing floor level and steepness of the site. Variation to this control is permitted under Clause 4.3 (2D) if the proposed breach is minor, the maximum height not exceeding 10m, the objectives of the clause have been met and the building footprint is situated on land with a slope in excess of 16.7 degrees. Though the breach does exceed 10m for a small section of roof all other prerequisites have been met, we feel that strict compliance is both unreasonable and unnecessary. Strict compliance could be achieved by either lowering the roof pitch or reducing the length of the roof however this would result in less cover to the proposed deck and northeast facing windows, lessening the amenity for the residents. With no impact from the proposed works or breach in the height control on the amenity of surrounding neighbours in terms of view loss, privacy or increased overshadowing or as none of the works will be visible or impact on public spaces and is consistent with the desired future character of the area there are sufficient environmental planning grounds to justify contravening the development standard.

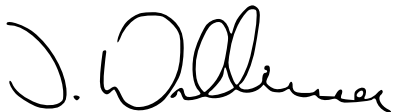
Also-

- (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,*

As set out above all the objectives of the Height of Buildings control have been met and all works are compatible with the Desired future character of Avalon Beach locality.

CONCLUSION

Pursuant to Clause 4.6 we are requesting the variation to clause 4.3 Height of Buildings of Pittwater LEP 2014 as we feel that the proposed works provides a better outcome than a fully compliant proposal. It is our opinion that due to the steep slope of the land and with all objectives of the control being met there are 'sufficient environmental planning grounds' to justify contravening the development standard' and as demonstrated strict compliance with this standard is unreasonable and unnecessary with no impact to the surrounding neighbours and environment from the breach in the control. As such we request a variation to the standard.

SIGNED BY APPLICANT:

ITEM 3.2**DA2021/2139 - 34 A BEATRICE STREET CLONTARF -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER** Phil Lane**TRIM FILE REF** 2022/158007**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 DA2021/2139 for alterations and additions to a dwelling house including a swimming pool on land at Lot 2 DP 201194, 34 A Beatrice Street CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2139
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 2 DP 201194, 34 A Beatrice Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Benjamin Mathew Henshall Naomi Elizabeth Henshall
Applicant:	Naomi Elizabeth Henshall
Application Lodged:	09/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/11/2021 to 03/12/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 36.98%
Recommendation:	Approval
Estimated Cost of Works:	\$ 425,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2021/2139 for alterations and additions to a dwelling house including a swimming pool.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (180.04sqm gross floor area). The proposed development results in a FSR of 0.55:1 (246.61sqm gross floor area), which represents a 36.98% variation to the development standard. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Despite this, the site is an 'undersized allotment' as defined by the Manly DCP 2013 and the overall height and bulk of the proposed development is consistent with surrounding residential development. The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 - Floor Space Ratio of the Manly LEP 2013.

The proposed development involves minor non-compliances with Clause - 4.1.4 Setbacks (front, side and rear) and Building Separation and Clause 4.1.5 - Open Space and Landscaping of the Manly DCP 2013, specifically in relation to the side setback and total open space numeric requirements. However, the minor variations do not result in any unacceptable amenity impacts, specifically with regards to solar access, visual privacy, views and visual bulk.

The site is located approximately 42m to the east of the road reserve and the proposed development will not be discernible from the public domain.

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

Accordingly, it is recommended that the application be approved by the DDP, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house, including a new swimming pool. The works consist of:

Ground Floor

- Demolition of walls along the western façade of the dwelling.
- Demolition of existing doors and windows.
- Demolition of existing main bedroom and family room.
- New main bedroom with a WIR and ensuite.
- New living room.
- New doors and windows along the western façade.
- Deck extension to the west.

First Floor

- Demolition of the internal walls, stairs, kitchen, laundry and bathroom.
- Construction of a new bedroom (bedroom 4), laundry and bathroom.
- New dining room.
- New open plan kitchen and living area, with attached elevated deck on western elevation including privacy screens and solid balustrading.
- Internal staircase to proposed rooftop terrace.
- New gas fire place.

Ancillary Works

- In-ground swimming pool within western yard.
- Associated landscape 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 Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 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 2 DP 201194 , 34 A Beatrice Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment that is accessed via a shared Right of Carriageway from the eastern side of Beatrice Street, Clontarf. The site is located approximately 42m to the east of the Beatrice Street road reserve. The site is irregular in shape with a surveyed area 450.1sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a two storey dwelling house with an integrated double garage.</p> <p>The site contains screen planting around the curtilage of the site and lawn areas within the eastern and western confines,</p>

	<p>in addition to two trees.</p> <p>The site experiences a fall of approximately 2.5m that slopes away from the east towards the west.</p> <p>The subdivision pattern is atypical of the surrounds and the site is undersized in nature.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is largely characterised by low density residential development (i.e. dwelling houses), ranging from 1-3 storeys in height. Balgowlah Heights Public School is located directly to the east (rear) of the site.</p>
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Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent or relevant application.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 1 February 2022.

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

- **Floor Space Ratio Calculation:** The applicant had failed to include storage space on the ground floor within the FSR calculations. The storage area did not constitute 'basement storage' and thus, must be included in the FSR calculations. It was requested that the Clause 4.6 written

request be updated to include the storage space.

- **Privacy Impacts:** Concern was raised of the proposed rooftop terrace with respect to acoustical and visual privacy impacts. In addition, concern was raised with regards to the first floor deck and the lack of privacy measures that would prevent the occupants for overlooking into the southern and western properties.
- **Wall Height non-compliance:** Concern was raised of the wall height non-compliance for the proposed rooftop terrace, given the structure exacerbated the bulk and scale of the proposed development.
- **Fire Place:** The applicant had not clarified whether the proposed fire place was a gas or solid fuel burning device.
- **Swimming Pool:** Concern was raised with regards to the setback of the swimming pool.

Subsequently, the applicant submitted amended plans and additional information which included as follows:

- Revised Clause 4.6 request to include the storage space on the ground floor within the FSR calculations.
- Delete the rooftop terrace in its entirety, which also made the proposal compliant with the Manly DCP 2013 wall height provision.
- Include a 1.2m solid balustrade on the northern and western elevations of the first floor decking, in addition to a 2.2m louvre privacy screen on the southern elevation of the deck.
- Increase the western setback for the swimming pool.
- Confirmation that the fire place is a gas device.
- New BASIX Certificate.

The amended plans result in a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended architectural plans.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/11/2021 to 03/12/2021 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
Landscape Officer	<p>The development application is for alterations and additions to a dwelling, an outdoor deck, a roof terrace and an above ground swimming pool.</p> <p>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):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable, • 4.1.9 Swimming Pools, Spas and Water Features <p>The Statement of Environmental Effects notes that existing landscaping is retained, with minor changes to the landscaping on site to accommodate the proposed swimming pool and this involves removal of existing boundary planting only that are exempt species by height and thus excluded from Council consent. It is noted that the addition to the proposed entry is in proximity to an existing tree that as the height is not over 5 metres. This tree is proposed for retention of the plans however it is noted that the management of this tree is exempt from Council consent due to its current height, and thus no assessment on impact is required. A tall existing tree along the eastern boundary landscape area is noted for retention and conditions shall be imposed for standard tree and vegetation protection.</p> <p>The application plans provide an indication of planting around the proposed pool along the boundaries and conditions of consent shall be imposed.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The application was referred to Ausgrid, who responded stating that a formal assessment is not required.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with this application (see BASIX Certificate No. A426543_02, dated 18 February 2022). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The application was referred to Ausgrid, who responded stating that a formal assessment is not required.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP.

Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.84m	-	Yes
Floor Space Ratio	0.4:1 (180.04sqm GFA)	0.55:1 (246.61sqm GFA)	36.98%	No

Notes:

1. GFA refers to gross floor area.
2. The maximum building height is taken from RL86.91.

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.4:1 (180.04sqm GFA)
Proposed:	0.55:1 (246.61sqm GFA)
Percentage variation to requirement:	36.98% (66.57sqm GFA)

The site is subject to a 0.4:1 FSR development standard. The proposed FSR equates to 0.55:1 (246.61sqm GFA), which does not comply with the development standard.

It is noted that the 0.4:1 FSR requirement is based off an average site area of 750sqm. The site is an

undersized allotment, being 450.1sqm in area. Therefore, when applying the proposed gross floor area of 246.61sqm to an area of 750sqm the proposed FSR would be 0.33:1, which complies with the development standard.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

- *"The area surrounding the subject site is characterised by large two and three storey detached residential dwellings, a number of which have been modernised and renovated. The subject site is also not visible from the streetscape meaning it has no major impact on the bulk and form of the public domain.*
- *The proposed dwelling has been designed to remain consistent with the character of the area, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- *The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).*
- *The proposed dwelling will allow for the provision of a modern floor plan, with ground and first floor living and bedrooms, as well as outdoor living space and off-street parking.*
- *The built form proposed is consistent with other buildings in the locality.*
- *The proposed variation does not result in any unreasonable impacts to neighbouring properties and complies when the small lot variation permitted by the DCP is considered.*
- *The proposed works will not hinder any future development of the lot.*
- *The refurbishment and alterations proposed demonstrates fulfillment of clause 1.3(a), (b), (c) and (g).*
- *The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additions to a dwelling in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*
- *The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.*
- *The development does not require the removal of any significant native vegetation and complies with Council DCP landscape area controls.*
- *The new dwelling proposed, allows for environmental impacts to be minimized, by locating works on an already disturbed residential lot.*
- *The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.*
- *The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It provides the opportunity to work from home in a dedicated home office and utilises existing services, satisfying Cl1.3(b). Accordingly refusal of the development based on this reason would be unreasonable.*
- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report, the development stays almost entirely within its current footprint meaning it is an appropriate environmental planning outcome.*
- *The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain (where it is not easily visible) and there is recent precedent of similar variations being accepted by Council. By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality. The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation".*

Comment:

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

It is agreed that the site is sufficiently separated from Beatrice Street and as a result, the proposed alterations and additions will not be visually imposing within the streetscape.

Furthermore, it is accepted that the site is an undersized allotment and that the resulting two storey build form will remain consistent with the height and bulk of nearby dwelling houses, noting that the locality accommodates a number of two and three storey dwelling houses.

It is also accepted that the FSR non-compliance will not give rise to unreasonable amenity impacts, specifically with regards to privacy, solar access, views and visual bulk. This is discussed later within this report.

Moreover, it is further agreed that the FSR non-compliance will not have an unacceptable impact upon local vegetation, noting that all prescribed trees will be retained.

Overall, it is considered that the proposed additions will enhance the amenity of the building's occupants without detract from the visual qualities of the streetscape or adversely impacting upon the amenity of surrounding properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

Despite the FSR breach, the overall height and bulk of the proposed development is commensurate with surrounding residential development and even of a smaller scale when compared to some nearby dwelling houses that are three storeys in height. Furthermore, the works are separated over 42m from the road reserve and therefore, will not have a detrimental impact upon the streetscape. For these reasons, it is considered that the bulk and scale of the proposed development is consistent with the existing and desired streetscape character.

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

Comment:

The proposal will not be visually prominent when viewed from the streetscape and thus, will not obscure any important landscape and streetscape features.

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

Comment:

The proposed development does not result in the removal of prescribed vegetation. In addition, the additions are appropriately scaled and setback from side boundaries to minimise impacts upon adjacent residential development. Therefore, the development will continue to maintain an appropriate visual relationship with the surrounding built environment.

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

Comment:

The additional gross floor area does not result in unreasonable amenity impacts to adjacent residential properties, specifically with regards to privacy, views, solar access and visual bulk. Furthermore, the works are sufficiently separated from the road reserve and will not preclude the use or enjoyment of the public domain.

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

Comment:

The site is not located within a business zone or local centre.

Zone objectives

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

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

Comment:

The proposal does not alter the residential land use and thus, the development will provide for the housing needs of the community within a low density residential environment.

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

Comment:

The proposal relates to low density residential development.

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

Comment:

The proposal maintained a residential land use.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 450.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 750sqm of site area	1 dwelling on 450.1sqm of site area - existing non-compliance and unchanged	N/A	N/A
	Dwelling Size: minimum 107sqm GFA required (based off 4 bedrooms and	246.61sqm	-	Yes

	2 bedrooms)			
4.1.2.1 Wall Height	West: 6.9m (based on gradient 1:17)	6.18m	-	Yes
	South: 6.9m (based on gradient 1:16)	5.98m	-	Yes
4.1.2.2 Number of Storeys	2 storeys	2 storeys	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.28m	-	Yes
	Pitch: maximum 35 degrees	26 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	N/A	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 2.06m (1/3 of wall height)	4.63m	-	Yes
	South: 1.99m (1/3 of wall height)	1.86m	6.53%	No
	North: 1.8m (1/3 of wall height)	1.56m	13.33%	No
	Windows: no windows within 3m of side boundaries	6x new windows within 3m of side boundaries	up to 38%	No
4.1.4.4 Rear Setbacks	8m	no change	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (270.06sqm) of site area	49.94% (224.8sqm)	16.76%	No
	Open space above ground 25% (56.2sqm) of total open space	0% (0sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (89.92sqm) of open space	91.56% (205.83sqm) of open space	-	Yes
	2 native trees	2 native trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.33m	-	Yes
	Curtilage: 1m from side and rear boundaries	0.7m	30%	No
	Water Line: 1.5m from side and rear boundaries	1m	33.33%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

***Notes:**

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

2. The site does not front Beatrice Street and is accessed via a shared driveway. Therefore, there is no

applicable 'front boundary' setback.

3. As there is no front boundary, the site contains three 'side boundaries' (i.e. north, west and south) and one 'rear boundary' (eastern boundary).

4. The wall heights are measured from the boundaries that adjoin private land (i.e. western and eastern boundaries).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 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	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The following controls are of relevance when considering the proposal's impact upon the privacy of adjacent properties:

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

Comment:

Windows are appropriately positioned and off-set from windows on adjacent properties to mitigate direct overlooking between dwellings. Furthermore, appropriate measures have been incorporated where necessary (i.e. high window sills) to maximise privacy.

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

Comment:

The proposed development includes an elevated balcony setback 4.63m from the western boundary and 1.86m from the southern boundary. The finished floor level of the balcony is elevated approximately 3.2m above the natural ground level. Noting that the balcony is directly accessible from the internal living areas, any direct overlooking occurring from the balcony into adjacent properties would be unreasonable.

It is noted that the southern elevation has been affixed with a 2.2m high privacy screen, which prevents the occupants from overlooking into the new swimming pool area that is currently under construction at No. 30 (southern adjacent site).

Furthermore, a 1.2m high solid balustrade has been included on the western and northern elevations to prevent direct sightlines between the development and western adjacent site (No. 30), particularly when the occupants of the proposal are standing back from the edge of the balcony or occupying the internal living area. The applicant has provided a photo from the western neighbour's private open space looking towards the existing dwelling house at the subject site (refer to Figure 1 below).

Figure 1: sight line back to dwelling house at subject site



As demonstrated above, the existing vegetation obscures the existing dwelling house at the subject site when viewed from the western adjacent site. Whilst vegetation cannot be solely relied upon as a privacy measure, it is considered that the proposed separation, coupled with the 1.2m solid balustrading and dense vegetation, will ensure that a reasonable level of visual privacy is maintained between dwellings.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

See also Noise Guide for Local Government prepared by NSW Department of Environment, Climate Change and Water in 2010.

- a) Consideration must be given to the protection of acoustical privacy in the design and management of development.
- b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.
- c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.

Comment:

Adequate separation has been afforded from the opposing areas of private open space to ensure that a reasonable level of acoustical privacy is maintained. In addition, a condition has been included with this consent limiting all sound producing plant, equipment, machinery or fittings to no more than 5dB (A) above the background level when measured from any property boundary and/or habitable rooms.

Conclusion

Having regard to the above assessment, it is concluded that the proposed development satisfies the prescribed requirements within the control.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation.

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment of 750sqm. Therefore, when applying the proposed gross floor area of 246.61sqm to an area of 750sqm the proposed FSR would be 0.33:1, which complies with the development standard.

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

Description of non-compliance

The control requires development to be setback at least 1/3 of the adjacent wall height from side boundaries. Given the site is situated approximately 42m from the road reserve and accessed via the shared Right of Carriageway, the site does not explicitly have a front boundary. In this regard, eastern boundary has been considered the rear boundary, whilst the northern, southern and western boundaries have been considered as side boundaries.

When applying the 1/3 wall height requirement, the following side setbacks are required:

- West: 2.06m (1/3 of wall height).
- South: 1.99m (1/3 of wall height).
- North: 1.8m (1/3 of wall height).

The proposed development involves the following side setbacks:

- West: 4.63m - complies with the numeric requirement.
- South: 1.86m - does not comply with the numeric requirement.
- North: 1.56m - does not comply with the numeric requirement.

In addition, the control states that windows must not be located within 3m of side boundaries. The proposal includes 6 windows within 3m of side boundaries, which does not meet the prerequisite.

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 works are located over 42m from the road reserve and will not be visually imposing within the streetscape. Notwithstanding, the proposal is appropriately scaled and sited to minimise impacts upon the surrounding built environment. Furthermore, all prescribed trees will be retained and the works comply with the Manly DCP 2013 landscaped area numeric requirement, thereby ensuring an appropriate landscaping outcome for the site. Overall, the proposal meets this objective.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

As discussed earlier within this report, windows and balconies have been appropriately located and incorporate privacy treatments where necessary to ensure that a reasonable level of privacy is maintained between dwellings. In addition, the proposed development does not eliminate more than 1/3 of existing solar access to the private open space on the southern adjacent property (No. 30) and allows windows to living rooms to maintain at least 2 hours of existing sunlight on June 21, which complies with the Manly DCP 2013 solar access provision. It is noted that all north facing windows for the proposal next door at No. 30 that is currently being constructed would experience significant shading on June 21 by the existing dwelling house on the subject site due to the east-west orientation of the allotments.

In regards to views, an examination of the site and the surrounds has concluded that the proposed development will not obstruct significant view lines from nearby private and public land.

Furthermore, given the significant separation from the street edge the proposal will not hinder road visibility.

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

Comment:

Flexibility is afforded in this circumstance as the numeric side setback non-compliances will not result in adverse streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*

- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

There is sufficient landscaped open space within the eastern and western confines of the site which will meet the recreational needs of the occupants. These areas in question also have sufficient dimensions to accommodate for future canopy planting. Furthermore, the works do not result in the removal of prescribed vegetation.

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

Comment:

The site is not bushfire prone.

Conclusion

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 60% (270.06sqm) of the site to consist of total open space (TOS). To be included as TOS, open space areas must not pertain to parking (i.e. driveways and hardstands) and must be at least 3m x 3m in dimension.

The application proposes 49.94% (224.8sqm) of the site as TOS, which fails to meet the numeric requirement.

Merit consideration:

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

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

Comment:

The proposal does not result in the removal of native vegetation on the site. The retention of the native vegetation, coupled with the provision of screen planting around the pool, will ensure an appropriate landscaping outcome for the site.

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

Comment:

The proposal complies with the Manly DCP 2013 landscaped area provision. Furthermore, native vegetation will be enhanced through the provision of the screen planting. Whilst the proposal may not satisfy the numeric requirement for total open space, it is considered that the landscaped open space areas within the eastern and western confines of the site, coupled with the ground floor and first floor decking areas (which are not total open space as they have an area less than 3m x 3m), will provide adequate outdoor open space to meet the recreational needs of the occupants.

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

Comment:

As discussed earlier within this report, the proposed development does not result in unacceptable amenity or streetscape impacts.

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

Comment:

45.73% (205.83sqm) of the site consists of landscaping, which is sufficient in this case due to the undersized allotment. The landscaped areas will assist in water infiltration, in turn decreasing runoff.

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

Comment:

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

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

Comment:

The retention of native trees will ensure that the proposal does not have an adverse impact upon existing wildlife habitat.

Conclusion

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

4.1.9 Swimming Pools, Spas and Water FeaturesDescription of non-compliance

The control requires the swimming pool curtilage to be setback 1m from side/rear boundaries and the water line 1.5m from side/rear boundaries. The swimming pool curtilage is setback 0.7m from the southern boundary and the water line 1m from the southern boundary, which does not satisfy the numeric requirements.

Merit consideration

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.

Comment:

The setback non-compliances do not give rise to adverse amenity impacts to neighbouring properties, specifically with regard to views, solar access and privacy.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.

Comment:

The swimming pool is an in-ground structure and located over 42m from the road reserve. Therefore, the pool will not be visible from the public domain.

Objective 3) To integrate landscaping.

Comment:

The setbacks are sufficient to allow for the integration of screen planting around the southern and western edges of the pool. Council's Landscape Officer has reviewed the application and raised no objections in this regard.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The site is not bushfire prone.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.4.2 Alterations and Additions

The control stipulates that if alterations and additions involve demolition of more than half of the building then the development will be assessed as new work and the controls of this plan will apply to the whole building. In assessing this particular application, it is noted that the proposed development does not demolish more than half of the existing dwelling house and thus, the proposal satisfies the requirement of this control.

Furthermore, a review and of the plans and supporting documentation against the Demolition Planning Principle established in the NSW Land and Environment Court Case of *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187* has concluded that the proposed development has been appropriately categorised as 'alterations and additions'.

4.4.5 Earthworks (Excavation and Filling)

The control states that excavation should not occur within 0.9m of side and rear boundaries. The development involves excavation within 0.9m of the side boundaries to accommodate for the pool, which does not meet this requirement.

Despite this, the excavation works are not significant and would not detract from the amenity of surrounding properties or preclude future development within the locality. Furthermore, the application has been accompanied by a Geotechnical Assessment Report (prepared by Ascent Geotechnical Consulting, dated 6 September 2021)) which concludes that the proposal is acceptable from a geotechnical standpoint.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$4,250 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$425,000.

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 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The proposed development involves alterations and additions to an existing dwelling house including a swimming pool.

The FSR of the proposed development equates to 0.55:1, which represents a 36.98% variation from the FSR Development Standard. Despite this, the proposed development will not result in any unacceptable streetscape or amenity impacts.

When considered on its merits, the proposed development is found to be acceptable and worthy of support.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/2139 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 2 DP 201194, 34 A Beatrice Street, CLONTARF, 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

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Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03 (Revision B)	15 February 2022	Action Plans
DA04 (Revision B)	15 February 2022	Action Plans
DA07 (Revision B)	15 February 2022	Action Plans
DA08 (Revision B)	15 February 2022	Action Plans
DA09 (Revision B)	15 February 2022	Action Plans
DA10 (Revision B)	15 February 2022	Action Plans
DA11 (Revision B)	15 February 2022	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment Ref. AG 21281	6 September 2021	Ascent Geotechnical Consulting
BASIX Certificate No. A426543_02	18 February 2022	Action Plans

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	19 October 2021	Naomi Henshall

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

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

2. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or

demolition work is being carried out, but must be removed when the work has been completed.

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

4. **No Consent for Solid Fuel Burning Fire Place**

No consent is granted for a solid fuel burning fire place. The fire place must be gas operated.

Reason: To minimise impacts upon surrounding properties.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$4,250.00 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 \$425,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **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.

8. **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.

9. **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.

10. **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

11. Tree and Vegetation Protection

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

12. Removing, Handling and Disposing of Asbestos

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);

- 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.

13. **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.

14. **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.

15. **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.

16. **Waste Management During Development**

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

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

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

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

OCCUPATION CERTIFICATE

17. Required Screen Planting

Screen planting shall be planted along the boundaries to the extent of the swimming pool and surrounds as shown on plan DA07 in accordance with the following:

- i) the selected planting is to comprise of native species capable of attaining a height of 3 metres at maturity,
- ii) plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iii) selected planting shall comply with the requirement of Australian Standard AS 1926.1 for a non climbable zone for planting care.

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

Reason: To maintain environmental amenity.

18. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

19. **Geotechnical Recommendations**

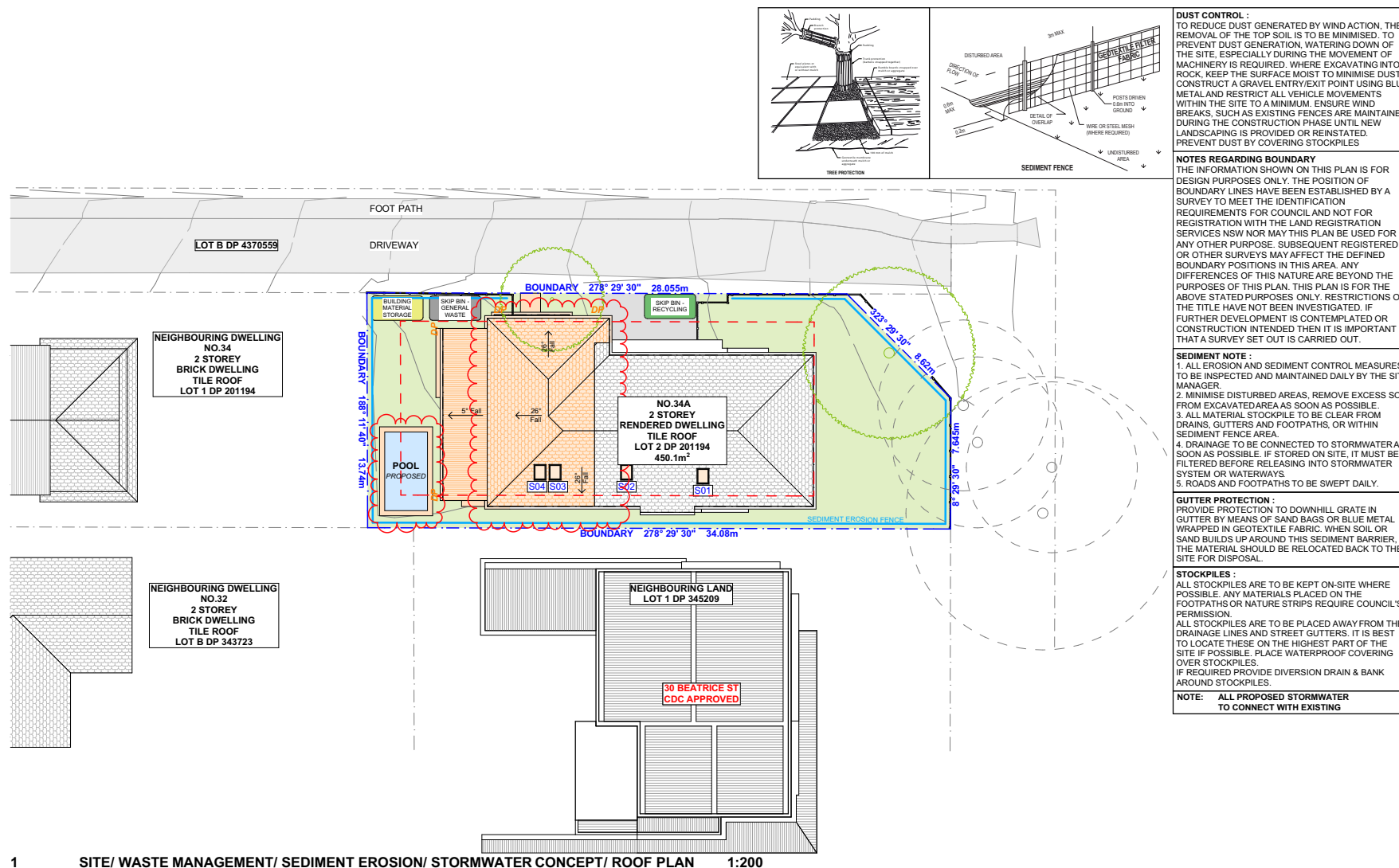
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **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.



1 SITE/ WASTE MANAGEMENT/ SEDIMENT EROSION/ STORMWATER CONCEPT/ ROOF PLAN 1:200



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LEGEND

	EXISTING
	PROPOSED
	DEMOLISHED
	LANDSCAPED AREA
	HARD SURFACE AREA



EX NEIGHBOUR TREE

CLIENT
NAOMI & BEN
HENSHALL

PROJECT ADDRESS
34A BEATRICE
STREET, CLONTARF
NSW 2093

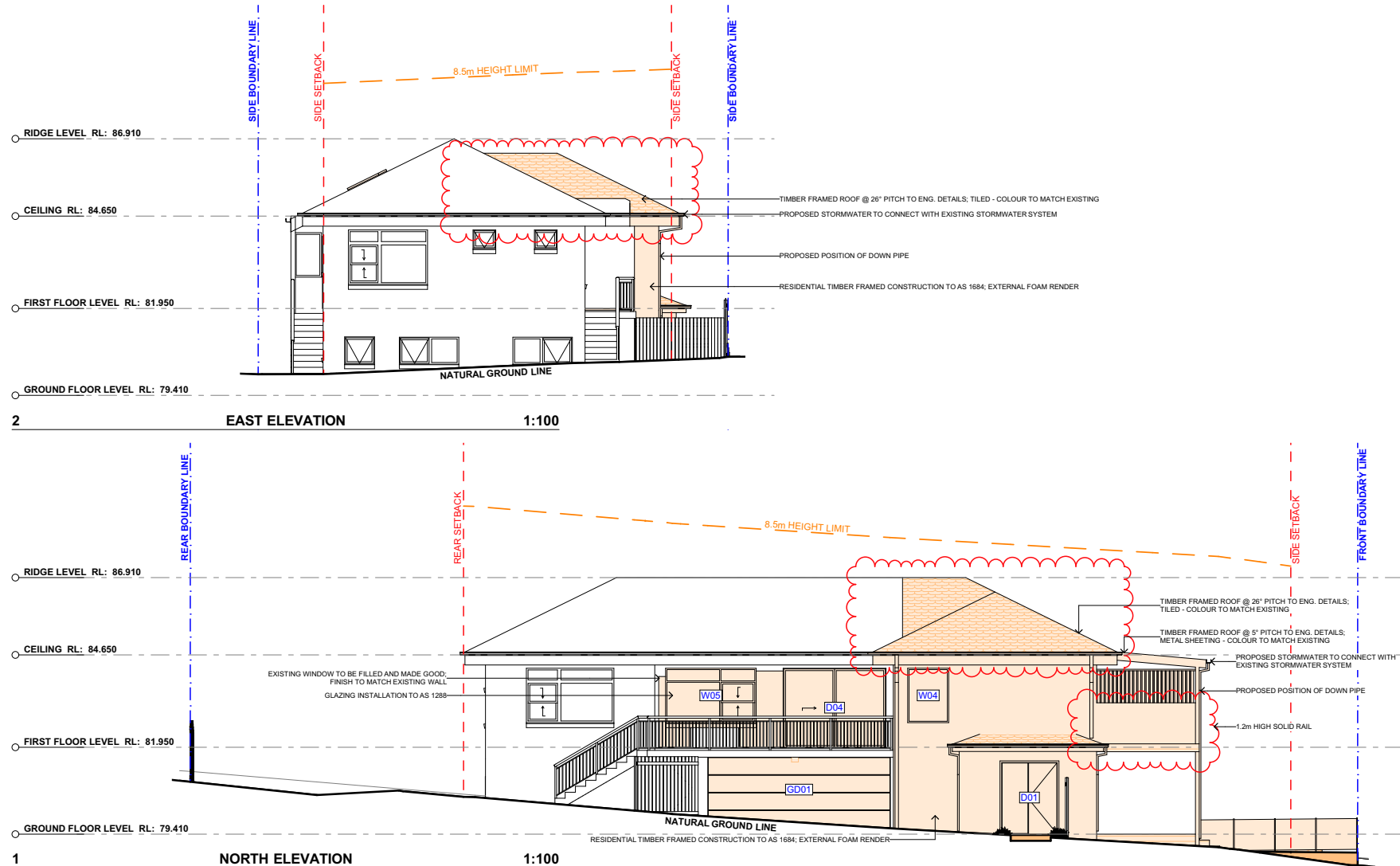
DRAWING NO.
DA04

DATE
Tuesday, 15 February
2022

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION /
WASTE MANAGEMENT /
STORMWATER CONCEPT PLAN

SCALE
1:200 @A3





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LEGEND

NEW FLOOR AREA
 METAL ROOFING
 TILED ROOFING

CONCRETE
 EXISTING
 DEMOLISHED

CLIENT
 NAOMI & BEN
 HENSHALL

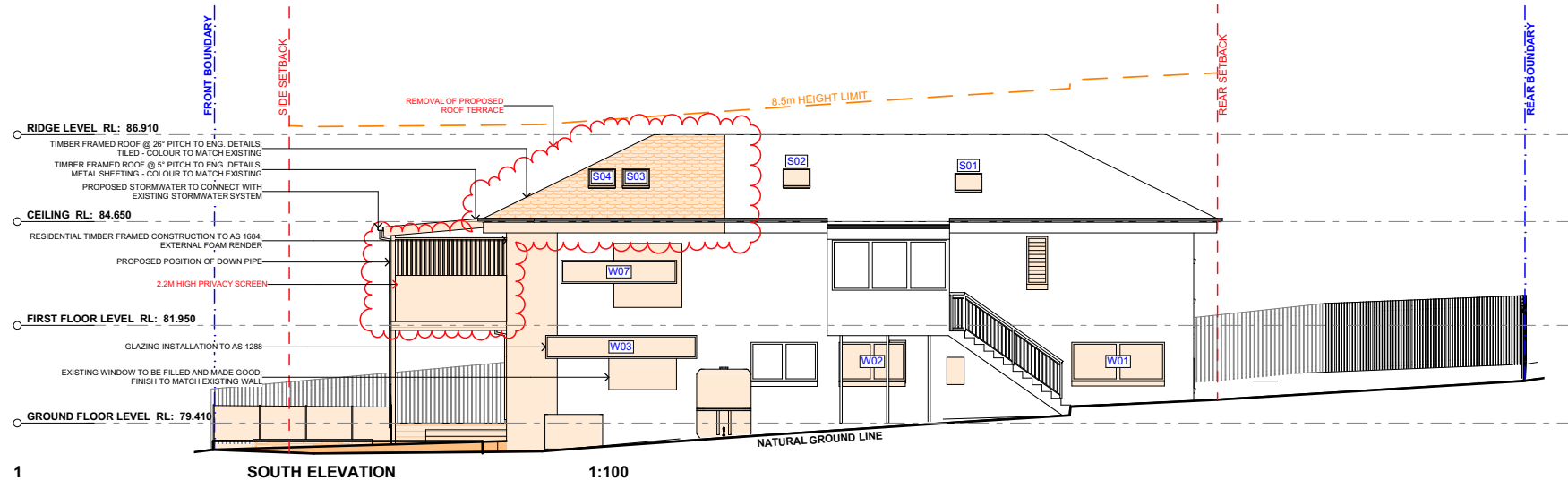
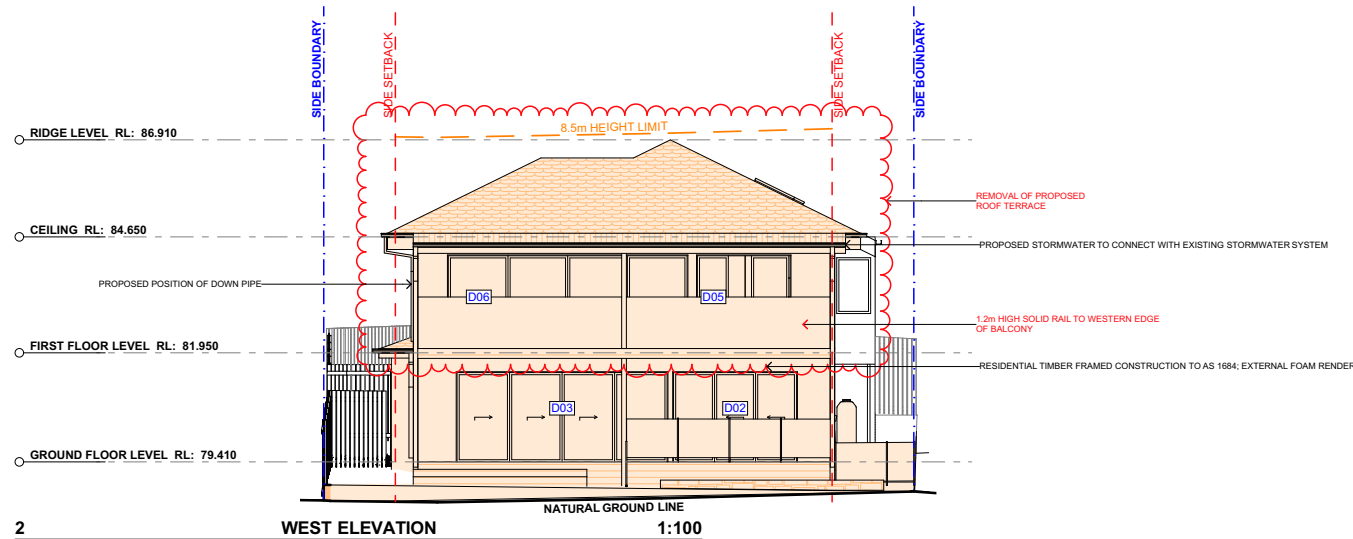
PROJECT ADDRESS
 34A BEATRICE
 STREET, CLONTARF
 NSW 2093

DRAWING NO.
DA09

DATE
 Tuesday, 15 February
 2022

DRAWING NAME
 NORTH / EAST ELEVATION

SCALE
 1:100 @A3



ACTION PLANS

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B	15/02/2022	DA-REV A	RNA	

LEGEND

NEW FLOOR AREA
METAL ROOFING
TILED ROOFING

CONCRETE
EXISTING
DEMOLISHED

CLIENT
NAOMI & BEN
HENSHALL

PROJECT ADDRESS
34A BEATRICE
STREET, CLONTARF
NSW 2093

DRAWING NO.
DA10

DATE
Tuesday, 15 February
2022

DRAWING NAME
SOUTH / WEST ELEVATION

SCALE
1:100 @A3

**Clause 4.6 Exceptions to Development Standards****Floor Space Ratio****34a Beatrice Street, Clontarf**

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

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



The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

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

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

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

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

1. Environmental Planning Instrument Details (Manly LEP 2013)

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

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *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.*

1.4 What is the development standard being varied?

CI 4.4 – Floor Space Ratio

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

CI 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

(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,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

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

The numeric value of the FSR development standard applicable to the subject site is 0.4:1, this equates to a maximum floor area of 180.04m² for the site area of 450.1m².

The Manly DCP permits a GFA, based on a lot size of 750m², for this undersized lot, which equates to a maximum GFA of 300m².

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

The development proposes a maximum floor area of 246.61m² or 0.55:1.

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

The percentage variation sought is 36.9% or 66.57m²

The Manly DCP provides exceptions to floor space ratio for undersized lots. The subject site is an undersized lot, mapped with a minimum lot size of 750m² and comprising an area of 450.1m², as such it qualifies for consideration as an exception.



In this regard the DCP permits an FSR calculation based on a 750m² lot size, which equates to 300m² for the site. As noted above, the proposed gross floor area is 246.61m² and therefore complies with the provision of DCP Clause 4.1.3 with an FSR equivalent to 0.33:1.

NSW Land and Environment Court Case Law

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

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

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

The five ways outlined in *Wehbe* include:

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

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



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

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

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

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

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

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

2.4 Zhang v City of Ryde

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

1. *The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
2. *The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and*
3. *The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances*



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

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

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

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

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

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

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

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

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

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

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

The objectives of the standard are:

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

Comment

The proposed development adopts a modern built form with a bulk and scale consistent with the existing dwelling and other dwellings in the locality.

The proposed variation is reasonable for a small lot at 36.9% or 66.57m² and is considered reasonable given the proposed development does not present with excessive bulk and is of a similar or lesser scale than adjoining properties, and similar to the subject dwelling bulk and size before the proposed development. Lastly, the development is hidden from the public domain meaning it has no major impact on the streetscape. It is considered this objective is met, despite the numerical variation.

(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 built form, setbacks and massing are considered to be consistent with other dwellings in the locality and remain consistent with the existing dwelling. The proposal is appropriately massed and articulated to be compatible with the prevailing streetscape character within the locality (despite not being visible from the public domain) and to minimise any impacts on adjoining properties.

A site visit has been undertaken and it is considered the development will not result in any view loss impacts.

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

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

Comment

The proposed variation does not require the removal or pruning of trees on the subject site or on adjoining properties. The proposed works are largely located on the portion of the lot that is already disturbed and it is considered the built form is consistent with new development in the locality and the existing dwelling. The landscaped area requirements in the DCP are also comfortably met thanks to the development. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment



The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no impact on views, visual privacy or acoustic privacy. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

Not relevant as the subject site is no located in a business zone.

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

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

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

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

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

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

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

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

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



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

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

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

Context

- The area surrounding the subject site is characterised by large two and three storey detached residential dwellings, a number of which have been modernised and renovated. The subject site is also not visible from the streetscape meaning it has no major impact on the bulk and form of the public domain.
- The proposed dwelling has been designed to remain consistent with the character of the area, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:

DA Number	Address	Description	Variation
DA2020/1477	53 Castle Circuit SEAFORTH NSW 2092	Residential - Alterations and additions,	FSR Variation of 20% Control: 0.4:1 (153.28m ²) Proposal: 0.48:1 (283m ²)
DA2020/1487	89 Cutler Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 48.8% Control: 0.4:1 (153.28m²) Proposal: 0.6:1 (228.1m²)
DA2020/1657	18 Baltic Street & 2/18 Baltic Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 16.85% Control: 0.6:1 (601.95m ²) Proposal: 0.7:1 (703.4m ²)
DA2021/0617	37 Radio Avenue BALGOWLAH HEIGHTS NSW 2093	Residential - Alterations and additions	FSR Variation of 11.4% Control: 0.45:1 (227.43m ²) Proposal: 0.5:1 (253.4m ²)
DA2020/1058	23 Parkview Road FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 25.2% Control: 0.6:1 (161.22m ²) Proposal: 0.75:1 (201.8m ²)
DA2020/1372	19 - 21A Addison Road and 15 Oyama Avenue MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 20% Control: 0.6:1 (219.42m ²) Proposal: 0.72:1 (263.04m ²)
DA2020/1419	23 Crescent Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 21% Control: 0.6:1 (129.5m ²) Proposal: 0.75:1 (162.3m ²)



DA2020/1745	92 Addison Road MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 31.67% Control: 0.6:1 (187.98m ²) Proposal: 0.79:1 (246m ²)
DA2020/0702	9 Steinton Street MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 22.5% Control: 0.75:1 (114.225m ²) Proposal: 0.91:1 (140m ²)
DA2020/0821	32 Beatrice Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 50.6% Control: 0.4:1 (230.28m ²) Proposal: 0.6:1 (347m ²)
DA2019/1463	95 Gurney Crescent SEAFORTH NSW 2092	Residential - Alterations and additions	FSR Variation of 59.4% Control: 0.4:1 (237.8m ²) Proposal: 0.63:1 (379m ²)
DA2020/0612	19 Sandy Bay Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 80% Control: 0.4:1 (111.6m²) Proposal: 0.72:1 (201m²)
DA123/2015	2 Moore Street CLONTARF NSW 2093	New dwelling	FSR Variation of 29.2% Control: 0.4:1 Proposal: 0.53:1
DA2019/0506	19 Moore Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 8% Control: 0.4:1 (196.2m ²) Proposal: 0.43:1
DA123/2017	88 Cutler Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 68.7% Control: 0.4:1 (145.2m²) Proposal: 0.67:1 (245m²)
DA2018/2004	92 Cutler Road, CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 12.5% Control: 0.4:1 Proposal: 0.45:1

- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed dwelling will allow for the provision of a modern floor plan, with ground and first floor living and bedrooms, as well as outdoor living space and off-street parking.
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality,
- The proposed variation is does not result in any unreasonable impacts to neighbouring properties and complies when the small lot variation permitted by the DCP is considered.
- The proposed works will not hinder any future development of the lot.
- The refurbishment and alterations proposed demonstrates fulfillment of clause 1.3(a), (b), (c) and (g).

**Consistent with Zone Objectives**

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

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any significant native vegetation and complies with Council DCP landscape area controls.
- The new dwelling proposed, allows for environmental impacts to be minimized, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It provides the opportunity to work from home in a dedicated home office and utilises existing services, satisfying Cl 1.3(b). Accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report, the development stays almost entirely within its current footprint meaning it is an appropriate environmental planning outcome.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain (where it is not easily visible) and there is recent precedent of similar variations being accepted by Council.



By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

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

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

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

Zone – R2 Low Density Residential

Objectives of zone

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

Consistent. The proposal is for partial demolition of the existing dwelling, alterations and additions to a dwelling house and a swimming pool.

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

Not relevant. The proposal is for a residential dwelling.

Despite the proposal seeking an exception to the floor space ratio clause, the bulk and scale of the building will have minimal effects as it represents reasonable exceedance for a small lot and is consistent with surrounding development.

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

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

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

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



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

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

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

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

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

Strict numerical compliance with the 0.4:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper*



construction and maintenance of buildings, including the protection of the health and safety of their occupants.

The proposed development for partial demolition of the existing dwelling and the construction of a new dwelling and swimming pool, on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to CI 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The works proposed will allow for a modern dwelling, to meet the housing needs of the residents, including an opportunity to work from home, in their current community,
- The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

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

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.3**DA2021/0900 - 40 SUNRISE ROAD PALM BEACH -
CONSTRUCTION OF A DWELLING HOUSE INCLUDING A
SWIMMING POOL AND SPA**

REPORTING MANAGER Steven Findlay
TRIM FILE REF 2022/158454
ATTACHMENTS 1 [↓](#) Assessment Report
2 [↓](#) Site Plans and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/0900 for construction of a dwelling house including a swimming pool and spa on land at Lot 151 DP 6937, 40 Sunrise Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0900
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 151 DP 6937, 40 Sunrise Road PALM BEACH NSW 2108
Proposed Development:	Construction of a dwelling house including a swimming pool and spa
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 Elizabeth Rothwell
Applicant:	Susan Rothwell Architects
Application Lodged:	01/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	23/11/2021 to 07/12/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,760,000.00

EXECUTIVE SUMMARY

The development application is for the construction of a three (3) level dwelling house, including a swimming pool and spa on a vacant residential parcel of land. The application is referred to the Development Determination Panel due to the estimated cost of construction being over \$1 million and there being three (3) objections.

Following notification and preliminary assessment of the proposal, concerns with the proposal were raised with the applicant, including height, character, views, building envelope, landscaping, privacy, front setback, scenic protection, tree removal, stormwater and insufficient/inconsistent documentation. Amended plans and additional information were submitted in response. The assessment of this application is based on the amended plans.

A total of three (3) submissions were made in response to the original notification and one (1) was made to the notification of the amended plans. These submissions raised numerous concerns with the proposal. The principle issues that were raised in the submissions were concerned with the height, bulk, scale and visual impact of the proposal; amenity issues regarding privacy, noise and views and non-compliance with built form controls including height, building envelope, front and side building lines.

Overall, it is considered that the design and appearance of the proposed dwelling (as amended) is consistent with the sloping topography and the surrounding newer residential dwelling houses located on Sunrise Road and wider locale. The application is accompanied by an Arboricultural Impact Assessment and Biodiversity Development Assessment Report which address the proposed tree removal and associated impact on biodiversity. These reports have been reviewed by the relevant experts in Council who are satisfied that the issues can be managed, subject to their recommended conditions and compliance with the relevant expert reports which include replacement planting. Potential amenity issues to surrounding neighbours have been reviewed under Council's Policies and have been determined to be reasonable within a residential environment (subject to recommended conditions).

The proposed development has the appearance of being two storey as viewed from Sunrise Road, steps down the site and is within the required 10.0m height variation for sloping sites under the PLEP 2014. The proposed development is set below the general tree canopy height, is in keeping with that of other properties along Sunrise Road, many of which are three stories in height, and includes building modulation to minimise bulk. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposed variations to the Built Form Controls under the Pittwater 21 DCP are supported for the reasons discussed in detail in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

Accordingly, it is recommended that the application be approved subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the construction of a new three (3) level dwelling-house, including a swimming pool and spa on a vacant site.

The proposal consists of:

First Floor Level

- Bed 1 & Bed 2 (with individual ensuites)
- Terrace Balcony
- Lift access

Ground Floor Level

- Open Kitchen, Living and Dining Plan with Terrace balcony
- Double Garage

- Lift access
- Entry porch

Lower Ground Floor Level

- Bed 3 – 7 (with individual ensuites)
- Rumpus room
- Cinema
- Laundry
- Lift Access

External Works

- New pool and Spa
- Courtyard and terracing
- Landscaping works
- Excavation and fill works
- Retaining walls
- Stormwater infrastructure

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 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

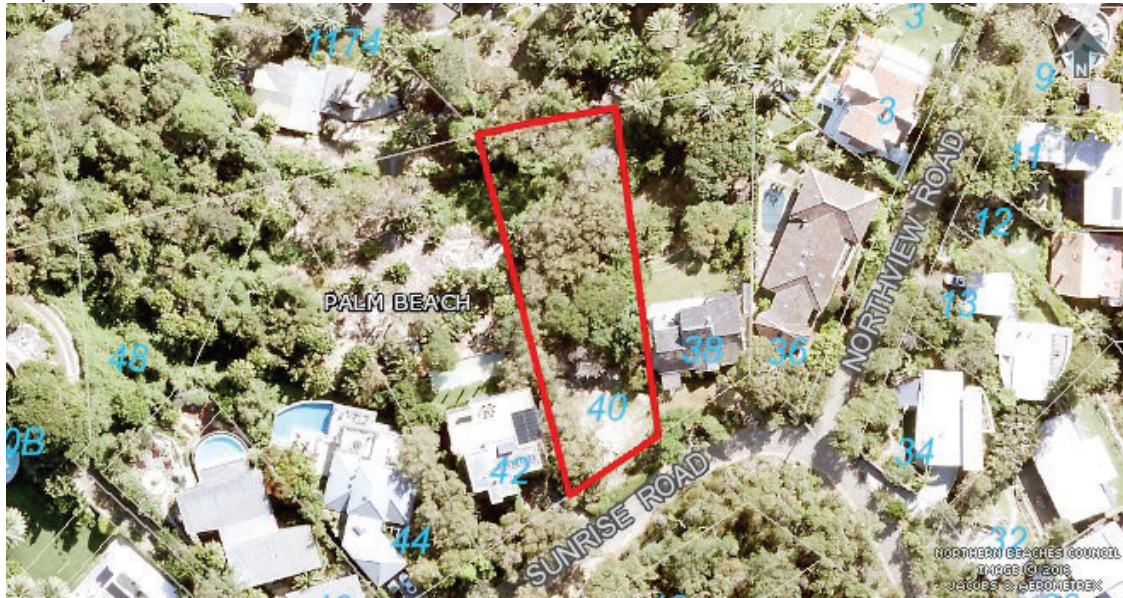
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites
Pittwater 21 Development Control Plan - B1.4 Aboriginal Heritage Significance
Pittwater 21 Development Control Plan - B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor
Pittwater 21 Development Control Plan - B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
Pittwater 21 Development Control Plan - B6.7 Transport and Traffic Management
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.13 Pollution Control
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas
Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 151 DP 6937 , 40 Sunrise Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Sunrise Road</p> <p>The site is irregular in shape with a frontage of 20.42m along Sunrise Road and a depth of 71.09m. The site has a surveyed area of 1528m².</p> <p>The site is located within the C4 Environmental Living zone and is currently vacant.</p> <p>The site has a crossfall of approximately 28m from the south (street frontage) to the north (rear) .</p> <p>Numerous native and non-native trees and vegetation is located on the site. The rear of the site is densely vegetated. Rock outcrops are located throughout the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two, three and four storey dwelling houses of varying architectural styles. Sunrise reserve is located to the south of the site.</p>

The site adjoins two heritage items "Villa D'este' (house) - 3 Northview Road Palm Beach and C6 Sunrise Hill Heritage Conservation Area - Sunrise Road

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:

N0094/12 - Development Application for the demolition of the existing dwelling - Approved 05/09/2012

APPLICATION HISTORY

15 September 2021

Council wrote to the applicant, raising concerns in relation to:

- Height non-compliance
- Palm Beach Locality
- Landscaping
- Views
- Privacy
- Character as viewed from a public place
- Front building line
- Building envelope
- Insufficient documentation

09 November 2021

Amended plans and additional information were submitted to address Council's concerns.

18 November 2021

Amended plans were re-notified to the original list of residents and those who made a submission.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and updated reports.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/11/2021 to 07/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Lance Doyle	3A Kendall Road CASTLE COVE NSW 2069

Name:	Address:
The Palm Beach & Whale Beach Association Inc	Palm Beach/Whale Beach Areas AB Dummy For Daba Notification WARRIEWOOD NSW 2102
Richard West	87 Florida Road PALM BEACH NSW 2108
Doyle Consulting Group	3A Kendall Road CASTLE COVE NSW 2069

The following issues were raised in the submissions:

- **Building Height**
- **View Loss**
- **Size, bulk, and visual impact of proposed development**
- **Non-compliance with DCP Controls – Building Envelope, Front and Side Building Line**
- **Number of Storeys**
- **Privacy**
- **Proximity of proposed pool**
- **Retaining Wall Height**
- **Impact of proposed fire place**
- **Amenity impact of plant and equipment**
- **Landscaping around pool**

The above issues are addressed as follows:

- **Building Height**

The submissions raised concerns that the proposed height of the development and the the proposal does not meet the stipulated height requirement.

Comment:

Following this submission, amended plans were received which reduced the height of the proposed development to under 10.0m. This matter has been addressed within section 4.3 *Height of buildings* of this report. In summary, the proposed development (as amended) is considered to meet the requirements of Clause 2D of Clause 4.3, which permits the 10.0m height standard for this development.

- **View Loss**

The submissions raised concerns that the proposal would result in unreasonable view loss from the public realm and from the adjoining property to the east (No.38 Sunrise Road)

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 View Sharing of the P21 DCP. The requirements of this clause and the view sharing principles of *Tenacity Consulting vs Warringah Council [2004] NSWLEC 140* and *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

- **Size, bulk, and visual impact of proposed development**

The submissions raised concerns regarding the bulk and scale of the proposal and the associated visual impact. Particular concern was raised by the neighbour to the east (No. 38 Sunrise Road) with regards to the bulk and visual impact of the eastern elevation of the proposed dwelling and the pool.

Comment:

During the assessment of this application, amended plans were received which reduced the height, increased side and front setbacks, reduced the building envelope breach, reduced the extent of terracing and introduced additional landscaping to the proposal.

The proposed dwelling (as amended) is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being a two storey building when viewed from street and "human scale". The design and appearance of the proposed dwelling is consistent with the sloping topography of the site and newer surrounding residential dwelling houses located on Sunrise Road. The proposed dwelling steps with the fall of the land and is predominantly below the required 8.5m height requirement and is within the required 10.0m height control applying to sloping sites. Furthermore, the height and scale of the proposed dwelling is in keeping with that of other properties along Sunrise Road, many of which are three stories in height (see No.42; No.44 and No.46). Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape, when viewed from the street and the waterway.

- **Non-compliance with DCP Controls – Building Envelope, Front and Side Building Line**

Comment:

During the assessment of this application, amended plans were received which increased the side and front setbacks and reduced the building envelope non-compliance.

For each of the numerical non-compliances, a merit assessment has been carried out against the objectives of that control. The assessment has found that the proposed non-compliances are reasonable (subject to conditions).

- **Number of Storeys**

The submissions raised concerns that 3 storey development is not permitted on the subject site.

Comment:

The proposed development consists of part a two/part three storey dwelling house, where the locality calls for two storey development.

The proposed dwelling is considered appropriate in the context of the site, in that the subject site slopes away from the street, with the proposed development having the appearance of being two storey and "human scale" as viewed from Sunrise Road. The design and appearance of the proposed dwelling will be consistent with the sloping topography and newer surrounding residential dwelling houses located on Sunrise Road. The proposed dwelling steps with the fall of the land and is predominantly below the required 8.5m height requirement and is within the required 10.0m height variation for sloping sites. Furthermore, the height and scale of the proposed dwelling is in keeping with that of other properties along Sunrise Road, many of which are three stories in height (see No.42; No.44 and No.46).

- **Privacy**

A submission was received on behalf of the neighbour to the east (No. 38 Sunrise Road) with regards to visual and acoustic privacy impacts. The initial submission raised particular concern with the upper level terrace and the location of the proposed pool. Following this submission, amended plans were received which substantially reduced the size of the upper level terrace and set the pool and spa away from the eastern side boundary to incorporate screen planting.

Following the notification of the amended plans, a further submission was raised on behalf of the neighbour to the east (No. 38 Sunrise Road) with regards to visual privacy from the upper level terrace, requesting the provision of planter boxes with vegetation a minimum of 1.4 metres in height above the finished floor level along the eastern periphery of the upper level deck.

The terrace (Terrace 1) floor level is RL62.4 and the head height of adjoining windows of No.38 Sunrise Road is RL61.63. As such, this terrace would be appropriately offset from these adjoining windows. In order to prevent downward overlooking into adjoining windows, it is recommended a condition be imposed for the balustrading on the eastern elevation of this terrace to be solid or obscure glazed. In addition, this terrace would serve bedrooms which are not considered high usage areas. Given the orientation and height of this terrace, the proposal is not considered to give rise to unacceptable privacy impacts to this neighbour (subject to conditions). Given the dense urban environment of this area of Palm Beach, it is considered that it is an unreasonable expectation that complete privacy can be maintained between dwellings.

The proposed development (as amended) is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section C1.5 Visual Privacy of the P21 DCP. In summary, the proposal results in reasonable levels of privacy to adjoining properties (subject to recommended conditions).

- **Proximity of proposed pool**

A submission was raised on behalf of the neighbour to the east (No. 38 Sunrise Road) with regards to the proximity of the proposed pool to the eastern boundary and lack of screen landscaping between the pool and the eastern boundary.

Comment:

Following this submission, amended plans were received which increased the side setback of the pool to 4.5m from the eastern side boundary and introduced suitable screen planting to assist in the mitigation of bulk and privacy impacts.

- **Retaining Wall Height**

A submission was raised on behalf of the neighbour to the east (No. 38 Sunrise Road) with regards to the height of the proposed retaining wall adjacent to the eastern boundary requested that this wall be no higher than 300mm above the finished ground level at any point.

Comment:

The retaining wall has been designed to allow light and ventilation to the lower ground floor windows and is considered acceptable in this instance. Suitable conditions have been imposed to ensure the structural adequacy of this retaining wall. In order to ensure that there are no adverse impacts on the adjoining neighbours during excavation, conditions have been imposed which ensure structural adequacy of landfill and excavation work; ensure the recommendations of the Geotechnical report are adhered; and require the preparation of pre and post construction dilapidation reports for adjoining properties.

- **Impact of proposed fire place**

Concern was raised with regards to the amenity impact of the proposed fire place.

Comment:

Council's Environmental Health Department have reviewed the proposed fire place and have raised the following comments:

Environmental Health note the gas fireplace marked in the plans and offer the recommendation of approval without conditions. Unlike solid fuel heaters, gas fireplaces do not create smoke nuisances and therefore aren't subject to the same emission control standards.

As such, the proposed gas fireplace is considered acceptable. A condition is imposed to ensure that no approval is granted for the installation of a solid/fuel burning heater.

- **Amenity impact of plant and equipment**

The submissions raised concerns with regards to potential acoustic impacts of air-conditioning and plant equipment.

Comment:

In this regard, conditions are imposed to ensure that any plant equipment does not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

- **Landscaping around pool**

"Landscaping of the pool in the rear yard area is a very important consideration for both the applicant and my clients as the issue of privacy to and from the proposed pool is an important consideration. We would like to ensure that the proposed landscaping between the pool and my clients living areas is of sufficient height to overcome any potential privacy impacts but not of a height that would block views from my clients areas of principle open space."

Comment:

It is considered that this planting would assist with maintenance of privacy and would not result in unreasonable view loss. The proposal has been reviewed by Council's Landscape Officer who has raised no objection to the proposal. Appropriate conditions are imposed to ensure compliance with the landscape plan and ongoing landscape maintenance.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>Environmental Health note the gas fireplace marked in the plans and offer the recommendation of approval without conditions. Unlike solid fuel heaters, gas fireplaces do not create smoke nuisances and therefore aren't subject to the same emission control standards.</p>

Internal Referral Body	Comments
	<p>Recommendation</p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>Further comments: An updated Arboricultural Impact Appraisal and Method Statement dated 4 February 2022 is submitted and is reviewed.</p> <p>Updated comments: A arboricultural investigation titled Tree Impact Statement for existing tree 3 (Paperbark) is submitted providing evidence that the tree is advised for removal regardless of development works as tree 3 has had "a major failure, ... with a large cavity at the base ... and the structure of the tree has been severely compromised ... and the strong recommendation is that this tree be removed and replaced."</p> <p>With removal of tree 3 (Paperbark) within the frontage of the site, the Landscape Plan outcome shall be improved by conditions imposed for replacement tree planting within the front setback in accordance with Pittwater 21 DCP control C1.1 Landscaping, requiring two canopy trees within the frontage, of which at one shall be a replacement Cheese Tree.</p> <p>In total eight existing locally native Paperbark trees are preserved to the rear of the property, seven prescribed trees (ie. protected by the DCP and requiring Council consent) require removal based on development impacts, and thirteen exempt species by either height or by species type and not requiring Council consent are proposed for removal. No impacts are assessed in the Arboricultural Impact Appraisal and Method Statement dated 9 December 2020 upon existing trees and vegetation within adjoining properties.</p> <p>Tree protection measures as recommended in the Arboricultural Impact Appraisal and Method Statement shall be adhered to, including the engagement of a Project Arborist.</p> <p>Subject to conditions of consent for tree protection, and the completion of landscape works as imposed by conditions, Landscape Referral raise no concerns.</p> <p>Previous comments: The application is for the construction of a new dwelling.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality

Internal Referral Body	Comments
	<p>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.</p> <p>A Landscape Plan and a Arboricultural Impact Assessment is provided. The Landscape Plan identifies existing trees to be retained and removed and provides additional landscape treatment to the frontage of the site, with the rear to be retained in its natural landscape state.</p> <p>The Arboricultural Impact Assessment report recommended removal of three (3) high retention value trees without any detailed information or justification for removal. It is considered that trees identified as number 4 (Paperbark) and 18 (Cheese Tree) are impacted by the development with no opportunity for retention. However detailed information is required to justify removal of tree 3 (Paperbark) as its location within the frontage provides streetscape appeal and satisfies the landscape outcomes of E4 zone and the DCP controls B4.22 and C1.1.</p> <p>It is considered that a design alternative is available to retain this tree including retention of the existing ground levels and realignment of proposed retaining walls to ensure the structural root zone is not impacted and any encroachment into the tree protection zone is managed, including pier and beam construction if required. Given the existing slope it may be assessed that the majority of tree roots are found upslope. The Arboricultural Impact Assessment report does not provide arboricultural investigation to support tree removal and a sensitive tree root investigation may reveal accurate information to justify any proposed removal. The site plans additionally do not co-ordinate the location of tree 3 Paperbark against the proposal.</p> <p>Landscape Referral are unable to continue the assessment until detailed information is provided.</p>
NECC (Bushland and Biodiversity)	<p>Updated Biodiversity Comments</p> <p>It is noted that a Tree Impact Statement (Naturally Trees, October 2021) was submitted as additional information for investigations into Tree 3. The Arborist has recommended the removal of Tree 3 due to concerns on the structural health of the tree. As such, the Landscape Plan is to be amended to include replacement canopy trees within the site as per Council's Landscape Referral teams comments.</p> <p>Subject to conditions, including amendments to the landscape plan, Council's Biodiversity referrals team raise no objection</p> <p>Previous Biodiversity Comments</p> <p>Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity</p>

Internal Referral Body	Comments
NECC (Development	<p>related controls:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>The Development Application seeks consent for the construction of a new two-storey dwelling with basement level, including a pool and attached garage.</p> <p>It is noted that the following biodiversity related reports/documentation were reviewed as part of this assessment:</p> <ul style="list-style-type: none"> • Arboricultural Impact Appraisal and Method Statement (Naturally Trees, December 2020) • Flora and Fauna Surveys and Biodiversity Impact Assessment (ACS Environmental, January 2021) • Landscape Plan (Susan Rothwell Architects, June 2021) <p>The Biodiversity Impact Assessment confirmed that the proposal does not trigger the Biodiversity Offset Scheme (BOS) and thus a Biodiversity Development Assessment Report (BDAR) is not required. No threatened species or entities listed under the BC Act were confirmed on site, and after conducting a likelihood of occurrence for threatened species identified within BioNet, no 5-part tests were undertaken.</p> <p>The Arborist Report identified that six (6) native prescribed trees will require removal to facilitate the proposed development. It is recommended that Tree 3 (<i>Melaleuca quinquenervia</i>) be retained as it is located outside the development footprint. Loss of native tree removal will be mitigated through replacement plantings at a 1:1 ratio to ensure that no net loss in native canopy trees is achieved in accordance with P21DCP cl. B4.2. Replacement trees are to be included in the Landscape Plan.</p> <p>The Landscape Plan currently does not achieve compliance with P21DCP cl. B4.2 which requires that development ensure that at least 80% of any new planting incorporates native vegetation. Species are to be selected from Council's Native Plant Species Guide - Pittwater Ward which is available on Council's website (https://www.northernbeaches.nsw.gov.au/node/34932).</p> <p>Subject to these conditions of consent, Council's Biodiversity referrals team are satisfied that the proposed development complies with the controls listed above.</p>

Internal Referral Body	Comments
Engineering)	<p>The stormwater plans proposes to discharge stormwater, via a private drainage easement, to a council pit located on the low side of Barrenjoey Road. As this requires crossing a state road concurrence from TfNSW is required prior to approval.</p> <p>Review 29/11/2021 The stormwater management plan by Acor Consultants dated 7/6/2021 proposes an interallotment easement along the northern boundary of No 1174 Barrenjoey Rd to connect to the Council system in Barrenjoey Road. However there is a previous approval for a stormwater system for the development at 1174 Barrenjoey Rd (Lot 2) with a pipeline and an underground OSD system along the northern boundary. Correspondence from the applicant suggest the proposal is to connect to the approved system once constructed. The issues with this proposal is as follows:</p> <ol style="list-style-type: none"> 1. The proposed private interallotment easement as per the current stormwater plan for 40 Sunrise Rd conflicts with the existing approval for 1174 Barrenjoey Road. The current plans does not appear to have considered the approved system. Due to the narrow area of Lot 2, along the northern boundary, there does not appear to be enough room for both an easement and private drainage system for Lot 2. 2. The interallotment drainage line must be separate from the private drainage for 1174 Barrenjoey Rd and cannot pass through the private OSD system. 3. The private connection across Barrenjoey Road is not supported. If the proposal involves the connection to the council system on the western side of Barrenjoey Rd, then the applicant shall extend the council system via a new pit and pipe connection across Barrenjoey Road. The Private line can connect to the new pit on the eastern side of Barrenjoey Rd. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • <i>Stormwater drainage for the development in accordance with clause B5.15 Stormwater.</i> <p>Additional Information Provided on 17/12/2021 The amended stormwater plans showing the interallotment drainage line via No 1178 Barrenjoey Rd and the extension of the council system to the eastern side of Barrenjoey Rd is satisfactory. The proposed drainage works across Barrenjoey Rd are subject to TfNSW approval as conditioned. No objections to approval subject to conditions as recommended.</p>
NECC (Water Management)	<p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. The relevant water management Policy principles are:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Improve the quality of water discharged to our natural areas to protect the ecological and recreational condition of our, beaches, waterways, riparian areas and bushland. • Water sensitive urban design measures will be integrated into the built form to maximise liveability and reduce the impacts of climate change e.g. urban heat island effect and intensified rainfall events. • Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources. <p>The proposed development is presenting a low environmental risk after the construction period. The development application is acceptable, subject to conditions.</p>
Road Reserve	<p>There is no impact on existing road infrastructure assets.</p> <p>Development Engineering to provide comments and conditions pertaining to driveway access.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site adjoins two heritage items</p> <p>'Villa D'este' (house) - 3 Northview Road Palm Beach</p> <p>C6 Sunrise Hill Heritage Conservation Area - Sunrise Road</p>
	Details of heritage items affected
	<p>Details of the item as contained within the Pittwater inventory are as follows:</p> <p>Villa D'Este <u>Statement of Significance</u> Villa D'este at 3 Northview Road in Palm Beach, was built in 1933 to the design of Fred Verrills as a holiday house, has historic and aesthetic significance as a rare and intact example of Spanish Mission House typical of the early Pittwater subdivisions.</p> <p><u>Physical Description</u> The house is located on a slightly raised site screened by a short stone fence and vegetation with scenic views over Ocean Beach. The house comprises of a rendered brick two-storey building characterised by typical Spanish Mission style features. These include: the asymmetrical facade, shaped gable facade, barley-twist columns, semi-circular arches, rendered brick walls, decorative sunrise motif, wrought-iron door hardware, gabled chimney stack, arched veranda, timber shutters, front steps, timber pergola, stucco finish and decorative parapet.</p> <p>Sunrise Hill Heritage Conservation Area <u>Statement of Significance</u> The Sunrise Hill Heritage Conservation Area includes the curtilage</p>

Internal Referral Body	Comments																					
	<p>of a number of historic properties representing the earliest phase of residential development at Palm Beach.</p> <p><u>Physical Description</u> Conservation area includes houses at 50, 52, 54, 56, 58-60,35 and public reserve at summit of Sunrise Hill.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td></td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> <p><u>Consideration of Application</u></p> <p>The proposal seeks consent for a new dwelling on the subject lot. The conservation area is located directly to the south of the subject property and includes the road reservation outside the property. However the significant component of the conservation area in this location is the bushland reserve located opposite which is unlikely to be impacted by the works and no concerns are raised in relation to this conservation area.</p> <p>Villa D'este is located to the north east of the subject property in Northview Road. It is built close to the road reserve. However, given the subdivision pattern, one of its lot extends to the west and eventually shares a common boundary with the subject site. However the proposed dwelling is to be located close to the road reserve with no works proposed in the rear vegetated portion of the site. This leaves an adequate physical and visual separation between the site and this item.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? A short statement has been provided within the Statement of Environmental Effects.</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register			RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
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Other	N/A																					

Internal Referral Body	Comments
	<p>Further Comments</p> <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 8 July 2021</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	The proposal was referred to Transport for NSW (TfNSW) for concurrence in accordance with Section 138 of the Roads Act, 1993 due to stormwater works proposed on Barrenjoey Road. TfNSW has reviewed the proposal and provided a response stating that the proposal is acceptable subject to compliance with recommended conditions. 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.1163660S_03 dated 31/10/2021). The BASIX Certificate is supported by an NatHERS Certificate (see Certificate No.0005518410-02 dated 31/10/2021).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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.

Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to classified road states:

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

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The proposal seeks stormwater infrastructure works on Barrenjoey Road to facilitate the development. As such, the proposal was referred to TfNSW who raised no objection subject to recommended conditions.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	10.0m *Clause 2D Applies	9.9m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes

Clause	Compliance with Requirements
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The proposed dwelling has a maximum building height of 9.9m which does not comply with the 8.5m requirement. The proposal has been amended during the assessment to reduce the overall height, bulk and scale of the dwelling

Clause 2D of the height of building control within PLEP 2014 states that the height of a building may exceed the 8.5 metre height, but not be more than 10.0 metres, subject to the following provisions being met:

(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

Comment

The variation to the 8.5m height limit is demonstrated in Figure 1 below. As shown, the extent of the variation is predominantly limited to the roof form and areas of open balustrading. The non-compliances generally occur as the land falls away steeply to the north and the west. The exceedances of the 8.5m is considered to be minor.

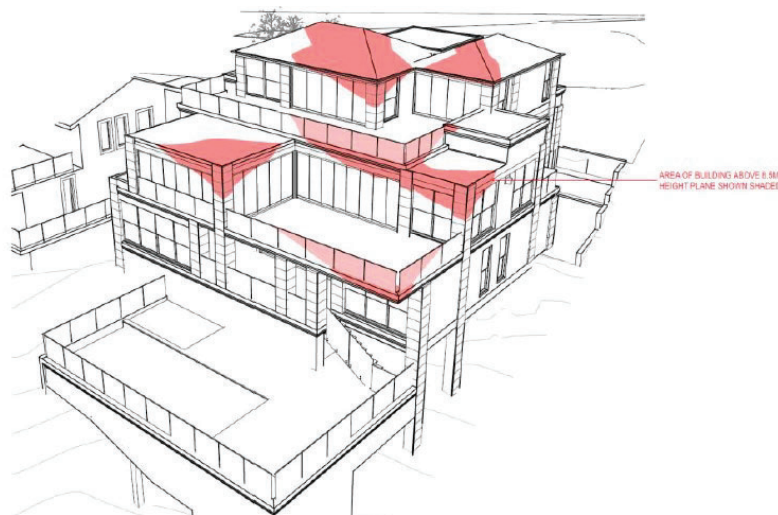


Figure 1: 3D representation of the proposed building form relative to the 8.5m building height with areas above 8.5m highlighted in red

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

Comment

The objectives of 4.3 Height of Building are achieved as follows:

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

character of the locality,

The proposed dwelling is comparable with the built form of surrounding newer dwellings located on Sunrise Road. The dwelling is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being two storey and "human scale" as viewed from Sunrise Road. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions), will assist to visually screen the bulk and scale of the building and integrate the built form into the landscape. Overall, the height, design and scale of the new dwelling will be inconsistent with surrounding properties and 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 above, the dwelling is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being two storey and "human scale" as viewed from Sunrise Road. The proposal presents a compatible height and scale with that of surrounding and nearby development (noting that multiple properties and structures on the low side of Sunrise Road are built in close proximity to sunrise Road with similar overall ridge heights). The proposed ridge height will be 2.0m below the adjoining neighbour to the west (No.42) and the overall scale and height of the proposal is consistent with this neighbour.

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

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.

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

Comment

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. Overall, the height variation is not considered to result in unreasonable view loss.

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

Comment

The proposed development would not require excessive excavation and would be stepped with the fall of the land.

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

Comment

Whilst there is some tree removal required, the proposed development has been designed to retain and

protect other significant trees on the site (and adjoining the site). The proposal is supported by a Biodiversity Impact Assessment Report and Arborist Report, which have been reviewed by Council's Biodiversity Officer, who has raised no objection to the proposal subject to conditions. Proposed landscaping, in conjunction with existing and required landscaping by conditions, will assist to visually screen the bulk and scale of the building and integrate the built form into the landscape as viewed from the street and waterway. A substantial vegetated rear setback (of approximately 35m) will also assist in the amelioration of the visual impact when viewed from Pittwater waterway. The proposed recessive colours and materials will assist to harmonise the proposal with the natural environment. The proposal has been reviewed by Council's Heritage Officer and Aboriginal Heritage Officer, who have raised no objections to the development.

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

Comment

The building footprint is situated on a slope which exceeds the 30% requirement.

(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.

Comment

The extent of excavation for the proposed dwelling house will be minimised due to the design of the proposed dwelling house 'stepping down' the natural topography of the site. The proposed development is supported by a geotechnical risk assessment, that demonstrates all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

5.10 Heritage conservation

The proposal has been reviewed by Council's Heritage Officer and Aboriginal Heritage Office who have raised no objections to the development.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment

The development was referred to the Aboriginal Heritage Officer, who provided comments and conditions that have been included in the consent.

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

Comment: The development has been assessed by Water Management Officer and Biodiversity Officers, who have raised no objection to the proposal subject to conditions.

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

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

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

Comment:

The proposal has been reviewed by Council's Heritage Officer and Aboriginal Heritage Officer who have raised no objections to the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

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

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

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

Comment:

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to the proposed development. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

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

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

Comment:

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

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, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

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

Comment:

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

- (b) the consent authority is satisfied that:

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	5.2m (garage) 4.9m (Porch) 5.9m (Lift) 6.0m (Laundry)	20% (Max)	No
Rear building line	6.5m	35m	N/A	Yes
Side building line	2.5m (W)	2.1m (Bed 6) 2.2m (Terrace 4)	16%	No
	1.0m (E)	1.0m	N/A	Yes
Building envelope	3.5m (W)	Outside envelope	Outside envelope	No
	3.5m (E)	Outside envelope	Outside envelope	No
Landscaped area	60% (916.8sqm)	71% (1087sqm)	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: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 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
B8.6 Construction and Demolition - Traffic Management Plan	No	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The Palm Beach Locality Statement notes as follows:

"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community".

"Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards".

Comment

The proposed development consists of part two/part three storey dwelling house, where the locality calls for two storey development.

The proposed dwelling is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being two storey and "human scale" as viewed from Sunrise Road. The design and appearance of the proposed dwelling would be consistent with the sloping topography and newer surrounding residential dwelling houses located on Sunrise Road. The proposed dwelling steps-down with the fall of the land and is predominantly below the required 8.5m height requirement and within the required 10.0m height

variation for sloping sites. Furthermore, the height and scale of the proposed dwelling is in keeping with that of other properties along Sunrise Road, many of which are three storeys in height (refer to No.42; No.44 and No.46).

The proposed development involves relatively modest excavation works, is set below the general tree canopy height, and includes building modulation to minimise bulk. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape as viewed from the street and waterway. A substantial vegetated rear setback (of approximately 35m) will also assist in the amelioration of the visual impact of the building when viewed from Pittwater waterway. The proposed recessive colours and materials will assist to harmonise the proposal with the natural environment.

As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

The proposal has been reviewed by Council's Heritage Officer who has raised no objection to the development. Please see Council's Heritage Officer's referral comments for further details.

B1.4 Aboriginal Heritage Significance

The proposal has been reviewed by Council's Aboriginal Heritage Officer who has raised no objection to the development subject to conditions.

B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor

The application is accompanied by an Aborigicultural Impact Assessment and Biodiversity Impact Assessment Report which addresses the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended conditions, the application satisfies the outcomes of this clause and is supported on merit

B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor

The application is accompanied by an Aborigicultural Impact Assessment and Biodiversity Impact Assessment Report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended conditions, the application satisfies the outcomes of this clause and is supported on merit

B4.22 Preservation of Trees and Bushland Vegetation

The application is accompanied by an Aboricultural Impact Assessment and Biodiversity Impact Assessment Report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended conditions, the application satisfies the outcomes of this clause and is supported on merit

B6.7 Transport and Traffic Management

A condition has been imposed requiring the Applicant to prepare and submit an application for a Traffic Management Plan prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person and further conditions ensure this will be implemented during works.

B8.1 Construction and Demolition - Excavation and Landfill

The proposal seeks to excavate portions of the land and redistribute the material over the site to facilitate the development. Council's Development Engineers have reviewed the proposal and submitted Geotechnical Report and have raised no objection subject to recommended conditions.

Given the proposed location of these works, the proposal is not considered to have an adverse impact on the streetscape. In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions have been imposed which:

- Ensure structural adequacy of landfill and excavation work;
- Ensure the preparation and adherence of a Waste Management Plan;
- Ensure the recommendations of the Geotechnical report is adhered to;
- Ensure the proper installation and maintenance of sediment and erosion control;
- Ensure topsoil is stockpiled on site and stabilised during construction works;
- Require the preparation of pre and post construction dilapidation reports for adjoining properties.

The proposal has also been assessed by Council's Bushland and Biodiversity team; Landscape Officer and Water Management Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

B8.6 Construction and Demolition - Traffic Management Plan

This control states that development that involves either excavated materials to be transported from the site or the importation of fill material to the site is 100m³ or greater, a Construction Traffic Management Plan indicating truck movements, and truck routes is to be provided and approved by Council prior to the commencement of works.

The proposal involves earthworks and it is anticipated that the earthworks require excavation in excess of 100m³. Noting that Sunrise Road is a particularly narrow road, a condition has been imposed requiring a Construction Traffic Management Plan to be prepared and submitted to Council prior to

works commencing on site.

Subject to compliance with the conditions of consent, the proposal will be consistent with the outcomes and requirements of this control.

C1.1 Landscaping

Please refer to the referral comments prepared by Council's Landscape Officer. The proposal will meet the requirements of this control subject to recommended conditions.

C1.3 View Sharing

Merit Consideration

One (1) submission was received from the following properties which included concerns regarding view loss from a private property:

- **38 Sunrise Road PALM BEACH**

Figure 1 below shows the origin of the submissions relative to the subject site, and the view angles of the sites over the subject site (outlined in blue).

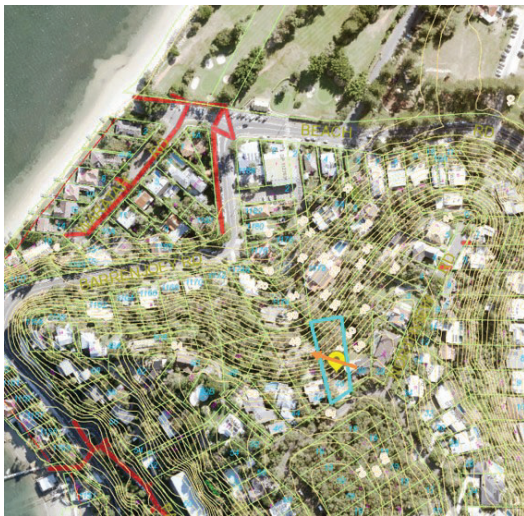


Figure 1: View angles over the subject site

The proposed development is considered against the outcomes of the control as follows:

- *A reasonable sharing of views amongst dwellings. (S)*

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:

The views from 38 Sunrise Road are to the north-west of the property and include views of the Pittwater Waterway and Ku-ring-gai Chase National Park and land and water interface. The view is heavily obstructed by existing vegetation. This is demonstrated in photo 1 and 2 below. Photo 3 and 4 demonstrates unobstructed views to the north that are unaffected by the proposal.



Photo 1: Existing views from No.38 Sunrise Road to the north-west (outside upper floor kitchen and dining room windows. Photos taken externally due to COVID Restrictions). Height pole indicates extent of view loss



Photo 2: Existing views from No.38 Sunrise Road to the north-west (upper side facing dining room window. Photo provided by objector)





Photos 3 & 4 - Existing views from No.38 Sunrise Road to the north from ground and first floor decks and north facing windows to the living and dining room. Views are unobstructed by the proposal.

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

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

Comment to Principle 2:

The view which is of concern is obtained from both a sitting and standing position and is over the western side boundary. The expansive Pittwater views to the north remain unaffected by the proposal (as demonstrated in photos 3 and 4 above).

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".

As viewed from No.38 Sunrise Road, the proposed dwelling would impact views of vegetation and filtered views of Pittwater waterway from side facing windows of the upper floor dining room and kitchen and a portion of the upper floor deck.

The proposed dwelling would not have an impact on existing expansive views of Pittwater enjoyed by primary living areas and private open space of No.38 from the windows and private open space oriented towards the north. Given the design and layout of the dwelling at No.38, waterway and national

park views including the interface between land and water are obtained from the majority of the internal and external principle living areas over the rear (northern) boundary.

In considering the entirety of the views obtained by No.38, and the fact that the expansive views from the principle living area to the north are unaffected by the proposal (see photo 3 & 4) the extent of the impact is considered negligible to **minor**.

4. Reasonableness of the proposal that is causing the impact

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

The portion of the proposed dwelling that would cause the greatest view loss impacts to No.38 meet the stipulated height requirement as well as the side and rear setback requirements. The proposal has been amended to "step-in" the proposed dining room away from the eastern boundary to assist in maintaining a view corridor for the adjoining side facing windows. It is recognised that a portion of the east elevation does not meet the required building envelope requirement. However, as described elsewhere in this report, the dwelling is considered to meet the objectives of this control and this non-compliance is largely attributed to the steep slope of the site. During the assessment of the application, amended plans were received to significantly reduce this non-compliance.

Overall, the view loss associated with the proposal is considered minor when put in context of the entirety of views obtained from this property and the location of existing vegetation. As such, the proposal is not considered to result in an unreasonable view loss for the neighbouring dwelling at No.38 Sunrise Road and will satisfy the provisions of this clause.

Concern has also been raised with proposed landscaping and the impact on views. The inclusion of replacement tree planting is reasonable to satisfy the objectives of E4 zone, B4.22, C1.1 and D12.1, that can be summarised as follows:

- Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.
- Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.
- To provide for residential development of a low density and scale integrated with the landform and landscape.

Furthermore, the objectives of clause C1.3 View Sharing of P21 DCP specifies that canopy trees take priority over views. In consideration of the location of existing canopy trees within the existing view corridor (on the subject site, adjoining road reserve and neighbouring sites); as well as the requirements and objectives of P21DCP, the replacement tree planting and proposed landscaping is supported and any associated view loss is considered reasonable in this instance. Councils Landscape Officer has imposed conditions requiring all proposed tree planting to be positioned in locations to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Concern has been raised by an objector with regards to the impact of the proposal on views from Sunrise Road.

In determining the extent of potential view loss from the public domain, the planning principles outlined within the Land and Environment Court Case of *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* are applied to the proposal.

1. Nature and Scope of Views

The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:

- *Any existing obstructions of the view;*
- *Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *Are existing obstructions permanent or temporary;*
- *The curtilages of important elements within the view.*

Comment to Principle 1:

The existing views obtained from the public domain, in this case being Sunrise Road, consists of filtered and unfiltered views to the north Pittwater Waterway, Ku-ring-gai Chase National Park, Lion Island and land and water interface. Existing obstructions to the views includes dense screen vegetation and canopy trees. The screen vegetation at the front of the site is on the Council Road Reserve and has existed for many years. Nevertheless, this vegetation can be described as temporary in nature given it is an exempt species. The established trees to the north of the site are relatively permanent in nature as they are unlikely to be removed in the foreseeable future. The current views obtained from the road can be classified as static views. The change to the available outlook from the road will be permanent. See photographs and submitted perspectives below:



Photo 5: Existing views from Sunrise Road looking over the subject site (south to north from road reserve).



Photo 6: Existing views from Sunrise Road looking over the subject site (south to north from road reserve).



Photo 7: Existing views from Sunrise Road looking over the subject site (south to north-east from road reserve).



Photo 8: Existing views from Sunrise Road looking over the subject site (south to north from front boundary, i.e. behind screen vegetation).

2. Locations of View Interruptions

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment to Principle 2:

The affected view is available from the road and road reserve of Sunrise Road. Sunrise Road does not contain any formal footpath. It is noted Sunrise Road is not classified as a major road, thus traffic frequency is not considered to be significant.

3. Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location. The impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment from many positions by all people.

Comment to Principle 3:

The location where views are obtained are limited to the roadway. Views are currently obtained from a seated position in a car travelling along Sunrise Road; or from a standing position on the street. The proposed development will obstruct views to the waterway and land and water interface. The views are filtered by existing dense vegetation when approaching the site from the east or the west as seen in the images above.

4. Intensity of the use of the Relevant Public Spaces

The fourth step is to identify the intensity of public use of those locations where enjoyment of the view will be obscured, in whole or in part, by the proposed development.

Comment to Principle 4:

Sunrise Road is a secondary road, used to gain access to the residential properties along the road. The street does not contain any formal pedestrian footpath. The nature of the street does not encourage people to stop and gather and views are maintained over and between other properties along the street.

5. Documentation of the View

The final step to be identified is whether there is any document that identifies the importance of the view

to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection of public domain views.

Comment to Principle 5:

Sunrise Road is identified as part of Council's Scenic Streets Register, which states (of the whole road):

Sunrise Road is some 500 metres long, narrow, tortuous and hilly. At the start there are splendid views of the southern part of Palm Beach. These give way to glimpses of Lion Island and the mouth of the Hawkesbury river. The last 150 metres shows the common themes of Palm Beach streets: tall Eucalypts, native shrubs and further spectacular water views.

Overall Comment

As the existing site is vacant, any proposed development would result in a degree view loss from the public domain. The existing view from Sunrise Road over the subject site is also heavily impeded by existing vegetation. As discussed throughout this report, the proposed dwelling is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being two storey and "human scale" as viewed from Sunrise Road. The proposal presents a compatible height and scale with that of surrounding and nearby development (Noting that multiple properties and structures on the low side of Sunrise Road are built in close proximity to sunrise Road with similar overall ridge heights).

The proposed ridge height would be 2.0m below the adjoining neighbour to the west (No.42) and the overall scale and height of the proposal would be consistent with this neighbour. The proposal maintains suitable side setbacks to allow for view corridors to the east and the west of the dwelling. The proposal has been designed to step-down with the fall of the land and the amended design is below the 10.0m height requirement for steeply sloping sites.

To approve the proposed development would not be setting a precedent, as the proposal is consistent with the existing character of the locality and the form and scale would be consistent with adjoining properties.

Overall, in consideration of the existing views obtained from the road reserve, location of existing screen planting, the nature of the site being a vacant lot and the character and scale of surrounding development in the vicinity, the proposed view loss is considered reasonable in this instance.

C1.5 Visual Privacy

Description of Non-compliance

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation. The proposed development contains side facing windows and elevated balconies and areas of private open space, which are within 9.0m from both the eastern (No.38 Sunrise Road) and western (No.42 Sunrise Road) neighbours.

Merit Assessment

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

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good*

design.

No.38 Sunrise Road (East)

Windows

In plan, windows W202 and W203 on the eastern elevation of the ground floor garage is within 1.0m of the side boundary and private open space of the adjoining neighbour to the east (No.38 Sunrise Road). In order to minimise privacy impacts and mitigating direct overlooking to the adjoining private open space of this neighbour, it is recommended that a condition be imposed for these windows to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e.. containing a sill height of 1.65m from the FFL) or obscure glazed.

In plan, window W302 on the eastern elevation of the first floor ensuite is within 2.5m of the side boundary and private open space of the adjoining neighbour to the east (No.38 Sunrise Road). In order to minimise privacy impacts and mitigating direct overlooking to the adjoining private open space of this neighbour, it is recommended that a condition be imposed for this window to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e.. containing a sill height of 1.65m from the FFL) or obscure glazed.

Windows W203b and W203b on the eastern elevation to the ground floor dining room would contain privacy screens and the proposed lower ground floor windows on the eastern elevation would be suitably offset from adjoining windows and private open space and would be screened by proposed landscaping. As such, these windows are not anticipated to result in unreasonable privacy impacts.

Terrace 1 - First Floor

A first floor terrace is proposed on the northern (rear) elevation which is 1.0m from the eastern boundary. A submission was raised on behalf of the neighbour to the to the east (No. 38 Sunrise Road) with regards to visual privacy from this terrace, requesting the provision of planter boxes with vegetation a minimum of 1.4 metres in height above the finished floor level along the eastern periphery of this terrace.

This terrace floor level is RL62.4 and the head height of adjoining windows is of No.38 Sunrise Road is RL61.63. As such, this terrace would be appropriately offset (above) these adjoining windows and private open space. In order to prevent downward overlooking into adjoining windows, it is recommended a condition be imposed for the balustrading on the eastern elevation of this terrace to be solid or obscure glazed. In addition, this terrace would serve bedrooms which are not considered high usage areas. Given the orientation and height of this terrace, the proposal is not considered to give rise to unacceptable privacy impacts to this neighbour (subject to conditions). Given the dense urban environment of the Northern Beaches, it is considered that it is an unreasonable expectation that complete privacy can be maintained between dwellings.

Swimming pool

The proposed elevated pool and spa would be 4.5m from the eastern side boundary and within 6.0m of No.38 Sunrise Road's private open space. The swimming pool would be below the level of the adjoining neighbours' balcony. In order to assist with the mitigation of privacy impacts, it is recommended a condition be imposed for the eastern elevation of the pool fencing/balustrading to be solid or obscure glazed. It is considered that this, combined with proposed Lilly Pilly screen planting along the eastern boundary will appropriately mitigate privacy impacts.

No.42 Sunrise Road (West)

Windows

In plan, windows W110 and W109 on the western elevation of the lower ground floor Bed 5 ensuite and Bed 6 ensuite is within 9.0m of the private open space of the adjoining neighbour to the west (No.42 Sunrise Road). In order to minimise privacy impacts and mitigating direct overlooking to the adjoining private open space of this neighbour, it is recommended that a condition be imposed for these windows to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e.. containing a sill height of 1.65m from the FFL) or obscure glazed.

In plan, windows W211 (to the kitchen) and W209 and W208 (to the living room) on the western elevation of the ground floor is within 9.0m of windows and private open space of the adjoining neighbour to the west (No.42 Sunrise Road). In order to minimise privacy impacts and mitigating direct overlooking to the adjoining windows and private open space of this neighbour, it is recommended that a condition be imposed for these windows to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (ie. containing a sill height of 1.65m from the FFL) or obscure glazed.

In plan, window W307 the western elevation of the first floor Bedroom (Bed 2) is within 9.0m of windows of the adjoining neighbour to the west (No.42 Sunrise Road). In order to minimise privacy impacts and mitigating direct overlooking to the adjoining windows of this neighbour, it is recommended that a condition be imposed for this window to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (ie. containing a sill height of 1.65m from the FFL) or obscure glazed.

Terrace 1 - First Floor

A elevated "first floor" terrace is proposed on the northern (rear) elevation which is within 9m of the private open space and balconies of the adjoining western neighbour (No.42 Sunrise Road). To prevent overlooking within 9m of of neighbouring properties, and to achieve consistency with this development control, a condition of consent is recommended to require privacy screen measuring 1.5m in height on the western elevation of the proposed "Terrace 1" adjoining Bed 1 & Bed 2.

Terrace 3 - Ground Floor

A elevated "ground floor" terrace is proposed on the northern (rear) elevation which is within 3.5m from the western boundary. This terrace would align with private open space and balconies of the adjoining western neighbour (No.42 Sunrise Road). To prevent overlooking within 9m of of neighbouring properties, and to achieve consistency with this development control, a condition of consent is recommended to require privacy screen measuring 1.5m in height on the western elevation of the proposed "Terrace 3" adjoining the living and dining room.

Terrace 4 - Ground Floor

A elevated "ground floor" terrace is proposed on the western (side) elevation which is within 3.0m from the western boundary. This terrace would align with windows of the adjoining western neighbour (No.42 Sunrise Road). To prevent overlooking within 9m of of neighbouring properties, and to achieve consistency with this development control, a condition of consent is recommended to require privacy screen measuring 1.65m in height on the western elevation of the proposed "Terrace 4" adjoining the living room.

Swimming Pool "Lawn"

The proposed elevated "lawn" are adjoining the proposed pool and spa would be 4.0m from the western side boundary and within 9.0m of No.42 Sunrise Road's private open space. To prevent overlooking within 9m of of neighbouring properties, and to achieve consistency with this development control, a condition of consent is recommended to require privacy screen measuring 1.5m in height on the western elevation of the proposed "lawn" adjoining the swimming pool

To prevent overlooking within 9m of of neighbouring properties, and to achieve consistency with this

development control, a condition of consent is recommended to require privacy screen measuring 1.65m in height on the western elevation of the proposed "Terrace 4" adjoining the living room.

Front Courtyard

The proposed landscape plan provide adequate screen planting along the western boundary of the front courtyard in order to mitigate privacy impacts

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

- *A sense of territory and safety is provided for residents.*

Comment:

The proposed development is considered capable of providing a sense of territory and safety for residents on the subject site and adjoining properties.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit, subject to conditions.

C1.13 Pollution Control

A condition of consent has been included to ensure that no solid fuel heaters are approved under this consent. Subject to compliance with this condition the proposal is considered to meet the requirements of this control.

C1.23 Eaves

The control requires dwellings to incorporate 450mm wide eaves on all elevations. The proposed dwelling does not incorporate 450mm wide eaves on all elevations, which fails to meet this requirement.

Despite this non-compliance, consideration has been given that the roof form will continue to reflect character of the locality. The proposal is supported by a valid BASIX Certificate to demonstrate suitable energy efficiency. Additionally, the proposed development allows for compliant solar access to the subject site and adjacent properties, whilst also providing covered outdoor private open space to ensure appropriate shading.

For the reasons outlined above, it is concluded that the outcomes of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D12.5 Front building line

Description of Variation

Clause D12.5 of the P21DCP requires development (other than driveways, fences or retaining walls) to be setback at least 6.5m from the front boundary or the established building line, whichever is greater. The following elements of the proposal do not comply with the required 6.5m setback.

- The proposed porch has a setback of 4.9m from the front boundary
- The proposed garage has a setback of 5.2m from the front boundary
- The proposed lift has a setback of 5.9m from the front boundary
- The proposed lower laundry has a setback of 6.0m from the front boundary

It should be noted that the front boundary line is angled and the design of the front facade has been stepped to accommodate this angled boundary line.

Merit consideration

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

- ***To achieve the desired future character of the Locality. (S)***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.12 *Palm Beach Locality* of the Pittwater 21 DCP.

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

Comment:

The proposed elements within the front setback are not considered to result in unreasonable view loss. This matter has been addressed under Clause C1.3, above in this report, which has determined that the proposal will allow a reasonable sharing of views.

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

Comment:

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

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

Comment:

Whilst there is some tree removal required as part of the development, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions and replacement planting. Overall, retained and proposed vegetation and the conditioned replacement planting would appropriately break up the building massing and reduce the visual impact of the proposal. Sufficient landscaped area has been retained at the front and rear of the site to accommodate plantings to minimise the built form.

- ***Vehicle manoeuvring in a forward direction is facilitated. (S)***

Comment:

Vehicle maneuvering is not proposed in a forward direction. Providing such would necessitate a large portion of the front garden to become a driveway and, given the relatively low volume of traffic which

traverses Sunrise Road, maneuvering in a forward direction is not considered to be essential. The application has been reviewed by Council's Development Engineer who has raised no objection to the proposal.

- ***To preserve and enhance the rural and bushland character of the locality. (En, S)***

Comment:

Whilst there is some tree removal required as part of the development, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The proposal is considered to preserve and enhance the rural and bushland character of the locality. Council's Bushland Officer has reviewed the application and raised no objections to approval, subject to conditions.

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

Comment:

The development is sited below the established tree canopy and would appear "human scale" when viewed from the street due to the steep cross fall of the site away from the frontage, and the bulk and scale of the development would not appear inconsistent with existing development along Sunrise Road.

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

Comment:

The development is sited below the established tree canopy and would appear "human scale" when viewed from the street due to the steep cross fall of the site away from the frontage, and the bulk and scale of the development would not appear inconsistent with existing development along Sunrise Road. Notwithstanding the non-compliance, sufficient space remains within the front setback area for additional vegetation planting to provide an attractive street frontage and retain pedestrian amenity.

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

Comment:

The northern side of Sunrise Road accommodates examples of structures located forward of the front building line. In this regard, the location of the structures will not be out of context with the established streetscape character. Furthermore, given the significant slope of the site, the proposed porch, garage and laundry would be below street level and would not dominate the streetscape. Additionally, the proposed porch would be open structures of minimal bulk and scale. The facade of the proposed dwelling would be modulated and stepped, with the majority meeting the required 6.5m setback. Existing and proposed vegetation and landscaping and planter boxes will further alleviate the visual impacts when viewed from the street and surrounding properties. Based on the above, it is concluded that the development responds to the spatial characteristics of the existing built and natural environment.

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

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

D12.6 Side and rear building line

Description of Non-Compliance

The proposed 2.1m side setback to the western boundary of the proposed dwelling does not comply with the 2.5m setback requirement. It should be noted that this is a minor encroachment and the vast majority of the western elevation does comply with the 2.5m setback requirement.

The proposal complies with the required 1.0m setback to the eastern side boundary and the 6.5m rear setback

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

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

Comment

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to *A4.12 Palm Beach Locality* of the Pittwater 21 DCP.

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

Comment

The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, planters, eaves and changes in materials and roof formation to break up built form. Furthermore, the proposal retains and introduce suitable landscaping minimise the visual impact of the development from adjoining properties and the public realm. The proposal steps with the fall of the land and incorporate open balconies with variable setbacks. This provides a situation in which presentation of bulk and scale is adequately minimised.

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

Comment

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. Overall, the non-compliant side setback does not result in unreasonable view loss to surrounding sites.

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

Comment

It is considered that the proposal provides adequate spatial separation between adjoining

buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered that no unreasonable privacy impacts occur as a result of the development, subject to conditions. Furthermore, the proposal introduces suitable landscaping along side boundaries to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

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

Comment

The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objections to the proposal subject to recommended conditions and replacement plantings.

- ***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

The existing and proposed landscape treatments on site are sufficient and ensure the site is not dominated by the built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objections to the proposal subject to recommended conditions for tree protection and replacement planting. Subject to recommended conditions, it is considered that remaining and proposed vegetation will adequately reduce the visual impact of the built form.

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

Comment

N/A the 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 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.

D12.8 Building envelope

Description of Non-compliance

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

The proposed development encroaches into the prescribed building envelope along both the eastern elevation and western elevation. This variation is represented in figures 1 and 2 below.

This building envelope non-compliance is largely attributed to the slope of the site, which exceeds 30%. P21DCP allows for a variation to the prescribed building envelope for development on steep sites, subject to consistency with the outcomes of this Clause. Furthermore, amended plans were received during the assessment of this application which reduced the side boundary envelope non-compliance on both side elevations by reducing the overall height of the dwelling and increasing side setbacks.

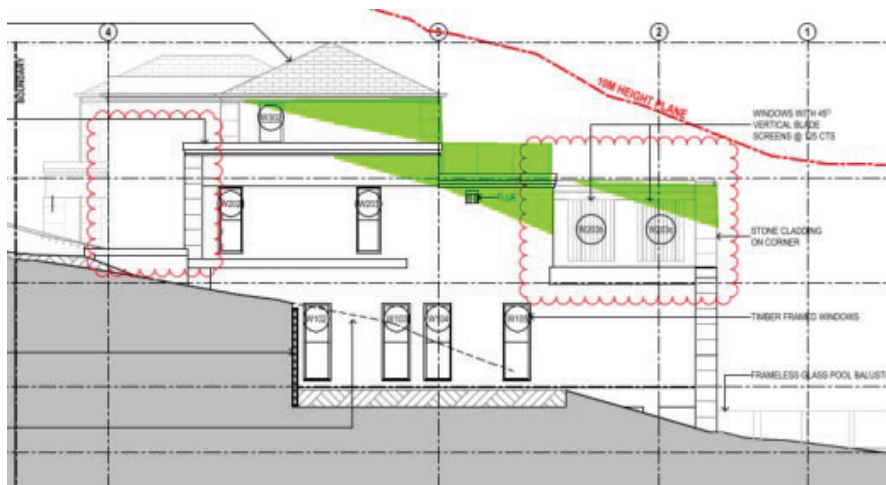


Figure 1: Envelope breach on the eastern elevation shown in green

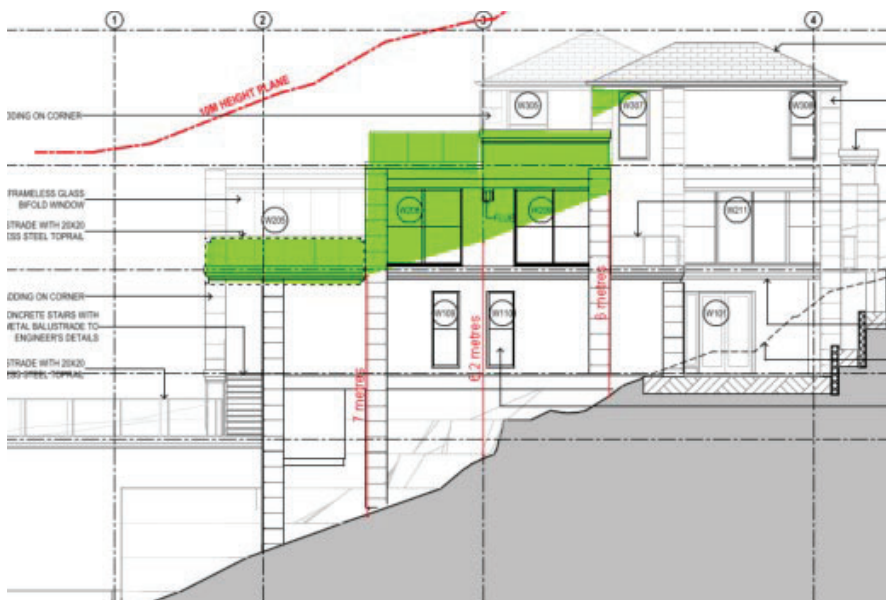


Figure 2: Envelope breach on the western elevation shown in green

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. (S)***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.12 *Palm Beach Locality* of the Pittwater 21 DCP.

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

Comment:

The proposed dwelling is comparable with that of the built form of surrounding newer dwellings located on Sunrise Road. The dwelling is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being two storey and "human scale" as viewed from Sunrise Road. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape when viewed adjoining properties and the public realm. The proposed development is generally set below the height of the trees adjoining the site and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing streetscape and wider locale.

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

Comment:

The proposed dwelling has been designed to step with the fall of the land and would be within the required 10.0m height variation for sloping sites. Deep soil planting is provided in the front, side and rear setback areas. The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

- ***The bulk and scale of the built form is minimised. (En, S)***

Comment:

The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, planters and changes in materials and roof formation to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief.

Additionally, the proposal retains and introduce suitable landscaping minimise the visual impact of the development from adjoining properties and the public realm. This provides a situation in which presentation of bulk and scale is adequately minimised. Visually, the building will present as two storeys from the street which is consistent with the character of the locality.

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

Comment:

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

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development subject to conditions. Furthermore, the proposal will introduce suitable landscaping along side boundaries to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

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

Comment:

The application is supported by a landscape plan which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The existing and proposed landscape treatments on site are sufficient and ensure the site is not dominated by the built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions for tree protection and replacement planting. Subject to recommended conditions, 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 PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.13 Construction, Retaining walls, terracing and undercroft areas

The proposed development, while including earthworks, steps down with the topography of the land, thereby minimising the impacts the proposal has in relation to bulk and scale, view loss, overshadowing and privacy. The level of excavation included in this proposal is consistent with developments in the Palm Beach area, due to the land's steep topography and valuable views, where higher pier and beam construction may cause greater impact than earthworks.

As discussed previously in this report, the level of excavation is considered acceptable subject to recommended conditions. The proposal has also been assessed by Council's Bushland and Biodiversity; Landscape Officer; Water Management Officer; Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

The proposed pool and associated coping is elevated due to the steeply sloping nature of the land. This results in a solid wall to the north of the site. In order to minimise the visual impact of this wall,

conditions are to be imposed to ensure facade of this wall is sandstone cladding. Existing and proposed trees and vegetation adjoining this area minimises the visual impact of the development as viewed from the north.

D12.14 Scenic Protection Category One Areas

The proposal has been supported by a Biodiversity Impact Assessment Report and Arborist Report which have been reviewed by Council's Biodiversity Officer who have raised no objection to the proposal subject to recommended conditions. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape as viewed from the street and waterway. A substantial vegetated rear setback (of approximately 35m) will also assist in the reduction of built form as viewed from Pittwater waterway. The proposed recessive colours and materials will assist to harmonise the proposal with the natural environment. The architectural elements and use of stepping and terracing provide for high levels of modulation and articulation to reduce the massing of the built form.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$17,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,760,000.

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

The assessment of the proposal has found that the proposed development does not strictly comply with the requirements of the applicable controls related to the Palm Beach Locality, building envelope, front and side building lines and visual privacy under the Pittwater 21 DCP.

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

Three (3) submissions were received in response to the notification of the application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report. A number of these concerns initially raised within the submissions were concurred with by Council's assessment of the application. Amended plans were received and the application was renotified, with one (1) submission being received in response.

The assessment of the amended scheme reveals the resident's issues do not warrant the refusal or further amendment of the application.

Conditions have been imposed to ensure that reasonable levels of privacy between properties is maintained.

Subject to the recommended conditions of consent, it is considered that the amended proposal results in a development that displays reasonable scale and density compatible with the surrounding newer development in the locality and does not result in unreasonable amenity impact to surrounding properties.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/0900 for Construction of a dwelling house including a swimming pool and spa on land at Lot 151 DP 6937, 40 Sunrise Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA100 Issue.B - SITE AND ROOF PLAN	29/10/2021	Susan Rothwell Architects
DA101 Issue.C - LOWER GROUND FLOOR PLAN	29/10/2021	Susan Rothwell Architects
DA102 Issue.B - GROUND FLOOR PLAN	29/10/2021	Susan Rothwell Architects
DA103 Issue.B - FIRST FLOOR PLAN	29/10/2021	Susan Rothwell Architects
DA104 Issue.B - NORTH ELEVATION	29/10/2021	Susan Rothwell Architects
DA105 Issue.B - SOUTH ELEVATION	29/10/2021	Susan Rothwell Architects
DA106 Issue.B - EAST AND WEST ELEVATIONS	29/10/2021	Susan Rothwell Architects
DA107 Issue.B - SECTION	29/10/2021	Susan Rothwell Architects
DA108 Issue.B - SECTIONS	29/10/2021	Susan Rothwell Architects
DA109 Issue.B - SECTIONS	29/10/2021	Susan Rothwell Architects
DA110 Issue.B - SECTIONS	29/10/2021	Susan Rothwell Architects
DA1009 Issue A - EXTERNAL COLOURS AND FINISHES	29/10/2021	Susan Rothwell Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
C1.01 Issue C - COVER SHEET, LEGENDS AND DRAWING LIST	09/12/2021	ACOR Consultants Pty Ltd
C1.02 Issue C - NOTES SHEET	09/12/2021	ACOR Consultants Pty Ltd
C1.05 Issue C - DETAILS SHEET 1	09/12/2021	ACOR Consultants Pty Ltd
C1.06 Issue C - DETAILS SHEET 2	09/12/2021	ACOR Consultants Pty Ltd
C1.07 Issue C - DETAILS SHEET 3	09/12/2021	ACOR Consultants Pty Ltd
C3.01 Issue C - STORMWATER MANAGEMENT PLAN	09/12/2021	ACOR Consultants Pty Ltd
C3.10 Issue D - EASEMENT PLAN	15/12/2021	ACOR Consultants Pty Ltd
C5.01 Issue C - SOIL EROSION AND SEDIMENT CONTROL PLAN	09/12/2021	ACOR Consultants Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Appraisal and Method Statement Rev.A	04/02/2022	Natural Heritage
GEOTECHNICAL ASSESSMENT (Ref: 33855BYrptrev)	02/02/2022	JK Geotechnical
BASIX Certificate (1163660S_03)	31/10/2021	Andre
NatHERS Certificate No.0005518410-02	31/10/2021	Andre
Flora and Fauna Surveys, Biodiversity and Ecological Impact Assessment Report	03/01/2021	ACS

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
DA1003 Issue B - LANDSCAPE PLAN	01/11/2021	Susan Rothwell Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA1002 Issue B - SEDIMENT CONTROL AND WASTE MANAGEMENT PLAN	29/10/2021	Susan Rothwell Architects
Waste Management Plan	01/06/2021	Susan Rothwell Architects

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

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

2. 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
Transport for NSW	TfNSW Referral Response (SYD21/0112)	03/11/2021

(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/onsite structures/units/tenancies as

detailed on the approved plans for any land use of the site beyond the definition of a dwelling house

A dwelling house is defined as:

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

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

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

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

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

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

5. **Transport for NSW Conditions/Requirements**

The development shall be carried out in accordance with all conditions and requirements raised by TfNSW in their correspondence (Ref. SYD21/0112) dated 03 November 2021. Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of the Construction Certificate and final Occupation Certificate.

Reason: To ensure the development is carried out with the requirements of TfNSW.

6. **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.

7. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$17,600.00 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 \$1,760,000.00.

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.

9. **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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics dated 02/02/2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Compliance with Ecologist's Recommendations – Pre-construction**

All pre-construction biodiversity-related measures specified in the Biodiversity Impact Assessment (ACS Environmental, January 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.

12. **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.

13. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

At least six (6) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide.

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.

14. **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.

15. **Private Interallotment Stormwater Drainage Line**

The Applicant is to provide drainage plans including specifications and details of the interallotment drainage line to the Accredited Certifier for approval prior to the issue of the Construction Certificate. Such details are to be accompanied by a certificate from a suitably qualified Civil Engineer, who has membership to [Engineers Australia, National Engineers Register \(NER\)](#) and registered in the General Area of Practice for civil engineering, that the stormwater management system complies with the requirements of AS/NZS 3500.3.2 - Stormwater Drainage and Council standards.

The drainage plans must address the following:

1. The inter- allotment line to be minimum Ø150mm at minimum 1% grade
2. Thrust blocks to be utilised where pipe grades exceed 10%
3. Pit details to be provided
4. HGL analysis to be provided.

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

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

16. **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.

17. **Amendments to the approved plans**

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

a) **"Ground Floor" Windows (W202 and W203)** - Privacy screens are to be installed on the "ground floor" eastern windows labelled W202 and W203 adjoining the "garage " as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

b) **"Ground Floor" Windows (W211; W209 and W208)** - Privacy screens are to be installed on the "ground floor" western windows labelled W211 (adjoining the "kitchen") and W209 and W208 (adjoining the "living room") as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

c) **"First Floor" Window (W302)** - A Privacy screen is to be installed on the "first floor" eastern window labelled W302 (adjoining the "ensuite") as shown on the approved plans. The privacy screen shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

d) **"First Floor" Window (W307)** - A Privacy screen is to be installed on the "first floor" western window labelled W307 (adjoining "Bed 2") as shown on the approved plans. The privacy screen shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be

fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

e) **"Lower Ground Floor" Windows (W110 and W109)** - Privacy screens are to be installed on the "lower ground floor" western windows labelled W110 and W109 (adjoining "Bed 5 ensuite" and "Bed 6 ensuite") as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

f) **"Terrace 1" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "first floor" terrace labelled "Terrace 1" located off the "Bed 1 & Bed 2" 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.

g) **"Terrace 1" Balustrading** - The proposed "first floor" terrace labelled "Terrace 1" located off "Bed 1" is to incorporate solid balustrading for the entire length of the eastern elevation. This balustrading is to be constructed of nontransparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.

h) **"Terrace 3" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "ground floor" terrace labelled "Terrace 3" located off the "living room" 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.

i) **"Terrace 4" Privacy Screen** - A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "ground floor" terrace labelled "Terrace 4" located off the "living room" 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.

j) **"Swimming Pool Lawn" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "lower ground floor" lawn area adjoining the proposed swimming pool 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.

k) **"Swimming Pool and Spa" Balustrading/fence** - The proposed swimming pool and spa is to incorporate solid balustrading/fencing for the entire length of the eastern elevation. This balustrading is to be constructed of nontransparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.

l) **Swimming Pool and OSD wall** - The exterior of the wall below the proposed swimming pool and OSD tank shall be covered in sandstone cladding or similar which uses dark, earthy and natural coloured finishes and materials of low reflectivity

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.

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 ACOR Consultants, project number NSW202638, drawing number C1.01, C1.02, C1.05, C1.06, C1.07, C3.01, C3.10, dated 9/12/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. OSD shall be provided in accordance with Clause 9.0

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

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

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 the extension of the existing Council stormwater system to the eastern side of Barrenjoey Rd via a new pit and pipe connection which are to be generally in accordance with the drainage plans by Acor Consultants, drawing number NSW202638 -3C3.10, dated 15/12/2021 and Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified civil engineer. The design must include the following information:

1. The stormwater connection and any associated works on Barrenjoey Road shall be in accordance with TfNSW letter reference SYD21/0112 dated 3 November 2021.
2. Detailed design plans of the proposed works are to be submitted to TfNSW for approval. Approval from TfNSW to be submitted with this application.
3. A v-grate pit to be provided within kerb/layback on the eastern side of Barrenjoey Road in front of No 1178 Barrenjoey Road constructed with Class D grate in accordance with

- Council Standards.
4. A minimum Ø 375mm RRJ RCP extending from the newly constructed v-grate pit to the existing council pit located on the western side of Barrenjoey Road.
 5. Civil Engineers design certificate.
 6. Connection of the private interallotment line from 40 Sunrise Rd to the new pit in front of No 1178 Barrenjoey Road.
 7. Long section and HGL analysis.
 8. Survey plan showing location and levels of the existing Council pit on the western side of Barrenjoey Road.
 9. Road reserve outside No 1178 Barrenjoey to be reinstated as required.
 10. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided with the application.

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. **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.

23. **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.

24. **Sydney Water "Tap In"**

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

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

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

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

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

25. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- o The proposed phases of construction works on the site, and the expected duration of each construction phase
- o The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- o Make provision for all construction materials to be stored on site, at all times
- o The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- o The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- o The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- o Make provision for parking onsite.
- o Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- o Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- o The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- o Include a site plan showing the location of any site sheds, location of requested Work

Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

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

26. 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

27. 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 Appraisal and Method Statement dated 4 February 2022, including:

- i) excavation and construction works in proximity to trees 21 to 56 inclusive, under section 3.2.2, 3.2.3, and 4.3,
- ii) ground protection to existing trees 21, 22 and 24 under section 4.2.2 and appendix 5,
- iii) any other works deemed necessary by the Project Arborist and as listed under section 4 Arboricultural Method Statement,
- iv) compliance with appendix 7 - schedule of works and responsibilities,
- v) compliance with appendix 8 - tree protection plan.

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.

28. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Appraisal and Method Statement dated 4 February 2022):

- i) trees numbered 3 and 4 (Paperbark), 6 and 7 (Frangipani), 17, 18 and 20 (Cheese Tree).

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal. The following existing trees are identified for removal: tree numbers 1, 2, 5, 8, 9, 10, 11, and 12 (exempt by height), and tree numbers 13, 14, 15, 16, and 19 (exempt by species type).

Note: all existing trees to be removed shall be marked on site by the Project Arborist prior to removal.

Reason: To enable authorised development works.

29. **Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with

the Biodiversity Impact Assessment (ACS Environmental, January 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.

30. **Impacts to Protected Native Wildlife**

Habitat for native wildlife including all vegetation proposed for removal is to be inspected for native wildlife by the Project Ecologist prior to removal. If native wildlife is found within habitat to be removed, the wildlife is to be safely relocated by the Project Ecologist.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be prepared by the Project Ecologist and provided to the Principal Certifying Authority

Reason: To protect native wildlife.

31. **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.

32. **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.

- 38 Sunrise Road, Palm Beach
- 42 Sunrise Road, Palm Beach

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

33. 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 Appraisal and Method Statement dated 4 February 2022.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any

other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

34. **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.

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

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

36. **Dewatering Management**

Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about permits.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

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

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

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

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

38. **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.

39. **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.

40. **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.

41. **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.

42. **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.

43. **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.

44. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 5EL 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.

45. **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.

46. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to

Council on request.

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

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

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

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

48. **Stockpiling of Topsoil**

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

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

49. **Landscape Completion**

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

- i) two (2) locally native canopy trees shall be planted within the front setback, with at least one species to be a *Glochidion ferdinandi* (Cheese Tree), and the other to be selected from Northern Beaches Council's Native Plant Species Guide - Narrabeen Ward, or Council's Tree Guide, and capable of attaining at least 6 metres in height at maturity,
- ii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- iii) 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 and preferably 5.0m from buildings, 2.0 metres from structures including driveways, walling and paths, and at least 1.5 metres from common boundaries,
- iv) 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,
- v) 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, 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/>

50. **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.

51. **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the Biodiversity Impact Assessment (ACS Environmental, January 2021).

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.

52. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

53. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the amended and approved Landscape Plan 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.

54. **Replacement of Canopy Trees**

At least six (6) locally native canopy trees are to be planted on site to replace protected trees

approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide.

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

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

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

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

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

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

56. **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.

57. **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.

58. Waste Management Confirmation

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

59. Passenger Lift Noise Control

Prior to the issue of an Occupation Certificate, certification by a suitably qualified person shall be provided to the Principle Certifying Authority demonstrating that the noise level from the passenger lift will not exceed 5dBA above background noise when measured from the nearest property boundary.

Reason: To ensure an appropriate level of residential amenity is maintained.

60. 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.

61. **Certification Elevated Parking Facility Work**

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

Reason: Compliance with this consent.

62. **Retaining wall**

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

Reason: Public and Private Safety

63. **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.

64. **Creation of Easement for Drainage**

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by ACOR Consultants dated 15/12/2021. The easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide evidence of the created easement on title and the constructed private stormwater connection from the subject site to the existing council system in Barrenjoey Road.

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

to the issue of the Occupation Certificate.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

65. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

66. **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.

67. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life (DACPLF09)

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

68. **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.

69. **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.

70. **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.

71. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

72. **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.

73. **Plant Equipment and Air Conditioning**

Any plant equipment and air conditioning unit associated with the development 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.

74. **Lift noise control**

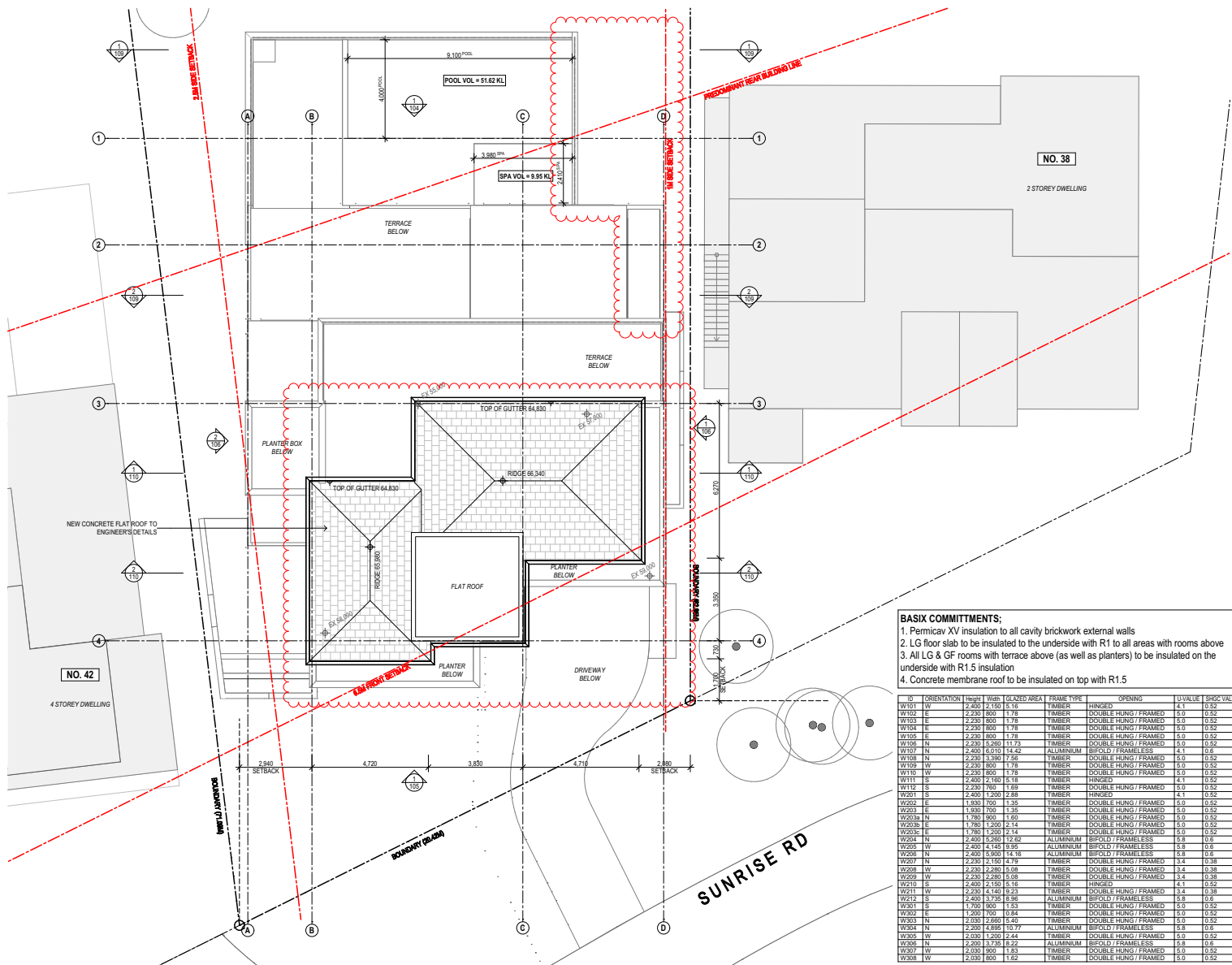
The passenger lift must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

75. **Use of "Lower ground floor level"**

The proposed "Lower ground floor level" is not to be used for the purpose of separate habitation (including a secondary dwelling or dual occupancy) and is not to contain any cooking facilities.

Reason: To ensure that the ground floor remains ancillary to the dwelling house.



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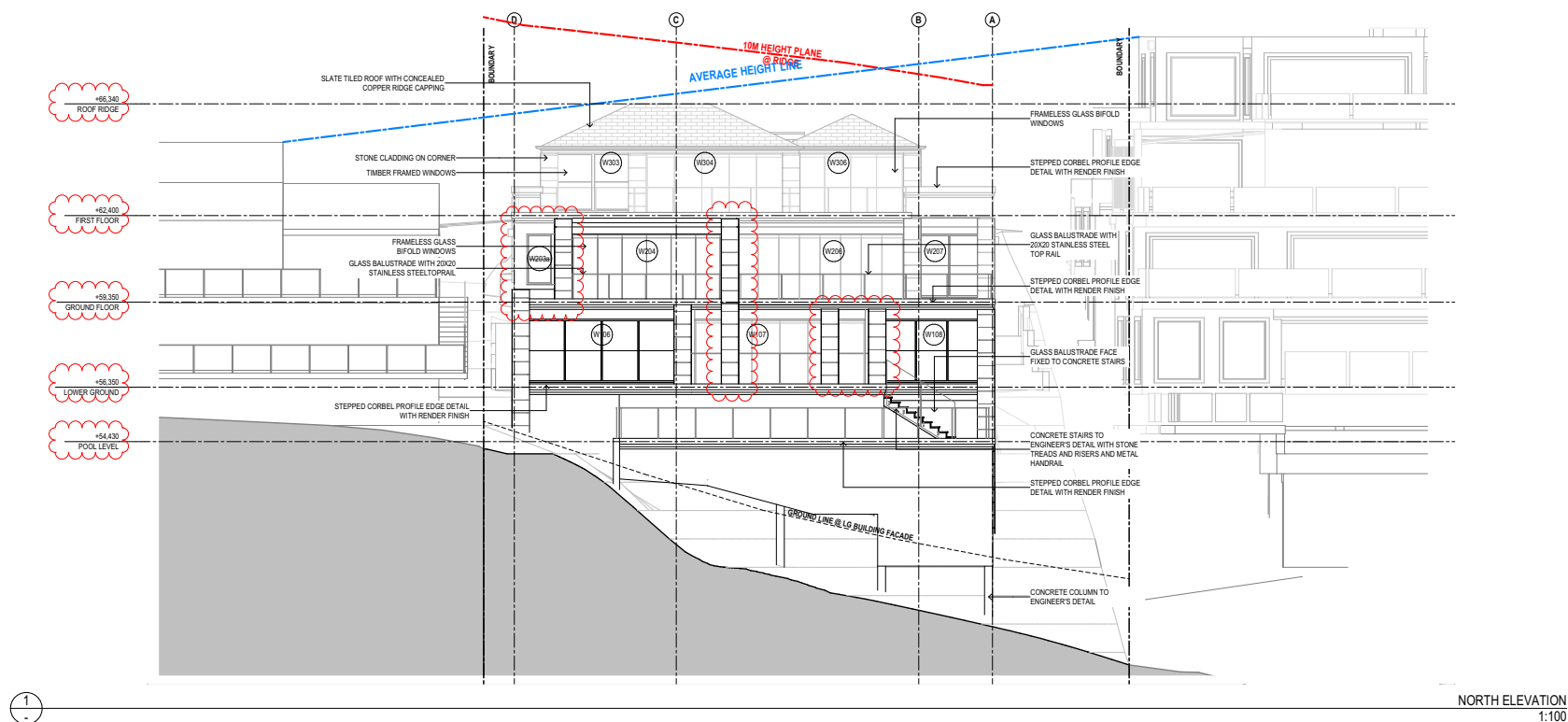
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**NEW RESIDENCE
AT 40 SUNRISE ROAD, PALM
BEACH
FOR SUSAN ROTHWELL**

ISSUE
A. FOR DA SUBMISSION
(05/21)
B. POOL SETBACK INCREASED AND
ROOF LEVEL LOWERED IN
RESPONSE TO COUNCIL COMMENTS
(10/21)

SITE AND ROOF PLAN

SCALE 1:100@A2
DATE 29/10/21
JOB NO. SRSP
DWG. NO. DA100
ISSUE B



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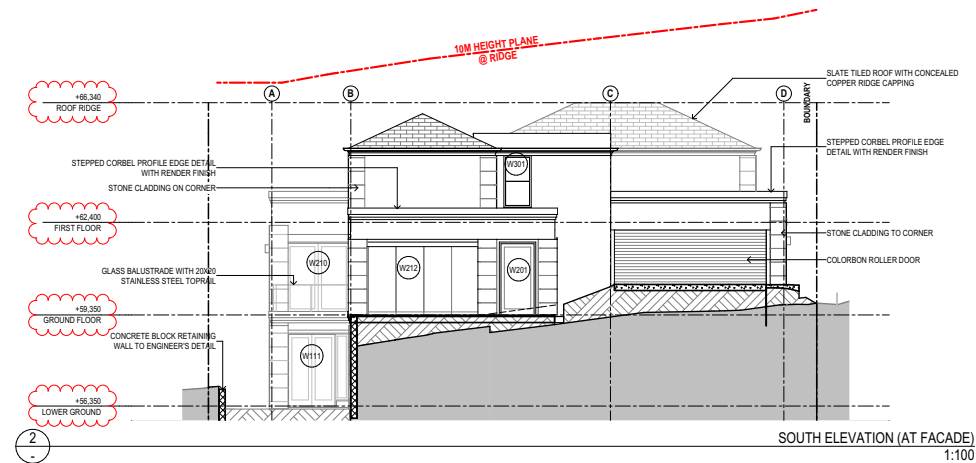
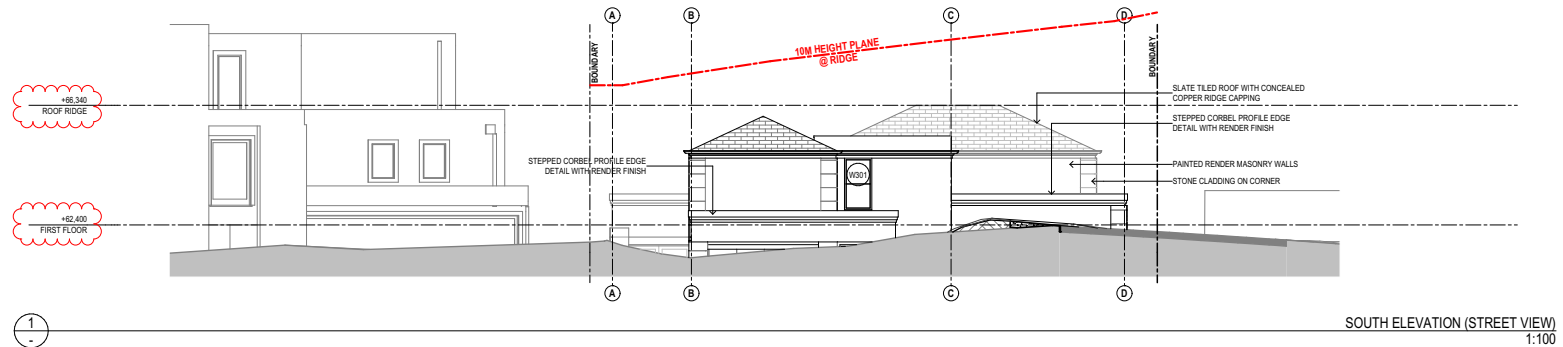
**NEW RESIDENCE
AT 40 SUNRISE ROAD, PALM BEACH
LOT 151 / DP 6937
FOR SUSAN ROTHWELL**

BUILDING LEVELS
B. BUILDING LEVELS
ROOM SETBACK
TO DETERMINE SETBACK
TO DETERMINE COMMENTS
(1021)
A. FOR DA SUBMISSION
(1021)

NORTH ELEVATION

SCALE: 1:100@A2
DATE: 29/10/21

PROJECT	DWG NO.	ISSUE
SRSP	DA104	B



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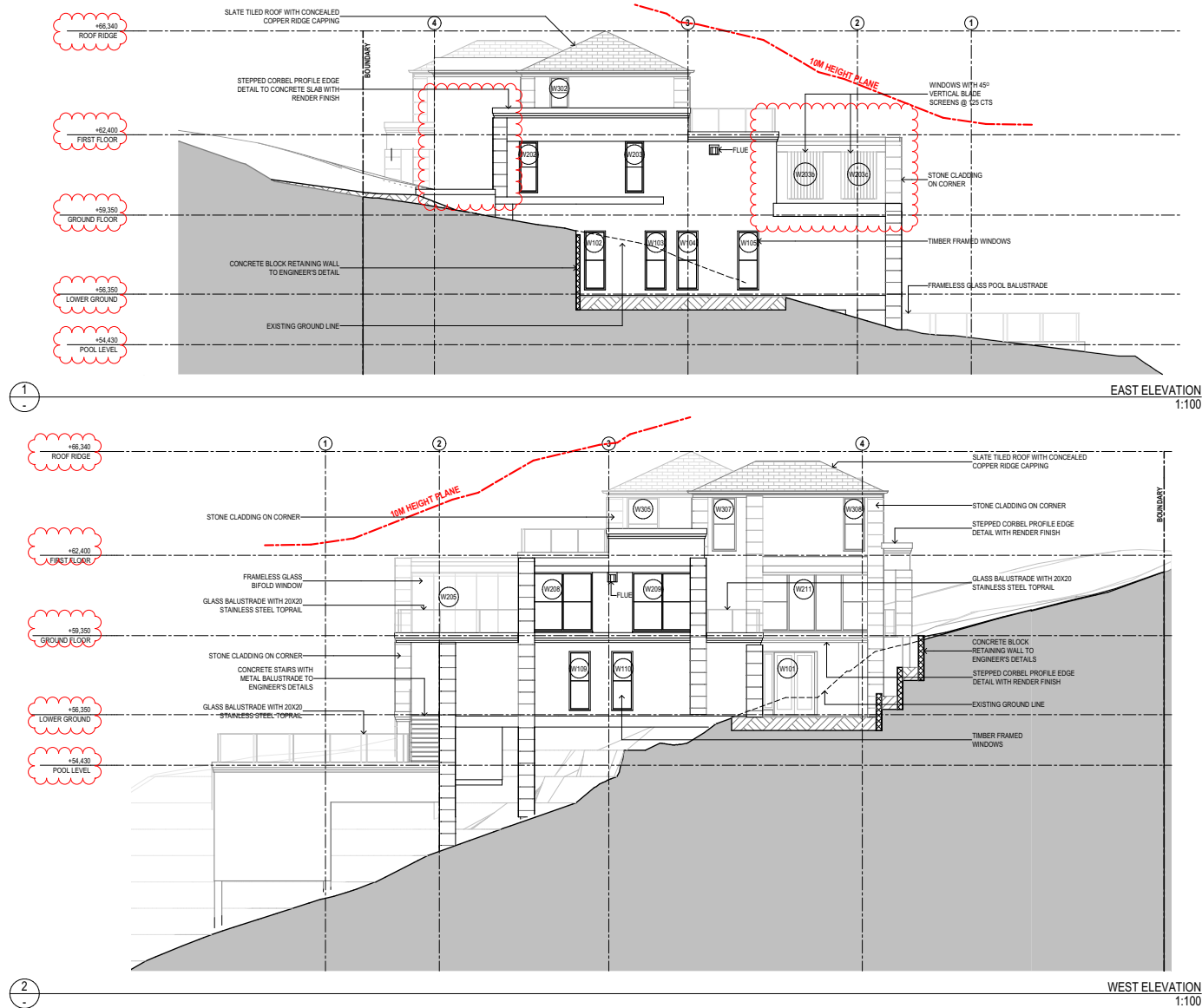
**NEW RESIDENCE
AT 40 SUNRISE ROAD, PALM BEACH
LOT 151 / DP 6937
FOR SUSAN ROTHWELL**

B: BUILDING LEVELS
C: CIVIL WORKS
D: DRAINAGE
E: ELECTRICAL
F: FURNITURE
G: GEOTECHNICAL
H: HAZARDOUS WASTE
I: INFRASTRUCTURE
J: JUNCTIONS
K: KITCHEN
L: LANDSCAPE
M: MATERIALS
N: NOTES
O: OTHER
P: PLUMBING
Q: QUANTITY
R: ROADWORK
S: SITEWORK
T: TENDERS
U: UTILITIES
V: VENTILATION
W: WATER
X: XEROX
Y: YARDWORK
Z: ZONING

SOUTH ELEVATION

PROJECT	DWG NO.	ISSUE
SRSP	DA105	B

SCALE: 1:100@A2
DATE: 29/10/21



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NEW RESIDENCE
AT 40 SUNRISE ROAD, PALM
BEACH
FOR SUSAN ROTHWELL

ISSUE

A: FOR DA SUBMISSION
(05/21)
B: GARAGE SETBACK INCREASED,
DINING ROOM SETBACK INCREASED
AND FLOOR LEVELS LOWERED IN
RESPONSE TO COUNCIL COMMENTS
(10/21)

**EAST AND WEST
ELEVATIONS**

SCALE	1:100@A2
DATE	29/10/21
JOB NO.	SRSP
DWG. NO.	DA106
ISSUE	B

ITEM 3.4

**DA2021/1469 - 23 LOCH STREET FRESHWATER -
DEMOLITION WORKS AND SUBDIVISION (BOUNDARY
ADJUSTMENT) MAINTAINING (2) LOTS AND THE
CONSTRUCTION OF A NEW DWELLING HOUSE, SPA POOLS
AND ASSOCIATED LANDSCAPING WORKS WITHIN LOT 102**

REPORTING MANAGER Rodney Piggott

TRIM FILE REF 2022/158085

ATTACHMENTS

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site Plan and Elevations
- 3 [↓](#) Clause 4.6

PURPOSE

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

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 **refuses** Development Consent to DA2021/1469 for demolition works and subdivision (boundary adjustment) maintaining (2) lots and the construction of a new dwelling house, spa pools and associated landscaping works within Lot 102 on land at Lot 7 DP 14040, 23 Loch Street FRESHWATER, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1469
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 7 DP 14040, 23 Loch Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and subdivision (boundary adjustment) maintaining (2) lots and the construction of a new dwelling house, spa pools and associated landscaping works within Lot 102
Zoning:	Warringah LEP2011 - 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:	Darren Andrew Holland Tania Brenda Holland
Applicant:	Bruce Stafford & Associates Pty Ltd
Application Lodged:	23/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	03/09/2021 to 17/09/2021
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 1.4%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,637,044.00

EXECUTIVE SUMMARY

The proposal is referred to the Development Determination Panel as there have been more than 3 submissions received for the dwelling house and subdivision, which has a cost of works greater than \$1 million. The critical assessment issues for the proposal relate to building height, views, drainage, overshadowing and topography related issues. The applicant has sought to respond to the issues raised in submissions with specific amendments to the plans to marginally reduce building height, address view sharing and drainage concerns. In doing so the applicant was unsuccessful in confirming any 'in principle' agreement for an easement to drain stormwater to Ellen Street, despite lengthy

negotiations. Notwithstanding this, the proposed dwelling design and subdivision (boundary adjustment) layout / lot area is considered acceptable but concerns raised regarding stormwater remain a critical concern.

The non-compliances with the building height, side boundary envelope and wall height are supported based on merit consideration. The majority of the building height complies with the 8.5m height plane and therefore the height of the proposal, as amended, is supported pursuant to 'Clause 4.6' and the non-compliance is not unreasonable given the steep site.

Development Engineering do not support approval of the proposal due to stormwater management concerns in this particular location. All other internal referrals support the proposal. Despite other amenity considerations (views, privacy, solar access and the like) being supported a detailed assessment of the proposal against the applicable engineering considerations (landslip, stormwater, subdivision requirements) the proposal is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

In summary, the proposal involves a subdivision (boundary adjustment) between No. 23 Loch Street and No.25 Loch Street, Freshwater, with the demolition of the present dwelling house at No.23 Loch Street to be demolished (but keeping the existing pool and cabana) followed by the construction of a 3 storey dwelling house, spa outbuilding and associated site works within the enlarged "Lot 102". The present dwelling house at No.25 Loch street will remain and both properties are under the same ownership. Details of the proposed works are as follows:

Subdivision

- Demolition of the existing house at No.23 Loch Street, including site preparation works for a boundary adjustment between No.23 and No.25 Loch Street.
- Subdivision by boundary adjustment proposed as "Lot 101" - 500sqm (No.25 Loch Street) and Lot 102 - 883sqm (No.23 Loch Street)
- Construction of a dwelling house configured as:

Basement Level: (RL44.70)

- Excavated garage with turntable (3 car spaces), ramp entry, stair and lift access, storage, equipment plant, bin room, laundry, services areas, rumpus room, bathroom, bedroom.

Ground Floor Level (RL47.85)

- Entry area, stair and lift access areas, storage, bathroom, courtyard (2), kitchen / living / dining area, terrace / bbq area, study room, library room, bedroom.

First Floor Level (RL51.05)

- Bedrooms (3), bathrooms (3), lift and stair access areas, storage, balcony (2).

Roof Level (RL54.25)

- Flat style roof form, pebble ballast with perimeter parapet element and skylight.

Ancillary site works:

- Existing pool outbuilding and swimming pool to be retained.
- On-site detention, drainage work with level spreader for stormwater discharge
- Landscaping works, garden planting and retaining walls
- Spa (2) and garden outbuilding and fish pond.
- Fencing, deck areas, pathways / stairs.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D13 Front Fences and Front Walls
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 7 DP 14040 , 23 Loch Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject proposal involves two (2) allotments and two (2) dwelling houses on the eastern side of Loch Street, being No.23 and No.25 Loch Street near the intersection with Wyadra Avenue and Bath Avenue.</p> <p>The property of No.23 Loch Street contains a spit level detached dwelling (to be demolished with this proposal), swimming pool, outbuilding, garage and garden areas. The land falls steeply to the east toward the rear of the house and has extensive stairs, paths and terraced areas. The exiting lot is identified as Lot 7 DP 14040 having a maximum width of 12.575m, length of 50.34m and an area of 633 square metres (sqm).</p> <p>The property of No.25 Loch Street contains a detached dwelling (to be retained with this proposal), outbuilding, off street parking and garden areas. The land falls steeply to the east at the rear half of the site with two high stone terraces. The exiting lot is identified as Lot 10 DP 1257419 having a maximum width of 15.2m, length of 50.34m and an area of 750.5sqm. A concrete driveway borders the northern boundary, approved for access to No.2 Wyadra Avenue.</p> <p>Surrounding development consists predominantly of detached dwelling houses on the eastern side of Loch Street. Directly opposite the site on the western side of Loch Street is a 3 storey residential flat building (No.28 Loch Street), which contains twelve (12) apartments.</p> <p>The subject site has an easterly aspect with broad coastal views. The surrounding topography is characterised by a natural sandstone escarpment area above Curl Curl foreshore area and therefore the rear of the site descends steeply with natural drainage toward Ellen Street.</p> <p>The site has a cross fall of up to 10m with shallow soils and sandstone rock outcrops / bedrock visible in parts of the site. A mature Norfolk Island Pine is located on the south-eastern corner No.23 Loch Street with no other large canopy trees on either property. The land is identified as within "Area B" for geotechnical classification, however parts of the land exceed 18 degrees due to retained slope areas.</p>

Map:



SITE HISTORY

Development Application No.DA2011/0861 for "Alterations and additions to a dwelling house" was approved by Council on 11 October 2011. This DA was subject to a modification No.MOD2011/0251 approved on 23 January 2012.

Development Application No.DA2015/1173 for 'alterations and additions to the existing dwelling and construction of a swimming pool and adjoining pavilion'. This application was approved by Council on 19 September 2016. This DA was subject to a modification No.MOD2017/0156 approved on 18 August 2017.

Pre-lodgement meeting No.PLM2017/0115 was held on 5 October 2017 for construction of a three storey dwelling, landscaping and a pool. DA2017/1203 is associated to this PLM.

Development Application No.DA2017/1203 for 'demolition of the existing dwelling and construction of a new dwelling' was approved on 11 July 2018.

Pre-lodgement meeting No.PLM2020/0026 was held on 3 March 2020 for 'site consolidation, demolition works and construction of a dwelling house including excavation, landscaping and ancillary site works. (This concept involved demolition of both dwellings on No.23 and No.25 Loch Street)

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to view analysis, building height, OSD / stormwater and landscape areas. The applicant has provided the information as requested by Council letter dated 11.11.2021. The information was not able to be consolidated in a single response but detailed information was provided on 26.11.2021, 16.2.2022 and 7.3.2022. The information is of a routine nature and include minor changes to the plans to address assessment issues which could otherwise be made via conditions. Therefore, no additional notification is required pursuant to Council's Community Participation Plan.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is suitable to be addressed via a condition of consent as applicable.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is suitable to be addressed via a condition of consent as applicable.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is suitable to be addressed via a condition of consent as applicable.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is suitable to be addressed via a condition of consent as applicable.</p>
Section 4.15 (1) (b) – the likely impacts of the	(i) Environmental Impact The environmental impacts of the proposed development on the natural

Section 4.15 Matters for Consideration'	Comments
development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>and built environment are addressed under the Warringah Development Control Plan section in this report. This assessment includes consideration of the built form controls, LEP and DCP requirements, local amenity, views, overshadowing, privacy, landscaping, drainage, dwelling design and the like.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development of the dwelling house and subdivision subject to meeting engineering requirements for the disposal of stormwater. Conclusions on suitability of the site for the development are provided within the 'Recommendations' section of this report.
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	Issues raised in submissions of objection have been considered in context of the LEP and DCP. Consideration is also made to the pattern of approved surrounding development and additional information provided. Some submissions have included letters of support for the proposal which are noted but do not impact the objective consideration of the overall environmental assessment, referral advice and other concerns raised in submissions (particularly drainage management).

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 03/09/2021 to 17/09/2021 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 6 submission/s from:

Name:	Address:

Name:	Address:
Mr Mark Robert Aubrey Ms Megan Aubrey	14 Ellen Street CURL CURL NSW 2096
Mr Mark Andrew Casazza	21 Loch Street FRESHWATER NSW 2096
Mr Stephan Nicholas David	4 / 28 Loch Street FRESHWATER NSW 2096
Jamie Cockerill	5 Batho Street FRESHWATER NSW 2096
Mr Crispin Marcel Swan	17 Loch Street FRESHWATER NSW 2096
Stanko Vidaic	26 Loch Street FRESHWATER NSW 2096

The following issues were raised in the submissions of objection to the proposal (it is noted that three (3) submissions were in support of the development):

1. Fencing
2. Overshadowing
3. Views
4. Stormwater drainage
5. Ground Levels
6. Building Height Compliance
7. Development approval process
8. Property Values
9. Privacy

The above issues are summarised and addressed as follows:

- 1. *Submissions received raise concern that front fencing exceeds the normal low open style requirement of the Warringah DCP and in places is misaligned with the legal boundary.*

Comment:

This issue is addressed in detail under the heading *Part D13 Front Walls and Fences* within this report. In summary, the site has an existing solid front fence structure and minor variations to fence alignments are common where original structures may have been used as reference points for upgrading fencing work. Unless raised as a concern by an adjacent affected land owner, minor existing alignment differences with existing fencing along the legal boundary do not warrant refusal of the subject application. Disputes relating to the *Dividing Fences Act* are administered through the local Court system and not Council. The style and design of the fencing does not warrant refusal of the proposal.

- 2. *Submissions received raise concerns regarding overshadowing toward No.19-21 Loch Street.*

Comment:

This issue is addressed in detail under the heading *Part D6 Access to Sunlight* within this report. In summary, the proposal is overshadowing regime is influenced by the east-west orientation of the site and sloping topography. Consideration of solar access (and site inspection) was made with regard to No.19-21 Loch Street. Overall the proposal is consistent with the objectives for solar access with regard to private open space, principal living areas and solar amenity. This issue does not warrant refusal of the application.

- 3. *Submissions received raise concerns regarding view sharing impact, including ocean views*

from No.24 and No.26 Loch Street.

Comment:

This issue is addressed in detail under the heading *Part D7 Views* within this report. In summary, the subject property and those that raised view submissions were inspected. The applicant provided a detailed view analysis and photo montage. Given the simple flat roof design form at the front elevation and low height at street elevation height poles are not warranted. Properties on the western side of Loch Street are vulnerable to view impacts with the re-development of houses on the eastern side of Loch Street in context with opportunity to view the ocean horizon at various positions / angles along the street. The applicant has responded to this issue and reduced some elements of non-compliance with the building height and demonstrate view sharing in context with the development potential of the site. Overall, the view impact is not considered to warrant refusal of the application.

- 4. *Submissions received raise concerns regarding stormwater disposal (using a level spreader) and potential impact this may have on the natural and built environment (including geotechnical and risks to buildings / future development downslope).*

Comment:

This issue is addressed in detail within this report under the heading "Internal Referrals" (from Council's Development Engineer), *Part 6.4 Development on Sloping land* (Warringah LEP), *Part C4 Stormwater* and *Part E10 Landslip Risk*. Additional consideration is also made under *Part C1 Subdivision* within this report. In summary, the proposal is considered to warrant the use of an easement to manage and control stormwater, including limiting impact on No.2 Wyadra Street and No.14-16 Ellen Street. Successful negotiation for a future easement has not been achieved and therefore this issue has determining weight to warrant refusal of the application. A deferred commencement is not supported (as the prospect of an easement remains unresolved) in that no details of the route, required pipe system, connections and affected properties has been consolidated with an 'agreement in principle' gained by one or more downstream properties.

- 5. *The submissions raised concerns that ground levels have changed over time will various development work and ancillary structures that influences the reading / overlay of development controls including built form controls and amenity considerations.*

Comment:

The measurement of height and levels is based on survey information with existing ground levels in the survey, dated 12 August 2021, and is therefore suitably current for "existing ground level" as defined under the Warringah LEP 2011 to be used. The use of 'extrapolated' ground lines may be used as explained within this report under "Clause 4.6" where circumstances require this. This issue has been considered and does not warrant refusal of the application in terms of the assessment and consideration of built forms control variations or potential impacts and amenity issues such as overshadowing, building bulk and the like.

- 6. *The submissions raised concerns that the proposal does not comply with the Height of Building development standard of the LEP or other built form controls under the DCP.*

Comment:

The NSW planning systems allows for flexibility with regard to development standards under a *Local Environmental Plan* (LEP) and also with regard to built form controls in a *Development Control Plan* (DCP). Variations are considered on merit for a development standard subject to 'Clause 4.6' of the 'standard instrument' LEP. A DCP also allows for consideration on merit for variations to numerical controls and the overall planning controls are not intended to be rigid and inflexible. Overall the variations sought to building height, wall height, side boundary envelope are minor with no unreasonable impact and have been addressed within this report under the relevant heading.

- 7. *The submissions raised concerns that the development approval process would allow for the proposal to be approved despite submissions of objections, impact and variations to the planning controls.*

Comment:

The application is referred to Council's Development Determination Panel (DDP) for consideration due to the number of submissions received and the category (class) of development, in accordance with Council's delegations. This ensures that the final assessment and decision on the application proposal will be made via a Panel process, including consideration of the application details, assessment report, submissions and relevant documents. Ultimately the Panel may decide to support the recommendation for refusal or approve the proposal subject to conditions.

- 8. *The submissions raised concerns that the proposal will impact property values.*

Comment:

Land valuations, property price changes and potential real estate market values are not a relevant consideration in the environmental assessment of a development application and no provisions for this is applicable under the Warringah LEP or Warringah DCP. Therefore, this issue does not have determining weight on the development application.

- 9. *The submissions raise concerns that the proposal will impact privacy.*

Comment:

This issue is considered in detail under the heading *Part D8 Privacy* within this report. The principal living areas and balconies at the rear of the site are similarly located to the existing house and adequately setback from the rear boundary with properties along Ellen Street to ensure no unreasonable privacy impact. Also the proposal will not create an unreasonable impact on adjoining or adjacent land, including No.28 Loch Street (opposite) or No.19-21 Loch Street due the location and screening of windows (including blinds) and internal floor layout. Generally the upper storey of the proposed dwelling contains bedroom area, bathrooms and wardrobes that are low use rooms during the day, being principally used for sleeping at night. This issue does not have determining weight.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported with conditions.</p> <p>The development application is for boundary realignment of No. 23 and No. 25 Loch Street into proposed Lots 101 and Lot 102.</p> <p>In relation to the proposed Lot 102, the application is for demolition of an existing dwelling and structures, and the construction of a new dwelling, spa pools and associated landscape works.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • C1 Subdivision • D1 Landscaped Open Space and Bushland Setting • D16 Swimming Pools and Spa Pools

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation • E6 Retaining unique environmental features <p>The subdivision proposal does not raise any issues with Landscape Referral as the existing trees within the site that are prescribed (ie. protected under the DCP) and located within the road verge are retained, and natural landscape features such as existing rock outcrops are not significantly impacted.</p> <p>A Landscape Plan is provided with the application for Lot 102 and includes retention of existing trees within the road verge and within the site and retention of vegetation along the boundary perimeter with adjoining properties. The landscape proposal includes retention of landscape elements and includes additional landscape works that enhances the landscape setting of the site.</p> <p>It is noted that proposed tree planting occurs below the existing RL 44.00 contour level a minimum of 10 metres and more below the proposed roof level. The mature height of the proposed trees are unlikely to reach the height of the proposed roof and the Landscape Plan nominates maintained heights.</p> <p>Landscape Referral raise no objections to the development works proposed under the development application subject to protection of existing trees and vegetation, and the completion of landscape works.</p>
NECC (Bushland and Biodiversity)	<p>Supported with conditions.</p> <p>The application seeks approval for a boundary realignment, the demolition of an existing two-storey dwelling and structures and construction of a three-storey dwelling, spa pools and associated landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><u>Biodiversity Conservation Act 2016 (BC Act)</u></p> <p><u>Warringah Development Control Plan (WDCP)</u></p> <ul style="list-style-type: none"> • Clause E2 Prescribed Vegetation • Clause E5 Native Vegetation • Clause E6 Retaining unique environmental features <p>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. No objection is raised to the proposed Landscape Plan, which seeks to restore locally-native vegetation to the site, however the following species must be deleted due to their status as priority or environmental weeds; <i>Olea europaea</i> and <i>Raphiolepis spp.</i></p>

Internal Referral Body	Comments
	<p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>Not supported.</p> <p><u>Updated Engineering Referral comments 8/3/21</u> It is noted that the applicant has been in negotiations to obtain an inter-allotment drainage easement, however the easement has not been obtained. The previous development engineering comments are still current and relied on in relation to the proposed 2 lot subdivision.</p> <p><u>Previous Engineering referral comments</u> The proposed method of stormwater drainage for the subdivision/housing which details discharge of stormwater via a level spreader is not supported by Council for the following reasons:</p> <p>1) As required by Councils Water management for development policy Section 5.5 the applicant is required to obtain an inter allotment drainage easement through the downstream properties to connect the drainage into Councils system in Ellen Street.</p> <p>2) The proposed stormwater drainage system as designed by ITM which consists of a stormwater detention tank and level spreader at the top of the escarpment. As such this method of disposal is not supported given the following impacts :</p> <p>a) The level spreader is located too close to the proposed house/garage and driveway platform area as approved in DA2020/0147 for No. 2 Loch Street. It will directly discharge stormwater onto this area both by overland and underground flows. For a level spreader to work adequately and have minimal impacts on downstream properties these systems require a substantial setback to the downstream dwelling which is normally a minimum of 30m</p> <p>b) The below cliff /escarpment is classified as id classified by Council as land slip risk B and C with C being the most / highest risk classification. As such it is considered that any method of stormwater disposal that proposed to saturate the top of the escarpment is not acceptable and elevates the risk of land slip failure.</p> <p>For the above following reasons the proposed subdivision/house development is <u>not supported</u>, the applicant is required to obtain an inter allotment drainage easement through the downstream properties as this is the most suitable way of draining the proposed development.</p> <p><u>Planning Comment:</u> On the basis of the Development Engineering referral response provided the application cannot be recommended for approval. See</p>

Internal Referral Body	Comments																																							
	reasons for refusal with the "recommendation" section of this report.																																							
NECC (Water Management)	Supported with conditions. The proposed development is for a boundary realignment, knock-down rebuild of a residential dwelling, excavation and landscaping works. Subject to conditions, the development is compliant with Council's water management controls.																																							
Strategic and Place Planning (Heritage Officer)	Supported without conditions. <table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">The proposal has been referred to Heritage as the subject is within proximity to a heritage listed property I128 - Building known as 'Stewart House' - 45 Carrington Parade, Curl Curl</td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3">Details of the item as contained within the Warringah inventory is as follows: <u>Statement of Significance</u> A representative example of the institutional buildings which were erected in the area to provide health & welfare services associated with the sea. Socially important due to the role that it has played in public health & child welfare since 1930. <u>Physical Description</u> Elevated face brick building of symmetrical design & central entrance. Tiled hipped roof with stepped parapet centrally located above entrance pavillion. Projecting bays at either end. Flat roofed (enclosed) verandahs with terracotta shingle skirts.Circular driveway at front. Central stairway to entrance. Flagpole.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td></td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td></td><td></td></tr><tr><th colspan="3">Consideration of Application</th></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as the subject is within proximity to a heritage listed property I128 - Building known as 'Stewart House' - 45 Carrington Parade, Curl Curl			Details of heritage items affected			Details of the item as contained within the Warringah inventory is as follows: <u>Statement of Significance</u> A representative example of the institutional buildings which were erected in the area to provide health & welfare services associated with the sea. Socially important due to the role that it has played in public health & child welfare since 1930. <u>Physical Description</u> Elevated face brick building of symmetrical design & central entrance. Tiled hipped roof with stepped parapet centrally located above entrance pavillion. Projecting bays at either end. Flat roofed (enclosed) verandahs with terracotta shingle skirts.Circular driveway at front. Central stairway to entrance. Flagpole.			Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register			RAIA Register of 20th Century Buildings of Significance	No		Other			Consideration of Application		
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Internal Referral Body	Comments
	<p>The proposal seeks consent for a boundary adjustment and new dwelling with associated works. The eastern rear yard of number 25 Loch Street is proposed to be merged with 23 Loch Street to form a new large L shaped lot. A new dwelling is then proposed for 23 Loch Street. To the north of the properties and separated by a private driveway is the heritage listed Stewart House site. This site is however quite large and the physical building subject to the listing is located at the eastern end of the site facing Carrington Parade over 80m away. In addition there is a significant fall in elevation from the subject site to the heritage item. Given the above, the proposal is considered to not impact upon the item or its significance.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>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</p> <p><u>Conclusion</u> Therefore, Heritage raises no objections and requires no conditions.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response on the 16.9.2021 with no comments, conditions or other advisory requirements.

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. The possibility of asbestos / lead paint material present within demolition waste is appropriately managed by standard conditions to comply with National safe handling requirements.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1071907S 02) dated 14.7.2021.

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

Pass

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	60

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 and a referral response was received on 16.9.2021 that raised no objections are raised and no requirements or conditions.

Other Service Authorities

The proposal does not require referral to Transport NSW (formerly RMS) and no other Service Infrastructure Authority referral issues are raised pursuant to the SEPP. Sydney Water requirements are managed under separate administrative processes directly with Sydney Water.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	450sqm	Lot 101: 500sqm Lot 102: 883sqm	N/A	Yes Yes
Height of Buildings:	8.5m	8.62m	1.4% (120mm)	No* 'Clause 4.6' Merit variation sought

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	No

Detailed Assessment

Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposal involved the demolition of a dwelling house and construction of new dwelling in a low density residential environment with compliant lot area, including appropriate landscaped settings to the street and the rear boundary. Therefore, 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 proposal does not involve the construction of other uses or services as part of a variety of local land uses. It is considered that this objective is not relevant to the proposal.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The development will maintain a low density residential environment however this involves a subdivision of the land and new stormwater management system. The use of a level spreader (rather than an easement) for water disposal in the surrounding steep sandstone coastal terrain is not supported due to risks of saturation / water nuisance to downslope properties, landslip risk along the escarpment area and potential impact on future development below the site.

It is considered that the development does not satisfy this objective.

4.6 Exceptions to development standards

Development standard:	Building Height
Requirement:	8.5m
Proposed:	8.62m
Percentage variation to requirement:	1.4%

The survey and amended plans show the following height levels for the building based on EGL

- Forward (eastern edge / parapet): Architectural section based on extrapolated ground line across front elevation.

These levels give a minor non compliance of 120 millimetres (mm) at the eastern elevation roof parapet (See Drawing DA321 / B).

The building height is measured from an extrapolated existing ground line across the central building footprint which is consistent with the practical method adopted by the NSW Land and Environment Court in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. In this, the court regarded that it was unhelpful when measuring height to follow excavation lines below ground level that "*results in an absurd height plane with a large and distinct full storey dip in it as it moves across the site*". Therefore, across the majority of the building the roof area the dwelling is under 8.5m height as indicated in the section diagram below.

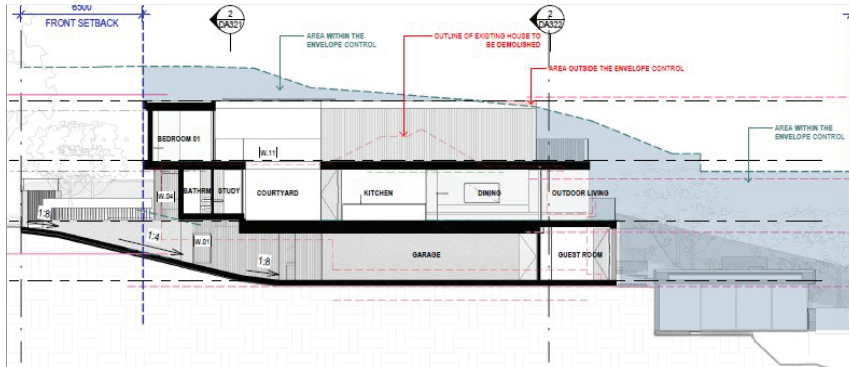


Image 1: Height of building along the site from front (west) to rear (east).

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

health and safety of their occupants,

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

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

The applicants written request argues, in part:

- The breaching portions of Height of Buildings Development Standard is limited to a miniscule portion the proposed eastern edge of the roof of the proposed Master Bedroom at proposed Level 1.
- The majority of proposed Level 1 is significantly below the Height of Buildings Development standard.
- The proposed development is of a comparable height, bulk and scale to that approved under DA2017/1203 and similarly this proposal has gives no unreasonable impact on adjoining or nearby properties from visual impact, disruption of views, loss of privacy, or loss of solar access.
- The proposed flat roof design generally ensures that aside from the very minor breaching portion of the proposed master bedroom, the majority of the proposed dwelling is significantly below the 8.5m Height of Buildings standard.
- The 3D Views demonstrate a proposed dwelling on proposed Lot 102 that is compatible with the height, bulk and scale of adjoining existing buildings to the south.
- The properties to the west (on the opposite side of Loch Street) sit higher than the subject site, with the result that the proposed top level will only be viewed, at worst, as a 2 storey structure.
- The proposed development will not adversely impact on views of the adjoining dwellings to the north and south, due primarily to the fact that the proposed dwelling has a proposed rear setback significantly greater than the Rear Boundary Setback control.
- The breaching portions of the proposed Dwelling are setback a greater than required distance from the side and rear boundaries of the subject site, incorporating significant articulation.

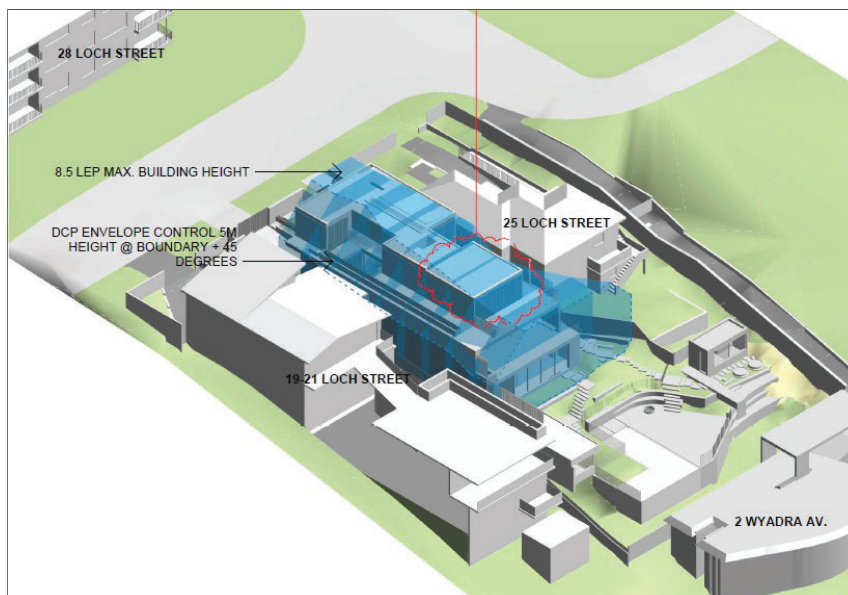


Image: Height plane overlay and image of surrounding development.

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 an

acceptable design that will not unreasonably impact the amenity of the surrounding urban or natural 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).

In considering the proposal, it is noted that the bulk, height, setbacks and selected elements of the proposal have been designed in consideration to minimise elements that contribute to height and style the upper level to ensure non-complying elements do not contribute to unreasonable views and overshadowing. Generally the height of the building and distribution of built form has been made with regard to the Warringah DCP and WLEP. The subject land is a moderately steep slope (including existing excavation) that influence the design response such as floor levels, side and front setbacks, excavation, building footprint and future amenity considerations.

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 standards

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the WLEP 2013 are:

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

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

Comment:

The proposed height is consistent with the established streetscape on the eastern side of Loch Street for newer dwellings. The variation is minor in nature and only present at the eastern end of the building where the land falls steeply toward the rear. Given the increase side setbacks at the rear and along the southern elevation overshadowing of neighbouring properties as a result of the variation will be minimal.

The subject site is similar to adjacent land due the hillside position, depth and orientation. The moderately steep topography and excavated contours of the land are considered to influence the requirement to seek variation under clause 4.6. The styling of the building reflects the newer dwellings in the street that are of a contemporary architecture, whereby many original dwellings have been demolished / replaced over time. The built form is consistent with the existing pattern

of development along the northern side of Loch Street that is, 2 storey at the front, but appears as 3 storeys only at the rear yard area. Therefore, the building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings in Loch Street.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment: The height variation is at the rear of the site. Residents on the western side of Loch Street have similar natural ground level for the front boundary setback and therefore no significant view advantage whereas properties on the eastern side of Loch Street the land falls away steeply and overlooks dwellings along Ellen Street. It is also noted that the portion of the site that exceeds the height control does not reduce views. With regard to the buildings adjoining the eastern and western properties, the development proposes setbacks and a building height consistent with the adjoining properties and therefore will not result in a significant loss of views. Selected parts of the upper floor elements have been reduced in size and wider setbacks to adjacent land as wall height increases to minimise any non-compliance with the building height control. Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land. Detailed view considerations have been made with the assessment of the proposal, including amendments made by the applicant reduce potential view impacts by selected minor changes made to address concerns raised with regard to views from adjacent dwellings and on the western side of Loch Street.

It is considered that the proposal is consistent with this objective.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments

Comment: The coastal terrain has a wide occurrence of bedrock and shallow soils along ridgelines and steeply sloping areas which limits the establishment of large canopy trees. In this case however the site has a large Norfolk Pine near the southern boundary and a canopy street trees at the front of the house. The subdivision assists the better utilisation of landscape area at the rear of No.25 Loch Street to now be accessible to No.23 Loch Street due natural contours of the site. The site is not in a location where principal public views lines are gained across the site from a public beach / parkland reserve or similar. It is considered that the proposed height variation maintains consistency with this objective.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment: The overall building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings in Loch Street as it presents from ground level to the lower and sloping topography at the rear. It is considered that the proposed building height variation maintains consistency with this objective.

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 height variation does not offend this objective of the zone in that the use of the remains (for detached housing) and is provided with landscaping concentrated at the front and rear that is compatible with the scale, density and pattern of surrounding development.

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: This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

Comment: The height variation does not impact the landscape setting of the site and the surrounding setting over the long term once landscaping is re-established for the garden areas. The higher houses adjacent and opposite the site reduce any isolated silhouette appearance to the dwelling when viewed from Curl Curl beach area. The proposed residential dwelling incorporates suitable (modern styling) palate of colours and materials (including natural timber vertical cladding / battens), stone, rendered walls and other materials (shown on Drawing DA121) in keeping with the scenic quality when viewed from Loch Street and extensive landscaped areas on the eastern half of the site.

Conclusion:

For the reasons detailed above, the height variation 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 PS 20-002 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Development Determination Panel.

6.4 Development on sloping land

Merit Assessment

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

(a) *to avoid significant adverse impacts on development and on properties in the vicinity of development sites resulting from landslides originating either on or near sloping land,*

- (b) to ensure the impacts of storm water runoff from development on or near sloping land are minimised so as to not adversely affect the stability of the subject and surrounding land,*
- (c) to ensure subsurface flows are not adversely affected by development so as to not impact on the stability of existing or adjoining land.*

Comment

- The subject site is situated along a natural sandstone escarpment between Ellen Street and Loch Street, Curl Curl. The land contains small ledges, retaining walls, cliff sections and overhangs with residential development occupying the surrounding land. Ancillary structures such as fences, pathways, and garden areas also exist across the escarpment area. The land associated with No.14 Ellen Street, No.16 Ellen Street and No.2 Loch Street contain development approvals for subdivision and residential development work. In addition to these factors the proposed seeks a subdivision of land also (by boundary adjustment) and there Council's Development Engineers consider that the use of a level spreader discharging surface water down the escarpment is an inappropriate stormwater management solution. The establishment of an inter-allotment stormwater easement will ensure stormwater runoff is better managed to avoid increased risk of landslip or stormwater affecting building foundations / water penetration risk and regular water flows is contained within an easement and therefore will not be released overland that could increase sub-surface flows (saturation) across shallow soils over steep sandstone areas.

(2) This clause applies to land shown as Area A, Area B, Area C, Area D and Area E on the LandslipRisk Map.

Comment

- Parts of the subject site and land east of the site (downslope) exceeds 18 degrees slope. Some sections of the site and adjacent land topography is vertical with rock ledges and overhangs. The site is categorised as 'Area B' and the land adjoining downslope is 'Area B and 'Area C'. (See concerns raised in Submissions made by No.14 Ellen Street attached to this report)

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

- (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) the development will not impact on or affect the existing subsurface flow conditions.*

Comment

- It is noted that DA2017/1203 for a dwelling house on No.23 Loch Street preceded DA2020/0147 for consolidation and subdivision at No.14-16 Ellen Street, therefore the current subdivision is a consideration with regard to the pattern of surrounding development. The Development Engineering section of Council is not satisfied that the proposal is providing an appropriate long term management for stormwater given the potential risk along the escarpment feature below the subject site, existing and approved pattern of development likely to be affected and existing overland flow conditions. The proposal involves the subdivision of land and therefore the use of an inter-allotment drainage easement is considered to be required to ensure regular stormwater discharge is connected directly to existing drainage infrastructure in Ellen Street. The permanent

use of a level spreader is not supported by Council's Development Engineers due to the potential risk to surrounding property, potential detrimental impacts and potential impact on subsurface flows. As a subdivision of land, the proposal is not appropriate to depend on a level spreader for the extensive re-development of the site and associated subdivision.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of that part of the WLEP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

Warringah Development Control Plan

Built Form Controls

No.23 Loch Street (Demolition of existing house)

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	8.1m	12.5%	No*
B3 Side Boundary Envelope	5m at 45 degrees North	Breach of side boundary envelope (up to 0.3m)	6.1%	No*
	5m at 45 degrees South	Breach of side boundary envelope (up to 0.5m)	8.6%	No*
B5 Side Boundary Setbacks	0.9m North	0.9m Basement	N/A	Yes
		0.9m Ground Floor	N/A	Yes
		0.9m to 4.4m First Floor	N/A	Yes
	0.9m South	0.9m Basement	N/A	Yes
		0.9m Ground Floor	N/A	Yes
		2.1m to 5.3m First Floor	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m Dwelling wall	N/A	Yes
B9 Rear Boundary Setbacks (Ancillary structures permitted up to 50% setback area)	6.0m	18.4m Dwelling	N/A	Yes
		2.2m Existing pool	N/A	Yes
		2.2m New deck	N/A	Yes

D1 Landscaped Open Space (LOS) and Bushland Setting (Proposed site area 883sqm from 633sqm)	40% (353sqm)	40.2% (355sqm))	N/A	Yes
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*See detailed merit assessment under the heading Built Form Controls within this report.

No.25 Loch Street (Existing house to remain)

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	6.0m (No change)	N/A	Yes
B3 Side Boundary Envelope	4m at 45 degrees North	Within Envelope (No change)	N/A	Yes
	4m at 45 degrees South	Within Envelope (No change)	N/A	Yes
B5 Side Boundary Setbacks	0.9m North	3.5m (No change)	N/A	Yes
	0.9m South	1.1m (No change)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	9.8m (No change)	Nil	Yes
B9 Rear Boundary Setbacks	6.0m	11m to new boundary (reduced from 25m)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting (Proposed site area 500sqm reduced from 750sqm)	40% (353sqm)	40.2% (355sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	Yes	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	No	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	No	No
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	No	No

Detailed Assessment

A.5 Objectives

The overriding objective of the DCP is to create and maintain a high level of environmental quality throughout Warringah. Development should result in an increased level of local amenity and environmental sustainability. The proposal does not satisfy the following DCP objectives under Part A.5:

- The development does not appropriately respond to the slope and drainage characteristics of the site in a manner that will protect the qualities of the surrounding neighbourhood, particularly with regard to landform risk and potential nuisance associated with stormwater management.

- The proposal does not meet the objective in creating a "good neighbour" relationship for the long term management of drainage in the surrounding landscaping and potential impacts of water runoff / discharge on the natural and built environment downslope of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of this part of the WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B1 Wall Heights

Description of non-compliance

The maximum wall height is up to 8.2m for the side wall and front of the building, being a variation of up to 13.8%.

Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The non-compliance with the wall height control relates to both the eastern and western wall planes and is most pronounced toward the upper corner for the master bedroom and bathroom room on the First Floor Level. In addition to this includes wall height consideration includes side blade wall elements / screens toward the rear balcony. These elements of the building will be visible from surrounding properties and the public street. The building is visible from the coastal zone (Curl Curl Beach area) but is consistent with the height / scale and density of surrounding dwellings. The front wall element is setback 6.5m from Loch Street boundary and maintains the general alignment of the majority of dwelling in Loch Street. The height has a minimal impact on private open space and overshadowing to the south. The building building bulk and scale, by comparison is consistent with newer (contemporary) dwellings along Loch Street. Despite the wall height non-compliance at the eastern half of the dwelling, the building still achieves acceptable view sharing in context of the broad ocean views of surrounding land.

- *To ensure development is generally beneath the existing tree canopy level.*

Comment:

There are no significant trees on the site the land has very thin soil profile with bedrock close to the surface. This part of the area is characterised by the escarpment feature that exists between Loch Street and Ellen Street and accordingly the pattern of surrounding development shows that the rear elevations / wall heights are much higher at the rear of dwellings. With the

exception of some street trees and established Norfolk Pine trees in the vicinity trees at the rear of buildings are low, to enable coastal views. A detailed landscape plan is provided that has various tree and shrub planting of various heights suitable for the space provided. The proposal is consistent with this objective.

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

Comment:

The non-compliance with the wall height is limited to the eastern end of the dwelling due to the natural slope of the land that drops away steeply toward the rear of the site. The wall height will have no unreasonable impact on view sharing with regard to public land. Issues of view sharing from surrounding private property is addressed in detail under the heading *D7 Views* within this report.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-complying sections of wall are limited to the corner of the side walls and across southern (front) elevation of the building which is influenced by the natural slope of the land and gradients required for the garage level below. Impacts on views from public domain are not unreasonable in the context of the pattern of development and broad views available. The balcony blade walls and screens assist to maintain reasonable amenity impacts with respect to privacy for adjacent land. No unreasonable amenity impacts of overshadowing, privacy, or spatial separation impacts will result from the wall non-compliant wall height with regard to adjoining private properties.

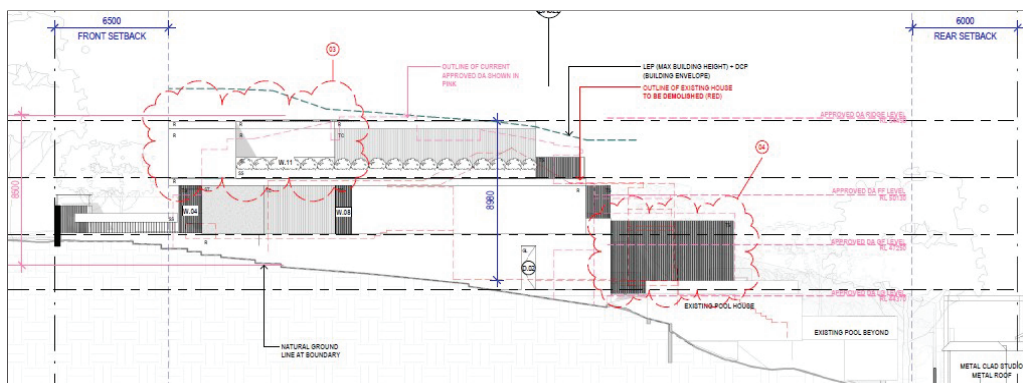


Image: Side elevation of dwelling showing building height, wall height and southern wall plane elements. Note privacy screen at lower ground level.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The natural ground level of the site is approximately 2.0m to 3.0m lower at the rear of the

building than at the front which therefore influences the extent of wall height non-compliance. This enables a basement area and two floors above to capitalise on the existing building footprint with the front wall of the dwelling is setback 6.5m from Loch Street. The upper storey at the front (western half) of the dwelling complies with the 7.2m wall height and the increased side setbacks and open balcony elements at the rear provide a reasonable response to the topography.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The building is of a contemporary style with a flat roof and small clerestory element (to bring light into the lower entry area via the stairwell) for the main dwelling house. Variation and visual interest (including light and ventilation) is provided by the skylights and window spaces in the upper levels that provides an innovative functional feature and minimise view impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives the control and is supportable on merit in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

Along the southern side elevation the proposal does not comply with the side boundary envelope for part of the upper wall section of the master bedroom (up to 0.5m) and the main living area wall (up to 0.3m). Along the northern side elevation the proposal does not comply with the side boundary envelope for part of the upper wall section of 'bedroom 2' (up to 0.3m) (See Drawing DA132/A, DA302 /C and DA321/B drawn by Stafford Architects).

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The non-compliance is influenced by the gradient of the site in that the land falls toward the east in that the front of the building is near compliant at the envelope line when viewed from Loch Street. Therefore, the non-compliant elements are not significant near the street frontage in terms of building bulk, being more pronounced toward the rear of the building where the land slope to the east.

The proposal presents as a two storey building from the street and the third storey element at the rear are consistent with newer dwellings in the vicinity of the site where the land falls toward Curl Curl. A low pitched / flat style roof form has been used to minimise height and bulk and the upper section of the building associated with the master bedroom is set in from the side boundaries to minimise impact of height and bulk. The proposal remains consistent with this objective.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The non-compliance with the building envelope does not unreasonably affect privacy or spatial separation to adjacent land. Privacy is maintained by the use of shutters / fitted screens, translucent glass, appropriate window placement and setbacks for side windows and walls. The proposal complies with minimum DCP requirements for solar access to adjacent land under *Part D2 Private Open Space*, and consideration of adjacent land with regard to natural light, direct solar access, privacy, bulk and the overall building design / separation are consistent with this objectives. The extent of non-compliance with the side boundary envelope does not contribute to an unreasonable loss of amenity by the variation to the side boundary envelope.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposal is position within similar footprint to the existing house and therefore seeks to capitalise on the coastal / ocean views toward Curl Curl beach. In part, the wall plane has been stepped in provided visual interest and break up building bulk along the side boundary envelope. Overall the non-compliance is minor.

Having regard to the above assessment, it is concluded that the proposed development, is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance by conditions to maintain consistency with the requirement and objectives of the side boundary envelope control.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements:	Proposed Lot 101 (No.25 Loch Street)	
	Proposed new allotments:	<u>Width</u> 12.7m (No change plus 2.4m access = 15.1m)	No (Note existing house and structures on No.25 Loch Street will remain unchanged)
	a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m ²	<u>Depth</u> 36.6m (Angled rear boundary created by boundary adjustment with No.23 Loch Street along rear retaining wall)	
		<u>Lot Area</u> : 500sqm with 175sqm building area available.	Yes
		Proposed Lot 102 (No.23 Loch Street)	No (existing lot width)

		Width: 12.57m to 27.7m	Yes
		Depth: 50.34m	Yes
		Area: 883sqm	
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p> <p>Rights-of-carriageway should be</p>	<p>Proposed Lot 101: Access in same position as the existing driveway crossing. No change</p> <p>Proposed Lot 102 New garage and driveway will use the existing driveway layback.</p> <p>No change to street residential garbage service for both Lots</p> <p>Driveway compliant across road reserve.</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>No change to existing arrangement with No.2 Loch Street.</p>	Yes

	<p>located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)																
Up to 3 lots	0.5																
4 or more lots	1.0																
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban</p>	<p>Proposal not supported pursuant to OSD requirements and considerations.</p>	<p>No - Recommended for refusal as per Engineering Referral response.</p>														

	<p>Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>		
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>No. An inter-allotment drainage has not been obtained for the proposal either 'In principal' or by existing legal title to drain water to Ellen Street.</p> <p>The site is within steep terrain and the subdivision (by boundary adjustment) and redevelopment of the land will discharge water down an escarpment. The use of a level spreader raises concerns with regard to saturation of cliff elements and long term adverse risk to the natural and built environment downslope. Stormwater drainage must be appropriately serviced with the benefit of an easement to connect to the system in Ellen Street.</p> <p>A deferred commencement is not supported (and remains unresolved) in that no details of the route, required pipe system, connections and affected properties has been consolidated with an 'agreement in principle' gained by one or more downstream properties.</p>	<p>No - Recommended for refusal as per Engineering Referral response.</p>
Restrictions	<p>Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.</p>	<p>Not applied for by the applicant.</p> <p>Existing easement on proposed Lot 101 and Lot 102 shown on the draft subdivision plan.</p>	<p>A positive covenant will be required for any easement to drain water.</p>

Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	Subdivision pattern utilizes the rock ledge / retaining walls on No.25 Loch Street to transfer land area to No.23 Loch Street. New dwelling house is situation on same location as the existing house for No.23 Loch Street. Landslip and drainage risk has not been addressed to the satisfaction of Development Engineering.	No - Reason for refusal
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	N/A	N/A

Description of non-compliance

The proposal does not satisfy engineering requirements for the appropriate disposal of stormwater relevant to the particulars of this site. A deferred commencement is not supported in the circumstances.

Merit consideration

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

- To regulate the density of development.*

Comment:

The proposal complies with density requirements for the residential zoning.

- To limit the impact of new development and to protect the natural landscape and topography.*

Comment:

The proposal seeks to utilise the existing retaining wall shape to guide the re-alignment of the boundary between No.23 and No.25 Loch Street. As a subdivision both properties should seek use of a future easement to drain stormwater to Ellen Street. The use of an easement has not been gained and therefore the reliance on a level spread raises valid concerns and increase risk associated with water saturation / discharge down the escarpment with landslip potential and hazard to future development downslope.

- To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

Sufficient area for landscaping, private open space, electrical, gas and Sydney Water services and vehicular access are available to the site

- *To maximise and protect solar access for each dwelling.*

Comment:

The proposal is satisfactory for this objective. The existing house on proposed Lot 101 (No.25 Loch Street) will remain.

- *To maximise the use of existing infrastructure.*

Comment:

The proposal is not consistent with this objective in that connection to Council's drainage system in Ellen Street has not been achieved. The use of level spreader on the site does not maximize the use of existing stormwater system.

- *To protect the amenity of adjoining properties.*

Comment:

The amenity of downslope properties will be affected by nuisance water if the use of level spreader saturates surface areas and subsurface areas of adjacent land below the site. The proposal is not consistent with this objective.

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

The proposal does not satisfy this objective in that increased risk are raised as a valid concern for downslope properties and Development Engineering in terms of the topography and need to appropriated manage stormwater in steep terrain with potential landslip issues may arise. The proposal is not consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C4 Stormwater

Merit consideration

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

- *To ensure the appropriate management of stormwater.*

Comment:

The use of an infiltration and dispersal system is not appropriate in this case for the site topography / terrain and the use of a piped easement to transfer roof water and additional runoff should be implemented.

- *To minimise the quantity of stormwater run-off.*

Comment:

The site is permitted to have natural runoff from grassed / garden areas as natural overland flow however the use of an easement for roof water and similar hard surface areas to take the water directly to Ellen Stret stormwater connection will minimise and better manage water runoff and prevent nuisance flows by natural overland and subsurface water with reduced saturation / discharge.

- *To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.*

Comment:

The OSD Technical Specification and Council's Water Management Policy includes various options to dispose of water and applicant should select the most efficient, reliable and serviceable method for the long term (including minimising risks / nuisance to downslope water receivers). In this case the use on an easement to transfer water is appropriate for the site due to the steep sandstone terrain and subdivision / redevelopment works.

- *To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).*

Comment:

The use of an easement will ensure the sustainability of peak discharge can be acceptably managed by a piped system direct to Council's connection in Ellen Street.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D6 Access to Sunlight

Part D6 Access to Sunlight seeks that at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space (POS) of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

In addressing solar access the following matters within *Benevolent Society v Waverley Council (2010) NSWLEC 1082* of relevance and have been factored in with the merit consideration of the WDCP objectives:

- *"The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*
- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*
Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.
- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*
- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*
- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence. In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development."*

Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

The subject land slopes toward the east and the rear balcony provides private open space is accessible to the pool area and wider landscape area in the lower part of the site. To the south No.19/21 Loch Street has a detached design of 2 main building modules and includes a roof top terrace area with an elevated living area and views toward Curl Curl / the ocean. The bulk and height of this neighbouring building creates some self-shadowing in terms of the lower central courtyard area within No.19-21 Loch Street. Given the proposed building at No.23 Loch Street substantially complies with the maximum building height and includes wide side setbacks at the upper level, in response to the side boundary envelope, the proposal is considered to maintain reasonable access to sunlight. Consideration is however raised that the potential unnecessary extent of shadow cast from the high side screen on the southern rear side of the lower ground level would benefit from a more tapered screen design to ensure privacy and assist with sunlight to the ground level side of No.19-21 Loch Street. This issue is able to be addressed by amended plans or conditions however as noted in the conclusion of this report the proposal is subject to refusal.

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

Comment:

The proposed design is responsive to the topography, site constraints and does not create an unreasonable impact on the surrounding urban environment. The proposal achieved a good internal amenity for the occupants of the site in response to the site and site area as well as ensuring no unreasonable impact on the adjacent properties which have similar direct access to sunlight, or have large multi-storey dwellings adjacent on similar narrow side setbacks. The proposal is consistent with this objective.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The proposal has been designed to ensure reasonable penetration of mid-winter sunlight within the building by the use of a garden/light/ventilation courtyards (lightwell) integrated into the building design. This also assists with opportunity for sunlight to adjacent land along the southern side of the site. The elevated position of the rear main living area terrace assists with good natural light due to the full height glass windows and open outlook, and despite the broad shadow cast and self shadow from the proposal in the central part of the site and similarly for the amenity of No.19-21 Loch Street remains acceptable.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal includes passive solar design elements and does not have an unreasonable impact of passive solar access to adjacent land. It is noted that adjacent site on the south side, have similar circumstances with good access to early morning and late afternoon sunlight, but more difficult solar access in the mid part of the day due to the east-west subdivision pattern. The position of No.19-21 Loch Street maintains passive access to sunlight with the upper balcony level and primary living areas above ground level at the rear. On balance the proposal is considered to be consistent with this objective.

- *To minimise the need for artificial lighting.*

Comment:

The design of the proposal provides simple flat roof form that ensures no unreasonable impact on the need for artificial lighting given the density and pattern of surrounding development, consistency with the built form controls (including acceptability of some non-compliant elements) and circumstances of the existing site constraints for residential use.

Having regard to the above assessment, (including the planning principle established in the *Benevolent Society v Waverley Council* (2010) NSWLEC 1082) it is concluded that the proposed development is not consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

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:

The views affected include the sea horizon toward the Pacific ocean, off-shore area from Curl Curl Beach, generally east and north-east. At the front setback area the views are shared and principally from properties overlooking each adjacent property with view line being wide due to the alignment of Loch Street but view become a diagonal side view past the front setback of the proposal when looking in a north easterly direction. Various elements also obscure or interfere parts of the view line to the north-east due to roof additions to dwellings, trees, power line structure, balcony elements and the like that create a shared view space. The general focal interest is toward the horizon with the breaks in the view caused by 2 storey dwellings on the eastern side of Loch Street when viewed from the western side of Loch Street. Views from within No.19 Loch Street are not raised due to this dwelling being situated further east than No.23 Loch Street and the dominating feature of the large Norfolk Pine within the subject site.

No.28 Loch Street - Residential Flat Building

Views are obtained from (above ground level), front balconies and living areas toward the east, north-east and south east. Views are of the ocean horizon and off-shore water are out from Curl Curl Beach area.

No.26 Loch Street - Dual Occupancy

Views are obtained from (above ground level) front balconies and living areas toward the east, north-east and south east. Views are of the ocean horizon and off-shore water out from Curl Curl Beach area.



Figure 1: Indication building montage from 28 Loch Street (Level 1).



Figure 2: Indication building montage from 26 Loch Street (Level 1).

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.28 Loch Street - Residential Flat Building

Views are obtained from (above ground level), front balconies and living areas toward the east, north-east and south east. Views are across the front boundary although parts of views look in a diagonal across the roof spans and side elevations for properties opposite (including No.23 Loch Street) relative to a particular standing or sitting position of living or balcony areas. Apartment 4 and the common areas within this unit building have been inspected to gain an overall appreciation of the views available.

No.26 Loch Street - Dual Occupancy

Views are obtained from (above ground level), front balconies and living areas toward the east, north-east and south east. Views are across the front boundary although parts of views look in a diagonal across the roof spans and side elevations for properties opposite (including No.23 Loch Street) relative to a particular standing or sitting position of living or balcony areas. The upper front apartment within this building has been inspected to gain an overall appreciation of the views available.

3. Extent of impact

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

Comment to Principle 3:

The existing views are available from from both standing and sitting positions above the ground level storey level and are available from the front balcony areas, front living room and selected windows along the eastern side of No.24 and No.28 Loch Street. The view can change with respect to a particular standing position, such as toward the middle of the site, including from a particular room or open space area looking over the site.

The applicant has provided detailed view analysis information that indicates the impact of the dwelling (by photomontage) in context with its current surroundings. The photomontages provided also make a comparison to a recent approval for dwelling on the site under DA2017/1203.

The details and information provided demonstrate the non-compliance in the building form is principally limited to the back half of the dwelling and consideration of where views are at an angle to the building alignment do not have a material impact on the view in context of the minor non-compliance to building height, wall height and side boundary envelope. A principal difficulty in retaining this view is that the roof level is influenced by the variation between natural site levels, however a flat roof form has been used to assist views across the roof profile. It is unrealistic to be able to retain all existing view elements from sitting or standing positions through the whole of the site and all angles given the overall height and width of the building across the main front elevation. Other circumstances of development in the vicinity of the site have been considered in terms of views, however each has particular elements or building arrangements that are unique to those sites.

View impacts are demonstrated in the View Loss Analysis documents DA006 to DA007, as well as height analysis diagrams, prepared by Stafford Architects.



Figure 3: View from No.26 Loch Street with approved DA shown in pink.

No.28 Loch Street - Residential Flat Building

Having visited this property, considered the plans, extent of available coastal views, view analysis information and inspected the surrounding topography, the view sharing impact is considered to be minor.

No.26 Loch Street - Dual Occupancy

Having visited this property, considered the plans, wider extent of available coastal views, view analysis information and inspected the surrounding topography, the view sharing impact is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful 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:

Generally the proposed dwelling is substantially below the 8.5m building height across the western half of the building. At the eastern (rear) elevation the proposal breaches the building height control by 120mm. The building also complies with the wall height at the front section facing Loch Street. The non-compliance with the side boundary envelope and wall height toward the rear of the dwelling have been considered in further details under the heading *Part B5 Side Boundary Envelope* and *Part B1 Wall Height* within this report. In considering view issues the applicant has made some amendments to the plans and reduced the non-complying elements to provide a more acceptable design. In this regard, a fully compliant proposal would not achieve any substantive or materially increased view sharing opportunity due to the diagonal view line from No.24 Loch Street and the central massed area of the front elevation. In effect the front

section of the building around bedroom 1 blocks the appearance of the rear (non-complying elements) from being readily visible. The use of a flat roof form allows a lower building profile closer to the street. However, at the rear of the proposed dwelling where the land falls away the elongated floor span has influenced the non-compliance with the side boundary envelope, wall height and maximum building height.

Overall it is considered that a fully compliant 2 storey dwelling design would not materially improve view sharing for either No.26 or No.28 Loch Street, given the site potential for a higher front section of the building.

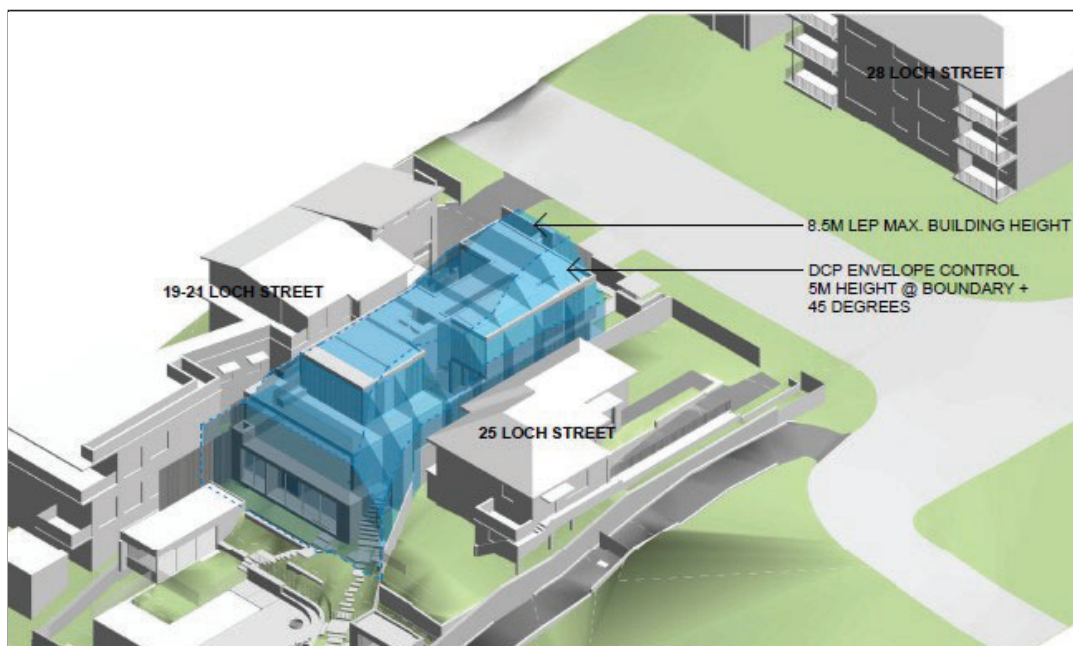


Figure 4: Side section showing non-compliance with 8.5m height plane and side boundary envelope.

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

Comment:

The proposed dwelling maintains a suitable streetscape impact that is consistent with the objectives of *Part D11 Side Boundary Envelope* and *B1 Wall Height* of the WDCP. A number of design refinements have been considered for the roof elements in considering view impacts. In addition to this, the floor to ceiling levels and changes to the roof elements have been assessed in terms of view sharing to ensure consistency with other considerations of amenity, streetscape, alternate access to views (such as from front balconies) and limitations on the building footprint due to slope and floor levels.

- *To ensure existing canopy trees have priority over views.*

Comment:

There are street trees on and adjacent the site, as well as a mature Norfolk Pine within the site that forms part of the view space and causes some obstruction to views, however the WDCP

gives priority to trees in terms of view impact. The landscape plan does not include significant height trees / other plants that would quickly grow to obstruct views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported with regard to Part D7, in this particular circumstance.

D8 Privacy

Merit consideration

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

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

Comment:

The proposal provides an articulated building form at the rear to assist with visual privacy to adjacent land. It is noted that the No.23 Loch Street and No.25 Loch Street are under the same ownership. At the rear the bedrooms on the upper storey comply with the rear setback and the rear yard is to include landscaping and the existing pool and main cabana. The rear elevation is consistent with the existing outlook in terms of living areas and adequate setback to the rear boundary. Privacy concerns for No.28 Loch Street (opposite) are not considered to warrant refusal of the application given the upper storey of the subject house contains screening style elements and upper windows are associated with a wardrobe and secondary bedrooms.

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

Comment:

The plans include a contemporary style vertical batten / screen style cladding to assist with privacy to bedroom windows and other window elements. The building also includes recessed courtyard areas to provide spatial separation along the walls as assist with views toward the sea, rather than toward a side boundary, including No.19-21 Loch Street. Therefore, the building is suitably designed to ensure no unreasonable impact on adjacent land for the surrounding residential environment.

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

Comment:

The design will include appropriate security and defined access areas for the occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported pursuant to Part D8 in this particular circumstance.

D13 Front Fences and Front Walls

Merit consideration

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

- *To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.*

Comment:

The proposal includes a steel awning integrated to the front fencing structure. While this may afford some weather protection for pedestrian movement at the front gate the site also includes a 3 car basement garage area (with turntable), and is large enough for a visiting car. The front setback is 6.5m and the dwelling includes a foyer / recessed front door area and therefore the inclusion of an awning in the front setback is inconsistent with the existing streetscape. The awning is recommended for deletion from the plans.

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

Comment:

The proposal does not demonstrate an 'innovative design' to improved the urban environment of the streetscape given this part of the DCP seeks requirements of low fencing to encourage passive surveillance, fencing with articulation and landscaping elements to soften the streetscape. Solid wall fences are generally limited to high traffic vehicle zones (main roads) which Loch Street is not.

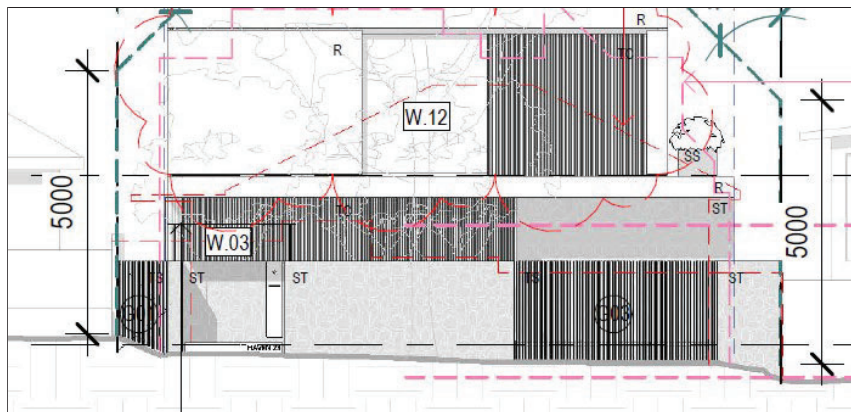


Image: Proposed fence and portico entry. (Existing fence steps down from left side to right side)

- *To avoid a 'walled in' streetscape.*

Comment:

The site has an existing solid fence up to 1.8m high that steps down across the frontage from the pedestrian entry toward the vehicle gate. The proposal includes a refurbished / altered solid fence that is stone clad 1.8m to 2.1m high that continues the fence height across the frontage at the same level, therefore increasing the maximum height of 2.1m adjacent the vehicle gate (southern end). The majority of Loch Street having low open style fences or no front fencing. The existing fence is solid masonry and steps down with the cross-fall of the land. It is recommended that this fence not be raised any higher as part of any refurbishment / re-cladding

and the portico element of the fence be deleted from the plans.

Having regard to the above assessment, it is concluded that the proposed development, is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal pursuant to Part D13 is not supported, in this particular circumstance.

E10 Landslip Risk

Merit consideration:

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

- *To ensure development is geotechnically stable.*

Comment:

The proposed development is at the top of the slope for the dwelling construction, with ancillary development proposed across the lower area of the site. In this regard, the proposal has been designed to be geotechnically stable, subject to conditions and recommendations provided for the construction of the new dwelling house.

- *To ensure good engineering practice.*

Comment:

The use of an easement to ensure the subdivision (including No.23 and No.25 Loch Street) is serviced by a suitable direct pipe connection to collect / control water and discharge stormwater to Ellen Street is considered to be good engineering practice given the steep terrain and pattern of surrounding development. The use of a level spreader that would continue to release water as part of the future development of the site (including subdivision) is not supported by Council's Development Engineering section. Therefore, the proposal is not consistent with this objective.

- *To ensure there is no adverse impact on existing subsurface flow conditions.*

Comment:

The subject site is within a location that includes slopes of 18 degrees or more and extensive sandstone areas with shallow coastal soils. The use of level spreader increases risks of on-going saturation to downstream properties. Development downslope included dwelling houses and ancillary development and therefore containing water discharge within an easement will minimise overland flow impacts on these properties between the back of the site and toward Ellen Street. The positioning of a level spreader directly above these downslope properties will potentially impact subsurface flows by the directing the spread of water from a permanent artificial discharge source.

- *To ensure there is no adverse impact resulting from stormwater discharge.*

Comment:

Concern have been raised that the subdivision and redevelopment of the site will result in adverse impacts from stormwater discharge as detailed by Councils Development Engineer and submissions received by downslope properties in Ellen Street. Therefore, the proposal is not consistent with this objective and requires an easement to limit any adverse impacts from stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of this part of the WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$26,370 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,637,044.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

The proposal seek demolition, excavation work and construction of a new dwelling house and subdivision of land (boundary adjustment between No.25 and No.23 Loch Street). Building setbacks, height and amenity issues raised in submissions have been addressed by the applicant and minor changes to the plans were made to assist with view sharing, building bulk, streetscape and landscaping. Notwithstanding this, Council's development engineers do not support the proposed use of a level spreader for the development. The site is within steep terrain and the subdivision (by boundary adjustment) and redevelopment of the land will discharge water down an escarpment. The use of a level spreader raises concerns with regard to saturation of cliff elements and long term adverse risk to the natural and built environment downslope. Stormwater drainage must be appropriately serviced with the benefit of an easement to connect to the system in Ellen Street.

A deferred commencement is not supported (and remains unresolved) as a potential option in that no details of the route, required pipe system, connections and affected properties has been consolidated with an 'agreement in principle' gained by one or more downstream properties.

In conclusion, the principal issue of stormwater management for the dwelling house and subdivision have not been able to be resolved by the applicant and therefore the proposal is not supported for the reasons provided pursuant to the Warringah LEP and DCP.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

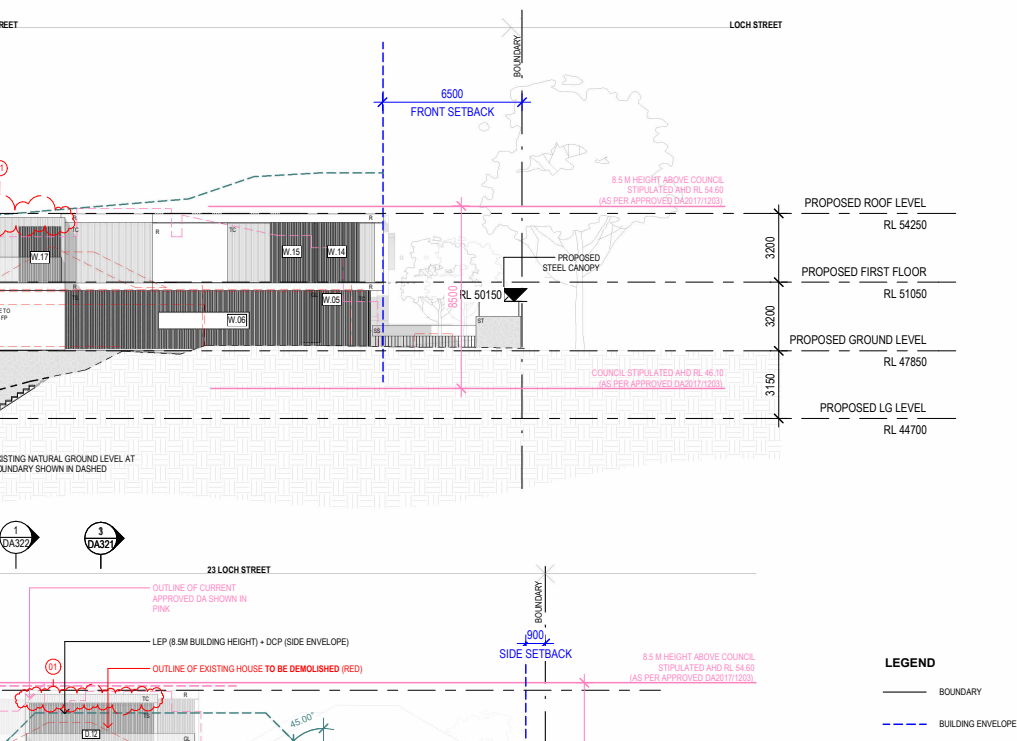
THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/1469 for the Demolition works and subdivision (boundary adjustment) maintaining (2) lots and the construction of a new dwelling house, spa pools and associated landscaping works within Lot 102 on land at Lot 7 DP 14040, 23 Loch Street, FRESHWATER, for the reasons outlined as follows:

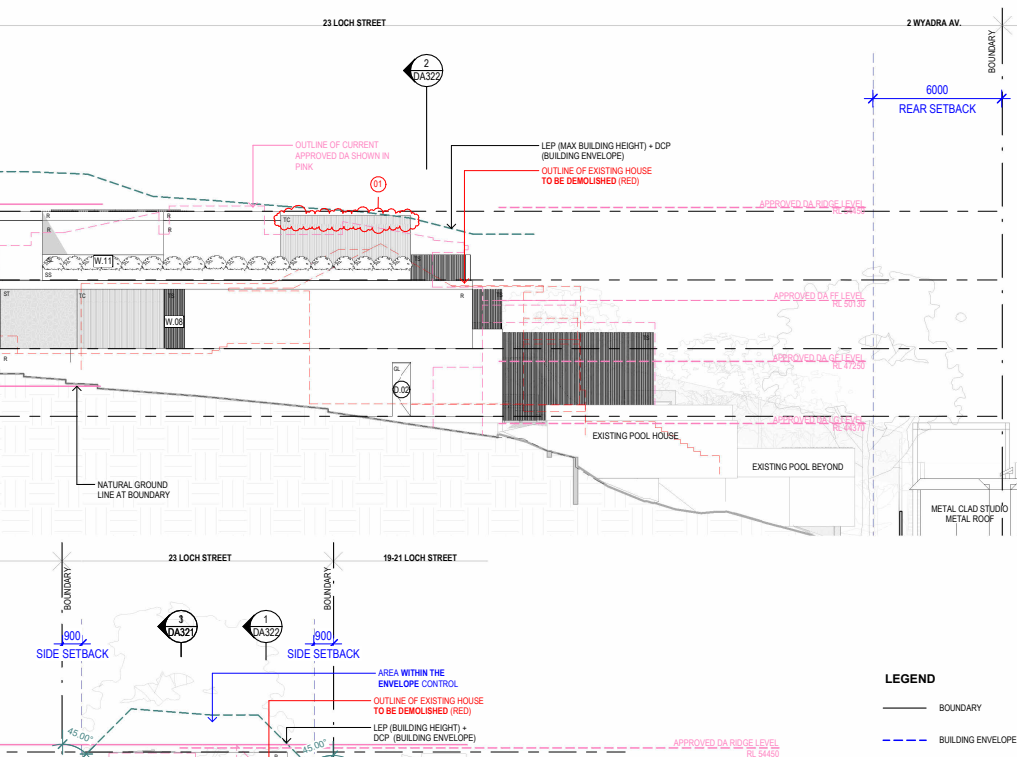
1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R2 Low Density

Residential of the Warringah Local Environmental Plan 2011.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D6 Access to Sunlight of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D13 Front Fences and Walls of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E10 Landslip Risk of the Warringah Development Control Plan.
8. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest for reasons pertaining to concerns with stormwater disposal impacts on the surrounding natural and built environment.







**AMENDED CLAUSE 4.6 REQUEST FOR VARIATION OF HEIGHT OF
BUILDINGS DEVELOPMENT STANDARD UNDER CLAUSE 4.3 OF
WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

FOR:

**PROPOSED BOUNDARY REALIGNMENT OF 23 AND 25 LOCH
STREET, FRESHWATER INTO PROPOSED LOTS 101 AND LOT 102.
IN RELATION TO PROPOSED LOT 102, THE PROPOSED
DEMOLITION OF A EXISTING 2 STOREY DWELLING HOUSE AND
STRUCTURES AND CONSTRUCTION OF A PROPOSED NEW 3
STOREY DWELLING HOUSE, SPA POOLS AND ASSOCIATED
LANDSCAPING**

AT:

**23 AND 25 LOCH STREET, FRESHWATER
LOT 7 DP 14040 AND LOT 10 DP 1257419**

*Tony Moody
BTP (UNSW), LL.B (UTS) (Hons.), MPIA
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Mobile: 0414 330 807*

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER**1.0 INTRODUCTION**

This Amended Clause 4.6 Request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011 (LEP 2011).

I note that there is a current Clause 4.6 Request seeking variation of the Height of Buildings Standard.

Following comments of Alex Keller of Northern Beaches Council (Council), Amended Plans have been lodged with Council, with the effect that a miniscule portion of the eastern edge of the proposed roof has been lowered, so that the maximum height of the proposed dwelling (at the eastern edge only) has been reduced from 8.89m to the amended height of 8.62m.

Given the fact that the amended height of 8.62m still breaches the Height of Buildings Standard, albeit to a very minor degree of 1.4%, this Amended Clause 4.6 Request is required.

Variation under Clause 4.6 of LEP 2011 is requested in relation to the Height of Buildings Standard under Clause 4.3 of LEP 2011 in support of a Development Application (DA) seeking approval for *“Proposed Boundary Realignment of 23 and 25 Loch Street, Freshwater into Proposed Lots 101 and Lot 102. In relation to Proposed Lot 102, the Proposed Demolition of an existing 2 Storey Dwelling House and Structures and Construction of proposed new 3 Storey Dwelling House, Spa Pools and Associated Landscaping”* on properties known as 23-25 Loch Street, Freshwater (subject site).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

I consider that variation of the Height of Buildings Standard in the circumstances of this current DA would achieve a better planning outcome rather than requiring strict adherence to the Height of Buildings Standard.

Clause 4.6 of LEP 2011 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

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,*

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless—*
 - (a) the consent authority is satisfied that—*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3*

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER

Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—

When this Plan was made it did not contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) A development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4.*
- (8) A). Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.*
- (8) B). Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.*

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

“[63] It is clear from a reading of cl 4.6 of WLEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the 2 development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).

[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:

- (1) are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).*
- (4) have considered a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl. 4.6(3)(b) and cl 4.6(4)(a)(i)).”*

In addition to the above mentioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council* [2001] NSW LEC 46, *Wehbe v Pittwater Council* [2007] NSW LEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90 and *Moskovich v Waverley Council* [2016] NSW LEC 1015.

Given the above judgment of his Honour, Chief Judge Preston which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 20011.

I note that the Height of Buildings Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 20011.

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER**2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT*****Clause 4.3 – Height of Buildings*****Objectives**

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

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment:

The subject site is identified as being within Area I under LEP 2011 which requires a Height of Buildings Standard of 8.5m.

As previously stated, following comments of Alex Keller of Council, Amended Plans have been lodged with Council, with the effect that the eastern edge of the proposed roof has been lowered, so that the maximum height of the proposed dwelling has been reduced from 8.89m to the amended height of 8.62m over a minuscule portion of the proposed roof. Given the fact that the amended height of 8.62m still breaches the Height of Buildings standard, albeit to a very minor degree of 1.4%, this Amended Clause 4.6 Request is required.

I consider that the variation of the Height of Buildings Standard is very reasonable for the reasons outlined in this Amended Clause 4.6 Request including, but not limited to, the following:

- The Land and Environment Court (Court) has held on previous occasions that the degree of the breach is not the ultimate determining factor in the deciding whether to support a request for variation of a Development Standard. I, nonetheless, note that the proposed breach of the Height of Buildings Standard is only by 1.4%, which can be described as a very minor breach.
- The breaching portions of Height of Buildings Development Standard is limited to a minuscule portion the proposed eastern edge of the roof of the proposed Master Bedroom at proposed Level 1. Please refer to Annexure A.

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER

- The majority of proposed Level 1 is significantly below the Height of Buildings Development Standard. Please refer to Annexure A of this Amended Clause 4.6 Request.
- The proposed development will not result in unreasonable amenity impacts to adjoining properties. On this point, I note that the proposed development is of a comparable height, bulk and scale to that approved under DA2017/1203.
- The proposed Dwelling on proposed Lot 102 responds to the sloping topography of proposed Lot 102. The breaching portions are a direct result of the sloping topography of proposed Lot 102.
- The proposed development is of a flat roof design, which I consider adds to the eclectic mix of roof types within the immediate locality. I also note that the proposed flat roof design generally ensures that aside from the very minor breaching portion of the proposed Master Bedroom, the majority of the proposed Dwelling is significantly below the 8.5m Height of Buildings Standard.

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER**3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD**

His Honour, Preston CJ in *Initial Action* (Para [27]) described the relevant test for this as follows:

The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

Based on Clause 4.3(1) of LEP 2011, the Objectives of the Height of Buildings Standard are as follows:

- (1) *The objectives of this clause are as follows—*
- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
 - (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
 - (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment:

I consider that the proposed development satisfies the Objectives of the Height of Buildings Standard for the following reasons:

- (a) To ensure that buildings are compatible with the height and scale of surrounding and nearby development,**

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER

- I consider that the Architectural Plans and the 3D Views demonstrate a proposed Dwelling on proposed Lot 102 that is compatible with the height, bulk and scale of adjoining existing buildings to the south.
- I should also note that a significant portion of the proposed First Level is significantly below the 8.5m Height of Buildings Standard.

(b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access,

- I consider that there would be no unreasonable impact on adjoining or nearby properties from visual impact, disruption of views, loss of privacy, or loss of solar access.
- As previously noted, I consider that the proposed Dwelling on proposed Lot 102 is of a comparable height, bulk and scale to that approved under DA2017/1203 and will not result in unreasonable visual impact, disruption of privacy, loss of solar access and disruption of views..
- In terms of privacy, the proposed Master Bedroom at Level 1 will not have unreasonable adverse privacy impact on adjoining properties to the north, south, east or west due to the fact that there are no windows on the southern elevation and a privacy screen is proposed to the window on the northern elevation. Furthermore, the eastern façade of the Master Bedroom at Level 1 is located approximately 23m away from the approved development to the east under DA2020/0147 at 2 Wyadra Avenue and 14-16 Ellen Street, Curl Curl. In terms of adjoining properties to the west, I note that these properties are on the opposite side of Loch Street.
- In terms of overshadowing impact, the Shadow Diagrams prepared by Cad Draft accompanying the DA confirm that the proposed Dwelling on proposed Lot 102 will not result in unreasonable loss of solar access to adjoining properties.
- In terms of disruption of views, the adjoining properties to the west (on the opposite side of Loch Street) sit higher than the subject site, with the result that the proposed top level will only be viewed, at worst, as a 2 storey structure. Furthermore, the view loss arising from the current DA will be equivalent to the view loss arising from the current approved development under DA2017/1203.
- The proposed development will not adversely impact on views of the adjoining dwellings to the north and south, due primarily to the fact that the proposed dwelling has a proposed rear setback significantly greater than the Rear Setback Control. Furthermore, notwithstanding minor breaches of the Building Envelope Controls, the proposed Wall Height and proposed maximum Height are very reasonable.
- In terms of proposed landscaping, I note the Landscape Plans prepared by Secret Gardens. If required, an appropriate condition can be imposed requiring existing and proposed landscaping to be maintained to a specified RL level, which will ensure that the existing and proposed landscaping will not have an adverse View Loss on any adjoining properties.

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER

- In terms of views from the properties on the opposite western side of Loch Street, I consider that there is no unreasonable view loss based on the fact that the building envelope approved under DA2017/1203 is comparable to the current proposed building envelope.
 - I note that the Council approved DA2017/1203 included a maximum RL of 54.45. In Council's Assessment Report, the Council Officer noted that "*While some loss of water views will result from the proposed development, on balance the development is considered reasonable and view loss considered minor*". The proposed Dwelling has a proposed maximum RL of 54.25, which is lower than the approved plans.
 - I note that the breaching portions of the proposed Dwelling are setback a greater than required distance from the side and rear boundaries of the subject site, incorporating significant articulation.
- (c) To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,**
- The proposed development incorporates significant landscaping works in order to ensure the proposed Dwelling does not result in any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.
 - The proposed Dwelling on properties Lot 102 incorporates an attractive palette of colours and materials in keeping with the scenic quality.
- (d) To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.**
- I consider that the proposed development will not adversely impact on any public views.
 - The proposed development incorporates significant landscaping works in order to ensure the proposed Dwelling does not result in any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.
 - The proposed residential dwelling incorporates an attractive palate of colours and materials in keeping with the scenic quality.

For the above reasons, I consider the proposed development is consistent with the objectives of the development standard.

Accordingly, I consider that the proposed development will be in the public interest if the standard is varied because it is consistent with the Objectives of the Height of Buildings Standard.

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
STANDARD - 23 AND 25 LOCH STREET, FRESHWATER**4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD
UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE
CASE?**

The steps to considering in assessing whether compliance with the Height of Buildings Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*) and are summarised below:

1. 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* [2007] NSWLEC 827 (*Wehbe*) at [42] and [43].
2. 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* at [45].
3. 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* at [46].
4. 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* at [47].
5. 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* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* 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.
6. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or

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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.

For the reasons referred to in this Clause 4.6 Request, it is my opinion 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 consistent with the “first way” as set out in Step 3 on the previous page.

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
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JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

Clause 4.6(3)(b) requires the Applicant to demonstrate that there are sufficient Environmental Planning Grounds to contravene 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].

For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the Height of Buildings Standard under LEP 2011 is unreasonable and unnecessary in the circumstances of the proposed development.

AMENDED CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT
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CONSISTENT WITH THE OBJECTIVES OF THE ZONE**

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to the following matters: -

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3),*
and
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

The above matters are addressed in the SEE and this Clause 4.6 Request, including the following comments.

The subject site is zoned R2 Low Density Residential. I note the Objectives of the R2 Low Density Residential.

Zone R2 Low Density Residential***Objectives of zone***

- *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 ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment or Warringah.*

The proposed development involves a proposed dwelling house which is permitted with consent in the R2 Low Density Residential zone under Warringah LEP 2011.

I consider that the proposed development satisfies the Objectives for the following reasons: -

- The proposed dwelling house will provide for the housing needs of the community within a low density residential environment, maintaining the current residential use of the subject site, whilst providing a modern and improved residential dwelling.

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- The proposed development does not impact on the ability of other land uses to provide facilities or services to meet the day to day needs of residents. I consider that the scale of the proposed development achieves the desired future character of the neighbourhood.
- The proposed residential dwelling includes landscaping works which result in an improvement in the quality of landscaped area and comply with the numerical requirements of Council's Landscaped Area Control under Warringah Development Control Plan 2011.

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7.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

In deciding whether to grant concurrence, the Planning Secretary must consider—

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

Would non-compliance raise any matter of significance for State or regional planning?

The non-compliance does not raise any other matter of significance for State or regional planning.

Is there a public benefit of maintaining the development standard?

I consider that there is no public benefit associated with maintaining strict compliance with the development standard

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

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8.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I consider that this objection to the Development Standard is well founded for the reasons outlined in the Clause 4.6 Request and the SEE.

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- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Comment:

The Department issued Planning Circular No. PS18-003 (dated 21st February 2018) which notified Council of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6...of the Standard Instrument...”.

Clause 64 of the EPA Regulation provide that Council may assume the Director General’s [Secretary’s] concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

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10.0 CONCLUSION

Notwithstanding the breach of the Height of Buildings Standard, I consider that this request for variation of the Height of Buildings Standard is well founded.

For the reasons outlined in this Amended Clause 4.6 Request, I fully support variation of the Height of Buildings Standard.



TONY MOODY

BTP(UNSW), LL.B (UTS)(Hons.), MPIA

Dated: 10 March, 2022.

ANNEXURE A

Section A & Section B

