

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 13 APRIL 2022



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 13 April 2022
via teleconference
Commencing at 10:00 am**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 23 MARCH 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 23 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	DA2021/1341 - 3 BROOKVALE AVENUE BROOKVALE - DEMOLITION WORKS AND THE CONSTRUCTION OF MULTI DWELLING HOUSING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2022/205055
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/1341 for demolition works and the construction of Multi Dwelling Housing on land at Lot 17 DP 6040, 3 Brookvale Avenue BROOKVALE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1341
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 17 DP 6040, 3 Brookvale Avenue BROOKVALE NSW 2100
Proposed Development:	Demolition works and the construction of Multi Dwelling Housing
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Primo Design Pty Limited
Applicant:	Primo Design Pty Limited
Application Lodged:	09/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	26/01/2022 to 09/02/2022
Advertised:	26/01/2022
Submissions Received:	8
Clause 4.6 Variation:	4.3 Height of buildings: 7.06%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,992,813.00

EXECUTIVE SUMMARY

The application seeks consent for demolition works and the construction of a new multi-dwelling housing development containing four units.

As the proposal attracted eight submissions with a cost of works over \$1million, the application is referred to the Development Determination Panel.

Eight submissions were received in response to the notification of the application, generally relating to the proposed building height and rear setback non-compliances, privacy, view loss, traffic and parking impacts, tree removal and stormwater management. As detailed in the report, none of the concerns

raised in submissions warrant the refusal of the application subject to the recommended conditions of consent.

The development proposes a maximum building height of 9.1m, resulting in a variation of 7.06% (0.6m) to the 8.5m control. The Applicant's Clause 4.6 written request has adequately demonstrated that the proposal achieves the objectives of the height of buildings development standard, and that there are sufficient environmental planning grounds to justify the extent of the proposed variation sought.

The proposal maintains a compatible visual relationship with surrounding development and will not result in adverse amenity impacts to surrounding properties, notwithstanding the proposed building height and DCP built form non-compliances.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the construction of a three-storey multi-dwelling development containing 4 units and a basement car park. The development in detail is as follows:

Basement:

- Car parking for 9 vehicles
- Stair and lift access
- 2 x Store
- OSD and pump out tank

External works (ground level)

- New driveway
- Pedestrian access ramp, path and bin store
- Central lift access
- Landscaping and planting at natural ground level within the front and rear setbacks
- Planter box landscaping within side setbacks

Front (north) Pavilion

- 2 x Three bedroom apartments

Rear (south) Pavilion

- 2 x Three bedroom apartments

Amendments to proposal

Following lodgement of the application, amendments to the proposal were made as follows:

- Driveway relocated to the western side of the street frontage with passing bay and basement reconfigured

- Northern pavilion moved east to accommodate new driveway location
- Bin store relocated to the eastern side boundary with increased front setback
- Front courtyards reduced in size and new at-grade lawn provided
- Pedestrian entry path relocated
- Increased ground floor side setbacks to apartments 3 and 4
- Buildings heights lowered through reduced basement levels and ceiling heights
- Retention of trees previously proposed for removal

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

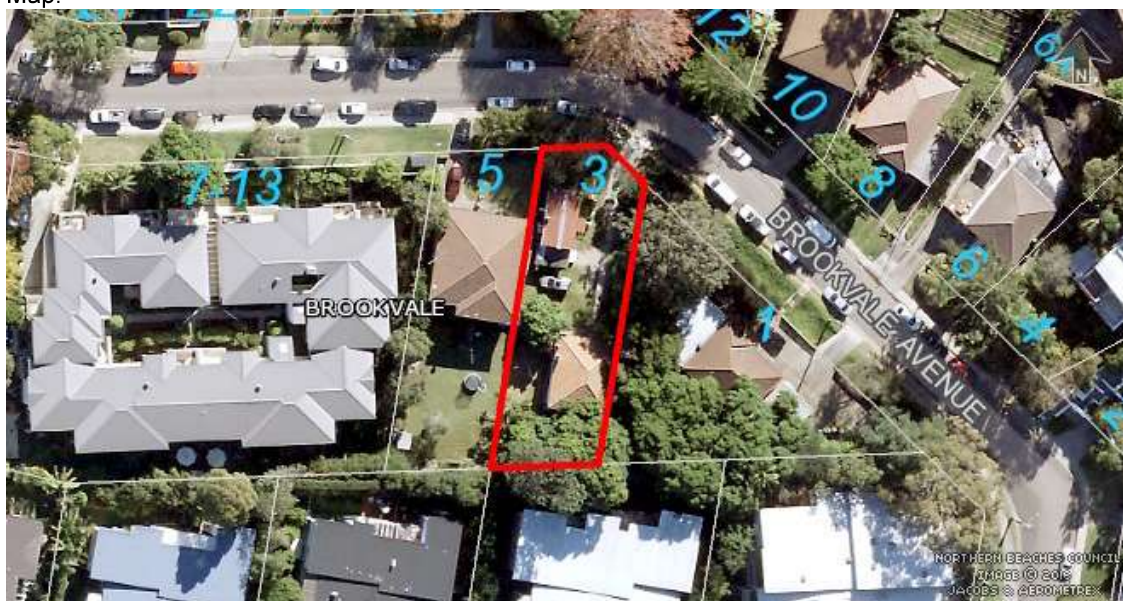
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Development Control Plan - B2 Number of Storeys
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone
 Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 17 DP 6040 , 3 Brookvale Avenue BROOKVALE NSW 2100
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Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Brookvale Avenue.</p> <p>The site is irregular in shape with a frontage of 16.75m along Brookvale Avenue and a depth of 47.31m. The site has a surveyed area of 706.1m².</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates an existing single storey dwelling house and detached garage.</p> <p>The site slopes 4.05m from north-east to south-west.</p> <p>The site contains six significant trees and a variety of smaller planted vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of dwelling houses, residential flat buildings and multi-dwelling housing developments.</p>
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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	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>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 matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</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 26/01/2022 to 09/02/2022 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 8 submission/s from:

Name:	Address:
Miss Yolanda Louise Rodriguez	82 Kambora Avenue DAVIDSON NSW 2085
Withheld	BARGO NSW 2574
Mrs Emilie Jeaninne Ethel Hamilton	5/27 Thornleigh Street THORNLEIGH NSW 2120

Name:	Address:
Withheld	BROOKVALE NSW 2100
Ms Sarah Louise Marmara	12/46 Old Pittwater Road BROOKVALE NSW 2100
Charles Dunn	Address Unknown
Alex Robert Obern	11 / 46 - 48 Old Pittwater Road BROOKVALE NSW 2100
Ms Elizabeth Anne Pottinger	26 / 7 - 13 Brookvale Avenue BROOKVALE NSW 2100

The issues raised in the submissions are addressed as follows:

- **Building height non-compliance, elevation above southern neighbour**

The submissions raised concerns that the proposal breaches the building height control.

Comment:

The proposed building height breach and accompanying Clause 4.6 written request are considered in this report under Clause 4.6 and are found to be supportable. The proposed 600mm variation will not result in any unreasonable visual bulk, overshadowing or amenity impacts.

- **Tree removal and loss of outlook, character and bird habitat**

The submissions raised concerns that the proposal will adversely impact the outlook and character of the streetscape, and reduce habitat for birds and wildlife.

Comment:

The proposal includes the removal of 2 trees within the site and 1 tree within the road reserve. The proposed landscape scheme, as conditioned, includes 2 new trees within the front setback, 1 new street tree and 1 new tree within the western rear courtyard. Further tree, ground cover, shrub and fern planting is also proposed across the site. The proposed development remains compatible with the character and landscape setting of the site, and provides sufficient compensatory tree and vegetation planting.

- **Rear setback non-compliance**

The submissions raised concerns that the proposal does not comply with the rear setback control. Concern was also raised that the proposed ground floor rear deck is not shown on the western elevation plan.

Comment:

The proposed rear setback non-compliance is limited to the ground floor rear decks. The decks are limited in size and are set back sufficiently from the rear boundary, with supplementary screen planting provided within the rear courtyards. Amended plans have been provided that show the position of the ground floor deck on the western elevation plan.

- **Overshadowing impacts**

The submissions raised concerns that the proposal will result in adverse overshadowing of the adjoining developments to the south of the subject site.

Comment:

The proposal maintains a compliant level of solar access to the private open space areas of all adjoining properties in accordance with the control. The overshadowing of 46-48 Old Pittwater Road is generally limited to the rear setback, with minor impact to the private open spaces of the northern units throughout the day and of the rear windows of the north-western unit at 10am and 11am. The rear elevation of the building complies with the 6m control and a further 2.8m setback is provided at the upper level. The compliant rear setbacks and articulation of the upper floor minimise the overshadowing of adjoining properties and ensure consistency with the objectives of the control. A full assessment is completed under D6 Access to Sunlight.

- **Stormwater management**

The submissions raised concerns that the existing site conditions result in stormwater drainage impacts to the properties to the rear and that proposal may exacerbate this issue.

Comment:

The proposal includes an integrated stormwater design, including the provision of on-site detention and appropriate stormwater treatment measures. Council's Development Engineering and Water Management teams advised that the proposal complies with the Water Management for Development Policy.

- **Traffic and parking impacts, pedestrian footpath**

The submissions raised concerns that the proposal will result in increased traffic movements and on-street parking demand. Concern was also raised in relation to the provision of a footpath on the southern side of Brookvale Avenue.

Comment:

Council's Traffic Engineer commented that the proposal will generate an insignificant increase in vehicle movements in comparison to the existing development. Further, the development provides a total of 9 car parking spaces on the site, exceeding the required 7 spaces. As such, the proposed is not considered to result in adverse traffic or on-street parking impacts. A condition is imposed requiring the construction of a footpath along the front of the subject site.

- **Privacy impacts**

The submissions raised concerns that the proposal will result in adverse privacy impacts and provides insufficient screening along the rear boundary.

Comment:

The proposal is generally designed appropriately to maintain privacy between the subject site and adjoining properties. Conditions are imposed requiring additional privacy measures to the first floor bedroom rear windows and the provision of an additional tree within the western rear courtyard. The proposed landscape scheme includes a Lillypilly hedge along the rear boundary to provide supplementary privacy screening. A full assessment is completed under D8 Privacy.

- **Removal of existing Jacaranda**

The submissions requested the removal of the existing Jacaranda in the rear setback of the site.

Comment:

The Jacaranda on the site is an exempt species under the Warringah DCP, but is not classified as an environmental weed. Council's Landscape Officer supported the retention of this tree as part of the amended proposal as it affords landscape amenity and provides screening to the adjoining property.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported without conditions.</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>Supported with conditions.</p> <p>Further updated comments:</p> <p>Further amended development proposal plans are submitted. The front setback has been amended to provide a common landscape area capable of supporting tree and shrub planting that when established will mitigate the bulk and scale and provide a suitable streetscape amenity.</p> <p>The landscape scheme includes deep soil areas to the front and the rear setbacks, appropriate to support tree and other planting. Additionally, on structure planters of 1 metre depth are included and a landscape area >2m width comprises 35.3% of the site area. Furthermore 4.71% consists of landscape area with less than a 2 metre landscape width.</p> <p>The landscape proposal as amended can be supported should the application be supported by the Assessing Planning Officer, and the following aspects of the landscape scheme satisfy the objectives of WLEP and the landscape controls of WDCP:</p> <ul style="list-style-type: none"> • retention of the existing large Jacaranda at the rear of the property to ensure the landscape amenity offered by the landscape buffer of the Jacaranda to the adjoining rear property at 46-48 Old Pittwater Road is maintained, • protection of adjoining trees and vegetation within adjoining properties, • tree planting to the common landscape area at the frontage to mitigate the built form, and it is noted that the selected deciduous species is appropriate as the frontage faces north and deciduous tree planting will permit solar access during the winter months and shade during the summer months,

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • mass shrub planting to the common landscape area at the frontage to mitigate the built form, • small tree and other screening planting along the side boundaries, • replacement street tree planting. <p>The rear setback shall be the subject of conditions to include tree planting within the western courtyard, and additional conditions shall be imposed regarding plant selections to remove undesirable species nominated in the plant schedule, and container sizes shall be upgraded where appropriate.</p> <p>The recommendations of the updated Arboricultural Impact Assessment is acceptable in regards to tree protection measures and removal of trees impacted by the development, except the existing Jacaranda shall be retained, and subject to the imposition of conditions.</p> <p>The proposed development includes works within the public road reserve, including driveway, pedestrian ramp, street tree planting, and mass planting. These works are not approved under the development application and such encroachments within the road verge shall be part of the proposed road reserve works application under section 138 and 139 of the Roads Act, for approval or otherwise. Landscape Referral raise no objects for the proposed street tree planting and all other works shall be considered by the relevant Council Officers.</p> <p><u>Updated comments:</u> Amended development proposal plans and reports are submitted, including updated Landscape Plans and updated Arboricultural Impact Assessment. As a consequence of the basement and structures layout, the landscaped area into natural ground or upon 1 metre deep planters, available for landscape treatment is represented as 33% as calculated (>2m) and shown on the architectural ground floor plan, and noting a total landscape open space area of 38.47%.</p> <p>Landscape Referral maintain concerns regarding the development proposal. A conclusive position is not provided on the status of the large Jacaranda at the rear of the development site. The updated Arboricultural Impact Assessment provides no commentary as the Jacaranda is an exempt species yet the updated Landscape Plan shows this Jacaranda as retained by notation. It is noted that the existing Jacaranda provides landscape amenity as well as a landscape buffer to the adjoining rear property at 46-48 Old Pittwater Road, and removal of the Jacaranda may expose occupants to the proposed development and the Landscape Plan does not propose any tree replacement to provide privacy and to replace the net canopy loss. The previous referral response required that updated plans and reports provide a coordinated and clear indication of the design intent to assess the landscape outcome of the development.</p> <p>The architectural design is updated such that the entry driveway is</p>

Internal Referral Body	Comments
	<p>now relocated and subsequently the impact to existing trees within the property at 1 Brookvale Avenue is reduced to a manageable level as assessed in the updated Arboricultural Impact Assessment, requiring on site intervention by a Project Arborist. No further concerns are raised with the recommendations of the updated Arboricultural Impact Assessment, subject to the imposition of conditions.</p> <p>The proposed development includes works within the public road reserve, including driveway, pedestrian ramp and walling, stairs and walling, street tree planting, and mass planting. These works are not approved under the development application and such encroachments within the road verge shall be part of the proposed road reserve works application under section 138 and 139 of the Roads Act, for approval or otherwise. Landscape Referral raise no objects for the proposed street tree planting and all other works shall be considered by the relevant Council Officers.</p> <p>Concern regarding the landscape outcome as a result of the inadequate provision of landscaped area remains. The landscape proposal is restricted by the building setbacks and basement footprint and the following inadequacy is present:</p> <ul style="list-style-type: none"> • front setback: the selected small deciduous tree planting is of a mature height (5 metres) that is insufficient to reduce the bulk and scale of the development and a larger species to achieve a mature height of at least 8.5 metres shall be recommended; the proposed lawn areas are small in area to be useful for outdoor recreation, and would likely end up as paved surfaces, and it is suggested that the lawn areas be replaced with mass planted garden to support adequate tree planting, • rear setback: no replacement tree planting is proposed; the proposed lawn areas are small in area to be useful for outdoor recreation, and would likely end up as paved terrace extensions, and it is suggested that the lawn areas be replaced with mass planted garden, • side setback: the northern side boundary adjacent to the property at 5 Brookvale Avenue provides no landscape opportunity to approximately half of the boundary length, to assist with reducing the built form and to provide for residential privacy. <p>Original comments:</p> <p>The application is for the demolition the existing site structures and the construction of multi dwelling housing containing 4 townhouses with basement level parking, and associated external works.</p> <p>A Landscape Plan is provided with the application and a number of concerns are raised. The landscaped area requirement of 50% under DCP control D1 Landscaped Open Space is not satisfied due to the development footprint. It is reported in the Statement of Environmental Effects that 34.4% is provided with a landscape dimension of at least 2 metres, and that additional non-compliant landscaped areas result in a total of 40% Landscaped Open Space for the development proposal. The result of this non-compliance is that the landscape</p>

Internal Referral Body	Comments
	<p>proposal does not provide a landscape outcome capable of mitigating the bulk and scale of the proposed development.</p> <p>Control D1 requires that development provides for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees, and in this proposal the proposed small tree planting of Eleocarpus as the only tree planting, within limited side boundary landscape soil areas 2 metres and less in places (ie. 1330mm to basement), does not provide adequate canopy establishment nor typical mature height as indicated. Within such restricted landscape soil areas and proximity to the building, the Elaeocarpus are unlikely to achieve mature heights to soften the built form of the development, and are more likely to be managed as tall shrub/hedges.</p> <p>A significant portion of the side setback is encroached by structures or is non-existent and this impacts on the ability to provide adequate planting opportunities to soften the built form as well as provide privacy to adjoining properties.</p> <p>The front setback contains walls, paths, garbage store, clotheslines and lawns, and the area for garden planting is limited with inadequate tree canopy planting to soften the built form along the streetscape.</p> <p>The rear setback contains garden bed planting, clothesline and lawns, and retains two existing trees. However the Landscape Plan provides notation that the existing Jacaranda identified as T12, noted as a significant tree and proposed for retention, is an exempt species that may be removed without Council consent. Likewise the existing Conifer identified as T13 is also noted for retention, yet as an exempt species may be removed. This stance is unsatisfactory in the assessment by Landscape Referral. Should the landscape design intention be to retain such trees within the rear, then the exempt provisions are not applicable and conditions of consent may be imposed. A clear indication of the design intent is required to assess the landscape outcome of the development.</p> <p>A Arboricultural Impact Assessment is provided with the application and concern is raised on a number of issues. The Statement of Environmental Effects notes that owner's consent from No. 1 Brookvale Avenue " has been obtained from this adjoining property owner in relation to the replacement of a number of trees located within their property as detailed in the accompanying arborist report prepared by Growing My Way Tree Services". This information is not included in any of the development application documents and Council requires sighting of such owners consent. Regardless of any owners' consent document it is advised that Council may not agree to any vegetation removal on adjoining properties if prescribed trees (ie. protected under the DCP) are involved that do not warrant removal.</p> <p>The following trees proposed for removal upon adjoining property include: tree 5 Callistemon viminalis - 9.5 metres high and in good</p>

Internal Referral Body	Comments
	<p>condition; tree 8 Syzygium jambos - 7.5 metres high and in good condition; and tree 10 Syzygium jambos - 8.0 metres high and in good condition. In any available tree permit application for removal, such trees without arboricultural issues would not be approved by Council for removal, and in any development application for works upon No. 1 property would only be approved for removal should no design alternative be available. Development works upon an adjoining property is not a valid reason to remove these prescribed trees (ie. protected under the DCP) in this instance.</p> <p>Concern is raised that the development application documents do not include a tree root investigation for tree 3 Angophora floribunda located within adjoining No. 1 property as recommended in the Arboricultural Impact Assessment under section 7. Recommendations "The Author's recommendation is for the Tree #3 discussed manually excavated 'live root investigation' to proceed as soon as is practicable, probably post pre lodgement meeting to see if the NBC can generally support the as proposed development concept." to assess location of tree roots impacted by the proposed development works and also to provide definitive construction recommendations for the driveway and walling that will be located in close proximity.</p> <p>Landscape Referral are unable to support the application without the issues raised above being attended to.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p>The proposal is for the development of multi dwelling housing with basement level parking. The submitted stormwater concept plan is unsatisfactory. The provision of any Onsite Stormwater Detention (OSD) system shall be in accordance with Council's Water Management for Development Policy Clause 9.3.2.6. The PSD is to be calculated on the maximum allowable impervious fraction of 0% for all developments except single residential dwelling developments . Discharge off the site is to be restricted to the "state of nature" condition.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> Stormwater drainage for the development in accordance with clause C4 Stormwater. <p><u>Additional Information Provided on 20/1/2022</u> The amended stormwater plan with the proposed connection to the Council pipe line at the rear via an OSD system is satisfactory. A pedestrian footpath shall be provided along the Brookvale Avenue frontage for future connectivity as conditioned. No objections to approval subject to conditions as recommended.</p>
NECC (Water Management)	<p>Supported with conditions.</p>

Internal Referral Body	Comments
	<p><u>Additional information review, 07/02/2022</u></p> <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 proposed stormwater quality is based on reuse, flowrate control and infiltration. The proposed treatment chain is in line with recommended Water Sensitive Urban Design measures. The documentation is satisfactory and NECC (Water Management) has no objection to the application, subject to conditions.</p> <p><u>Superseded</u></p> <p>The application is for the demolition the existing site structures and the construction of multi dwelling housing containing 4 townhouses with basement level parking, and associated external works. 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> <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 triggers specific water quality requirements to install a filtration device that removes organic matter and coarse sediments from stormwater prior to discharge from the land.</p> <p>Due to the sensitivity of the receiving waters (Greendale Creek and Curl Curl lagoon) it is recommended to achieve, as a minimum, the water quality targets shown on Table 5 of Council water policy. The treatment measures must be designed in accordance with the requirements of this Policy and Northern Beaches Council's WSUD and MUSIC Modelling Guidelines.</p> <p>Stormwater treatment measures must be part of a unified design for the project and contribute to a positive urban design outcome, visually and physically integrated with the adjacent built and natural environment.</p> <p>Council may approve the use of proprietary devices where alternatives are limited (for instance in clay soils). Evidence is to be provided to demonstrates the performance of the system.</p> <p>The supplied documentation is not demonstrating compliance with Council Water Management for Development Policy. A review of the stormwater quality management is required including a stormwater management report and a music model (to be supplied to Council).</p>
Road Reserve	Supported with conditions.

Internal Referral Body	Comments
	<p>The proposal has limited impacts on existing road infrastructure assets, however proposes a number of civil works within the public road reserve (stairs and ramps). There is no in principle objection to the works shown on the plans, however, the proposal is deficient in that no provision is made for pedestrian footpath along the kerb alignment to provide future connectivity. The stairs and bin access ramp will be considered as private structures for the benefit of the property and the maintenance of same will remain the responsibility of the property owner.</p> <p>Development Engineering to apply conditions to the development to submit a Road Act Application for Civil Works including stairs, ramp, driveway and include minimum 1.5m footpath adjacent to the kerb across the full frontage of the property.</p>
Traffic Engineer	<p>Supported with conditions.</p> <p><u>Revised referral comments 10/3/21</u></p> <p>The amended plans have incorporated a widening of the driveway at the the property boundary. The widening is of sufficient width to allow for a B99 vehicle to pass a B85 vehicle and will adequately serve the intended function as a passing bay.</p> <p>The swept path plots provided with the amended traffic report have satisfactorily demonstrated that access to and from the carpark and parking spaces within it can be achieved</p> <p>the development is now supportable from a traffic perspective</p> <p><u>Original comments 3/9/21</u></p> <p>The development proposes the demolition of the existing dwelling on the site and construction of a 4 x 3 bedroom residential unit development with 9 offstreet spaces accessed via a single car width driveway.</p> <p>Parking:</p> <p>The offstreet parking supply of 9 spaces is excess of the DCP requirement of 7 spaces (6 residential spaces and a visitor space). The development therefore satisfies the DCP requirement. All spaces are sized in accordance with the minimum dimensions outlined in AS2890.1</p> <p>Traffic Generation:</p> <p>The traffic generation from the site has been estimated from the RMS Guide to Traffic Generating Development using rates for medium density development and for larger units. This is appropriate. Using these rates it is estimated that the development will generate up</p>

Internal Referral Body	Comments
	<p>to 26 daily vehicle trips and around 3 trips in the peak hours. Given that the existing dwelling on the site would also generate up to 9 daily trips and 1 peak hour trip the increase in traffic generated from the site will be insignificant.</p> <p>Vehicular Access:</p> <p>The development proposed access via a driveway of 3.8m in width. This width is insufficient to cater for passing of two vehicles. The driveway is around 32m in length between the kerb alignment and the entry point to the basement carpark. AS2890.1 section 3.2.2 suggests that where the driveway is more than 30m in length or sight distance from one end to the other is restricted that it be widened to 5.5m for at least the first 6m inside the property boundary. As the driveway gradient over most of its length is on a steep 1 in 4 gradient and as the vehicle crossing is located on a bend with poor sight lines it is considered that the widening to 5.5m is appropriate in this instance. It is noted that the applicants traffic report suggests that the lack of any provision for passing can be overcome by the use of a convex mirror and waiting bay within the basement carpark however this is considered an inadequate solution as the waiting bay is sited where it:</p> <ul style="list-style-type: none"> a) blocks access to/from 3 basement car spaces b) would be difficult to access and c) requires a very tight manoeuvre from an entering vehicle to pass a vehicle stopped in the waiting bay. <p>It is also noted that the intersection between the ramp and the carpark circulation aisle has been designed to cater for access by the B85 vehicle. AS2890.1 section 2.5.2 c) requires that these type of locations should be designed for access by a B99 vehicle. Given that access for a B85 vehicle past a waiting vehicle is tight it is anticipated that safe access for a B99 vehicle would not be possible.</p> <p>Given the above concerns, the current arrangements for vehicular access are considered unsatisfactory and require review and resubmission of amended plans</p> <p>Pedestrian sight line triangle:</p> <p>It is noted that the point where the driveway meets the property boundary does not make provision for a compliant pedestrian sight line triangle as per AS2890.1 section 3.2.4(b). This issue would be addressed if the driveway were widened to 5.5m at the boundary as noted above.</p>
Waste Officer	<p>Supported with conditions.</p> <p><u>Waste Services Referral</u></p>

Internal Referral Body	Comments
	<p>Recommendation - Approval (Amended plans dated 26 February 2022)</p> <p><u>Waste Services Referral (amended plans received 7 February 2022)</u></p> <p>Recommendation – Refusal</p> <p>It is not clear from the amended plans that the bin storage area has a roof that meets council's requirements.</p> <ul style="list-style-type: none"> The Bin Storage Area must have a roof with 2.1 metre ceiling clearance that provides cover for people using the bins with a minimum 1m walkway in front of the bins. <p>As the entrance gate adequately screens the bins from view from the street, the sliding door on the bin storage area is optional. If sliding doors to access the bin storage area are included, the doors must be robust and fit for purpose and must not be locked.</p> <p><u>Waste Services Referral</u></p> <p>Recommendation – Refusal</p> <p>As this is a multiple occupancy proposal, Council will be providing a "wheel out / wheel in" service for the bins. The owners corporation / building occupants are not to place the bins at the kerbside for collection.</p> <p>The bin storage facility is to be provided in accordance with Councils design guidelines.</p> <p>Specifically:</p> <ul style="list-style-type: none"> Access to the bin storage facility does not comply with Council requirements. Access for collection staff must not contain steps or ramps steeper than a gradient of 1 in 8. A separate and unobstructed 1200mm wide pedestrian path with a maximum gradient of 1 in 8 between the Waste Storage Area and Collection Point at the kerb is required. Bin Storage Area must have a roof with 2.1 metre ceiling clearance. The gate from the street to the bin storage area must not open in the path of pedestrians accessing the bin storage area To provide unobstructed access between the Residential Bin Storage area and the Collection Point any doors fitted on the waste storage area, pathway and access to the street must be: <p>-Unobstructed by any locks and security devices -Minimum 1.2 metres wide</p>

Internal Referral Body	Comments
	<p>-Latched in the open position</p> <ul style="list-style-type: none"> In this proposed location the bins would be adequately screened from the street, thus the sliding doors on the bin storage area is optional. If sliding doors to access waste storage area are included, the doors must be robust and fit for purpose and must not be locked. <p>To improve access and safety, the applicant may choose to:</p> <ul style="list-style-type: none"> Replace the approximately 1500mm wide double entry gate that accesses the bin storage area with a single 1200mm wide door that can be latched in the open position on the opposite side to the bins providing unobstructed access to service staff needing to manoeuvre bins.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1202597M dated 20 July 2021).

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

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

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

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 with suitable conditions recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8m - 9.1m	7.06%	No

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
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.1m
Percentage variation to requirement:	7.06%

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 judgements 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:

- *"In my opinion, there are sufficient environmental planning grounds to justify the variation namely the topography of the site which makes strict compliance with the building height standard difficult to achieve whilst maintaining appropriate amenity to the development in terms of roof design, ceiling heights and maintaining an appropriate relationship between the proposed ground level floor plates and ground level (existing).*
- *While strict compliance could be achieved by reducing ceiling heights, or by reducing the height of the building relative to existing ground levels, such outcome would require additional excavation, or reduce the amenity of the development, in circumstances where the minor building height breaching elements will not give rise to unacceptable adverse environmental consequences.*
- *The building is of appropriate design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act."*

Comment:

The proposed building height breach is limited to the western side of the rear pavilion roof, in part as a result of the front to rear slope and crossfall of the site. The breach occurs centrally within the site, and is not immediately visible from the street frontage. The proposed roof form is well-articulated and is recessive as viewed from the adjoining properties. The proposal affords adequate amenity to the subject development and will not result in any unreasonable visual or amenity impacts.

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 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 R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 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 building height breach relates to part of the rear pavilion only, and the proposal remains of a compatible height and scale to existing multi-dwelling developments in the visual catchment and surrounding locality.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposal will have no unreasonable impacts in relation to visual amenity, views, privacy or solar access. A detailed assessment of these matters is completed in this report.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The proposal will not adversely impact the scenic quality of the surrounding coastal and bush environments. New planting is proposed and conditioned to ensure that the landscape setting of the locality is maintained.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The proposed northern pavilion maintains full compliance with the building height control as it presents to the street frontage, and the increased front setback to the upper level provides appropriate facade articulation. The siting of the development below the ground level of the street frontage further reduces the visual bulk of the building.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposed multi-dwelling housing development will provide additional housing within the medium density zone.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal will contribute to the variety of housing types within the zone.

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

Comment:

N/A

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal, as conditioned, includes an appropriate variety of new native tree planting, mass-planted gardens and lawn areas. The proposed landscape design ensures that the development is characterised by a landscape setting that is compatible with the surrounding locality.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The facade design and landscape scheme within the front setback ensures that the development's streetscape presentation of high visual quality.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020 issued by the NSW Department of Planning & Infrastructure, 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 delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

6.2 Earthworks

The proposal includes substantial excavation works to accommodate the proposed basement car park. The proposed excavation is appropriately located and is not anticipated to adversely impact the adjoining properties or the natural environment, subject to compliance with the recommendations of the submitted geotechnical assessment. Conditions are also imposed requiring the preparation of pre and post-construction dilapidation reports for the adjoining properties.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	2	3	50%	No
B3 Side Boundary Envelope	East: 4m	Two breaches: - length 6.2m, up to 1.1m - length 8.2m, up to 0.6m	16.5%	No
	West: 4m	Two breaches: - length 3.2m, up to 0.3m - length 7.5m, up to 0.5m	6.9%	No
B5 Side Boundary Setbacks	East: 4.5m (Basement 2m)	Basement: 1.23m - 2m	38.5%	No
		GF/L1: 2.67m - 3.255m	40.7%	No
		L2: 2.67m - 3.6m	40.7%	No
	West: 4.5m (Basement 2m)	Basement: 2m	N/A	Yes
		GF: 3.255m - 3.81m	49.9%	No
		L1: 3.255m - 3.83m	27.7%	No
		L2: 3.255m - 3.83m	27.7%	No
B7 Front Boundary Setbacks	6.5m	Basement: 3m - 6m	53.8%	No

		GF Courtyard: 4.9m - 7.7m	24.6%	No
		Building: 6.7m	N/A	Yes
B9 Rear Boundary Setbacks	6m	Deck: 4.3m - 6m	28.3%	No
		Building: 6.215m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50% 353.05m ²	33.6% 237.3m ²	32.8%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	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
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	No	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B2 Number of Storeys

Description of non-compliance

The proposed three-storey development exceeds the two-storey control applicable to the site.

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 does not visually dominate its surrounds.*

Comment:

The pavilion-style design of the proposal and articulated upper floor level ensure that the development will not visually dominate its surrounds.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The subject site is located on the lower side of Brookvale Avenue and the proposal complies with the 8.5m height control at the front building line. The additional setback to the upper level also minimises the visual impact of the development.

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

Comment:

The proposal will not adversely impact views to and from surrounding public and private properties.

- *To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.*

Comment:

The proposal is appropriately designed to maintain adequate building separation, privacy, solar

access and general amenity to surrounding properties.

- To provide sufficient scope for innovative roof pitch and variation in roof design.

Comment:

The proposed upper floor level and roof are designed recessively to minimise the overall height and bulk of the development.

- To complement the height of buildings control in the LEP with a number of storeys control.

Comment:

The proposed building height variation is supportable, as assessed under Clause 4.6.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of the control. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

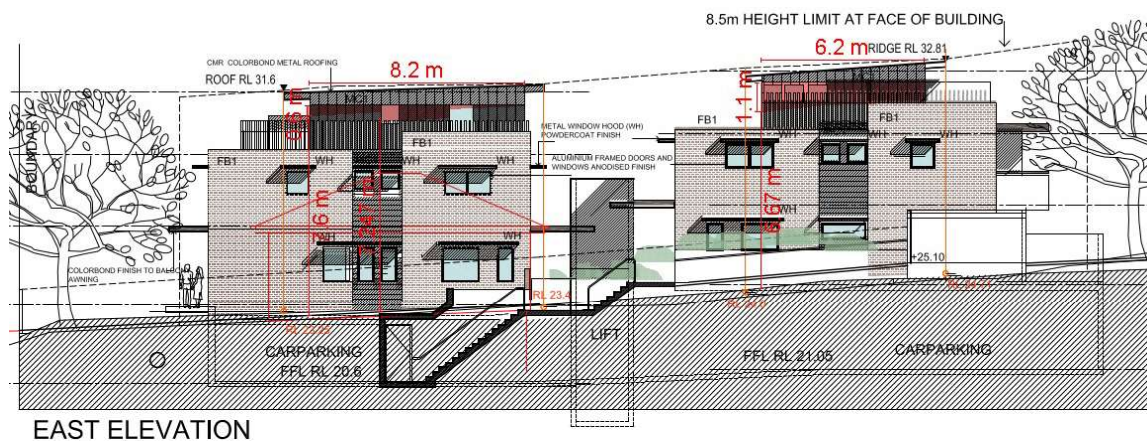
The proposal exceeds the building envelope at the eastern and western elevations of each pavilion, as depicted on the plans below. The extent of the breaches are as follows:

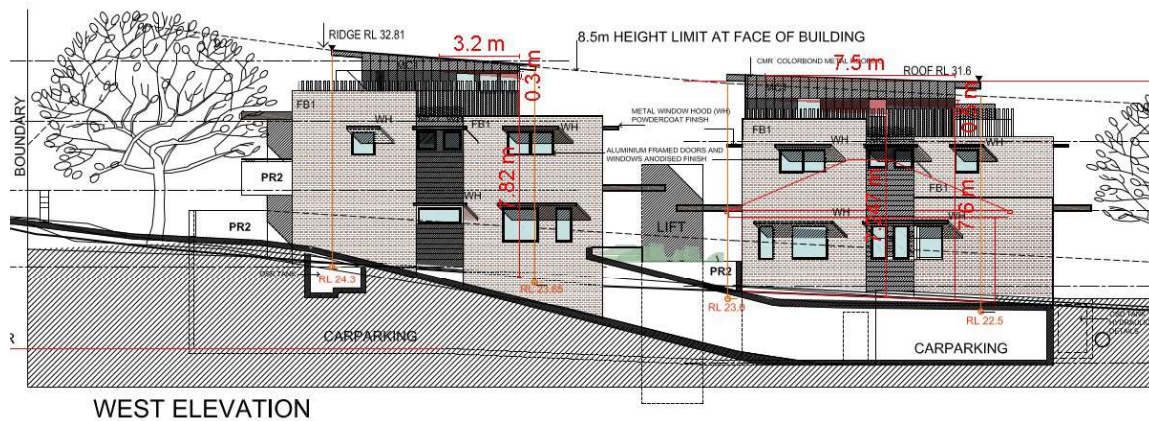
Eastern elevation:

- length 6.2m, up to 1.1m
- length 8.2m, up to 0.6m

Western elevation:

- length 3.2m, up to 0.3m
- length 7.5m, up to 0.5m





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 proposed pavilion-style design breaks up the bulk of the built form and minimises the visual dominance of the development as viewed from surrounding properties and the street frontage.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The separation and articulation of the two pavilions ensures the retention of adequate light, solar access and privacy to adjoining properties.

- *To ensure that development responds to the topography of the site.*

Comment:

The building bulk and roof form is stepped towards the rear of the site in response to the topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B5 Side Boundary Setbacks

Description of non-compliance

The control requires side setbacks of 4.5m to the building and 2m to the basement car park (in accordance with the R3 exceptions).

The development proposes side setbacks to the building that range between 2.67m and 3.83m, and basement setbacks of 1.23m-2m, contrary to the controls.

Merit consideration

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

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

Comment:

The proposal includes adequate deep soil landscape areas within the front and rear setbacks capable of supporting tree planting. Landscaping within the side setbacks consists of both deep soil and planter boxes, and will allow for the establishment of suitable screen planting.

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

Comment:

Notwithstanding the proposed side setback breaches, the proposal is not considered to be visually dominant. The built form is highly modulated to mitigate the bulk of the development, while the proposed and conditioned landscaping will provide further visual screening.

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

Comment:

The development is appropriately designed and located to limit the level of bulk and scale.

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

Comment:

The proposal ensures adequate privacy to the occupants of the subject site and adjoining properties.

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

Comment:

The proposal will not result in adverse view impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The proposed front setbacks to the basement car park (3m-6m) and ground floor northern courtyards (4.9m-7m) are non-compliant with the 6.5m control. The facade of the proposed building complies with the control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The amended proposal maintains a level of openness within the front setback that is compatible with that of nearby multi-dwelling developments.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal maintains the pattern of building and landscape elements within the existing streetscape. The amended driveway and courtyard design provides adequate at-grade landscaped area within the front setback to accommodate planting and ensure consistency with the character of the surrounding streetscape.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed development will protect and enhance the visual quality of the streetscape. The building facade is well-articulated and incorporates a variety of materials and finishes to add visual interest, while the proposed tree and vegetation planting will soften the appearance of the development as viewed from the public domain

- *To achieve reasonable view sharing.*

Comment:

The proposal will not result in any adverse view impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed rear setback of 4.3m - 6m to the covered ground floor southern decks is non-compliant

with the 6m control. The rear elevation of the building complies with the control.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposal includes adequate deep soil landscaped area within the rear setback that is capable of supporting existing and new planting.

- *To create a sense of openness in rear yards.*

Comment:

The rear setback breach relates to the ground level decks and awnings, and will maintain a sense of openness in the rear courtyards.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The setback breach at ground floor level will not unreasonably impact the amenity of the adjoining properties. The building maintains a compliant minimum setback of 6m at the ground and first floor levels, with greater minimum setbacks of 7.5m (deck) and 10m (wall) provided at the upper floor level. In addition to these separation distances, the existing and proposed trees and vegetation will provide supplementary landscape screening.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The proposed development is consistent with the pattern of buildings, rear gardens and landscape elements of the nearby multi-dwelling developments.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The proposal will maintain a reasonable level of privacy between the subject site and adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

C3 Parking Facilities

The proposal provides a total of 9 car parking spaces, which exceeds the required 7 spaces for the development.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires that a minimum of 50% (353.05m²) of the site area be provided as landscaped open space.

The proposal provides a total landscaped area of 33.6% (237.3m²) and an additional 27.7m² of on-slab landscaping with less than the required 1m of soil depth.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The amended proposal provides adequate landscaped area within the front setback to enable tree and vegetation planting to enhance the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The variety and quantum of new plantings, including compensatory native tree planting, will enhance vegetation and habitat for wildlife and maintain the character of the locality.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The proposal provides landscaped area of sufficient dimensions to accommodate adequate planting and is accompanied by a detailed landscaped plan which includes a variety of new plantings to be established across the site. Compliance with the landscape plan and conditions of consent will ensure that the bulk and scale of the building is appropriately managed.

- *To enhance privacy between buildings.*

Comment:

The proposed building is appropriately designed for privacy and includes extensive planting to provide supplementary screening. Privacy impacts are addressed further under D8 Privacy.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The development provides suitable outdoor recreational opportunities to meet the needs of occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

The development provides sufficient space for service functions, including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The development provides sufficient permeable surfaces to facilitate water management and is assessed as acceptable by Council's Development Engineers.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D6 Access to Sunlight

Compliance with control

Requirement 2 of the control specifies 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 of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

Adjoining properties

The adjoining developments to the rear consist of residential flat buildings, with each units requiring a minimum of 10m² of private open space.

The resulting overshadowing of 50-52 Old Pittwater Road will not impact any private open space areas within this property. There will be overshadowing at the rear of 46-48 Old Pittwater Road between 9am and 3pm, including impact to the private open space areas of the two eastern units between 2pm and 3pm. Despite the overshadowing impacts, each of the three rear-facing units at No. 46-48 will maintain the required solar access in accordance with the control.

The adjoining properties to the east and west, 1 and 5 Brookvale Avenue, contain dwelling houses that require a minimum of 60m² of private open space. No. 5 will be impacted between 9am and 10am, and No. 1 will be impacted between 1pm and 3pm. Both Nos. 1 and 5 will maintain the required three hours of sunlight access to 50% of the required private open space areas.

Subject development

The northern courtyards of units 1 and 2 will receive uninterrupted sunlight throughout the day. The rear courtyard of unit 3 will receive 3 hours of sunlight between 9am and 12pm, and the rear courtyard of unit 4 will receive 3 hours of sunlight between 12pm and 3pm.

D8 Privacy

Compliance with control

The proposal, as conditioned, is suitably designed to minimise privacy impacts between the subject site and surrounding properties.

The living areas and primary glazing of each of the units are located at the ground floor level and are orientated to the front and rear of the site. The side-boundary facing windows above ground floor level incorporate suitable sill heights and screening to avoid adverse overlooking impacts. A condition is included requiring that the south-facing Bed 1 windows of units 3 and 4 have either a minimum sill height of 1.5m, or translucent glazing or fixed privacy screening up to a height of 1.5m.

The proposed ground floor rear decks and courtyards of units 3 and 4 are located generally at natural ground level and supplementary screen planting is proposed/conditioned in these areas. The proposed upper floor rear decks of units 3 and 4 are accessed from studies and are sufficiently set back and screened at the side and rear elevations to minimise privacy impacts.

D9 Building Bulk

Compliance with control

The proposal is considered to be of good design that minimises the visual impact of the development when viewed from surrounding public and private land, and achieves the objectives of the control.

The development is assessed against the requirements of the control as follows:

1. *Side and rear setbacks are to be progressively increased as wall height increases.*

Comment: The upper floor levels of each pavilion are of minimal bulk with increased setbacks.

2. *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*

Comment: The wall planes of the development are broken up by the pavilion-style design and the modulation of the upper floor levels.

3. *On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:*

The amount of fill is not to exceed one metre in depth.

Fill is not to spread beyond the footprint of the building.

Excavation of the landform is to be minimised.

Comment: The proposal is stepped appropriately to minimise the height and bulk of the built form. The proposal includes minimal fill and excavation works are generally limited to the basement and driveway footprint.

4. *Building height and scale needs to relate to topography and site conditions.*

Comment: The proposal is designed and sited to respond to the topography of the site.

5. *Orientate development to address the street.*

Comment: The proposal addresses the street frontage and includes appropriately modulation of the building facade.

6. Use colour, materials and surface treatment to reduce building bulk.

Comment: The proposal incorporates a variety of materials and finishes to contribute to the visual interest of the building and reduce the perceived bulk.

7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.

Comment: The proposal includes extensive planting across the site, and further native tree planting is required by condition.

8. Articulate walls to reduce building mass.

Comment: The proposed pavilion-style design and the articulation of the upper levels sufficiently reduces the building mass, despite the setback and envelope breaches.

D19 Site Consolidation in the R3 and IN1 Zone

Merit consideration

In considering the development against the underlying Objectives of the Control, the below assessment has regard for the planning principles set out in *Karavellas v Sutherland Shire Council [2004] NSWLEC 251*.

- *To encourage lot consolidation to allow efficient use of land.*

Comment:

The objective of this clause is to encourage lot consolidation to ensure the orderly and efficient use of land, in accordance with the objects of the Environmental Planning and Assessment Act 1979. Details of negotiations between the owners of the subject site and adjoining properties are discussed below.

1 Brookvale Avenue

The applicant has provided evidence of written offer to purchase 1 Brookvale Avenue dated 15 February 2021. Evidence of refusal of the offer by the owner of 1 Brookvale Avenue was also provided. The applicant also argues that the existing Angophora tree and Council stormwater pipe located on No. 1 would negate any benefits achieved through consolidation with the subject site. It is also noted that a Sydney Water sewer main also traverses No. 1, and this would further constrain the development of the property as part of the subject development.

5 Brookvale Avenue

The applicant has provided evidence of an initial offer made to the owners of 5 Brookvale Avenue on 15 February 2021, along with written evidence of refusal of the offer. A further valuation and increased offer was made to the owners of No. 5 on 16 December 2021 and the applicant advises while that no written response was received, the offer was verbally refused.

The information provided by the applicant is considered to sufficiently demonstrate that consolidation with either of the adjoining properties is no longer feasible.

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

Comment:

While site consolidation would enable greater building separation and a better overall planning outcome, this has not been achievable in this case. Therefore, the applicant has sought to demonstrate that a smaller multi-dwelling housing development can still be accommodated in a manner that will be appropriate for the site and will not unreasonably impact the adjoining properties or the public domain.

- *To avoid lot sterilization.*

Comment:

Failure to consolidate with either 1 or 5 Brookvale Avenue does not prevent those properties from being developed for the purpose of medium density development that is of a comparable scale and density to the subject proposal. This has been illustrated in the concept plan *Adjoining Sites Re-development Option* prepared by Barry Rush and Associates, dated 11 January 2022. It is also noted that the subject site is not subject to a minimum lot size control under the WLEP. Further, while the subject proposal and the concept plans prepared for the adjoining properties include non-compliances with the WDCP controls, they are lesser in density than surrounding developments on consolidated allotments.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

E10 Landslip Risk

The site is mapped as Landslip Risk Areas A & B. A geotechnical investigation has been prepared in relation to the development, the recommendations of which are incorporated into the conditions of consent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$19,928 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,992,813.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- 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 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 application seeks consent for demolition works and the construction of a new multi-dwelling housing development containing four units.

The key planning issues considered within the assessment are the proposed building height development standard variation, built form non-compliances and the resulting amenity impacts of the proposal.

Notwithstanding the proposed building height variation of 7.06%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

Eight submissions were received in relation to the development, and are addressed within the report with suitable conditions imposed where necessary.

Assessment of the application against the Warringah LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Buildings development standard pursuant to clause 4.6 of the WLEP 2011 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 DA2021/1341 for Demolition works and the construction of Multi Dwelling Housing on land at Lot 17 DP 6040, 3 Brookvale Avenue, BROOKVALE, 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
A03C Basement Floor Plan	Rev. C, 26 February 2022	Barry Rush & Associates
A04C Ground Floor Plan	Rev. C, 26 February 2022	Barry Rush & Associates
A05C First Floor Plan	Rev. C, 26 February 2022	Barry Rush & Associates
A06C Mezzanine Floor Plan	Rev. C, 26 February 2022	Barry Rush & Associates
A07C Roof Plan	Rev. C, 26 February 2022	Barry Rush & Associates
A08D Elevations	Rev. D, 28 March 2022	Barry Rush & Associates
A09C Sections	Rev. C, 26 February 2022	Barry Rush & Associates
A12A External Colour Schedule	Rev. A, 11 January 2022	Barry Rush & Associates
A14A Demolition Plan	Rev. A, 11 January 2022	Barry Rush & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate No. 1202597M	20 July 2021	Building Sustainability

		Assessments
Slope Stability Risk Assessment	12 May 2021	JK Geotechnics
Arboriculture Impact Assessment	January 2022	Growing My Way Tree Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L_1 Landscape Site Plan	Issue F, 3 March 2022	Wallman Partners
L_2 Landscape Planting Plan	Issue C, 3 March 2022	Wallman Partners

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	13 August 2021

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

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

3. **Approved Land Use**

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

Multi dwelling housing is defined as:

"3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

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

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

4. Prescribed Conditions

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$19,928.13 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 \$1,992,813.00.

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

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

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

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

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

7. Security Bond

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

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$1 000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$10 000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

10. **Tree Protection Plan**

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the following trees:

- i) existing Jacaranda located at the rear of the property, identified on Ground Floor Plan A04C as 'existing Jacaranda tree to be retained', and on the Landscape Site Plan L-1 as T12,
- ii) existing trees within adjoining property number 1 Brookvale Ave.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- i) layout of the development, including existing and proposed underground services,
- ii) location of all trees identified for retention, including extent of canopy,
- iii) access routes throughout the site for construction activity,
- iv) location of tree protection fencing / barriers for the Jacaranda tree,
- v) location of tree protection fencing / barriers for trees within adjoining property should the dividing property fence be deemed insufficient for protection,
- vi) root protection in the form of mulching or boards proposed within the tree protection zone, if deemed necessary,
- vi) trunk and branch protection within the tree protection zone, if deemed necessary,
- vii) location of stockpile areas and materials storage,
- viii) inspection hold points,
- ix) other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason: Tree protection.

11. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed: 1metre soil depth.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

12. **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.

13. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Stormwater Management Plan (ACOR, rev.B 11.01.22) and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

14. **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:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

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

15. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

16. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

17. **Amendments to the approved plans**

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

- o The south-facing Bed 1 windows of units 3 and 4 shall have either:
 - i. a minimum sill height of 1.5m above FFL; or
 - ii. translucent glazing up to a minimum height of 1.5m above FFL; or
 - iii. fixed privacy screening with a maximum of 30% transparency, up to a minimum height of 1.5m above FFL.

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **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.

20. **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 CC210062, drawing number C1 to C5, dated 11/1/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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.

21. **Submission Roads Act Application for Civil Works in the Public Road**

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

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular crossing, access path and new footpath which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

1. A vehicular crossing 5.5 meters wide should be constructed in accordance with Council's standard drawing A4/3330/1 N.
2. All sight distances are to be in accordance with AS2890.1:2004.
3. Details of the access pathway to the site.
4. 1.5 meter concrete footpath along the Brookvale Avenue frontage from the western edge of the proposed driveway to the eastern boundary. Alignment to be along the back of kerb.

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.

22. **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.

23. **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.

24. **Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being the Council pipeline adjacent to the rear boundary and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

25. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to the existing council pit which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

26. **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.

27. **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.

28. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

29. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

30. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) tree number 2 - Photinia x fraseri 'Robusta', and tree number 11 - Callistemon viminalis,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

31. **Tree Removal Within the Road Reserve**

This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Arboricultural Impact Assessment):

- i) tree number 1 - Callistemon viminalis, subject to street tree replacement.

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

Reason: Public liability.

32. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

33. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-

- o Make provision for all construction materials to be stored on site, at all times.
- o The DTMP is to be adhered to at all times during the project.
- o Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- o Provide for the movement of trucks to and from the site, and deliveries to the site.

Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.

- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

34. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- 1 Brookvale Avenue, Brookvale
- 5 Brookvale Avenue, Brookvale

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

35. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

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.

36. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

37. **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.

38. **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.

39. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

40. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP 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 DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

41. **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.

42. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

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

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

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

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

44. **Geotechnical Requirements**

All recommendations included in the Geotechnical Report referenced in Condition 1 of this consent are to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

45. **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.

46. **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.

47. **Footpath Construction**

The applicant shall construct 1.5m wide footpath along the site frontage in Brookvale Avenue. The alignment of the footpath shall be along the back of kerb for the entire frontage of the site.

The works shall be in accordance with the following:

(a) All footpath works are to be constructed in accordance with Section 138 Road Act approval

(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

48. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

(a) Installation of Silt and Sediment control devices

(b) Prior to pouring of kerb and gutter, footpaths and vehicular crossing

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

49. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 1N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

50. **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.

51. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan dated 7 March 2021.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

52. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

53. **Street Tree Planting**

One (1) *Callistemon viminalis* as nominated on the Landscape Plan, shall be planted in accordance with the following:

- i) all street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all street 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, including a four post and top and mid rail timber tree guard, and watered until established, and shall be located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.

Reason: To maintain environmental amenity.

The street tree planting within the road reserve verge shall be part of the proposed road reserve works application under section 138 and 139 of the Roads Act.

54. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans L-1 and L-2 prepared by Wallman Partners, and inclusive of the following conditions:

- i) one (1) native tree capable of attaining at least 6 metres at maturity shall be planted within the western rear courtyard (unit 4) of the development, and shall be selected from the Northern Beaches Council's Native Plant Species Guide - Curl Curl Ward, or Council's Tree Guide, and the following suggestions are provided as a guide: Black Wattle - *Callicoma serratifolia*; Scribbly Gum - *Eucalyptus haemastoma*; Water Gum - *Tristanopsis laurina*; Ivory Curl - *Buckinghamia celsissima*; Lillypilly - *Syzygium paniculatum*; or Riberry - *Syzygium leuhmannii*,
- ii) the proposed *Fraxinus pennsylvanica* 'Urbanite' within the front setback shall be pre ordered 100 litre or 200 litre stock ready for delivery,
- iii) all tree planting, unless other nominated, shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- iv) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- v) 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,
- vi) the nominated *Rhapiolepis* species shall be substituted with a non self-seed spreading species of similar form and size.

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.

55. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture 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 and vegetation protection.

56. **Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by ACOR (stormwater management plan rev B) and all related construction certificate approved documentation. The certificate must

confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

57. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. 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 is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

58. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:

- a) Work as executed drawings
- b) Intent of the stormwater treatment measures including modelled pollutant removal rates
- c) Site detail showing catchment for each device
- d) Vegetation species list associated with each type of vegetated stormwater treatment measure
- e) Impervious area restrictions to maintain the water balance for the site
- f) Funding arrangements for the maintenance of all stormwater treatment measures
- g) Identification of maintenance and management responsibilities
- h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
- c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
- 3. Maintenance schedule and procedure - ongoing
 - a) Activity description, and duration and frequency of visits
 - b) Routine maintenance requirements
 - c) Work Health and Safety requirements
 - d) Waste management and disposal
 - e) Traffic control (if required)
 - f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
 - g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

59. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

60. **Community Title Management Statement**

The Community Management Statement must specifically list the stormwater treatment measures that will be maintained under community title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the **Occupation** Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

61. **Convex Mirror and signage at Ramps**

One (1) convex mirror is to be installed and maintained at the base of the ramp leading to the basement parking level to provide intervisibility between entering and exit vehicles. A sign shall also be installed at the base of the ramp advising exiting drivers to "Give Way to Entering Traffic". Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To minimise vehicular conflicts at ramps.

62. **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.

63. Geotechnical Certification Prior to Occupation Certificate

Certification from a suitably qualified and practicing Geotechnical Engineer that all recommendations included in the Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the development shall be provided to the Principal Certifying Authority prior to the issue of a Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

64. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

65. 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.

66. 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.

67. Garbage and Recycling Facilities

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

68. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines
(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

69. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

70. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

71. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

72. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

73. **Landscape Maintenance**

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

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

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

74. **Maintenance of Stormwater Treatment Measures - Major**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

The stormwater infiltration trench is to be maintained and flush as required to mitigate risk of blockages and maintain infiltration rate to the soil.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

75. **Parking Enclosure**

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

76. **Sight lines within carparks**

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

77. **Mechanical Plant**

Any mechanical plant equipment 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.





ITEM 3.2**DA2021/2337 - 8A LINKMEAD AVENUE CLONTARF -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER** Rodney Piggott**TRIM FILE REF** 2022/204742**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan and Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2021/2337 for alterations and additions to a dwelling house including a swimming pool on land at Lot 2 DP 534547, 8A Linkmead Avenue CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2337
Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 2 DP 534547, 8 A Linkmead Avenue CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew David Little Vanessa Delphine Peltier
Applicant:	Andrew David Little
Application Lodged:	07/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/12/2021 to 18/01/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12%
Recommendation:	Approval
Estimated Cost of Works:	\$ 975,000.00

EXECUTIVE SUMMARY

The application is for the proposed alterations and additions to an existing dwelling including a swimming pool and carport at 8A Linkmead Avenue, Clontarf.

The application requests a 12% variation to Clause 4.3 Height of Buildings of the MLEP 2013 and as such triggers referral to the Development Determination Panel (DDP) for determination. The applicant has provided a Clause 4.6 written request to vary a development standard to support the application.

No submissions were received with reference to the subject application.

The application is considered to be consistent with the relevant objectives of the MLEP 2013 and MDCP and has therefore been recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of alterations and additions to an existing dwelling including a new carport and swimming pool.

The following works are proposed:

Lower Ground Floor

- Alterations and additions to existing lower ground floor to provide for kids room/guest, laundry and storage, ensuite, internal and external stairs.

Ground Floor

- Alterations and additions to existing ground floor to provide for a new living, study, powder, open plan dining, kitchen with pantry, living area, balcony and external stairs.

First Floor

- Alterations and additions to existing first floor level to provide for extension of master bedroom, robe and bedroom 2.

External works

- Replacement of existing carport, new access to dwelling, new swimming pool and associated paving and landscaping.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 2 DP 534547 , 8 A Linkmead Avenue CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Linkmead Avenue. The site is a battle axe allotment.</p> <p>The site is irregular in shape with a frontage of 3.44m along Linkmead Avenue. The site has a minimum depth of 22.405m, excluding the access handle (eastern side boundary), and a maximum depth of 59.105m including the access handle (western side boundary). The angled rear boundary measures a total of 29.375m. The site has a surveyed area of 768m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a three storey rendered residence with a tile roof. A carport and attached timber deck and shed are located within the front yard. Vehicular access to the site is available via a steep concrete driveway from Linkmead Avenue.</p> <p>The site has a steep slope to the south with an average slope of 15%.</p> <p>The site is characterised by a variety of small, medium and larger trees and vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by <describe the built form of the surrounding area>.</p>

Map:



SITE HISTORY

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

- Pre-lodgement Meeting PLM2020/0115 was held on 18/06/2020 for Alterations and Additions to a dwelling house including a swimming pool.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Provisions of any planning agreement	
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>Clauses 54 and 109 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 Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p>

Section 4.15 Matters for Consideration	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/12/2021 to 18/01/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to the existing dwelling, a swimming pool and associated works. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral.</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 existing site contains two prescribed trees protected by the DCP and both, identified as tree numbers 1 and 2 - Paperbarks, are proposed for retention and recommendations for tree protection measures are provided in the Arboricultural Impact Assessment, and conditions shall be imposed. Six other trees identified as Exempt</p>

Internal Referral Body	Comments
	<p>Species under the DCP are proposed for removal and it is noted that such trees do not require Council consent.</p> <p>Landscape Plans are submitted with the development application, providing an indication of existing trees retained, and landscape surface treatments and planting including a mix of small trees, shrubs and other plants, and the Landscape Plans satisfies the landscape controls of the DCP.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and additions to existing dwelling and construction of a swimming pool. 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) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> Coastal Environment Area <p>Manly Local Environmental Plan (MLEP)</p> <ul style="list-style-type: none"> Clause 6.5 (Terrestrial Biodiversity) <p>Manly Development Control Plan (MDCP)</p> <ul style="list-style-type: none"> Clause 3.3.1. a) iv) Landscaping Design <p>The application does not require the removal of prescribed trees or vegetation, instead the six (6) exempt trees (by species or within 2m of dwelling) are proposed for removal. These trees (T.3, 4, 5, 6, 7 & 8) are exempt within the Northern Beaches and do not require Council approval to remove.</p> <p>It is noted that the proposal requires an Asset Protection Zone (APZ) to be established in perpetuity over the site, it is however noted that vegetation within the site is currently in a managed state, as confirmed by the Bush Fire Assessment Report:</p> <ul style="list-style-type: none"> <i>"The asset protection zone is existing, and no tree removal or vegetation modification is required to establish it. As such there is no impact on the environment of the proposed bushfire protection measures."</i> <p>Subject to conditions, no objection is raised against the proposal.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p>

Internal Referral Body	Comments
	<p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have/have not been met.</p>

Internal Referral Body	Comments
	<p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd dated November 2021, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p>The proposed development does not require OSD and connection to the existing system is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
Parks, reserves, beaches, foreshore	<p>The development application is for alterations and additions to the existing dwelling, a swimming pool and associated works.</p> <p>The development site adjoins Clontarf that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>Public access to the Reserve is not impacted by the development works and thus no concerns are raised.</p>

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

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. A432025 dated 24 November 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Coastal Management) 2018

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.

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

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:

On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.69m	12%	No

Floor Space Ratio	FSR: 0.4:1 (307.2m ²)	FSR: 0.38:1 (290.2m ²)	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.69m (RL 28.37) existing maximum RL 28.87
Percentage variation to requirement:	12%

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 new works maintain a bulk and scale which is consistent with the surrounding locality
- The proposal will not exceed the existing ridge line (RL 28.82) of the existing dwelling. When measured from the natural ground level to the maximum RL the height of the building is approximately 8 metres.
- The works are not expected to have any impacts on views enjoyed by neighbouring properties or limit solar access enjoyed by the adjoining properties
- The general bulk and scale of the dwelling as viewed from the public areas in Linkmead Avenue and from the surrounding private properties will be largely maintained

The proposed alterations and additions have been designed to be sympathetic to the character of the locality and respond to the site constraints. The development is considered to be consistent with the objectives of the act and displays high quality design and a variety of colours and finishes to mitigate any perceived bulk.

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 C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The surrounding area is predominantly characterised by two and three storey dwellings. The proposal seeks alterations and additions to an existing non compliant building and will keep within the existing maximum ridge line (RL).

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

The dwelling is not visible from the streetscape, however it is nonetheless considered to be consistent with the desired character of the streetscape.

b) to control the bulk and scale of buildings,

Comment:

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

Furthermore, the modulation of the building elevations where visible from the public domain and

neighbouring properties minimises the visual impact of the development.

c) to minimise disruption to the following:

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

Comment:

As a result of the slope of the site towards the south, the site and adjoining sites enjoy views towards Clontarf Reserve and Middle Harbour waterway.

The proposal is downhill of adjoining properties and proposes a low profile roof that will allow for existing views to be maintained through and over the site.

Views from the surrounding public spaces are not expected to be adversely affected.

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

Comment:

Shadow diagrams have been provided as part of the application. These diagrams confirm the alterations and additions will not result in any unreasonable overshadowing.

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

Comment:

The works are within an existing disturbed area of the site and maintain suitable separation from the foreshore. The site is not within a conservation area or in the immediate vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Linkmead Avenue.

A suitable area of soft landscaping is maintained.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant

- geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment:

It is considered the proposal is consistent with the zone objectives and is consistent with the desired character of the surrounding locality. The proposed alterations and additions maintain a similar bulk and scale to the existing development on site and will therefore not be overbearing within the foreshore locality.

The proposal will not require the removal of any significant trees or vegetation, with the works mostly over the existing footprint. The remaining vegetation within the site will be retained and protected and the property boundaries are capable of accommodating further plantings.

The works respect the sloping topography of the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

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

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

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).

6.2 Earthworks

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

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

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

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

locality of the development

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of 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 Office who provided comments and conditions that have been included in the consent.

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

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

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

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

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

6.4 Stormwater management

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

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

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

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

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

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

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

6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must 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*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The development is not likely to have an adverse impact on any of the above. Subject to conditions, no objection is raised against the proposal.

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

- (a) the development is designed, sited and will be managed to avoid 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 reviewed by Council's Natural Environment Biodiversity officer who provides support subject to recommended conditions of consent. These recommendations have been included as part of the development consent.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
(b) is restricted on unsuitable land, and
(c) does not endanger life or property.

In this regard, 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 the risk of landslide—

- (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 application has been reviewed by Council's Development Engineer who has supported the works subject to recommended conditions of consent.

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

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
(b) 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
(c) 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 has supported the works subject to recommended conditions of consent.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposal comprises of alterations and additions to an existing dwelling and is not likely to result in any adverse impacts when viewed from the foreshore area. The proposal will not result in any overshadowing of the foreshore area or unreasonable view loss from a public place to the foreshore.

The works have been designed to complement the existing character of the locality and are not likely to have any adverse impacts.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 768m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NE: 8m (based on gradient 1:4+)	7.9m (maximum)	N/A	Yes
	SW: 8m (based on gradient 1:4+)	8.5m (maximum)	6%	No
4.1.2.3 Roof Height	Height: 2.5m	0.6m	N/A	Yes
	Parapet Height: 0.6m	0.1m	N/A	Yes
	Pitch: maximum 35 degrees	<35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.3m (carport) 13.8m (dwelling) 6m (swimming pool)	62% N/A N/A	No Yes Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NE: 2.63m (based on wall height) SW: 2.83m (based on wall height)	1.6m (all levels) 10.6m (lower ground) 1.1m (ground) 3.1m (first floor)	39% N/A 61% N/A	No Yes No Yes
	Windows: 3m	NE: 1.6m (ground and first) SW: 2.4m (ground) SW: 5.8m (first)	47% 20% N/A	No No Yes
4.1.4.4 Rear Setbacks	8m	Nil	100%	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	Nil	100%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	41% (315m ²)	32%	No
	Open space above	6% (20.4m ²)	N/A	Yes

	ground 25% of total open space			
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	60% (188.4m ²)	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	<18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1m (0.7m natural ground)	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1.3m (both)	N/A 13%	Yes No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance

The proposal does not comply with the maximum height of buildings control. A Clause 4.6 written request to vary a development standard has been provided. This has been addressed earlier within this report and is supported on merit.

The works propose a maximum wall height of 8.5m along the south western elevation. This is a 6% variation to the required wall height of 8m based on a gradient of 1:4+.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The proposal does not comply with the wall height along the south western elevation as a result of the existing site constraints being the steep slope and existing development. The works do not exceed the existing ridgeline and are in line with the desired future streetscape character of the locality.

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

Comment:

The proposal has been well articulated through a variety of colours and finishes to mitigate any perceived bulk. In addition the works do not exceed the existing ridge line and follow the sloping topography of the site.

(c) to minimise disruption to the following—

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

Comment:

The variation to the wall height control is not likely to result in any view loss to nearby residential development from public spaces, nearby residential development to public spaces and views between public spaces.

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

Comment:

Shadow diagrams have been provided as part of the application. The shadow diagrams indicate there will be no unreasonable overshadowing impacts as a result of the development.

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

Comment:

The proposed alterations and additions do not exceed the existing maximum ridge line of the dwelling and are mostly built over the existing footprint. As a result the works have been designed to respect the existing vegetation and topography on site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported / is not supported, in this particular circumstance.

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

Description of non-compliance

The carport is proposed to be setback 2.3m from the front setback and therefore presents a variation of 62% to the required control of 6m.

The dwelling is setback 1.6m (all levels) along the northern elevation and therefore presents a variation of 39% to the required control of 2.63m (based on wall height of 7.9m).

The dwelling is setback 1.1m (ground floor) along the south western elevation and therefore presents a variation of 61% to the required control of 2.83m (based on wall height of 8.5m).

The dwelling has a nil setback to the rear and therefore presents a variation of 100% to the control requiring 8m.

Strict compliance with this control is limited by the siting of the existing dwelling and the irregular configuration of the battle-axe allotment.

The existing dwelling has a nil setback to the rear. The nil setback was supported at the prelodgement meeting (PLM2020/0115) conducted on the 18 June 2020 provided comments that the nil setback to the rear is considered acceptable on merit.

The dwelling also presents a variation to the window setback control requiring 3m by 47% along the north eastern elevation and 20% along the south western elevation. All windows comply with the BCA control of a minimum setback of 900mm.

The proposed setbacks are all consistent with the setbacks of the existing dwelling currently on site.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposal is located on a steeply sloping battle axe site and is therefore not visible from the streetscape. Nonetheless the works are well setback from the streetscape and adjoining properties and are consistent with the desired spatial proportions, the street edge and landscape character.

The carport is generally located in a similar position to the existing carport, within the front setback. Given the battle axe configuration of the site the carport location is considered appropriate.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is not expected to result in any adverse impacts on any of the above. It is considered there is sufficient building separation, in conjunction with existing landscaping to ensure there will be no direct view lines available.

Shadow diagrams have been provided as part of the application. The shadow diagrams confirm there will be no unreasonable overshadowing and maintain equitable access to light, sunshine and air movement.

In addition the works will not exceed the existing ridge line and therefore will not result in any unreasonable view loss.

There are no changes to the traffic conditions.

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

Comment:

The proposal is governed by the site constraints being the steep sloping topography, battle axe configuration and the siting of the existing dwelling. The proposal promotes flexibility by promoting high quality design that effectively responds to the constraints.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The new works are contained within an existing disturbed area of the site and do not seek to remove any significant trees or vegetation. The remaining vegetation within the site will be retained and protected and the property remains capable of accommodating additional planting, including deep soil zones.

The proposal has been assessed by Council's Landscape and Biodiversity Officer who confirm the application satisfies the provisions of all relevant controls, subject to the recommended conditions of consent.

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

Comment:

The proposal provides sufficient building separation to assist in appropriate bushfire asset protection zones. The application is supported subject to following recommendations provided within the Bushfire Report. These recommendations have been included as conditions.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal comprises of a total open space of 41% or 315m² which is a 32% variation to the control requiring 60%. The non compliance is attributed to the irregular shaped battle axe allotment. It should be noted the driveway and hardstand area is not numerically included in the open space. Therefore limiting strict compliance with the control.

The proposal complies with the minimum required landscaped area.

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 seek to remove any important landscape features and vegetation. The proposal has been assessed and is supported by Council's Biodiversity and Landscape Officers, subject to recommended conditions of consent.

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 comprises of a compliant landscaped area of 188.4m² or 60% and 3 new native trees. In addition, conditions have been recommended to ensure the maintenance and protection of the existing vegetation on site.

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

Comment:

The rear boundary of the site adjoins a public reserve, with overgrown vegetation and a steeply sloping topography, which minimises the visibility of the works within the foreshore locality and from adjoining sites.

The works do not exceed the existing ridge line and are not considered to have any unreasonable impacts on amenity, including sunlight, privacy and views as a result.

The proposed works, including the new swimming pool will enhance the function of the open space area.

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

Comment:

It is considered there is sufficient landscaped area on site to maximise water infiltration.

The application has been assessed by Council's Development Engineer who is supportive of the application, subject to recommended conditions.

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

Comment:

The proposal directly adjoins a public reserve. The works are not considered to lead to the degradation of private and public open space.

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

Comment:

Habitat for wildlife is maintained as there are no changes to the existing general footprint of the dwelling.

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

4.1.9 Swimming Pools, Spas and Water Features

Detailed Description of non-compliance

The waterline of the proposed swimming pool is setback 1.3m which is a variation of 200mm or 13% to the control requiring 1.5m to the side boundary.

Merit consideration:

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

Objective 1) To 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 proposed swimming pool is not expected to result in any unreasonable privacy impacts given the generous building separation. A site visit was conducted at 8A Linkmead Avenue and it was evident there will be no direct lines of sight available within close proximity to or from the location of the new swimming pool.

A condition has been recommended as part of the development ensuring management of the acoustic impact of filter noise.

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

Comment:

The site is a battle-axe allotment and is not visible from the streetscape as a result of the steep sloping topography. The location of the swimming pool is considered appropriate given the existing development on site.

Objective 3) To integrate landscaping; and

Comment:

The site maintains a compliant landscaped area and will continue to provide opportunities for deep soil landscaping.

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

Comment:

The site is located within a bushfire prone area. The swimming pool has the ability to become an emergency water resource if required.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$9,750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,000.

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2021/2337 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 2 DP 534547, 8 A Linkmead Avenue, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA002 Site Plan + Site Analysis RevA	24 November 2021	CM Studio
DA101 Existing + Demo LG Plan RevA	24 November 2021	CM Studio
DA102 Existing + Demo GF Plan RevA	24 November 2021	CM Studio
DA103 Existing + Demo L1 Plan RevA	24 November 2021	CM Studio
DA110 Proposed LG Plan RevA	24 November 2021	CM Studio
DA111 Proposed GF Plan RevA	24 November 2021	CM Studio
DA112 Proposed L1 Plan RevA	24 November 2021	CM Studio
DA120 Proposed Pool + Section RevA	24 November 2021	CM Studio
DA210 Proposed NE Elevation RevA	24 November 2021	CM Studio
DA211 Proposed SE Elevation RevA	24 November 2021	CM Studio
DA212 Proposed SW Elevation RevA	24 November 2021	CM Studio
DA212 Proposed SW Elevation RevA	24 November 2021	CM Studio

DA213 Proposed NW Elevation RevA	24 November 2021	CM Studio
DA301 Section 1 RevA	24 November 2021	CM Studio
DA302 Section 2 RevA	24 November 2021	CM Studio
DA303 Section 3 RevA	24 November 2021	CM Studio
DA304 Section 4 RevA	24 November 2021	CM Studio
DA910 Schedule of materials RevA	24 November 2021	CM Studio

Engineering Plans		
Drawing No.	Dated	Prepared By
CP100 Cover page, Notes & Calculations RevC	22 November 2021	RTS Civil Consulting Engineers
SW100 Level 1 & Roof Conceptual Stormwater Management Plan RevC	22 November 2021	RTS Civil Consulting Engineers
Lower & Ground Floor Conceptual Stormwater Management Plan RevC	22 November 2021	RTS Civil Consulting Engineers
SW200 Stormwater Drainage Details RevC	22 November 2021	RTS Civil Consulting Engineers
SE100 Site Sediment & Erosion Control Plan RevC	22 November 2021	RTS Civil Consulting Engineers
SE200 Sediment & Erosion Control Details RevC	22 November 2021	RTS Civil Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A432025	24 November 2021	CM Studio
Arboricultural Impact Assessment Report	28 October 2021	rain tree consulting
Bushfire Assessment Report	24 August 2021	Australian Bushfire Consulting Services
Geotechnical Report	23 November 2021	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LS01 Landscape Site Plan RevB	3 November 2021	Melissa Wilson Landscape Architect
LS02 Landscape Ground Floor Plan RevB	3 November 2021	Melissa Wilson Landscape Architect
LS03 Landscape Indicative Large Shrubs + Low Planting RevB	3 November 2021	Melissa Wilson Landscape Architect

LS05 Landscape Notes RevB	3 November 2021	Melissa Wilson Land
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Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16 November 2021	Andrew Little & Vanessa Peltier

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

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

2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,750.00 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 \$975,000.00.

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.

5. **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

6. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the inter-allotment drainage easement burdening the site.

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

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

7. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

8. **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.

9. **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.

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.

10. **Compliance with Standards**

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

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

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

11. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) nil prescribed trees

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal, and for reference these include: tree 3 - Bouganvillea; tree 4, 5 and 6 - Bangalow Palm; and tree 7 and 8 - Cocus Palm

Reason: To enable authorised development works.

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

No works are to be carried out on land owned or managed by Council.

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

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

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

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

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, including as listed in the following sections:

- i) section 2.2 Recommended tree management & protection principles
- ii) section 2.3 General tree protection requirements
- iii) Appendix- A: Tree Protection & Fencing Detail

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.

16. **Road Reserve**

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

Reason: Public safety.

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

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

Reason: Public safety, landscape amenity and tree protection.

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

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

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

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

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

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

20. **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.

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

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

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

22. **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**

23. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans.

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/>

24. **Condition of Retained Vegetation**

Prior to the issue of any Occupation Certificate a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

25. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

26. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Melissa Wilson Landscape Architects 2021) and these conditions of consent.

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

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

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. **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

29. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

30. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

31. **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.

32. **Geotechnical Recommendations**

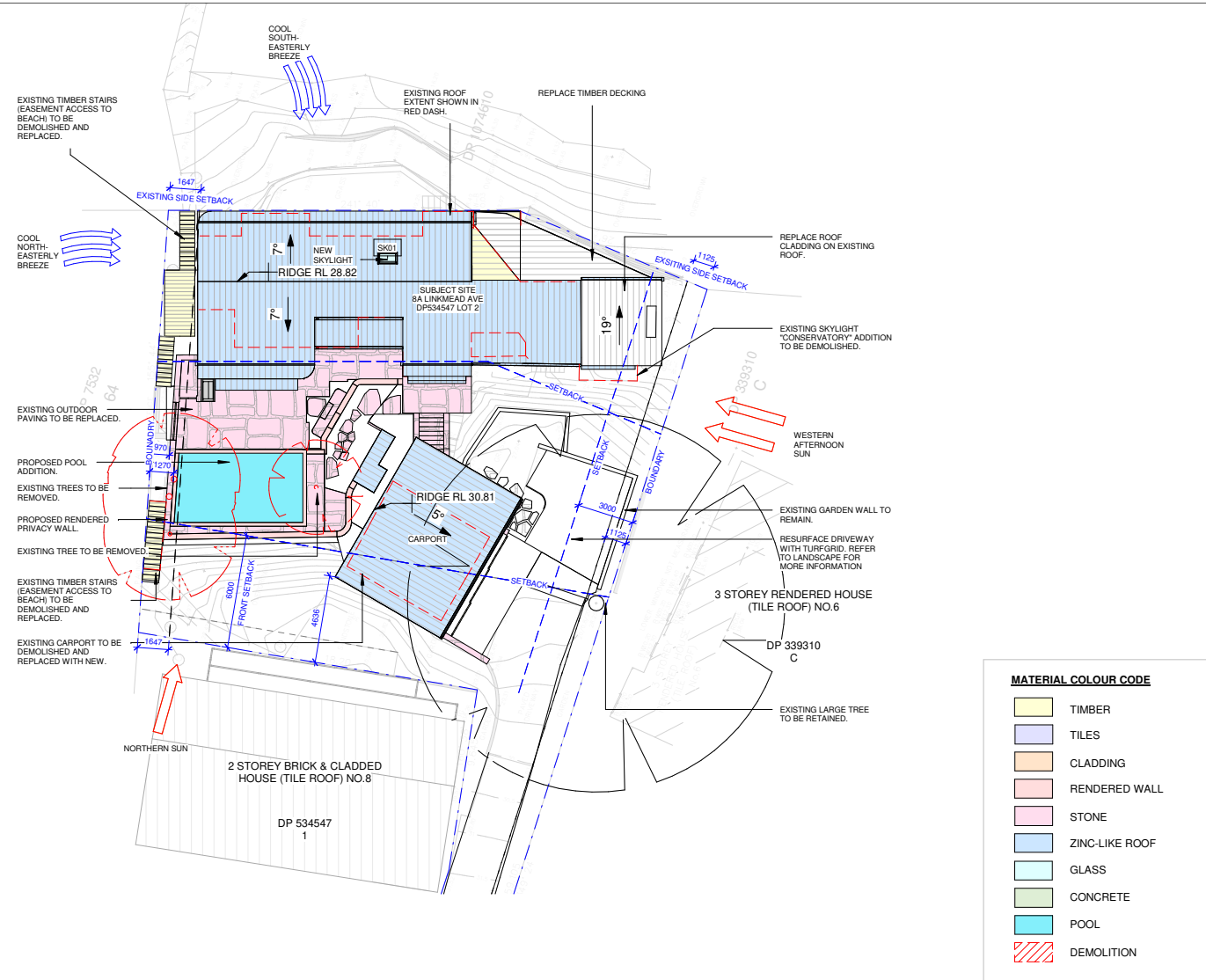
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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



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Project:
Linkmead
8A Linkmead Avenue, Clontarf
Project number 2019_106

Revisions		
No.	Description	Date
A	For DA	24-11-2021

Client:
Andrew Little + Vanessa Peltier
Drawing Number: **DA002**
Date 24-11-2021

Drawing:
Site Plan + Site Analysis Plan
Scale 1 : 200 @ A3
Drawn by: DF Checked by: MB



Project:
Linkmead
8A Linkmead Avenue, Clontarf
Project number **2019 106**

Client:
Andrew Little + Vanessa Peltier

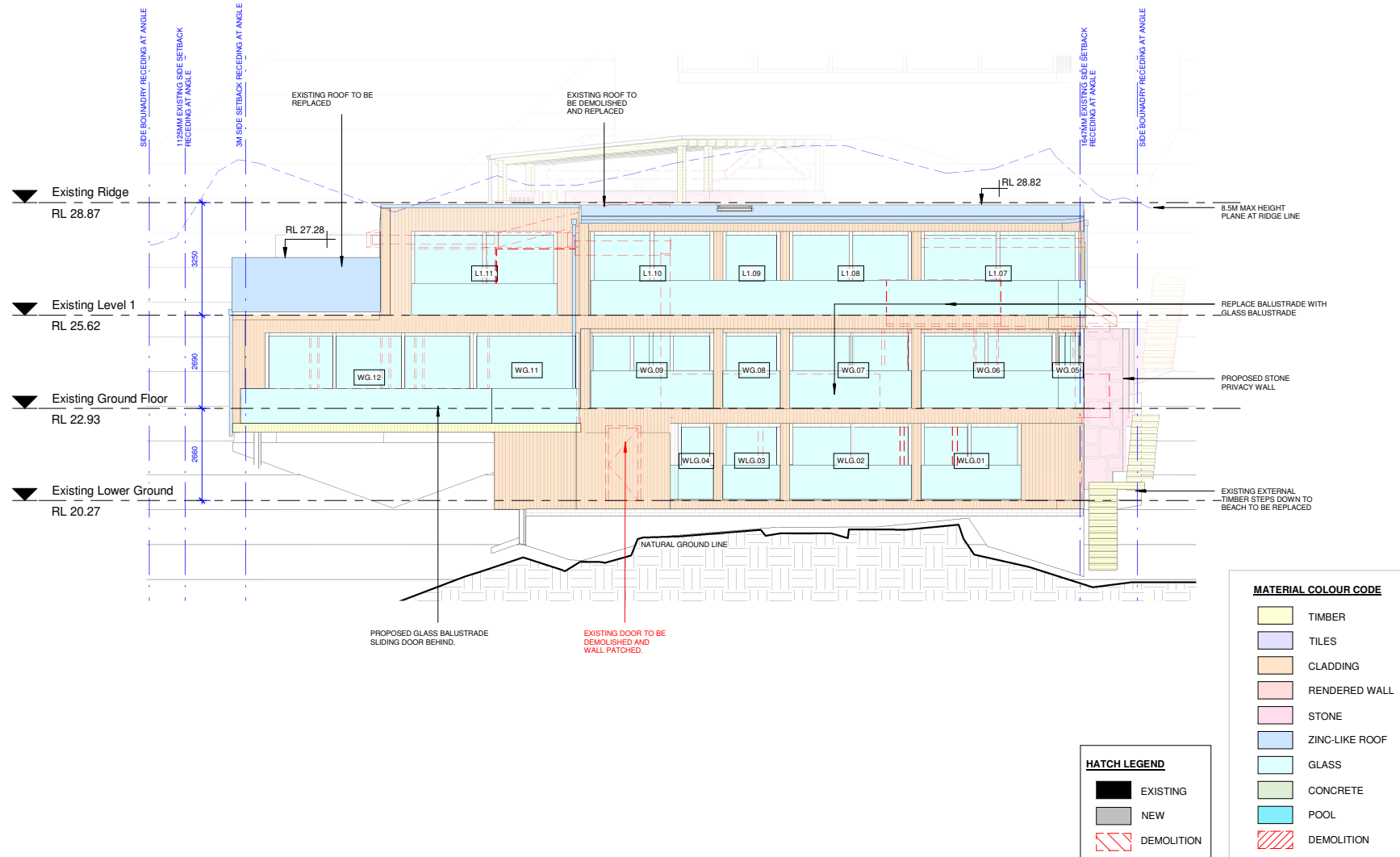
Drawing Number: **DA210** Issue **A**

Date **24-11-2021**

Drawing:
Proposed NE Elevation

Scale 1 : 100 @ A3

Drawn by: DF Checked by: MB



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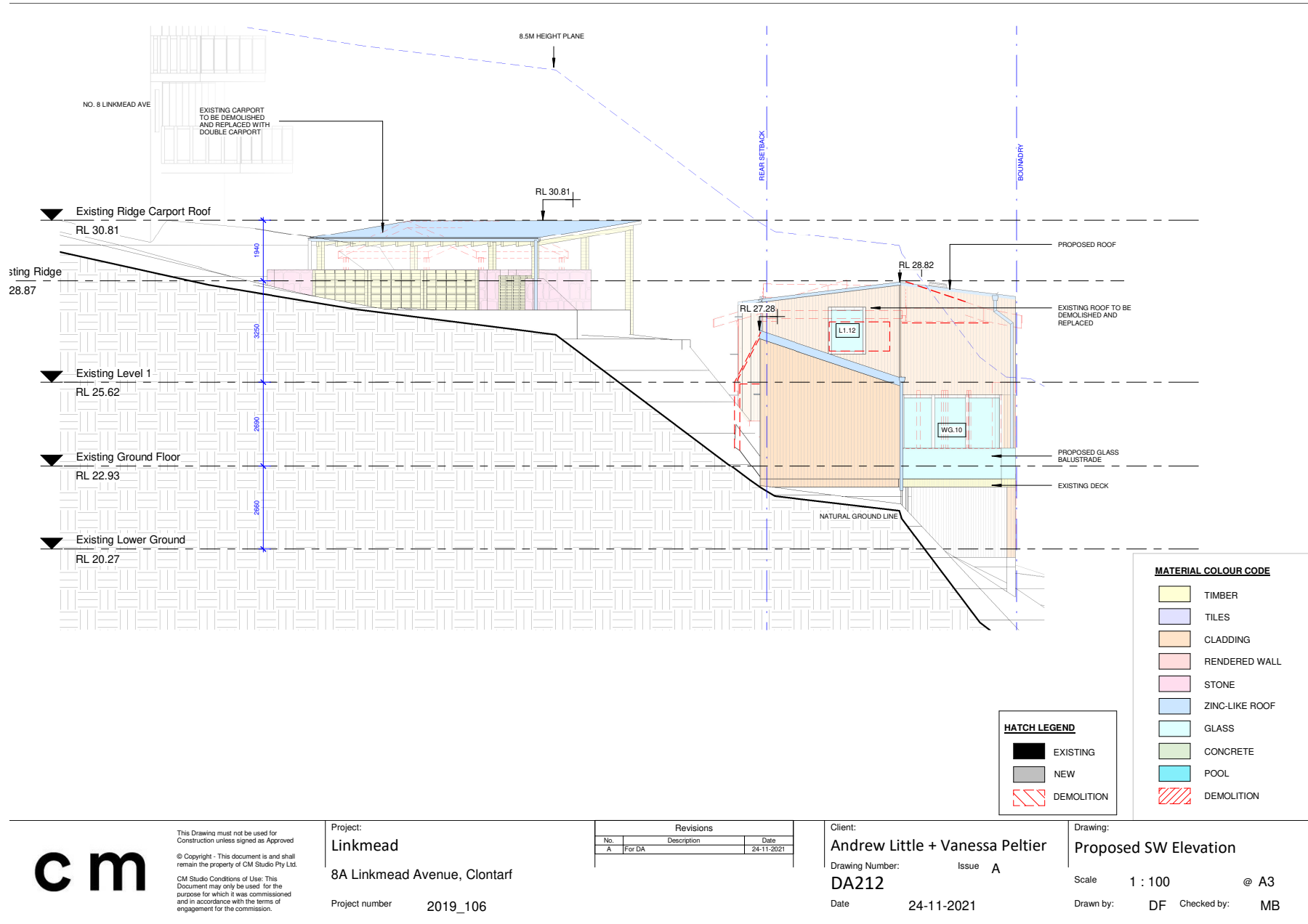
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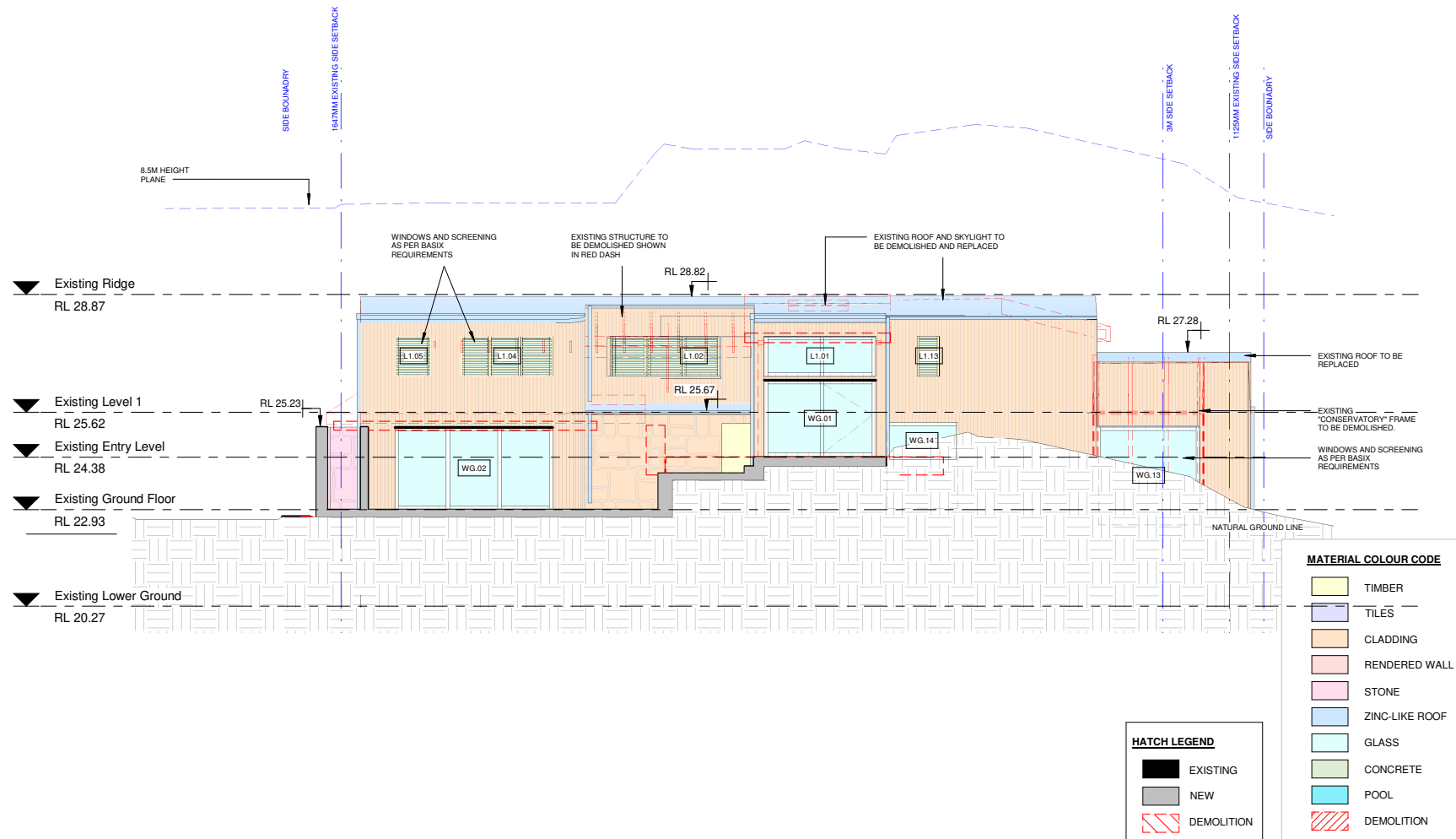
Project:
Linkmead
8A Linkmead Avenue, Clontarf
Project number 2019_106

Revisions		
No.	Description	Date
A	For DA	24-11-2021

Client:
Andrew Little + Vanessa Peltier
Drawing Number: **DA211**
Issue **A**
Date **24-11-2021**

Drawing:
Proposed SE Elevation
Scale **1 : 100** @ **A3**
Drawn by: **DF** Checked by: **MB**





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Project:
Linkmead
8A Linkmead Avenue, Clontarf
Project number 2019_106

Revisions		
No.	Description	Date
A	For DA	24-11-2021

Client:
Andrew Little + Vanessa Peltier
Drawing Number: **DA213**
Issue **A**
Date **24-11-2021**

Drawing:
Proposed NW Elevation
Scale **1 : 100** @ **A3**
Drawn by: **DF** Checked by: **MB**

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

8A LINKMEAD AVENUE, CLONTARF

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

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

For: Additions and alterations to an existing dwelling
At: 8A Linkmead Avenue, Clontarf
Owner: Andrew Little & Vanessa Peltier
Applicant: Andrew Little & Vanessa Peltier
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

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

2.0 Background

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

The relevant maximum height of the building in this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The existing dwelling on the site presents a maximum building height of up to approximately 8.9m, and the proposed additions are up to 9.691m in height, resulting in a non-compliance of 1.191m or 14% to the control, as noted in Figure 1.

Is clause 4.3 of MLEP a development standard?

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

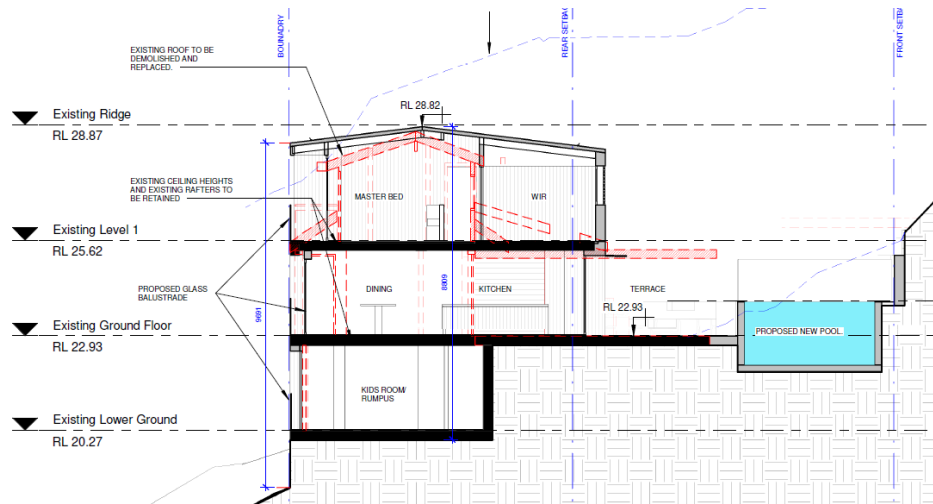
"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work."

- (b) Clause 4.3 relates to the maximum height of a building. Accordingly, clause 4.3 is a development standard.

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**Fig 1: Section indicating proposed roof exceeding Council's height of buildings control
(Source: C+M Studio)**

3.0 Purpose of Clause 4.6

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

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

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

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4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.3 (the height of a building standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

8A Linkmead Avenue, Clontarf

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

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

The proposed development does not comply with the maximum height of a building development standard pursuant to clause 4.3 of MLEP which specifies a maximum building height of 8.5m. As a consequence of the site slope towards the rear, southern boundary and the existing built form, the proposal will present a maximum height of 9.691m.

In the circumstances of this case, there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence

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for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

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

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

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

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

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

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

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

Notwithstanding the minor non-compliance with the maximum height of 1.191m or 9.691m in overall height, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

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

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

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

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum height of a building development standard contained in clause 4.3 of MLEP.
- 5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m for development in this part of Clontarf.
- 5.3 The proposed alterations and additions to the dwelling will present a maximum height of 9.691mm or a non-compliance of 1191mm or a variation of 14%.

The proposal will not exceed the existing overall ridge height.

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6.0 Relevant Caselaw

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It*

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may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.3 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E3 zone?
 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

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7.0 Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

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

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

The proposal seeks to accommodate the additions within a contemporary building form, with the slope of the site towards the rear resulting in a portion of the roof being up to 9.691m in height, which is in keeping with the existing overall height.

The overall building height respects the surrounding character and the design seeks to minimise the visual impact through the retention of the existing maximum ridge height.

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

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

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

Further, the modulation of the building elevations where visible from the public domain and neighbouring properties minimises the visual impact of the development.

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

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(c) to minimise disruption to the following:

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

Due to the general slope of the site towards the south, the neighbouring properties enjoy views towards Clontarf Reserve and the waterway.

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

Views from the surrounding public spaces are not adversely affected.

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

As the proposal will see the construction of alterations and additions to an existing dwelling, the shadow analysis prepared by C + M Studios details the proposed shadow impacts.

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

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

The new works are contained within an existing disturbed area of the site, and maintain suitable separation from the foreshore. The site is not within a conservation area or in the immediate vicinity of any heritage items.

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

A suitable area of soft landscaping is maintained.

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

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

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

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

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

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- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the Linkmead Avenue locality which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the maximum building height control will not exceed the ridge height of the existing dwelling and are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.

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

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

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

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

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

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7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E3 Environmental Management zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the E3 Environmental Management zone and the reasons why the proposed development is consistent with each objective is set out below.

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

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

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

It is considered that notwithstanding the considered form of the proposed additions which maintain the existing overall height of 9.691m, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E3 Environmental Management zone for the following reasons:

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

The proposal provides for alterations and additions to an existing dwelling, which is permissible development within the E3 zone.

The proposal will maintain a generous area of soft landscaping. Whilst a number of trees will be removed to accommodate the new works, the remaining vegetation on site will be retained and assist with softening and screening the built form of the development.

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

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

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

As outlined above, the proposed alterations and additions do not see any substantial change to the nature of the existing development on the subject site, and are therefore considered to be in keeping with the ecological and aesthetic values within the locality.

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

The proposal will not see the removal of any significant trees, with exotic species and large shrubs to be affected by the construction of the swimming pool. The proposed additions to the dwelling and carport are generally over the existing built footprint. The remaining vegetation within the site will be retained and protected, and the property boundaries are capable of accommodating further plantings.

The new works will not be a visually dominant feature within the locality.

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

The proposed alterations and additions will be carried out in accordance with the recommendations of the consulting Structural Engineer, which will minimise any impacts on the structural integrity of the land. No existing geological features will be affected, and no substantial excavation is required to accommodate the new works.

The proposal will not result in any adverse impacts on the adjoining bushland. A generous area of soft landscaping is maintained.

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

The proposed stormwater runoff from the site will be suitably managed in order to minimise any impacts on the surrounding locality.

Further plantings can be provided within the site as requested. The existing vegetation adjoining the site's rear boundary is retained.

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

The proposed alterations and additions will respect the sloping topography of the site. A suitable area of soft landscaping is maintained, and the extent and nature of the proposed is considered appropriate given the site constraints.

Whilst a number of trees will be removed to accommodate the new swimming pool, replacement plantings can be provided.

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

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

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

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

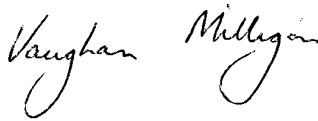
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8.0 Conclusion

This development proposes a departure from the maximum height of a building control, with the proposed additions to the existing dwelling to provide a maximum overall height of 9.691m, which maintains the existing overall height of the dwelling.

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

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



VAUGHAN MILLIGAN
Town Planner

ITEM 3.3**DA2021/2312 - 28 TASMAN STREET, DEE WHY -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSING
INCLUDING A SWIMMING POOL****REPORTING MANAGER** Phil Lane**TRIM FILE REF** 2022/207514**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 WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2021/2312 for alterations and additions to a dwelling housing including a swimming pool on land at Lot 53 DP 7435, 28 Tasman Street, DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2312
Responsible Officer:	Hugh Halliwell, Mecone (Independent Consultant Planner)
Land to be developed (Address):	28 Tasman Street, Dee Why
Proposed Development:	Alterations and additions to a dwelling housing including a swimming pool
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Luke Anthony Miles Ella Maree Miles
Applicant:	Ella Maree Miles
Application Lodged:	02/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Alterations and additions
Notified:	1 st Notification Period: 09/12/2021 – 14/01/2022 2 nd Notification Period: 23/02/2022 – 09/03/2022
Advertised:	Not advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 14.8%
Recommendation:	Approval
Estimated Cost of Works:	\$580,000

EXECUTIVE SUMMARY

This Development Application (DA2021/2312) is referred to the Development Determination Panel as it seeks consent for a variation exceeding 10% to a development standard (Clause 4.3 – Height of buildings) under Warringah Local Environmental 2011.

The site is located at 28 Tasman Street, Dee Why and is zoned R2 Low Density Residential under WLEP 2011. The site is legally described as Lot 53 within DP7435. Development for the purposes of a dwelling house is permissible with development consent.

The DA seeks consent for alterations and additions to an existing dwelling including a swimming pool.

The DA was notified in accordance with Council's Community Participation Plan to adjoining properties on two (2) occasions resulting in two (2) submissions.

A Request for Information was issued to the Applicant on 10 February 2022 requesting information addressing several issues identified pertaining to the following:

- Building height;
- Rear setback; and
- Landscaping.

PROPOSED DEVELOPMENT IN DETAIL

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

Specifically, the proposal includes the following:

Lower Ground Floor

- Storage room
- Two (2) bedrooms
- Living room
- Bathroom
- Balcony
- General window amendments

Ground Floor

- Internal reconfigurations to provide for two (2) bedrooms, including master bedroom, WIR and ensuite
- Balcony
- General window amendments

First Floor

- Internal reconfigurations to provide:
 - Family room
 - Office/library
 - Open plan kitchen, living and dining areas
 - Bathroom
 - Walk in pantry
 - Balcony

External works

- New alfresco and fireplace
- Swimming pool and spa
- Associated landscaping

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan – B1 Wall Heights
Warringah Development Control Plan – B9 Side Boundary Setbacks
Warringah Development Control Plan – B9 Rear Boundary Setbacks
Warringah Development Control Plan – D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 53 DP7435, 28 Tasman Street, DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Tasman Street, Dee Why.</p> <p>The site is regular in shape with a frontage of 10.06m along Tasman Street and a depth of approximately 40.235m. The rear boundary measures 10.06m. The site has a surveyed area of 404.6m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a one and two storey brick dwelling with metal roof. There is timber deck and paved area along with established garden beds and retaining walls to the rear of the site. Vehicular access to an attached double garage is available via a concrete driveway from Tasman Street.</p> <p>The site slopes from the southern front boundary towards the northern rear boundary with a fall of approximately 3.58m.</p> <p>The site is characterised by established garden beds including small sized shrubs and palm trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of original and contemporary dwellings that are one, two and three storeys.</p>

Map:



SITE HISTORY

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

- **DA1999/1874** – On 12 August 1999, Council approved a new residential dwelling on the subject site
- **MOD1999/1874/1** – On 13 February 2001, Council approved a modification application to the above approved Development Application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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 regulations	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 'Matters for Consideration'	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was requested on 10 February 2022 with regard to building height, rear setback and landscaping. Details of these are discussed later within the report and all can be resolved through the information provided to council and/or conditions of consent.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <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>
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 Warringah 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 on two (2) separate occasions in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan. The application was exhibited on the following dates:

- Initial notification period: 09/12/2021 – 14/01/2022
- Re-notification period: 23/02/2022 – 09/03/2022

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

Name:	Address:
Mrs Denise Chen	26 Tasman Street, DEE WHY NSW 2099
Mr Geoff Stewart	32 Tasman Street, DEE WHY NSW 2099

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

- Building envelope, wall height and building height non-compliances;
- Landscaped open space;
- Utilising existing non-compliant built form and increased upon existing non-compliances;
- Alfresco setback and height;
- Fireplace;
- Privacy; and
- Visual bulk.

The matters raised within the submissions are addressed as follows:

- **Building envelope, wall height and building height**

Comment:

A submission has been raised by the adjoining property to the west at No 26 Tasman Street. The submission correctly notes the built form non-compliances in relation to wall height, envelope and building height. While the proposal results in non-compliances to the above controls, the proposed works do not increase the extent to those non-compliances, with the exception of building height. Further, the encroachments do not give rise to adverse impacts on residential amenity by not affecting privacy, solar access or views enjoyed by the neighbour at No 26. Considered within the context of the existing dwelling, the inconsistencies with respect to envelope, wall height and building height are considered acceptable.

- **Landscaped open space**

Comment:

The submission from No 26 correctly notes the shortfall in LOS. While the proposal results in a notable shortfall in LOS, it does provide an overall improvement upon the existing LOS arrangement. The existing site is considered highly constrained with respect to the existing hard stand areas across the site, therefore achieving compliance is impracticable. The non-compliance does not contribute to any adverse amenity impacts upon the concerned property at No 26 but provides a significant improvement upon the landscape outcome for the rear yard by providing improved residential amenity for the occupants of the site.

- **Utilising existing non-compliant built form and increased upon existing non-compliances**

Comment:

The submission from No 26 states: *"The design proposal utilises an already non-compliant built form and in fact increases these non-compliances"*.

The proposal does not unreasonably utilise an existing non-compliant built form. Existing non-compliances with regard to envelope, height and wall height are noted. However, the proposed works do not increase these non-compliances beyond what is considered reasonable within the context of the site and surrounding built form.

- **Alfresco height and setback**

Comment:

The concerns raised by the neighbour at No 26 with respect to height and setback of the alfresco to the western side boundary are noted. The request for a lowering of the alfresco and pool and increase of the side setback are also noted.

A response from the applicant has been provided and acknowledges the privacy concern. As such, the applicant is accepting of a condition being included to require a 900mm side setback to assist in improving landscaping and overall privacy for both properties. Subject to the setback being increased, the proposed alfresco is found to be compliant in relation to built form controls, including building height, wall height and envelope. As the alfresco is otherwise compliant, the request to lower the structure is considered unreasonable.

An increased side setback and provision of screen planting will result in a substantially improved residential amenity outcome for both properties.

The following conditions are recommended to address concerns of privacy and bulk and scale:"

- 900mm side setback to the western boundary; and
- Screen planting to the side and rear boundaries with a minimum maturity height of 3m.

• **Fireplace**

Comment:

The concerns with regard to the fireplace are noted. Council's Environmental Health officer has reviewed the proposal and does not support the open fireplace (refer to comments further in the report). It is also noted that the applicant wishes to delete the fireplace from the proposal. A condition is therefore recommended requiring its removal.

• **Privacy**

Comment:

The neighbour at No 26 has raised concern in relation to the first-floor balcony at RL 51.570 needing to be extended. The applicant has responded to this advising they are happy to extend the privacy screen the full width of the balcony providing vertical louvres. The applicant has recommended a privacy screen with a height of 1.5m. However, it is recommended a height of 1.65m be enforced. A condition of consent is therefore recommended requiring the extension of the privacy screen.

• **Visual bulk**

Comment:

A submission was received from No 32 Tasman Street during the initial notification period. The submission was largely supportive of the proposal with the exception of an awning located on the first-floor protruding from the balcony. It is noted that this awning has since been deleted following amendments to the proposal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application seeks consent for alterations and additions to an existing dwelling house and construction of a swimming pool with associated landscape works.

Internal Referral Body	Comments
	<p>Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls: D1 Landscaped Open Space and Bushland Setting E1 Preservation of Trees or Bushland Vegetation E8 Retaining Unique environmental features</p> <p>The plans indicate that no significant landscape features are affected by the proposed works.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p> <p>The proposal is therefore supported.</p>
Environmental Health (Solid Fuel/Oil Heater)	<p>The proposed open fireplace is in a non-habitable area, an Alfresco entertaining area adjacent to a swimming pool area.</p> <p>The manufacturer of the heater advises: "the Heatmaster a very efficient open fireplace, the open wood fires are not intended to operate as a slow combustion heater or be used as a sole source of heating".</p> <p>It appears therefore to be a visual feature in an external area and not a traditional room heater. The heater cannot be assessed and approved as a complying solid fuel heater. (Also is manufacturers brochure only refers to AS/NZS 2918.2001).</p> <p>Note also:</p> <p>AS/NZS 2918.2018 – Domestic Solid fuel burning appliances – Installation, including Section 4.9.1 (d) that stipulates that no part of any building lies in or above a circular area described by a horizontal radius of 6m about the flue system exit.</p> <p>NSW EPA Environmental Guidelines for Selecting, Installing and Operating Domestic Solid Fuel Heaters 1999 recommends the following when considering topography or the proximity of multilevel buildings:</p> <p>There are locations, however, where, because of topography or the proximity of multilevel buildings, smoke emissions from a solid fuel heater are likely to cause nuisance to neighbouring dwellings. To assess the suitability of a site in these circumstances, the EPA recommends that the minimum discharge height of the chimney be 1 metre above any structure within a 15-metre horizontal radius. This is a guide—not a rigid rule—and high buildings or terrain beyond the 15- metre radius should also be considered.</p> <p>The proposed heater does not appear to will meet requirements of AS/NZS 4012:2014.</p> <p>In addition, considering air pollution legislation and exemptions, the proposed fireplace is likely to be used similar to: Fire pits, fire drums, chimeneas, braziers and the like that are permitted as they are considered to be temporary outdoor recreational activities.</p>

Internal Referral Body	Comments
	<p>The legislation is extracted below for clarity: Protection of the Environment Operations (Clean Air) Regulation 2010 Part 3, Division 3, Control of burning in local government areas, Clause 12 – Offences: 4) It is not an offence under this clause: (a) to cook or barbecue in the open, or to light, maintain or use a fire for recreational purposes such as camping, picnicking, scouting or other similar outdoor activities, so long as only dry seasoned wood, liquid petroleum gas (LPG), natural gas or proprietary barbecue fuel (including a small quantity of fire starter) is used.</p> <p>The issue in formalising an approval for the structure is the frequency of use and location as an axillary part of a dwelling adjacent to other dwellings compared to " recreational purposes such as camping, picnicking, scouting or other similar outdoor activities".</p> <p>Wood smoke complaints to Council are a regular issue and often difficult to resolve. Therefore, Environmental Health does NOT support the proposed open fireplace.</p> <p>We would however support a gas fired heater which will not create smoke and odour, for which no further comment or conditions would be required.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not identified as being located within bushfire prone land.

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 and no prior land uses. In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged with this application (see BASIX Certificate No. A438415, dated 4 November 2021). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of buildings	8.5m	9.755m	14.8%	No

Note: The maximum building height is taken to be RL55.715

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	4.3 Height of buildings
Requirement:	8.5m
Proposed:	9.755m
Percentage of variation to requirement:	14.8%

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:

"Despite the variation to the Height of Building control which occurs with the existing structures, the proposed alterations and additions are considered to be in keeping with the desired future character of the locality. The proposed works sited with regard to the existing building footprints and bulk and scale of Tasman Street, therefore the proposed development will not result in any unreasonable visual impact on the Tasman Street streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under WLEP2011 and the provisions of Clause 4.6 which permit a variation to a development standard.

It would indeed be unreasonable for Council to refuse the development that is proposed by way of relatively minor variation considering the existing building height approved on the site, and the fact that the proposal is to upgrade and enhance the dwelling. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed with the alterations and additions enhance the natural and built form of the locality."

This assessment generally agrees with the above that strict compliance with the building height development standard is unreasonable in the case of an existing development that does already comply with the control. The proposed works that result in the non-compliance consist of a minor roof alteration to change the pitch of the existing roof, are considered relatively minor.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 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,*

While the proposal includes some numerically non-compliant built form elements, the development remains sympathetic to the surrounding and nearby low-density residential development by providing a built form that is largely contained within the existing building footprint. The height non-compliance is confined to the proposed ridge with the remaining roof form remaining unchanged.

The proposal maintains the existing two and three storey built form, which is consistent with the surrounding development. The building height non-compliance is confined to the rear portion of the dwelling due to the slope of the land to the rear. Notwithstanding the building height encroachment, the height is largely a result of the existing dwelling which already protrudes the building height plane. The height non-compliance represents a marginal increase on the existing building height.

- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access*

As noted above, the proposed development is largely contained within the existing footprint with only a marginal increase on the existing building height. The non-compliance is a result of an amendment to the existing roof form by removing an existing curved portion of the roof and replacement with a standard hipped and gable roof form. The remaining roof remains unchanged, therefore not giving rise to any disruption to views, privacy or solar access with residential amenity to adjoining and nearby properties remaining unaffected. The bulk and scale of the development, in so far as the roof is concerned remains largely unchanged.

- c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

The impact of the development on the scenic quality of Warringah's coastal and bush environments is minimised by locating the height non-compliance to the rear of the site. The front of the dwelling continues to remain below the prescribed building height. The area of non-compliance is confined to the proposed ridge with the remaining roof form unchanged. The dwelling remains consistent with the established built environment in the area with dwellings on the northern side of Tasman Street falling with the slope of the land to the north. The proposal is consistent with the scenic quality of Warringah's coastal and bush environment.

- d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The visual impact of development as viewed from any nearby public places, such as parks and reserves, roads and community facilities are minimised with the height non-compliance located to the rear of the property and away from any public places. The proposed works to the front of the dwelling remain compatible with the existing streetscape character and provides generous separation to the Tasman Street frontage consistent with the DCP control.

Zone objectives

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

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

Comment:

The proposed height variation does not contravene this objective of the zone in that the use of the land remains (for detached housing) and is provided with sufficient 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.

- b) *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.

- c) *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 proposed alterations and additions incorporate suitable colours and materials consistent with the existing dwelling and surrounding development in keeping with the scenic quality when viewed from Tasman Street and improved landscaped areas to the rear 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.

WARRINGAH DEVELOPMENT CONTROL PLAN

Built form control	Requirement	Proposed	% Variation	Complies
B1 Wall Height	7.2m	8.3m (existing)	15.3%	No
		7.2m (proposed works)	N/A	Yes
B3 Side Boundary Envelope	5m (Eastern Elevation)	Outside envelope	35%	No
	5m (Western Elevation)	Outside envelope	40.7%	No
B5 Side Boundary Setbacks	0.9m (Eastern Boundary)	1.2m	N/A	Yes

Built form control	Requirement	Proposed	% Variation	Complies
	0.9m (Western Boundary)	0.9m (subject to condition)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	9.27m	N/A	Yes
B9 Rear Boundary Setbacks	6m	1.2m (swimming pool & alfresco)	80%	No
		9.38m (dwelling)	N/A	Yes
D1 Landscaped Open Space	40%	12%	70%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No (existing)	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscape Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The existing wall height exceeds the maximum permitted wall height control of 7.2m by providing a total height of 8.3m, representing a 15.3% variation to the control. Notwithstanding, the proposed works, specifically to the front of the dwelling achieve compliance with the control by providing a wall height of 7.2m and satisfy the objectives of the control. The proposed works do not seek to extend beyond the maximum wall height control. It is considered that no further assessment is required in this instance.

B3 Side Boundary Envelope

Description of non-compliance

Part B3 of the Warringah DCP prescribes a 5m building envelope control. It is noted the existing dwelling does not comply with the building envelope control. While some elements of the proposal along the western and eastern elevations are located outside the envelope control, these works do not increase the extent of the existing non-compliance.

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 not to an extent that will result in a development that is out of character for the area or is visually dominant by virtue of its height and bulk. With the exception of the proposed addition to the front of the dwelling, the dwelling, as viewed from public places and adjoining private property remains largely unchanged. The height and bulk of the dwelling remains generally consistent with the existing dwelling.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The elements protruding the envelope control will not give rise to adverse impacts on solar access and privacy to adjacent buildings and properties. The dwelling remains compliant with the minimum setback controls, providing sufficient spatial separation.

- *To ensure that development responds to the topography of the site.*

Comment:

The development appropriately responds to the topography of the site and is designed to minimise the overall bulk and scale of the development and resulting amenity impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in Section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

Part B9 of the Warringah DCP requires development be setback from the rear boundary of 6m. The proposed development provides a 1.2m setback from the alfresco to the northern rear boundary, representing a non-compliance with the numeric control, an 80% variation to the control.

Merit consideration

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

- *To ensure opportunities for deep soil landscape areas are maintained*

Comment:

The site is highly constrained from the perspective of the existing development restricting opportunity for compliance with the rear setback control. Notwithstanding this, the proposal provides sufficient opportunity for deep soil landscape areas with the context of the site and established built environment. Generous turfed areas are provided, while a 1.2m rear setback provides satisfactory opportunity for screen planting to the rear boundary.

- *To create a sense of openness in rear yards*

Comment:

The proposal is not expected to unreasonably impact the openness of the rear yard. The development provides an ample sense of openness within the context of the site.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings*

Comment:

The rear setback will not impinge upon the privacy between buildings, specifically to the rear

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements*

Comment:

The surrounding built environment is characterised by reduced rear setbacks with dwellings and ancillary structures, including swimming pools located within the rear setback area. The style of dwelling and relatively narrow lot widths requiring swimming pools and ancillary structures to be partially or wholly located within the rear setback area. In light of this, the proposal is seen to maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings*

Comment:

The encroachment of the swimming pool and alfresco in the rear setback will not unreasonably impact on the privacy between dwellings. The pool has been carefully designed to ensure no trafficable areas are provided along the northern or eastern edges, limiting opportunities for overlooking of adjacent dwellings. Existing screen planting on the northern property and proposed screen planting within the subject site along the northern boundary (see draft conditions) will ensure privacy is maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in Section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Part D1 of the Warringah DCP requires development provide a minimum 40% of landscaped open space. The proposal provides a total of 12% LOS, resulting in a sizeable shortfall of soft landscaping. This represents a 70% variation to the numeric control.

Notwithstanding the shortfall, the site is considerably constrained by the existing development with the site providing minimal soft landscaping. The proposal represents a modest ancillary residential development in the form of an alfresco and swimming pool with similar structures located in the

vicinity of the site. The swimming pool and alfresco provide an improved level of residential amenity of the occupants of the site.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal does not result in additional hard surface to the front of the site with no impact on the streetscape. Additional impervious areas are located to the rear of the site.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

There are no known indigenous vegetation, topographical features, and habitat for wildlife that will be impacted by the proposed works. The proposal includes landscaping consistent with the surrounding landscaped character in the form of screen plantings along the side and rear boundaries.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

In light of the relatively narrow lot widths and existing dwelling, the proposal provides for appropriately proportioned landscaped open space areas. The LOS areas are capable of providing suitable plantings consistent with the landscaped character of the surrounding area to help mitigate the height, bulk and scale of the alfresco and swimming pool.

- *To enhance privacy between buildings.*

Comment:

The proposal will provide for dense screen planting along the rear and side boundaries to enhance privacy between buildings. Existing screen planting along the rear boundary of the northern property will further enhance privacy between properties.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposal provides a considerable improvement upon the outdoor recreational opportunities that will meet the needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

Existing space for service functions, including clothes drying will not be impacted by the shortfall in LOS.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The shortfall in LOS will not adversely impact on water management on the site with the existing stormwater management system capable of managing water on the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in Section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021. A monetary contribution of \$5,800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$580,000.

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;
- 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 considered to be acceptable and is recommended for approval.

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 WDCP 2011, including building envelope, wall height, building height, rear and side setbacks.

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.

A total of two (2) submissions were received in response to the notification of the application during two (2) separate notification periods. The issues raised in the submissions along with those raised during Council's preliminary assessment have been addressed in the "Public Notification Section" of this report. A number of the 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 APPROVE Development Consent to Development Application No DA2021/2312 for the alterations and additions to a dwelling house including a swimming pool on land at Lot 53 DP 942171, 28 Tasman Street, DEE WHY, 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
DA04 Rev D, Site / Roof / Sediment Erosion / Waste Management / Stormwater Concept Plan	29/03/2022	Action Plans
DA05 Rev D, Existing Lower Ground Floor Plan – Demolition	29/03/2022	Action Plans
DA06 Rev D, Existing Ground Floor Plan – Demolition	29/03/2022	Action Plans
DA07 Rev D, Existing First Floor Plan - Demolition	29/03/2022	Action Plans
DA08 Rev D, Proposed Lower Ground Floor Plan	29/03/2022	Action Plans
DA09 Rev D, Proposed Ground Floor Plan	29/03/2022	Action Plans

DA10 Rev D, Proposed First Floor Plan	29/03/2022	Action Plans
DA11 Rev D, South Elevation, Primary Road	29/03/2022	Action Plans
DA12 Rev D, West Elevation	29/03/2022	Action Plans
DA13 Rev D, North Elevation	29/03/2022	Action Plans
DA14 Rev D, East Elevation	29/03/2022	Action Plans
DA15 Rev D, Long Section	29/03/2022	Action Plans
DA16 Rev D, Cross Section	29/03/2022	Action Plans
DA17 Rev D, Proposed Pool Sections	29/03/2022	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment, Ref: J3909	23/11/2021	White Geotechnical Group
BASIX Certificate No. A438415_02	29/03/2022	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:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA23 Rev D, Landscaping Plan	29/03/2022	Action Plans

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	11/11/2021	Luke and Ella Miles

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	11/01/2022

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

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

3. **Prescribed Conditions**

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
8.00 am to 1.00 pm inclusive on Saturday,
No work on Sundays and Public Holidays.
- Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.
- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$5,800.00 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 \$580,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **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. **Amendments to the approved plans**

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

- The alfresco is to be setback 900mm from the western side boundary.
- The fireplace in the alfresco is not approved and is to be deleted.

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.

9. **Boundary Identification Survey**

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

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

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

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

10. **Compliance with Standards**

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

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

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

11. **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.

12. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works

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

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

13. Privacy screen

A 1.65 metre privacy screen (measured from finished floor level) is to be erected from the northern end of the vertical privacy screen to the northern end of the first floor balcony on the outermost western edge located off the living/dining 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.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. 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.

15. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site outside of the area of approved works, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

16. **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.

17. Removing, Handling and Disposing of Asbestos

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

Work Health and Safety Act;

- 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.

18. Waste Management During Development

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

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

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

19. Installation and Maintenance of Sediment Control

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

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

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

20. 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.

21. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

22. **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.

23. **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

24. **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.

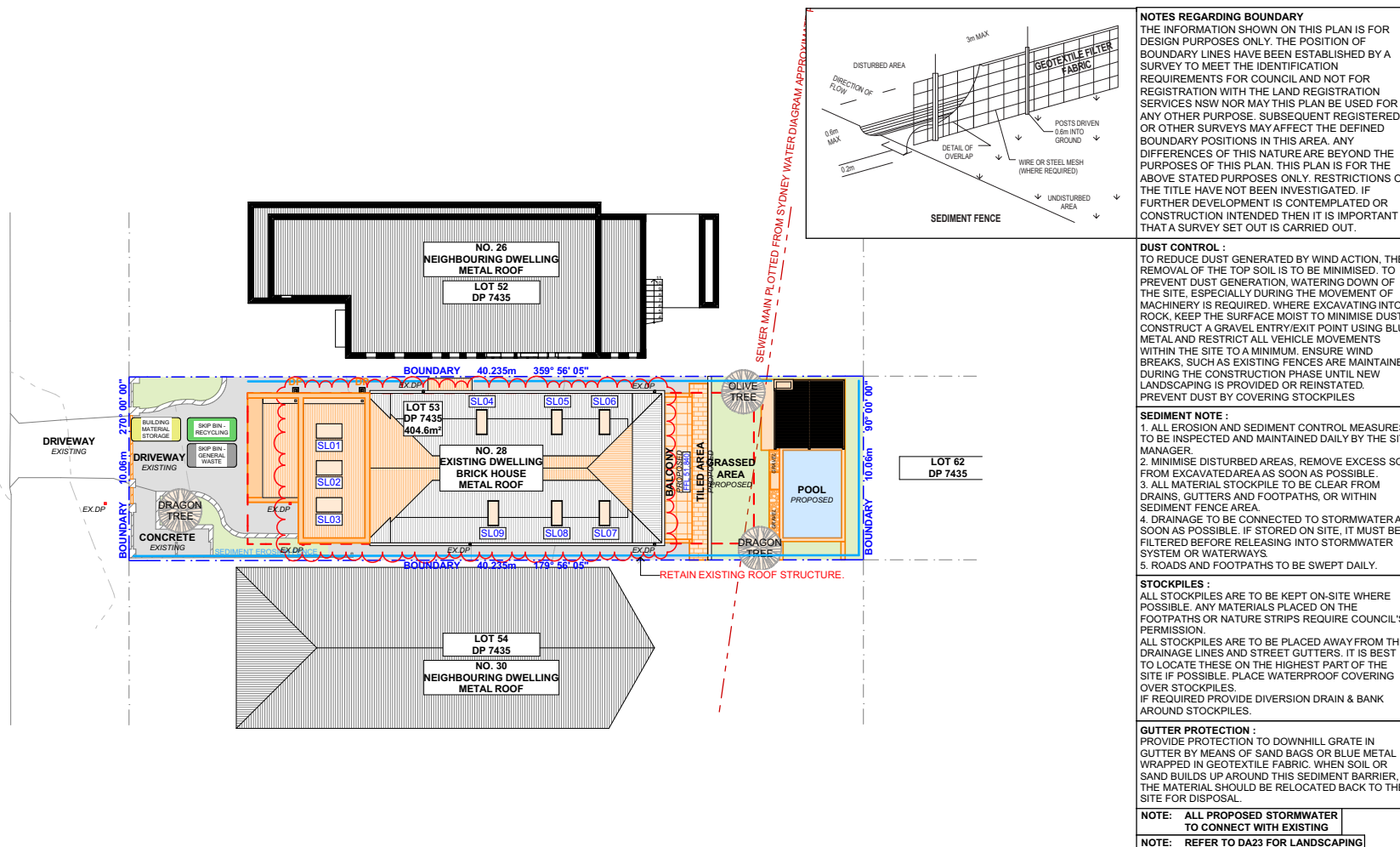
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

25. **Landscaping**

Screen planting with a minimum maturity height of 3m is to be provided and maintained adjacent to the alfresco and swimming pool along the western side and northern rear boundaries.

Reason: To ensure reasonable amenity, including privacy is provided between properties.

TASMAN STREET



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



ACTION PLANS

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D	29/03/2022	DA-Rev. C	RNA	All errors and omissions are to be verified by the Builder/Contractor and referred to the designer prior to the commencement of works.
E	#ED	REC	REDRWN	

LEGEND
 EXISTING
 PROPOSED
 DEMOLISHED

CLIENT
LUKE & ELLA MILES

PROJECT ADDRESS
28 TASMAN STREET,
DEE WHY NSW 2099

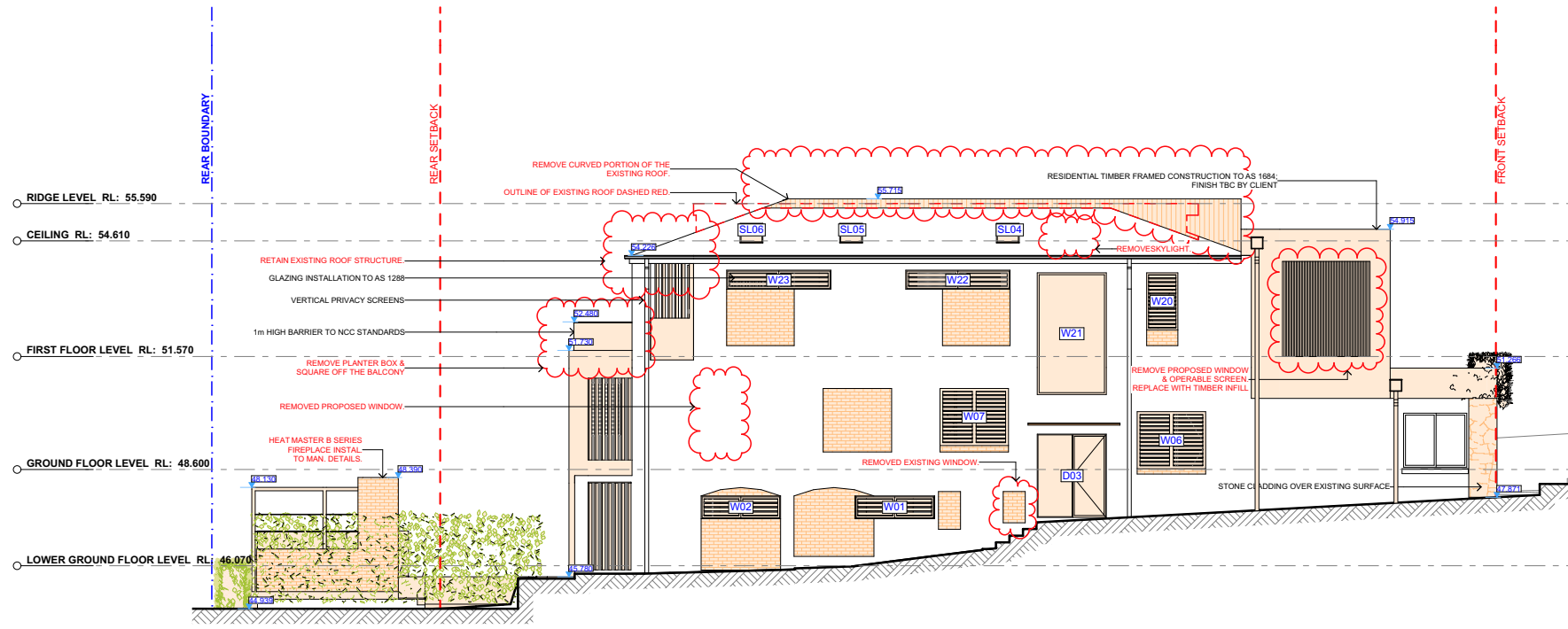
DRAWING NO.
DA04

DATE
Tuesday, 29 March
2022

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

SCALE
1:1, 1:200 @A3





1 WEST ELEVATION 1:100



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LEGEND
METAL ROOFING
TILED ROOFING
PROPOSED
EXISTING

CLIENT
LUKE & ELLA MILES

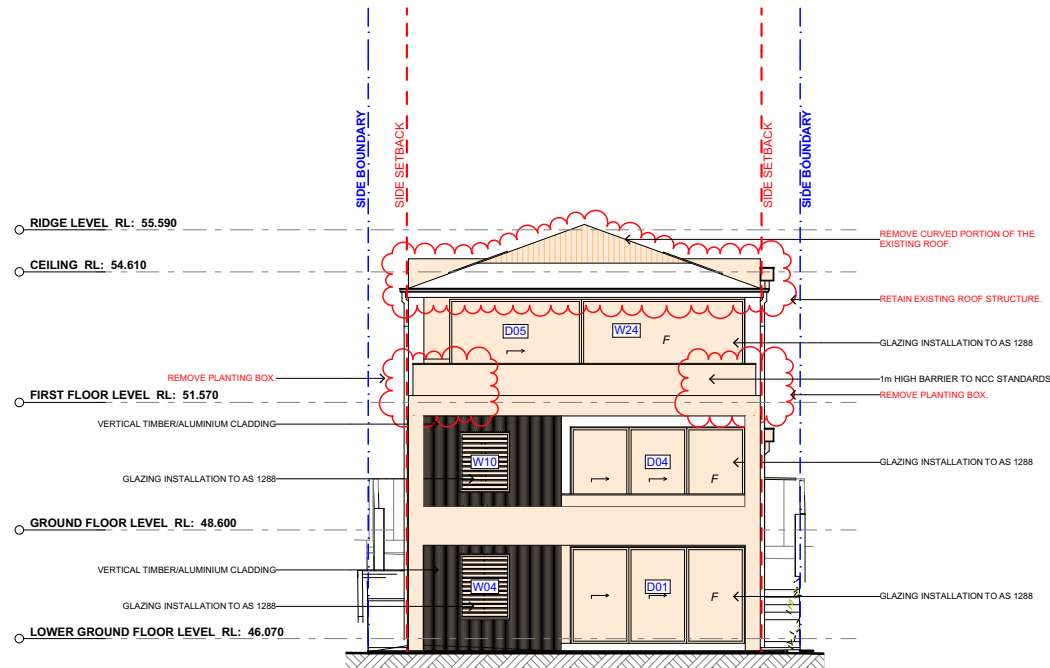
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DA12

DATE
Tuesday, 29 March
2022

DRAWING NAME
WEST ELEVATION

SCALE
1:100 @A3



1 NORTH ELEVATION 1:100



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E	#ED	#EC	REDRWN	

LEGEND
METAL ROOFING
TILED ROOFING
PROPOSED
EXISTING

CLIENT
LUKE & ELLA MILES

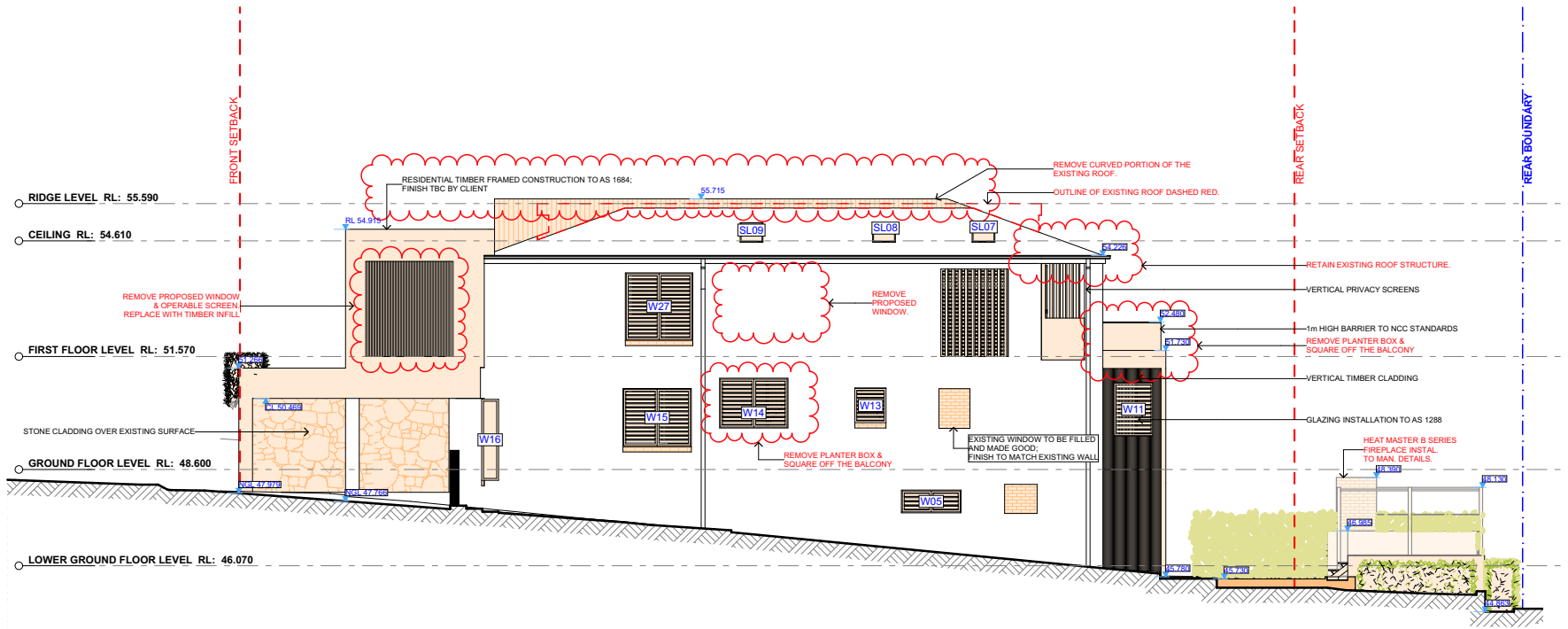
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DEE WHY NSW 2099

DRAWING NO.
DA13

DATE
Tuesday, 29 March
2022

DRAWING NAME
NORTH ELEVATION

SCALE
1:100 @A3



1

EAST ELEVATION

1:100



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E	#ED	#EC	REDRWN	

LEGEND
METAL ROOFING
TILED ROOFING
PROPOSED
EXISTING

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LUKE & ELLA MILES

PROJECT ADDRESS
28 TASMAN STREET,
DEE WHY NSW 2099

DRAWING NO.
DA14

DATE
Tuesday, 29 March
2022

DRAWING NAME
EAST ELEVATION

SCALE
1:100 @A3



**OBJECTION PURSUANT TO CLAUSE 4.6
OF WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011**

**REVISED - VARIATION OF A
DEVELOPMENT STANDARD REGARDING
THE HEIGHT OF BUILDINGS AS DETAILED
IN CLAUSE 4.3 OF WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011**

**Alterations and Additions to Existing
Dwelling House and Construction of New
Swimming Pool**

**28 Tasman Street,
Dee Why NSW 2099**

✉ matthew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Existing Dwelling House – 28 Tasman St, Dee Why

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:

Luke and Ella Miles

14 February 2022

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

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Alterations and Additions to Existing Dwelling House – 28 Tasman St, Dee Why

Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height of a building as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

The following assessment of the variation to Clause 4.3 – Building Height 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.

Requirement	8.5m
Proposed	9.55m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	12.35%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The proposal is consistent with surrounding developments and the existing bulk and scale of the dwelling. The proposed minor variation is compatible with the locality and streetscape of Tasman Street.

A variation to the strict application of the Height of Building standard is considered appropriate for the subject site and is supportable for the following reasons:

- The objectives of the WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The dwelling currently breaches the building height existing at 9.609m. The proposal includes amendments to the existing roof to delete the curve and create a straight pitch to accommodate skylights. The amendments reduce the height existing from 9.609m to a proposed height of 9.55m.
- The proposed development is consistent with the building height, rear setbacks and building bulk of northern properties along Tasman Street.
- The breach to the building is minimal and is existing with no further breach to the maximum building height existing on the site.
- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

It is important for Council to recognise and acknowledge the existing building height of the dwelling. Strict adherence for our site would impact the existing dwelling and create a building that is out of character and not compatible with the locality.

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Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case 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* and review the following:

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.3(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. 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]

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

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General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.3(2) Height of Building

4.6 Exceptions to development standards

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

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

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

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

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

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

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

(5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

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

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. *When this Plan was made it did not 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,*

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- (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.*

(8A) *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.*

(8B) *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.*

Comment: As detailed previously in this request, Clause 4.6 of WLEP2011 is applicable to enable a variation to the Height of Building to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the Height of Building control of WLEP2011, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

4.3 Height of buildings

(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.*

(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.*

(2A) *If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the WLEP2011 and demonstrates that

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compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the WLEP2011, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

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

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

Building height is defined as follows:

building height (or height of building) means—

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

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

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

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

In this regard, it has been determined that the existing development has a maximum building above unmodified ground level of 9.609m which exceeds the building height standard by 1.109m or represents a 13% variation to Council's development standard. The proposed development has a maximum building above unmodified ground level of 9.55m which exceeds the building height standard by 1.05m or represents a 12.35% variation to Council's development standard.

The Height of Building in clause 4.3(2) of the WLEP2011 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

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

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

Despite the variation to the Height of Building control which occurs with the existing structures, the proposed alterations and additions are considered to be in keeping with the desired future character of the locality. The proposed works sited with regard to the existing building footprints and bulk and

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scale of Tasman Street, therefore the proposed development will not result in any unreasonable visual impact on the Tasman Street streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under WLEP2011 and the provisions of Clause 4.6 which permit a variation to a development standard.

Objection to Development Standard – Height of Building (Clause 4.3(2))**Compliance being unreasonable or unnecessary**

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council* at [42] and [43].

Comment: Clause 4.6(3)(a) of the WLEP2011 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is ‘*unreasonable or unnecessary in the circumstances of the case*’.

In determining a merits-based assessment for the Height of Building of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – *Veloshin v Randwick Council* [2007] NSWLEC 428.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types and the consistent bulk, scale and built form along the northern side of Tasman Street. Given the proposed application is minor and exists on-site at present, and also noting that the proposal is consistent with similar approvals granted in the area, Council’s assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Dee Why precinct. As noted under the introduction a variation to the strict application of the Height of Building standard is considered appropriate for the subject site and is supportable for the following reasons:

- The objectives of the WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The dwelling currently breaches the building height existing at 9.609m. The proposal includes amendments to the existing roof to delete the curve and create a straight pitch to accommodate skylights. The amendments reduce the height existing from 9.609m to a proposed height of 9.55m.
- The proposed development is consistent with the building height, rear setbacks and building bulk of northern properties along Tasman Street.
- The breach to the building is minimal and is existing with no further breach to the maximum building height existing on the site.

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- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

Strict adherence for our site (noting the existing building height over 8.5m) would impact the existing streetscape and create a dwelling that is out of character and not compatible with the locality.

2. The underlying objective or purpose of Clause 4.3 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: The underlying objective and purpose of Clause 4.3 is not relevant as the proposal and variation to the building height meets the purpose and objectives of Clause 4.3:

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

The proposal retains the existing building footprint and reduces the existing maximum building height for the site. The proposal relates to alterations and additions more cosmetic in nature that enhance the existing dwelling. The proposal reduces the northern façade building height with new building materials and elements. The site is and will continue to be consistent and compatible with the height and scale of the surrounding area.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

The proposal has been strategically designed by the project architect to be retained within the existing building footprint. The proposal reduces the existing maximum building height relating to the site. The proposal will not have a visual impact, will not disrupt views, will not increase privacy or amenity impacts and will not create an unreasonable loss of solar access.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

As noted above, the proposal reduces the existing maximum building height and building footprint. The proposal is for alterations and additions which enhance the existing dwelling with modern facades which will have a positive impact 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.

As noted above, the proposal reduces the existing maximum building height and building footprint for the site. The proposal will enhance the existing dwelling with modern facades which will have a positive impact on the visual quality of the development when viewed from public places.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of relatively minor variation considering the existing building height approved on the site, and the fact that the proposal is to upgrade and enhance the dwelling. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed with the alterations and additions enhance the natural and built form of the locality.

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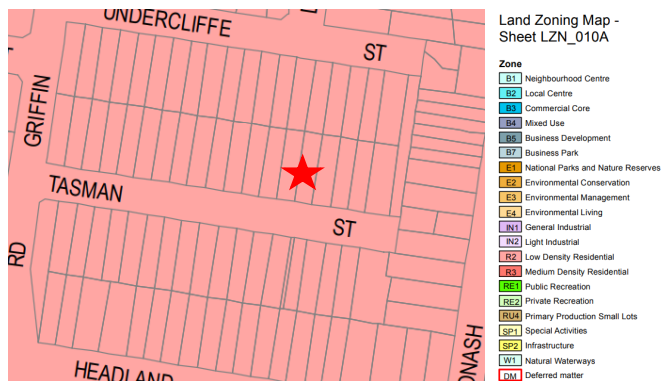
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

Comment: Whilst the proposal seeks a variation to Councils numerical Height of Building standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of the existing building height for the dwelling, other developments within the immediate area and the existing streetscape of Tasman Street shows that the development standard for Height of Buildings has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Map



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Any development not specified in item 2 or 3

Comment: The relevance of the zone objectives are assessed below:

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

Objectives of the R2 Low Density Residential zone:

1 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 of Warringah.*

The site is zoned R2 Low Density Residential. A dwelling house is a permissible land use within the R2 Low Density Residential zone with consent of Northern Beaches Council.

The site is zoned R2 Low Density Residential. A dwelling house is a permissible land use; therefore, any alterations and additions are permissible with Council's consent. The proposed alterations and additions are consistent with the objectives of the zone, as supported below:

- The proposal retains the existing dwelling house, which in turn provides for the housing needs of the community with the R2 Low Density Residential zone.
- The proposal encourages the revitalisation and rehabilitation of the existing site with new facilities functional to the needs of the occupants to bring it in line with the needs of the residential area.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the existing building height, streetscape and topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height and floor space. Further justification to support the proposed variation is provided below:

- The proposed development is for a minor variation to the building height that already exists and is within the parameters of the existing building footprint with no impact to the streetscape in terms of bulk and scale, which have set the ground rules for the bulk, scale and mass of the proposal.
- The LEC planning principles on Height of Building relating to the height, bulk and scale, including compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

Planning principle: assessment of height and bulk

The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

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Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

In addressing the above planning principals, the benefits of the proposed development, represents functional alterations which enhances the site with a new modern dwelling. Not only does this provide improved amenity for the occupants of the building, it complies with the objectives of the zone.

From a planning perspective, there is sufficient grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The dwelling currently breaches the building height existing at 9.609m. The proposal includes amendments to the existing roof to delete the curve and create a straight pitch to accommodate skylights. The amendments reduce the height existing from 9.609m to a proposed height of 9.55m.
- The proposed development is consistent with the building height, rear setbacks and building bulk of northern properties along Tasman Street.
- The breach to the building is minimal and is existing with no further breach to the maximum building height existing on the site.
- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

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It is important for Council to recognise and acknowledge the existing maximum building height of the dwelling at 9.609m with the proposed alterations at a building height of 9.55m. Strict adherence for our site would impact the existing dwelling and create a building that is out of character and not compatible with the locality.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such an outcome is achieved whilst realising the reasonable development potential of the land.

2. 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]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.3(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of Tasman Street and the proposed alterations and additions and associated components which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Height of Buildings. The proposal has been skilfully designed and strategically located within the existing building footprint to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Comment: As demonstrated in this request, the proposed development 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. The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of Height of Building applicable to this site. Additionally, the proposal adds significant social and healthy benefits through a new functional design. Council should encourage such building upgrades via support of positive intention to upgrade old residential buildings within the Northern Beaches LGA.

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

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

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*(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the Height of Building development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

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

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

Concurrence of the Secretary can therefore be assumed in this case. There are no other relevant matters required to be taken into account by the Secretary.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.3(2) Height of Building and this statement verifies that compliance with the provisions of clause 4.3(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

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

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

A variation to the strict application of Council's Height of Buildings development standard is considered appropriate for the site at 28 Tasman Street, Dee Why.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the existing building height and the unique nature of

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the locality in a varying degree of development types. Given the proposed application is minor and consistent with the streetscape, existing maximum building height of the dwelling and similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Dee Why precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3. From a planning perspective, there is sufficient grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The dwelling currently breaches the building height existing at 9.609m. The proposal includes amendments to the existing roof to delete the curve and create a straight pitch to accommodate skylights. The amendments reduce the height existing from 9.609m to a proposed height of 9.55m.
- The proposed development is consistent with the building height, rear setbacks and building bulk of northern properties along Tasman Street.
- The breach to the building is minimal and is existing with no further breach to the maximum building height existing on the site.
- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Height of Building, the R2 Low Density Residential zoning objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Height of Building Clause 4.3(2) is acceptable, and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. The variation under Clause 4.6 is to vary the Height of Building control to give Northern Beaches Council the power to grant development consent to the proposed development.

ITEM 3.4

**DA2021/1487 - 35 BUNGAN HEAD ROAD NEWPORT -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE, INCLUDING AN OUTBUILDING AND A SWIMMING
POOL**

REPORTING MANAGER Steve Findlay

TRIM FILE REF 2022/208676

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/1487 for Demolition works and construction of a dwelling house, including an outbuilding and a swimming pool on land at Lot 58 DP 10423, 35 Bungan Head Road NEWPORT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1487
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 58 DP 10423, 35 Bungan Head Road NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of a dwelling house, including an outbuilding and 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:	Gavin Stefan Gorazdowski
Applicant:	Buckandsimple
Application Lodged:	24/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	17/01/2022 to 31/01/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,468,039.00

EXECUTIVE SUMMARY

The development proposal relates to the construction of a dwelling house and is referred to the Development Determination Panel (DDP) as the proposal has three or more unresolved objections and a cost of development greater than \$1,000,000.

The notification of the application attracted submissions from seven (7) households, however one (1) of those submissions has been withdrawn. Those submissions raised concern with the developments ability to achieve the objectives of the C4 Environmental Living zone, its impact on trees and the general bulk and scale of the building itself. Concerns were also raised about view loss, overshadowing and a loss of privacy.

The matters raised in the submissions are detailed in this report, and in summary it is found that several of the concerns would warrant the refusal of the application, but may be addressed by way of appropriate conditions.

The proposal, as submitted, breaches the prescribed side setbacks (associated with a deck and inclinator), side boundary envelope and landscaped area. The building has a height that exceeds the 8.5m building height standard in the PLEP 2014, however that height is subject to a variation provision within the LEP which permits an increase of the height to be no greater than 10.0m, to which this development complies with.

The matters raised in the resident submissions and several of the non-compliances sought would be tantamount to a recommendation for refusal, however in this instance it is considered that the issues can be resolved by way of deleting the cabana/outbuilding and inclinator in its entirety, along with several other conditions relating to visual privacy attenuation measures. The requirement to delete the outbuilding and inclinator has been discussed with the Applicant.

On that basis, this report concludes with a conditional recommendation that the DDP **APPROVES** the proposal, subject to conditions as detailed in the recommendations of this report.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for the demolition of all existing improvements on the site, excavation works and construction of a detached dwelling house with swimming pool and a detached outbuilding.

The dwelling proposed spreads across four levels, stepping down from Bungan Head Road and incorporates the following:

- three (3) car + garage
- five (5) bedrooms
- four (4) full and three (3) half bathrooms
- four (4) living spaces
- cellar
- lift accessing all levels

The outbuilding proposed is two (2) storeys in height and accommodates two bedrooms, one bathroom, kitchenette, living/dining room and a separately accessible studio with a large terrace.

An inclinator is proposed down the eastern side of the site.

AMENDED PLANS

During the course of the assessment, Council wrote to the applicant and raised concerns with the building height, visual privacy, setbacks, envelope, landscaped area and the built form and use of the outbuilding.

The applicant responded to this correspondence with amended plans that delete a portion of the master suite, therefore decreasing the building height and envelope non-compliances, amended the landscape plan and slightly modified the southern elevation of the outbuilding.

These plans were re-notified to neighbours. Herein the amended plans are assessed and described as the '**development**'.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - A4.10 Newport Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 58 DP 10423 , 35 Bungan Head Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site is legally identified as Lot 58 in Deposited Plan 10423 and is known as 35 Bungan Head Road, Newport.</p> <p>The site falls within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014.</p> <p>The site is generally rectangular in shape with a splayed southern (rear) boundary. The site generally has a width of 15.24m and depths of 76.65m (west) and 80.76m (east)</p>

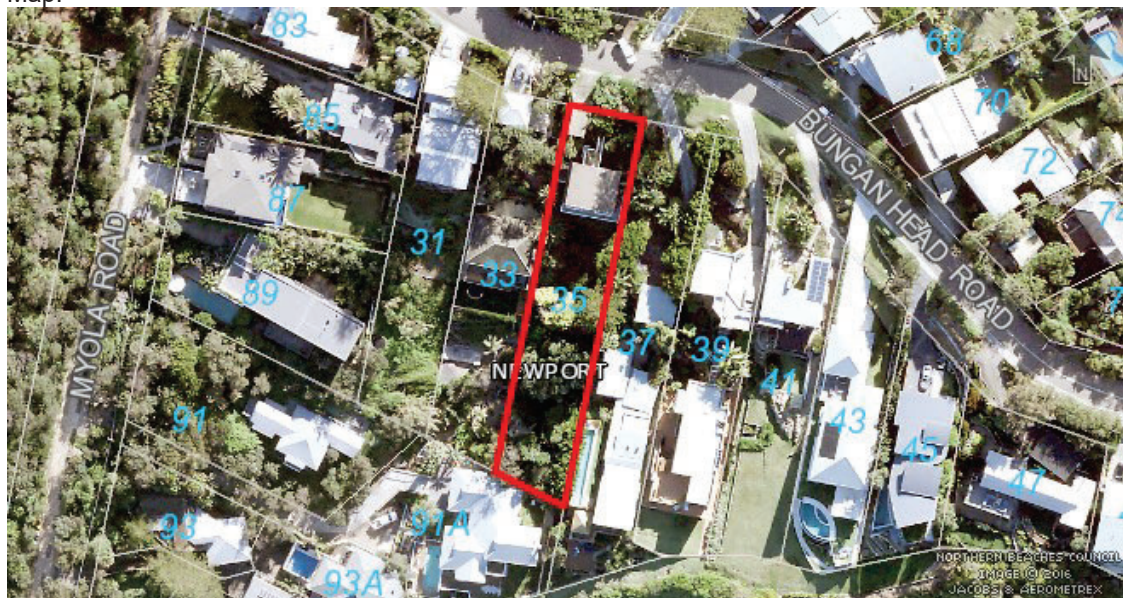
equating to an overall surveyed area of 1,195m².

The site falls to the southern side of Bungan Head Road and presently accommodates a two storey detached dwelling house and a detached single garage, both located to the northern third of the lot. The remaining two third of the lot (to the south) accommodate mature vegetation and scrub.

Topographically the site falls from the street (north to south) by approximately 20m via a relatively consistent steep slope.

Surrounding properties consist of other detached dwelling houses of varying age, size and construction. The site is proximate to Bungan Beach to the south.

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 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	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 the design of the building.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <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 Matters for Consideration'	Comments
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 17/01/2022 to 31/01/2022 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 7 submission/s from:

Name:	Address:
Mr Jonathan Paul Milligan	77 A Myola Road NEWPORT NSW 2106
Jasmine Wearin	60 Bungan Head Road NEWPORT NSW 2106
Mr Brian Scheiner Mrs Angela Margaret Scheiner	31 Bungan Head Road NEWPORT NSW 2106
Mr Gavan William Alston Potter	58 Bungan Head Road NEWPORT NSW 2106
Mrs Lisa Gay Sadler	33 Bungan Head Road NEWPORT NSW 2106
Prof Michael Lawrence	55 Bungan Head Road NEWPORT NSW 2106

Name:	Address:
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085

The application was originally notified from 30 August 2021 to 16 September 2021 and again from 17 January 2022 to 31 January 2022, in response to revised plans. During these two periods submissions were received from seven (7) addresses, however one (1) of those submissions has been withdrawn.

The following issues were raised in the submissions:

- **Built Form Compliance - height, setbacks, envelope, building bulk**
- **Landscaping - historic tree loss, ability to meet zoning objectives**
- **Amenity Impacts - privacy, acoustics, view loss and overshadowing**
- **Outbuilding - secondary dwelling v. separately accessible structure**
- **Requested Conditions in One Submission**

The matters raised within the submissions are addressed as follows:

- **Built Form Compliance - height, setbacks, envelope, building bulk**

Comment:

Submissions received objected to the proportions of the overall development including its height, setbacks, building envelope and subsequent bulk.

The height of the development is compliant and in accordance with the height provisions of the PLEP 2014. The setbacks of the dwelling are compliant with the P21DCP, however the inclinator and some decking on the western elevation encroach the prescribed setback area. The building encroaches the prescribed envelope, however such encroachment is permitted by variation consequent of the topography of the site.

Whilst the proposal is a particularly large dwelling, it is generally consistent with what can be expected to be constructed on the site and having regard to the character of newer development in the area. The overall massing of the proposal has been reduced by the deletion of the outbuilding as described below.

Where the proposal seeks to vary a built form control, that variation is assessed under the relevant section of this report.

- **Landscaping - historic tree loss, ability to meet zoning objectives**

Comment:

Submissions received objected to the extent of proposed tree removal, noting historic tree removals on the site and questioning whether the proposed tree removal aligns with the C4 Environmental Living zone objectives.

Council's Landscape Officer has conditioned that only exempt trees can be removed from the site - these trees (exempt) can be removed regardless of a DA. No native and prescribed trees are permitted to be removed.

The application is accompanied by a landscape plan which demonstrates that over time (upon

maturity of the plantings), the landscaping will screen the building and will accord with the intended objectives of the zone.

Matters pertaining to historic tree removal are not relevant to the assessment of this development application.

- **Amenity Impacts - privacy, acoustics, view loss and overshadowing**

Comment:

Concerns were raised in all the submissions received that the development will give rise to amenity impacts to adjoining residences.

These impacts are discussed in their respective clauses later in this report, however in summary the following conclusions are reached:

- Visual privacy is impinged on by the "secondary dwelling" roof terrace, pool terrace and main deck.
- Acoustic privacy can be maintained by appropriately concealing swimming pool equipment. Noise of people using the pool is not controllable.
- No unreasonable overshadowing is caused by the development.
- Concerns of view loss caused by the proposed garage are found not to warrant the refusal of the application.

- **Outbuilding - secondary dwelling v separately accessible structure**

Comment:

Submissions received raised concern about the potential impact of the detached outbuilding, but also question its use and whether it should be appropriately described as a 'secondary dwelling' or a 'separately accessible structure' (under cl.1.14 of the P21DCP).

Council wrote to the applicant on 8 November 2021 raising a number of concerns with the application, including the outbuilding. Council noted that the structure would not comply as a secondary dwelling by virtue of being two storeys, and would not comply as a separately accessible structure as it is designed for separate habitation, notwithstanding the fact that the applicant contends that it is not a proposed to be a secondary dwelling.

The BASIX Certificate submitted states that the proposal is for two dwellings. Council requested clarification as to the intended use of this building. Insufficient documentation has been provided as to how the building is to be used.

Despite the current owners intention not to use the outbuilding as a secondary dwelling, it is very well capable of being used as one (two bedrooms, bathroom, kitchenette, living area and separate access).

In the absence of the requested clarifications, and given the privacy impacts caused by the rooftop deck, a condition is recommended which deletes the outbuilding in its entirety.

- **Requested Conditions in One Submission**

Comment:

One of the submissions received to the first notification was extensive and raised a wide range

of issues with the proposal. Following the second notification, that applicant made a revised submission which still objected to the proposal, but included a number of requested conditions to be imposed on any approval of the application, including the addition of privacy plantings, screens and amendments to windows, sound attenuation measures, tree relocations and stormwater management. The submission also raised concern with the proposed outbuilding as addressed above.

The matters raised in this particular submission are addressed where relevant in this report and, where appropriate, conditioned as requested.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, with conditions</p> <p><i>The proposed outbuilding appears to be readily adaptable as a Secondary Dwelling although the statement of Environmental Effects nominates as guest accommodation with no cooking facilities or laundry. If Development Consent is to be issued for this building on the basis that it is not permitted to be used for a secondary dwelling then there are no objections. However if it is intended as a secondary dwelling then conditions may be applied for this use.</i></p> <p><u>Planners Comment</u></p> <p>No approval is to be granted under this consent for a Secondary Dwelling on the site.</p>
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported, without conditions</p> <p>Environmental Health note both the gas fireplace and barbecue chimney marked in the plans and offer a recommendation of approval without conditions. With regard to emission control standards, neither gas fireplace nor barbecue chimney require prescribed conditions of consent with regard to installation. In the unlikely event that use of the barbecue causes smoke nuisance, this can be regulated through Protection of Environment Operations Act 1997.</p> <p>It is noted that an inclinometer to be installed along the Eastern side of the Lot. Concerns regarding the potential noise impacts from the use of this machine are nullified by the 5.5 m privacy screen to be installed along the length of the Eastern boundary. Subsequently, an "industrial" referral is deemed unnecessary.</p>
Landscape Officer	<p>Supported, with Conditions</p> <p><u>Final Landscape Comments</u></p> <p>An amended Landscape Plan and a Arboricultural Impact Assessment is submitted.</p>

Internal Referral Body	Comments
	<p>The Landscape Plan as amended is satisfactorily, subject to conditions regarding selection of native canopy trees, and required container size for all nominated planting.</p> <p>The Arboricultural Impact Assessment provides justification for proposed removal, and standard conditions of consent shall be imposed for the protection of existing trees within adjoining properties and within the road reserve.</p> <p><u>Original Landscape Comments</u></p> <p>The development application is for demolition of existing structures and the construction of a dwelling and swimming pool, and a detached outbuilding.</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 (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D10 Newport Locality <p>The site is located in the 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>The Statement of Environmental Effects notes that the site includes several established trees and shrubs and that trees within the property are identified for removal and these are shown on the Site Layout - Existing, Excavation & Demolished number D010. No Arboricultural Impact Assessment has been provided with the application and there are other existing trees within the site and within adjoining properties within five metres of development works.</p> <p>Council require this information to determine if any design alternative is available in terms of retaining trees of high or moderate significance, excluding exempt species as listed in the DCP. No arboricultural evidence of the significance, or otherwise, of the existing trees is provided with the application. The Arboricultural Impact Assessment report shall indicate the impact of development upon the existing trees within the site, and for any existing tree on adjoining properties, and shall cover assessment of excavation and construction impacts upon the structural root zone and tree protection zone, tree protection requirements, and recommendations. Recommendations shall include the setback distance from each tree where no construction impact is to occur to ensure the long term retention of the tree. Existing trees and vegetation within adjoining property and within the road verge is not permitted to be impacted upon.</p>

Internal Referral Body	Comments
	<p>The Landscape Plan provided with the application is inadequate to meet the requirements of the E4 Environmental Living zone, including the retention of natural landscape features such as rock outcrops and existing trees. Pittwater DCP requires the provision of native canopy trees, of which the current Landscape Plan does not provide. An Amended Landscape Plan, that is presented in accordance with the DA Lodgement Requirements shall be submitted for further consideration.</p> <p>Under Pittwater 21 DCP, control C1.1 Landscaping, at least three locally native canopy trees are to be provided within the site, as are a range of shrubs to soften the built form in associated with the canopy trees.</p> <p>Landscape Referral are unable to support the development application at this stage based on the information provided.</p>
NECC (Bushland and Biodiversity)	<p><i>Supported, with conditions</i></p> <p><u>Final Biodiversity Comments</u></p> <p>The application seeks approval for the demolition of an existing three storey residence and detached garage and construction of a new dwelling. The application proposes the construction of a four-storey dwelling, integrated garage, swimming pool, inclinator and landscaping.</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) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> • Coastal Environment Area • Proximity to Coastal Wetlands <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> • 4.5 Landscape and Flora and Fauna Enhancement Category 3 Land <p>The requested Arboricultural Impact Assessment (Margot Blues Consulting Arborist 2021) now accompanies the application. The application will require the removal of seven (7) exempt trees (T3, 4, 6, 7, 8, 8a & 16) that do not require Council approval for removal.</p> <p>The application does not require the removal of prescribed trees or vegetation as demonstrated by the Arboricultural Impact Assessment,</p>

Internal Referral Body	Comments
	<p>nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p> <p><u>Original Biodiversity Comments</u></p> <p>The submitted Architectural Plans and Statement of Environmental Effects notes the proposed removal of at least 5 trees. Additional trees within the site, and in neighbouring properties appear to be within 5m of the development, and are required to be assessed by an AQ5 Arborist to determine impacts to TPZ and feasibility of retention.</p> <p>Prescribed tree removal is to be avoided and where avoidance is not possible, proposed replacement plantings are to be demonstrated by way of the Landscape Plan in accordance with B4.5 of the PDCP:</p> <ul style="list-style-type: none"> • <i>Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.</i> <p>On receipt of the required documents, Council's NEU-Biodiversity Unit can reassess the application.</p>
NECC (Coast and Catchments)	<p><i>Supported, with conditions</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (sections 11, 13, 14 & 15); and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p>
NECC (Development Engineering)	<p><i>Supported, with conditions</i></p> <p><u>Final Engineering Comments</u></p> <ul style="list-style-type: none"> • Easement refusal letter from neighbor (91A Myola Road, Newport) is provided. On-site Absorption System is proposed for main dwelling and cabana separately. • Proposal is to retain existing driveway. Driveway long section is provided. Existing driveway is not in good condition. Applicant to apply for vehicle crossing application. • Updated Geotechnical assessment by Ascent Geotechnical Consulting, Ref: AG 21439, Dated 15/12/2021 is provided. The report supports the proposed On-site Absorption System. <p><u>Original Engineering Comments</u></p>

Internal Referral Body	Comments
	<p>The application seeks approval for the demolition of an existing residence and construction of a new four-storey dwelling, integrated garage, swimming pool, inclinator and landscaping.</p> <p>Access Currently site is accessed via a concrete driveway from Bungan Head Road. The existing vehicular access point from Bungan Head Road will be retained.</p> <p>Applicant is advised to provide a longitudinal profile of centerline of driveway from street kerb to proposed garage showing chainage, existing and proposed levels and grades.</p> <p>Stormwater It is a low level site, stormwater runoff is currently collected and discharged to drainage infrastructure over the downhill property. Proposed additional impervious area is greater than 50m², hence an On-site Stormwater Detention system is required.</p> <p>Proposal is that stormwater runoff from the dwelling will be captured and diverted to an on-site detention and retention system and subsequently discharged to absorption trench at rear of site.</p> <p>But before Council consider these drawings applicant is advised as below:</p> <p>a) The Stormwater drainage for the site shall demonstrate compliance with Council's Water Management for Develeopment Policy, particularly Stormwater Drainage from Low Level Properties Technical Specification Section 5.5.As the subject site falls to the rear, an easement to drain water is to be created in favor of the site over the downstream properties. Evidence of owners consent by the property owners (91A Myola Road, Newport) shall be submitted with the Development Application. The Application shall be supported by a long section of the inter-allotment drainage to the connection with Council's road drainage system.</p> <p>b) Should this method of stormwater disposal not be possible, evidence shall be submitted with the Application.</p> <p>For sample letter refer Appendix 2, Easement Letter of Council's Water Management for Development Policy.</p> <p>Excavation Site is mapped as Geotechnical Hazard Area H1.</p> <p>Geotechnical assessment by Ascent Geotechnical Consulting, Ref: AG 20322, Dated 10/12/2020 is provided.</p> <p>It is noted that Geotechnical comments are based on the older version of drawings. Applicant is advised to seek geotechnical comments on the latest version of plans.</p>

Internal Referral Body	Comments
	Geotech Engineer to also confirm the infiltration rate of soil at site as stormwater plans indicates proposal of absorption trenches.

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.

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. 1174962M dated 04 June 2021).

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

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

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

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment

The proposal was referred to Ausgrid who raised no objections.

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 proposal has been reviewed by Council's Coast + Catchments team and Bushland + Biodiversity teams who raise no objections to the development being on land proximate to coastal wetlands or littoral rainforest. The application and neighbouring properties are all developed and have been so for an extended period of time. The construction of a new dwelling on the application site is not expected to significantly impact on the biophysical, hydrological or ecological integrity of the wetland or rainforest, and is not expected to impact on the quantity and quality of ground water flows.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*

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

Comment

The proposed development is not considered likely to cause an adverse impact on any of the criterion stipulated in Clause 13 (1) (a) through to (g).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment

The consent authority may be satisfied that the development is designed, sited and will be managed to avoid an adverse impact on the abovelisted criterion.

14 Development on land within the coastal use area

- (1)
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment

The proposed development is not considered to cause any detriment to the enjoyment, accessibility or visual quality of Bungan Beach and its surrounds.

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

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

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

Comment

It is not anticipated that the proposed development would cause an increased risk of coastal hazards.

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
4.3 - Height of Buildings	8.5m	9.99m	17.5%	No (see Clause 4.3(2D) assessment below)
4.3(2D) - Height of Buildings	10.0m		N/A	Yes

Consideration against Clause 4.3(2D)

Clause 4.3(2D) stipulates that development on land that has a maximum building height of 8.5 metres may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

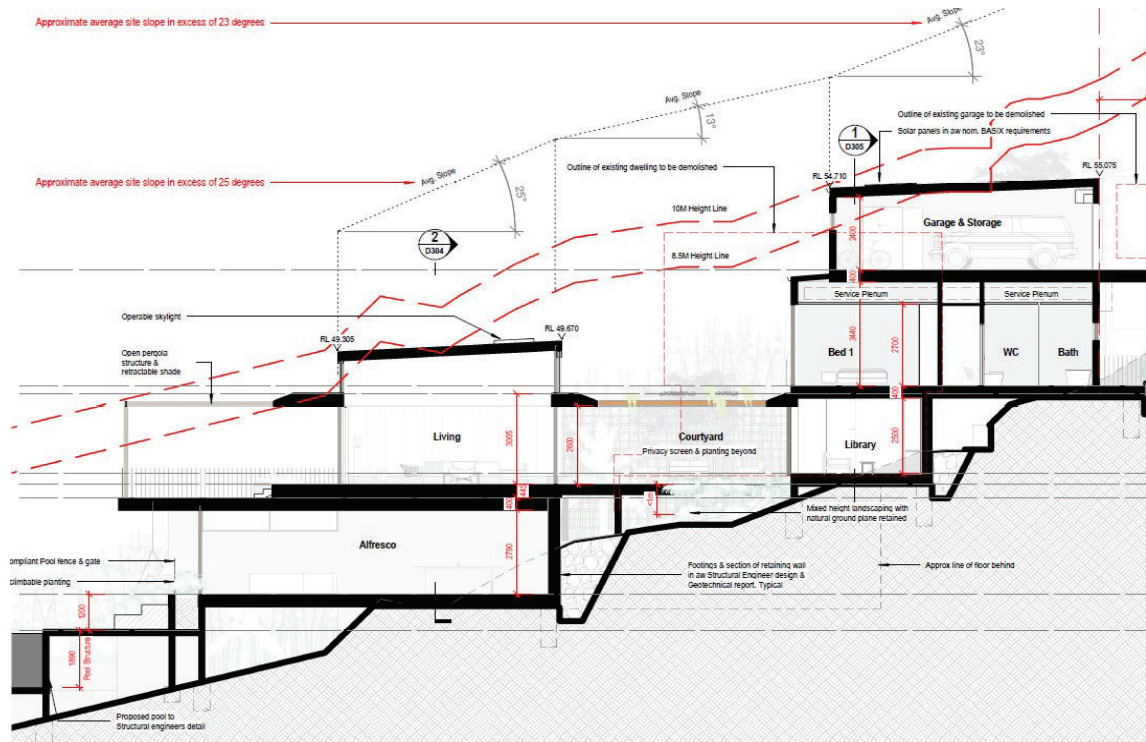
(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor.

Comment:

The project architect has provided a sectional drawing of the proposal detailing (refer to red line) the 8.5m and 10.0m height line above existing ground level.

As is evident from the below, the extent of building exceeding the 8.5m height line but below 10.0m is limited to the southern corner of the garage and master suite (note that the extent of variation changes on the different sectional plans, however the below details the largest extent of encroachment. On the basis of the extent of variation sought to the 8.5m, the consent authority can be satisfied that the non-

conforming portion of the building is **minor**.



(b) the objectives of the clause are achieved.

Comment:

The Objectives of the Clause are addressed 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 height of the proposed dwelling is generally consistent with the development controls and with the proportions of newer and more substantial dwellings within the locality.

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

The height and scale of the proposal is consistent with what could be developed on adjoining sites under the current planning controls. Whilst the two immediately adjoining properties are not developed to the same extent that this proposal seeks, the proportions of the build are not incompatible with their heights.

(c) to minimise any overshadowing of neighbouring properties.

The development provides a compliant level of solar access to neighbouring properties.

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

View loss is discussed elsewhere in this report, however it is noted that the minor building elements that may impact upon views do not exceed the height limit.

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

The building is designed to step down the slope of the land to minimise its bulk and scale.

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

The building is not considered to have an adverse visual impact when viewed from the private domain, the street, Bungan Beach and the ocean.

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

Comment

The slope of the land exceeds 16.7 degrees, being at 23 degrees slope to the northern end of the dwelling, and 25 degrees at the southern end of the dwelling.

(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 development is considered to be designed and sited to take into account the slope of the land to minimise the need for cut and fill.

The above considerations confirm that the 10.0 metre height limit may be applied in this particular instance.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or

drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 3.5m below the natural ground level. This extent of excavation is above 5 metres AHD and is unlikely to lower the water table by 1.0 metre and therefore no additional assessment is required.

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

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

Comment: The site is not considered likely to cause an adverse impact on any watercourse, drinking water catchment or environmentally sensitive areas.

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

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	North - 6.5m	6.5m	-	Yes
Rear building line	South - 6.5m	6.5 - 9.0m	-	Yes
Side building line	East - 1.0m	Building - 1.0m Inclinor - < 1.0m	- 50%	Yes No
	West - 2.5m	House - 2.5 - 3.5m Courtyard deck - 1.0m	- 60%	Yes No
Building envelope	East - 3.5m	Outside envelope	Up to 137%	No
	West - 3.5m	Outside envelope	UP to 80% (Garage only)	No
Landscaped area	60% (717sqm)	51.6% (616.8sqm) + 6% (71.7sqm) Total 57.6% (688.5sqm)	4%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	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
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	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
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	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	No	No
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	No
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.14 Fences - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.10 Newport Locality

Newport Locality Desired Character Statement

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

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

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

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements.

Comment:

On balance of all factors and for the reasons detailed throughout this Assessment Report, the proposal is considered to conform to the principles of the Newport Locality Desired Character Statement.

C1.3 View Sharing

Concern is raised by the owners of No. 60 Bungan Head Road that the proposed garage may give rise to view impacts from their home in a southerly direction.

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

- *A reasonable sharing of views amongst dwellings.*

Comment

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

1. Nature of the views affected

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

Comment on Principle 1

The views to be affected by the development are foreground water and land-water interface views, along with street-vegetation. The views are reasonably whole, albeit they are partially obscured by existing vegetation on the street and on the development site, and by power lines.

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 on Principle 2

The views to be affected are obtained over the front property boundary of the objectors property and development site which sit opposite the road from one another. The views are to the south of the objectors property and are the primary outlook. The views are available from a sitting and standing position. The views are better from a standing position, particularly as one is situated further inwards from the objectors property.

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 on Principle 3

The views to be affected are obtainable from the small front entertaining deck and the principal living spaces. The views from the kitchen may be impacted but to a lesser extent than the aforementioned spaces.

The views enjoyed from No. 60 Bungan Head Road are vast, and the portion of view to be affected is in the immediate foreground. The totality of view loss caused by the garage can be understood as being lesser in width than the existing dwelling with a slightly higher ridge height than existing, and located behind the existing garage.

The development will cause view loss of water and sand, although the interface of the two is somewhat screened by existing vegetation. The loss would be of the northern portion of Bungan Beach, but views of the land water interface of more than half of the beach will remain.

Principle 3 requires the assessment of the impact from the whole of the property commensurate to the entire view. In that respect, and given the limited vertical arc of view to be impacted, the extent of impact is assessed as moderate.

4. Reasonableness of the proposal that is causing the impact

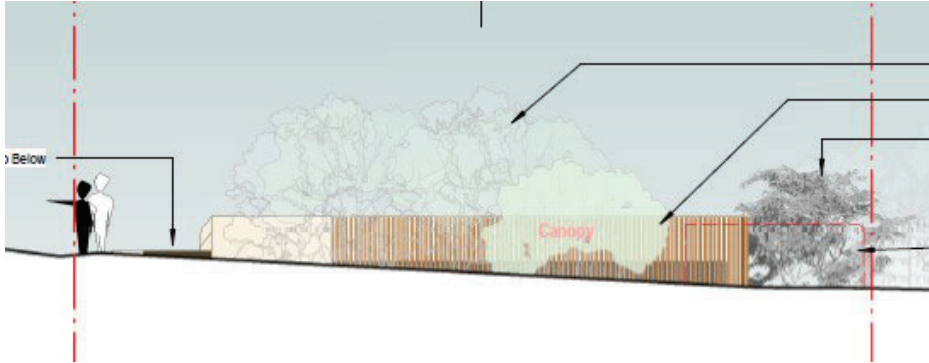
"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning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

Comment on Principle 4

The proposed garage structure is the portion of building causing the view impacts. It is noted that the garage complies with the front building setback control, side setback and building height control, but does encroach the side boundary envelope. The garage is located 6.5m further away from the street compared to the existing garage.

The submission received is correct in stating that the extent of view loss from their property would be lessened by pulling the garage closer to the street with a nil setback, however that improvement of a private view would jeopardise the streetscape and the provision of on-street car parking.

The garage is sunken from the street level with a front ridge height of RL55.075, compared to a kerb height of RL53.55 (west) and RL54.18 (east) resulting in the garage only slightly projecting higher than street level. This is depicted in the below extract from the submitted plans (east is to the left of the image). In essence, the only way to completely preserve the view from No. 60 Bungan Head Road would be for the entirety of the building to be below street level.



On balance of all factors, the garage is considered to be an acceptable structure that does not cause unreasonable view loss to neighbouring properties, and thus the proposal satisfies Principle 4.

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

Comment:

Southerly views from the public domain will remain possible over portions of the building, but not over the western edge of the garage, this however is consistent with the existing arrangement of buildings on the site.

- *Canopy trees take priority over views.*

Comment:

Achieved.

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.

C1.5 Visual Privacy

Concern is raised from the neighbouring property to the west that the proposed development may impede on their existing provision of visual privacy.

The submission requests that a number of conditions should be imposed on any approval to ensure that privacy is maintained. Those requested conditions are addressed as follows:

- **Addition of planter boxes with screening plants, along the western edge of the living room deck level**

Comment:

The referenced deck is accessible from the kitchen and living room and sits at a level of RL 44.425 and RL 44.870. For context, the adjacent objecting property at No. 33 Bungan Head Road has a maximum roof RL of 44.98 and a deck level of RL 39.78.

Resultant of those levels, the referenced deck is situated from 5.0m above the deck of No. 33

and is set off the boundary by 3.0m.

It is not immediately clear on the plans submitted where the proposed balustrade of this deck is intended to be and thus it is taken to be on the outer edge of the deck. In this instance, as the deck is significantly elevated above the neighbouring decking, it is found reasonable to require a planter structure along the western edge of the deck for a minimum width of 1.2m (approx. 1.0m internally) and at a height no greater than 1.0m, to be vegetated with species capable of attaining a height between 1.0m and 1.5m at maturity.

- **Addition of planter boxes with screening plants along the western edge of the pool deck together with hard screening 1.7m in height**

Comment:

The landscape plan indicates that the western edge of the swimming pool is to accommodate New Zealand Flax and Rosemary plantings. At ground level the boundary is to be planted out with Lilly Pillies.

The swimming pool deck is at RL 40.06 and is therefore roughly level with the neighbouring deck, and roughly in alignment with it.

Whilst the plantings will contribute to obscuring any views, it is considered that a solid fence (as would be required in any regard) along the western edge of the pool deck at a height of 1.7m measured from the floor level (therefore RL 42.21) would significantly enhance the amenity for both property owners. Thus, a condition is imposed that the western extent of pool fence is to be opaque and 1.7m in height.

- **Study Window WL08 requires a 1.7m high sill**

Comment:

This window is more-or-less level with the ground and will be screened from view or overlooking by vegetation and a standard 1.8m high boundary fence.

- **Kids breakout window WB09 to be replaced with high level window and privacy screen or translucent glass and Kids breakout room balcony needs to be deleted within the 2.5m side setback zone**

Comment:

The referenced WB09 is a door leading onto the referenced balcony. The balcony is anticipated to act as an external access way around the house rather than an entertaining deck.

The door and deck may allow for a small degree of overlooking into the front garden of No. 33 Bungan Head Road, but is not anticipated to overlook any principal living areas. It is therefore recommended to allow the retention of the deck and door, but to require that the balustrading be finished in a solid or opaque finish. The intent of such would prevent downward overlooking from inside the kids breakout room, albeit acknowledging that when standing on the balcony (which is not anticipated to be high use) there may be overlooking.

Subject to the above recommended conditions, it is considered that the proposal will provide an acceptable provision of privacy for neighbours and future occupiers.

C1.14 Separately Accessible Structures

The development proposes the construction of a detached two storey outbuilding located towards the rear/bottom of the site.

Clause C1.14 states:

Outcomes

Separately accessible structures that provide a recreational or office function for residents. (S)

Controls

A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:

- i. *it is ancillary to a dwelling;*
- ii. *it is not designed for separate habitation and does not contain any cooking facilities.*

Variations

Where the purpose of the structure or its distance from the nearest bathroom facility dictates, bathroom/toilet facilities may be allowed.

The outbuilding proposed contains a 65.55sqm lower ground floor with two bedrooms, one bathroom, a kitchenette, living and dining room area opening onto an east facing deck. The upper floor of the outbuilding contains a 42sqm studio opening onto a large deck atop the ceiling of the lower ground floor.

The applicant contends that the outbuilding is not a secondary dwelling.

However, the submitted BASIX Certificate No. 1174962M stipulates that the project entails "**two**" single dwelling houses, which is contrary to what the application seeks.

Notwithstanding the fact that the owner does not intend on using the outbuilding as a secondary dwelling, that does not negate the fact that it is clearly designed to be capable of separation occupation to the main dwelling. The outbuilding therefore fails to meet the requirements of Clause C1.14 Separately Accessible Structures.

The outbuilding also fails to meet the requirements of Clause C1.11 Secondary Dwellings and Rural Worker's Dwellings as the building is two storeys in height and scale.

Council raised this matter with the applicant by way of letter dated 8 November 2021 and gave the applicant an opportunity to amend the proposal, or provide further details as to the status of the outbuilding. No satisfactory response on this particular matter has been received and therefore, as the use of the outbuilding is not clear and given the fact that it does not constitute as a separately accessible structure or a secondary dwelling, it is recommended that the outbuilding structure be deleted from any approval of the application, including any excavation or vegetation removal associated with the structure.

C1.19 Incline Passenger Lifts and Stairways

Clause C1.19 pertains to inclinator on residential properties. The proposal includes an inclinator on its western edge from the driveway to the back garden which travels through the 1.0m side setback. There

are no platforms/landings along the inclinator located adjacent to the dwelling.

The control requires a 2.0m setback from the outer edge of the inclinator to the boundary. It is estimated (as detail is not provided) that the outer edge of the inclinator is approximately 0.2m from the side boundary.

The length and position of the inclinator is different on the floor/site plans and the landscape plan. The landscape plan details plantings along the eastern edge of the house, as required to mitigate its bulk, however such plantings would be impossible with the installation of an inclinator.

It is considered that the non-compliance with the side setback of the inclinator, combined the fact that the inclinator inhibits the ability to establish any effective landscaping down the eastern boundary, constitutes sufficient grounds to not support the inclinator.

As such, it is proposed that the inclinator be deleted via condition.

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

Description of Non-Compliance

Part D10.8 Side and rear building lines of the Pittwater 21 Development Control Plan 2014 prescribes a minimum rear building line of 6.5m, and required side setbacks of 1.0m to one side (east) and 2.5m to the other side (west).

The inclinator encroaches the 1.0m side setback to the eastern boundary and is assessed elsewhere in this report (and is recommended to be deleted via condition).

The courtyard/deck encroaches the 2.5m western side boundary by up to 1.5m and is assessed below.

Merit Assessment

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

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

Comment:

The encroachment does not inhibit the ability of the proposal to achieve the desired future character of the Newport Locality.

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

Comment:

The subject deck/courtyard is partially elevated above ground level but will be screened by landscaping and a side boundary fence and thus, the encroachment does not contribute to any unreasonable bulk or scale.

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

Comment

The encroachment to the side setback area does not impact on any views or vistas.

- *To encourage view sharing through complimentary siting of buildings, responsive design and*

well-positioned landscaping.

Comment:

As above.

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

Comment:

The outer western edge of the proposed deck is screened by landscaping and the encroaching portion of the deck are not the predominant sitting areas, but are rather aesthetic perimeter decking of a feature tree. A reasonable level of privacy and amenity is maintained.

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

Comment:

Substantial landscaping is retained and proposed on the site.

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

Comment:

It is considered that there is no considerable benefit in requiring strict compliance with the side setback control in this instance and thus it is warranted to permit flexibility to the requirement in this instance.

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

Comment:

Proposed.

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

Comment:

Not applicable.

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

D10.11 Building envelope (excluding Newport Commercial Centre)

Description of Non-Compliance

The site is subject to a building envelope control requiring structures to be contained within a 3.5m and 45 degrees space.

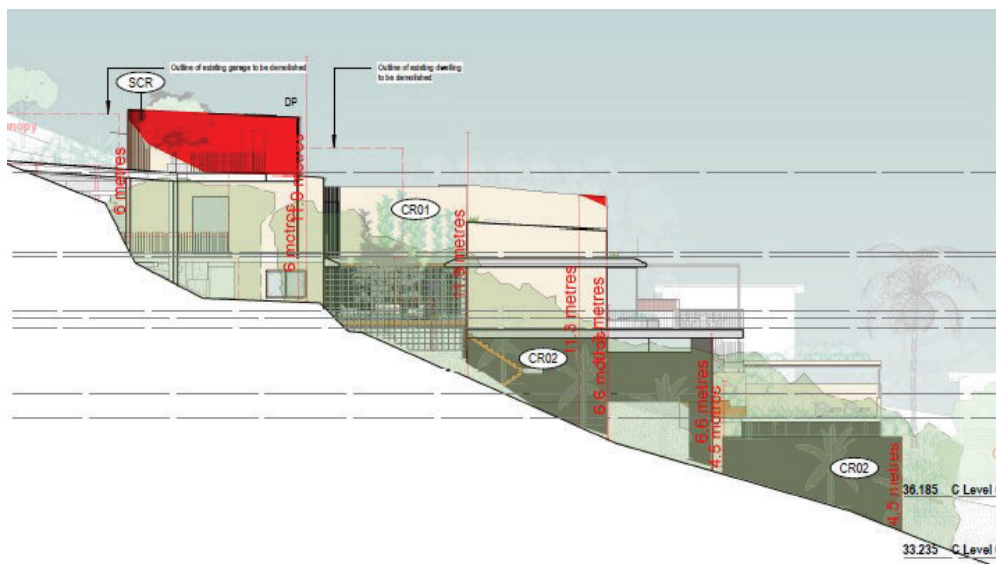
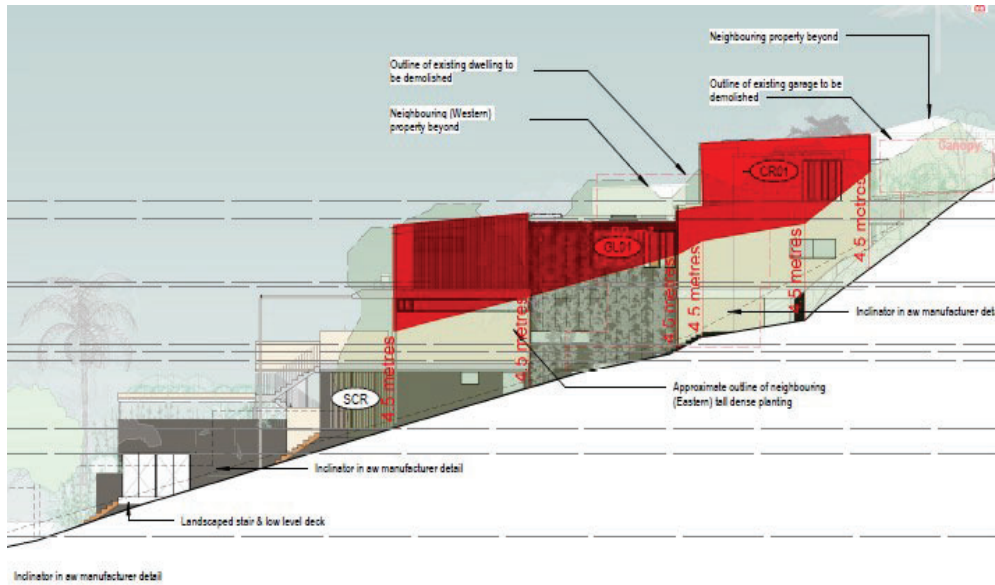
The clause is subject to a variation provision that states:

Where the building footprint is situated on a slope over 16.7 degrees (i.e. 30%) variation to this control will be considered on a merit basis.

The portions of building exceeding the prescribed envelope are both situated on areas that have a

slope greater than 16.7 degrees (being 23 and 25 degrees) and therefore the below assessment is done on a merit basis.

The extent of variations sought are demonstrated in red in the extracts of the plans below (top is east elevation, bottom is west elevation).



Merit Consideration

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

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

Comment

The extent of variations will not materially impact the desired future character of Newport, nor the scenic qualities of the site. The elevations of the proposed building are articulated and include a range of materials. It is considered that the planar appearance of the building as shown on the elevations will appear more sympathetic in actual appearance.

- **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 development generally steps down the slope of the land, meaning that the only element visible from the Bungan Head Road streetscape is the garage level. The overall height of the development is compliant with the provisions of the PLEP 2014 and is lower than that of mature canopy trees (both existing and future).

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

Comment

The relevant spatial characteristics of the site are the topography and vegetation. The proposal appropriately steps down the slope of the land and does not necessitate the removal of any significant or prescribed vegetation.

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

Comment

The development is considered to be sufficiently articulated/modulated with a variety of façade materials and interesting landscaping to result in it being of an acceptable bulk and scale.

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

Comment

The provision of view sharing is discussed elsewhere in this report.

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

Comment

The encroachment of the building envelope is not attributable to any unreasonable level of overlooking or overshadowing.

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

Comment

There is no significant vegetation retained immediately adjacent to the house. Both flank edges of the house incorporate vertical gardens which will help to visually reduce the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of Non-Compliance

Clause D10.13 requires that at least 60% of the total site area is to be landscaped area. The control permits (in some instances) decking and pathways to be considered as functional 'landscaping' but only up to 6% of the total site area and can be included in the 60% total.

Therefore, the control requires that 717sqm of the site is to be landscaped area. The proposal provides 616.8sqm of landscaped area, plus 71.7sqm of pathways and decking, thus resulting in a total landscaped area of 688.5sqm or 57.6%.

It is noted that the deletion of the inclinor and outbuilding by condition will increase the LOS to above 60%.

Merit Consideration

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

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

Comment

The shortfall in landscaped area is inconsistent with the expectations of new dwellings within the E4 zone, and the applicant contends that a compliant provision of landscaping is proposed. The deletion of the outbuilding as discussed elsewhere in this report increases the extent of landscaped area to be compliant and on that basis, the landscaping can achieve the desired future character of the Locality.

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

Comment

Subject to conditions relating to the deletion of an inclinor and the outbuilding the bulk and scale of the built form will be appropriately minimised.

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

Comment

The landscaped area does not detract from the amenity of neighbouring properties.

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

Comment

Refer to above commentary and comments from Landscape Officer

- *Conservation of natural vegetation and biodiversity.*

Comment

The proposal is not anticipated to cause any unreasonable or detrimental impacts to natural vegetation or biodiversity in the vicinity.

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

Comment

Council's Development Engineers are satisfied with the proposed stormwater solution.

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

Comment

The proposed landscape plan, combined with conditions from Council's Landscape Officer will ensure that the proposal can preserve and enhance the bushland/coastal character of the locale.

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

Comment

As above.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$24,680 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,468,039.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Summary of Planning Conclusions

The assessment of this application has found that notwithstanding the numerical non-compliances, the proposal overall is worthy of conditional approval.

The applicant responded to issues identified in the initial assessment with amended plans which are the basis of this assessment report.

The revised development is not found to have any unreasonable or adverse impacts on the amenity of adjoining land owners that cannot be appropriately mitigated by conditions of consent. In this regard, the assessment found that the proposed outbuilding and inclinor are contrary to the provisions of the P21DCP and are likely to cause or contribute to unacceptable amenity impacts upon adjacent land, and therefore Condition No. 10 of this report recommends the deletion of these two elements.

The impact the development has on vegetation has been found to be acceptable and is outweighed by the benefit of extensive new native plantings that will, over time, contribute to the reduction of any perceived visual bulk caused by the development from the public and private domain.

On the balance of all relevant matters and after a comprehensive assessment of all materials submitted by the applicant and issues from objectors, including a detailed analysis of views and amenity impacts, this report concludes with the recommendation that the DDP, as the consent authority, should **APPROVE** the development application, subject to the attached conditions. 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 DA2021/1487 for Demolition works and construction of a dwelling house, including an outbuilding and a swimming pool on land at Lot 58 DP 10423, 35 Bungan Head Road, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
D010 Rev. 3 - Site Layout - Existing, Excavation & Demolition	23 December 2021	Buck&Simple
D011 Rev. 3 - Site Layout - Proposed	23 December 2021	Buck&Simple
D0101 Rev. 3 - Floor Plan - Existing & Demolition	23 December 2021	Buck&Simple
D105 Rev. 3 - Alfresco Level - Proposed	23 December 2021	Buck&Simple
D106 Rev. 3 - Living Level - Proposed	23 December 2021	Buck&Simple
D107 Rev. 3 - Bedrooms Level - Proposed	23 December 2021	Buck&Simple
D108 Rev. 3 - Garage Level - Proposed	23 December 2021	Buck&Simple
D300 Rev. 3 - Section 1 - Existing & Demolition	23 December 2021	Buck&Simple
D301 Rev. 3 - Section 1 - Proposed	23 December 2021	Buck&Simple
D302 Rev. 3 - Site Section - Proposed	23 December 2021	Buck&Simple
D304 Rev. 3 - Section 2 - Proposed	23 December 2021	Buck&Simple
D305 Rev. 3 - Section 3 - Proposed	23 December 2021	Buck&Simple
D400 Rev. 3 - North Elevation - Proposed	23 December 2021	Buck&Simple
D401 Rev. 3 - East Elevation - Proposed	23 December 2021	Buck&Simple
D402 Rev. 3 - South Elevation - Proposed	23 December 2021	Buck&Simple
D403 Rev. 3 - West Elevation - Proposed	23 December 2021	Buck&Simple
D406 Rev. 3 - East Site Elevation - Proposed	23 December 2021	Buck&Simple
D408 Rev. 3 - West Site Elevation - Proposed	23 December 2021	Buck&Simple
D906 Rev. 3 - Materials Board	23 December 2021	Buck&Simple

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	14 December 2021	Margot Blues Consulting Arborist
BASIX Certificate no. 1174962M	04 June 2021	Gradwell Consulting
Geotechnical Assessment (Ref: AG 21439)	15 December 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:

Landscape Plans		
Drawing No.	Dated	Prepared By

D070 Rev. 3 - Landscape Plan	23 December 2021	Buck&Simple
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Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	12 January 2021 [sic]	Peter Ahern

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

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/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 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.

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$24,680.39 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,468,039.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **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;

- o Ascent Geotechnical Consulting, Ref: AG 20322, Dated 10/12/2020
- o Ascent Geotechnical Consulting, Ref: AG 21439, Dated 15/12/2021 (for Stormwater System)

are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

8. **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.

9. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the

surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

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

10. **Amendments to the approved plans**

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

a. The two storey cabana/outbuilding located to the southern end of the site is to be deleted in its entirety. No ground works, excavation or vegetation removal on the footprint of this structure is authorised under this consent.

b. The inclinator and its associated landings are to be deleted from the plans

c. Planter box(es) are to be installed for along the outermost western edge of the deck accessible from the kitchen and living room for the full width of the deck. The planter box(es) are to have a minimum internal dimension of 1.0m and shall be constructed or installed to a minimum height of 1.0m above finished floor level. The planter box(es) are to be planted with native species capable of reaching a height between 1.0m and 1.5m at maturity.

d. A fence or screen that is non-transparent is to be erected along the outermost western edge of the swimming pool deck to a height of 1.7m measured from finished floor level.

e. The balustrade of the balcony accessible from the 'kids breakout' room is to be either solid or opaque in finish.

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.

11. **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: 4671H, Drawings No: 1 to 9, Issue: A, Dated 31st May 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) Both absorption trenches (for main and Cabana) are to be 3m away from any site boundary.
- iii) Applicant must install two rainwater tank of at least 4000l and 3000l capacity (BASIX).
- iv) Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

12. **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.

13. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

14. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

15. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact receiving waters.

16. **Compliance with Standards**

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

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

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

17. **Sydney Water "Tap In"**

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

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

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

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

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

18. **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

19. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property:

- Nil

Exempt Species as listed in the Development Control Plan and as identified in the Arboricultural Impact Assessment do not require Council consent for removal, and within the property include:

- T4 Hinoki Cypress; T6, T7, and T8a Canary Island Palm; T8 Oleander; and T16 Norfolk Island Hibiscus.

Reason: To enable authorised building works.

20. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

21. **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.

- 33 BUNGAN HEAD ROAD, NEWPORT
- 37 BUNGAN HEAD ROAD, NEWPORT

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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

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

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

Reason: Street tree protection.

24. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.

The Certifying Authority must ensure that:

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

Reason: Tree and vegetation protection.

25. **Road Reserve**

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

Reason: Public safety.

26. **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.

27. **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.

28. **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.

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

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

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

30. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide at kerb in accordance with Northern Beaches Council Drawing No A4-3330/ 3NL 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 Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

31. **Waste Management During Development**

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

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

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

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

32. **Landscape Completion**

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

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings and other trees, and at least 2.0 metres from common boundaries,
- iii) the nominated *Strelitzia nicholi* (Sn) proposed in close proximity to the nominated *Banksia integrifolia* (Bi) shall be planted at least 3 metres from the *Banksia integrifolia*,

- iv) the nominated *Leptospermum laevigatum* (LI) within the front setback shall be substituted with *Syzygium leuhmannii*,
- v) mass planting shall be installed at minimum 1 metre intervals for shrubs and screening plants 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, climbers and cascading plants 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,
- vi) 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.

33. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Buck & Simple 2021) and these conditions of consent.

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

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

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

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

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

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

35. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

36. **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.

37. **Waste Management Confirmation**

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

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

38. **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.

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy

(Appendix 5 of P21 DCP) to the Certifying Authority prior to issue of the Final Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **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.

41. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

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

42. **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.

43. **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.

44. **Geotechnical Recommendations**

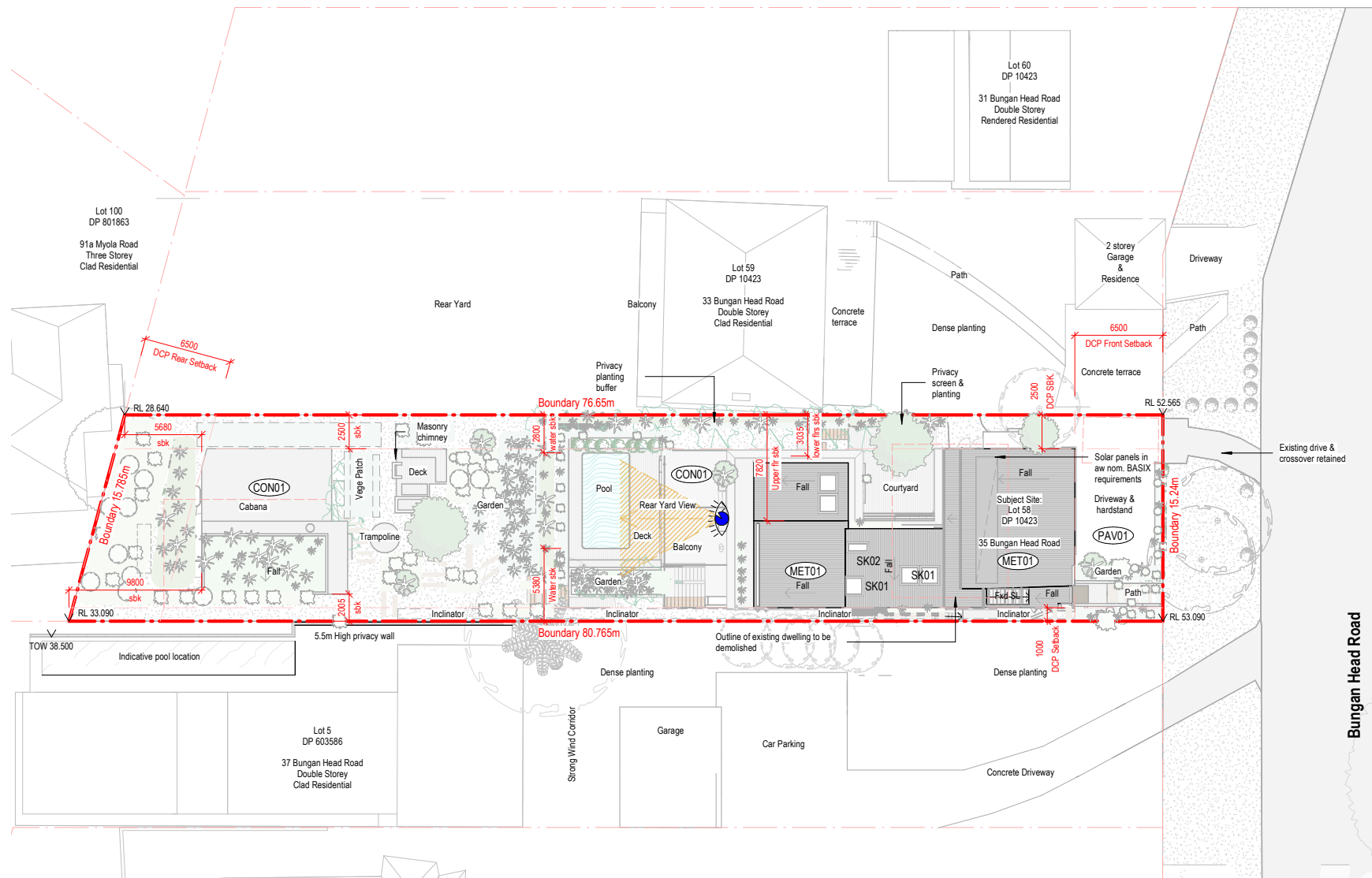
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

45. **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.

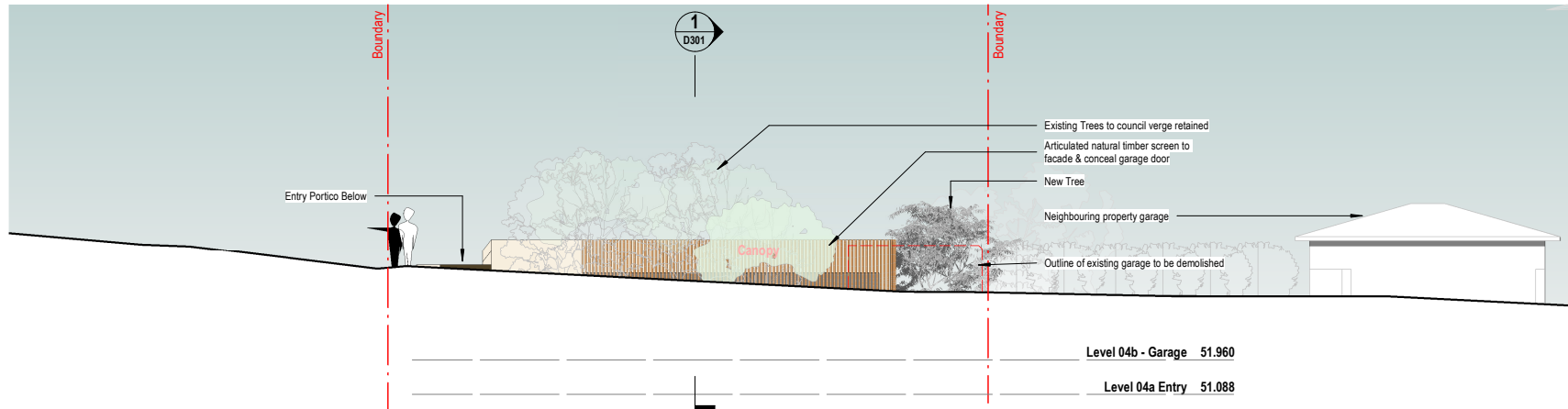


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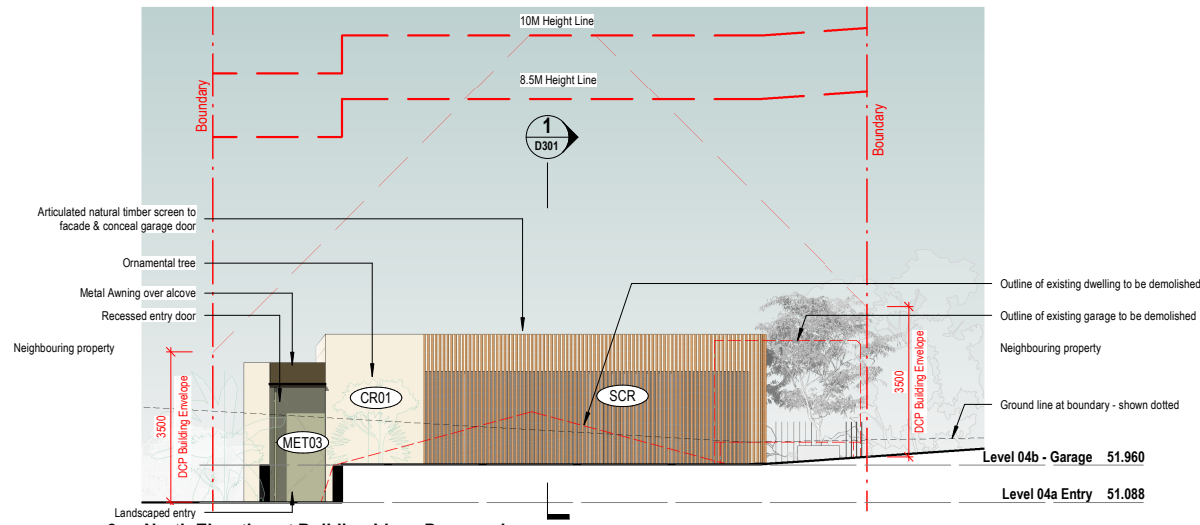


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		ABN - 86 106 604 025		01 June 2021	Location		Project Issue Date	Sheet Issue Date	
		NSW #8631 VIC #19664		23 Dec 2021	35 Bungan Head Road, Newport, 2106		May 2020	23 Dec 2021	
		www.buckandsimple.com			Client		Project number	Drawing #	Revision
Development Application					Gorazdowski & Verbeek Family		1180	D011	3
					Site Layout - Proposed				

22/12/21 12:30:45 pm



1 Streetscape Elevation - Proposed
1 : 100



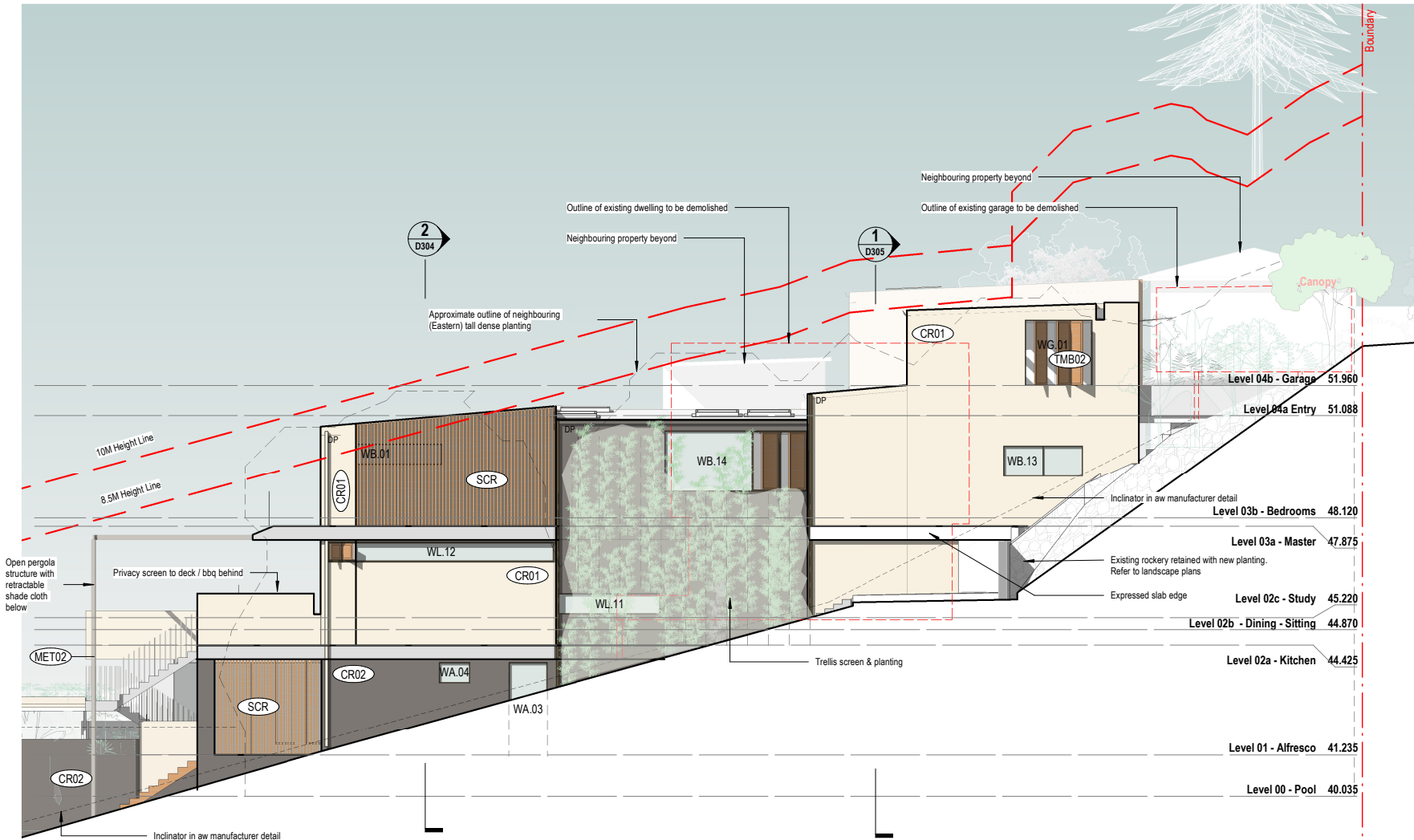
2 North Elevation at Building Line - Proposed
1 : 100

Key:

	- Existing building fabric to be demolished
	- Ground plane and soft landscaping (cut)
	- Site Boundary

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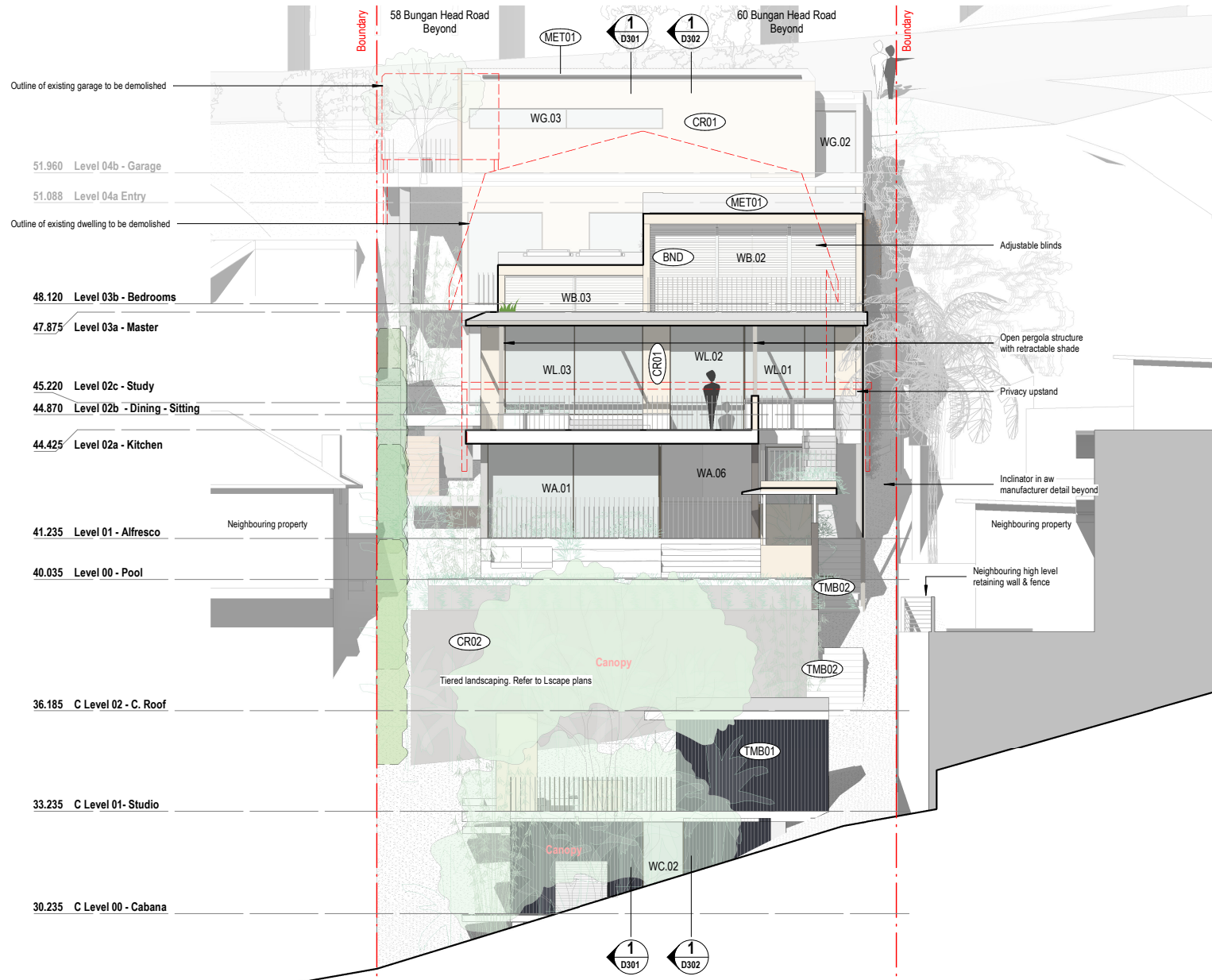
General Notes	No. Description	Date	Project	Scale @ A3	Drawn by	Checked by	
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	ABN : 86 106 604 025	1 Updated for consultant information and issued for Development Application		Project Issue Date	Sheet Issue Date		
	NSW #8631 VIC #19664	2 Issued for Submission	01 June 2021	May 2020	23 Dec 2021		
	www.buckandsimple.com	3 Updated for DA submission	23 Dec 2021	Client	Project number	Drawing #	Revision
	Development Application			Gorazdowski & Verbeek Family	1180	D400	3
			Drawing				
			North Elevation - Proposed				



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	2	Issued for Submission	01 June 2021	35 Bungan Head Road, Newport, 2106	Project Issue Date	May 2020	Sheet Issue Date
	3	Updated for DA submission	23 Dec 2021	Client	Project number	Drawing #	Revision
				Gorazdowski & Verbeek Family	1180	D401	3
				Drawing			
			East Elevation - Proposed				

22/12/21 12:41:45 pm



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No.	Description	Date
1	Updated for consultant information and issued for Development Application	18 May 2021
2	Issued for Submission	01 June 2021
3	Updated for DA submission	23 Dec 2021

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ABN - 88 100 604 025 NSW #8631 VIC #19664
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Development Application

Project:
Bungan Residence

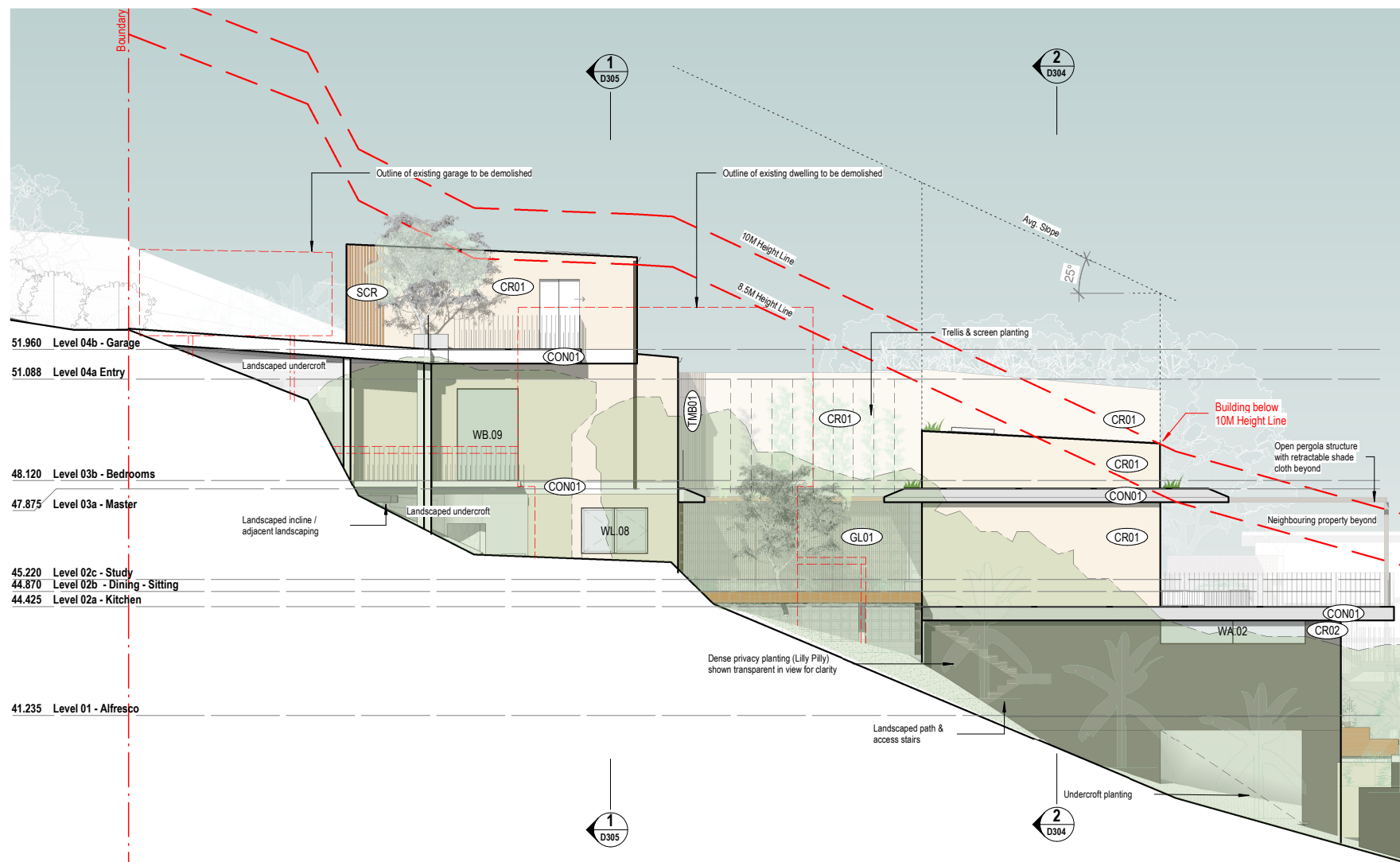
Location:
35 Bungan Head Road, Newport, 2106

Client:
Gorazdowski & Verbeek Family

Drawing:
South Elevation - Proposed

Scale @ A3	1 : 100	Drawn by	BS	Checked by	BS
Project Issue Date	May 2020	Drawing #	1180	Revision	D402
Project number	1180	Drawing #	D402	Revision	3

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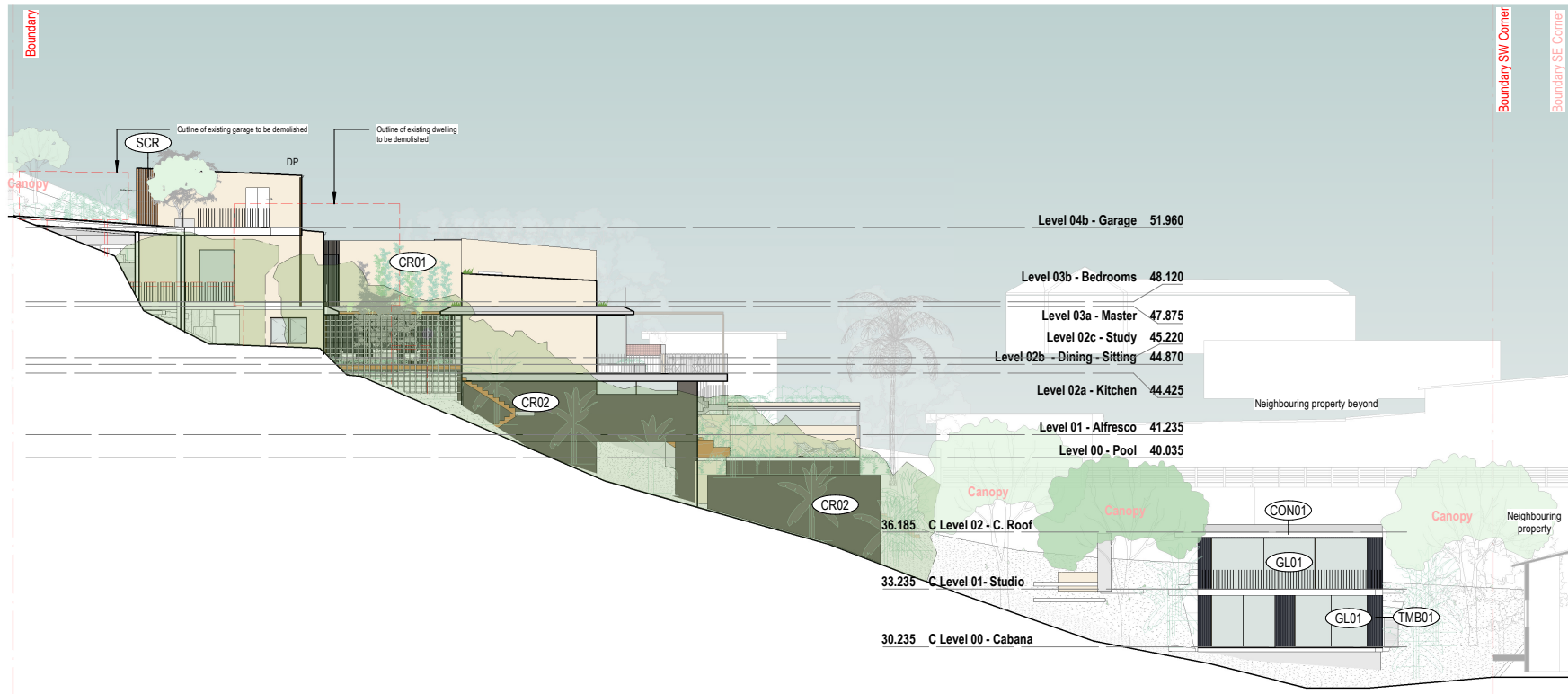


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				01 June 2021	Location 35 Bungan Head Road, Newport, 2106	Project Issue Date May 2020	Sheet Issue Date 23 Dec 2021	
				23 Dec 2021	Client Gorazdowski & Verbeek Family	Project number 1180	Drawing # D403	Revision
					Drawing West Elevation - Proposed			

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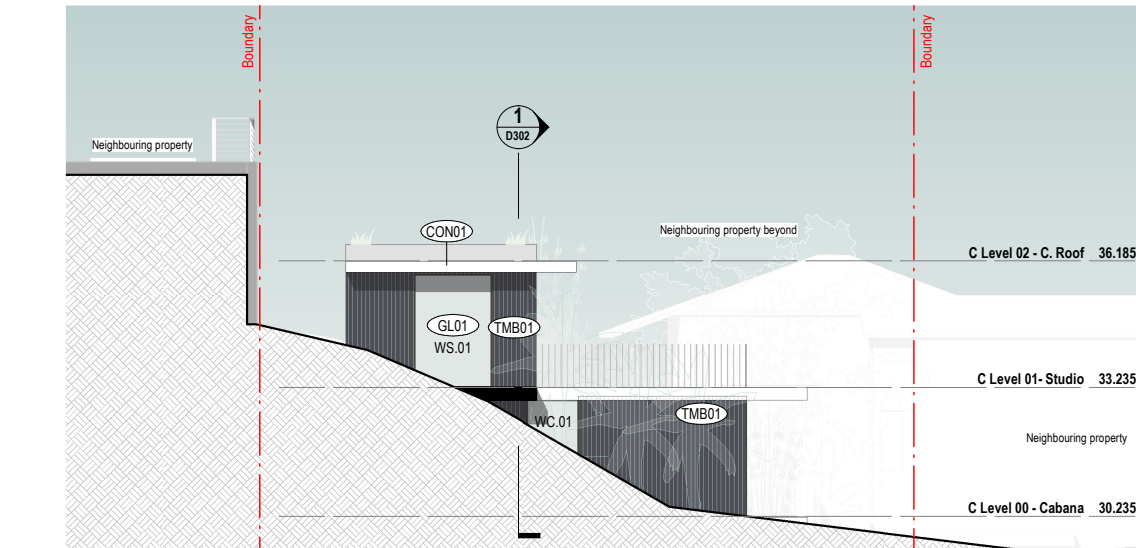
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Contact: info@buckandsimple.com ABN : 86 106 604 025 NSW #8631 VIC #19664 www.buckandsimple.com	2	Issued for Submission	01 June 2021	35 Bungan Head Road, Newport, 2106	Project Issue Date	May 2020	Sheet Issue Date
Development Application	3	Updated for DA submission	23 Dec 2021	Gorazdowski & Verbeek Family	Project number	1180	Revision
				West Site Elevation - Proposed	Drawing #	D408	3

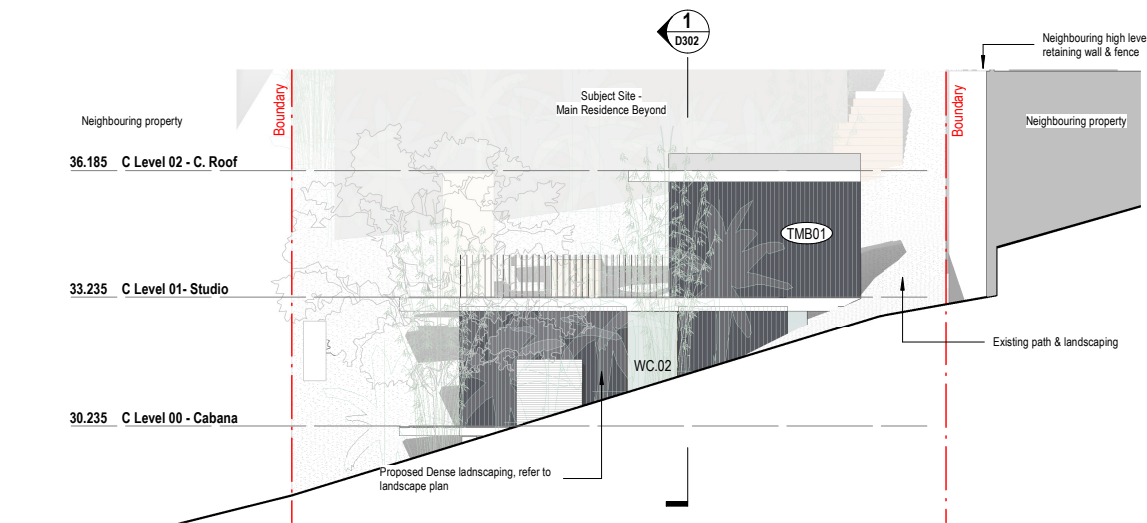
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No.	Description	Date
1	Updated for consultant information and issued for Development Application	18 May 2021
2	Issued for Submission	01 June 2021
3	Updated for DA submission	23 Dec 2021



1 Proposed Cabana - North Elevation
1 : 100



2 Proposed Cabana - South Elevation
1 : 100

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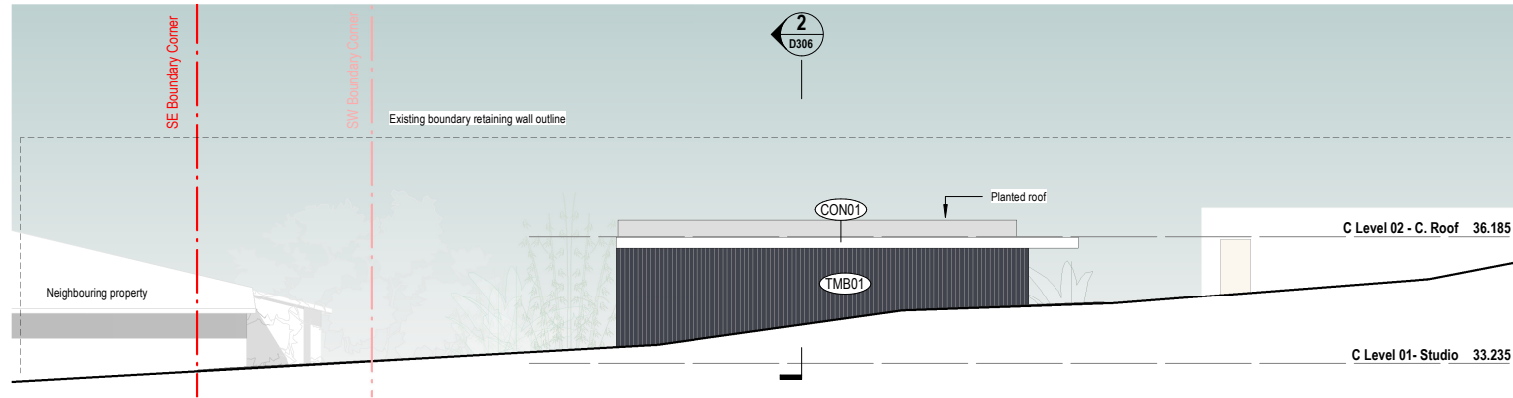
ABN - 88 100 604 025 NSW 88631 VIC #19664
www.buckandsimple.com

Development Application

Project
Bungan Residence
Location
35 Bungan Head Road, Newport, 2106
Client
Gorazdowski & Verbeek Family
Drawing
Cabana Proposed - North & South Elevations

Scale @ A3	1 : 100	Drawn by	BS	Checked by	BS
Project Issue Date	May 2020				
Project number	1180	Drawing #	D410	Revision	3

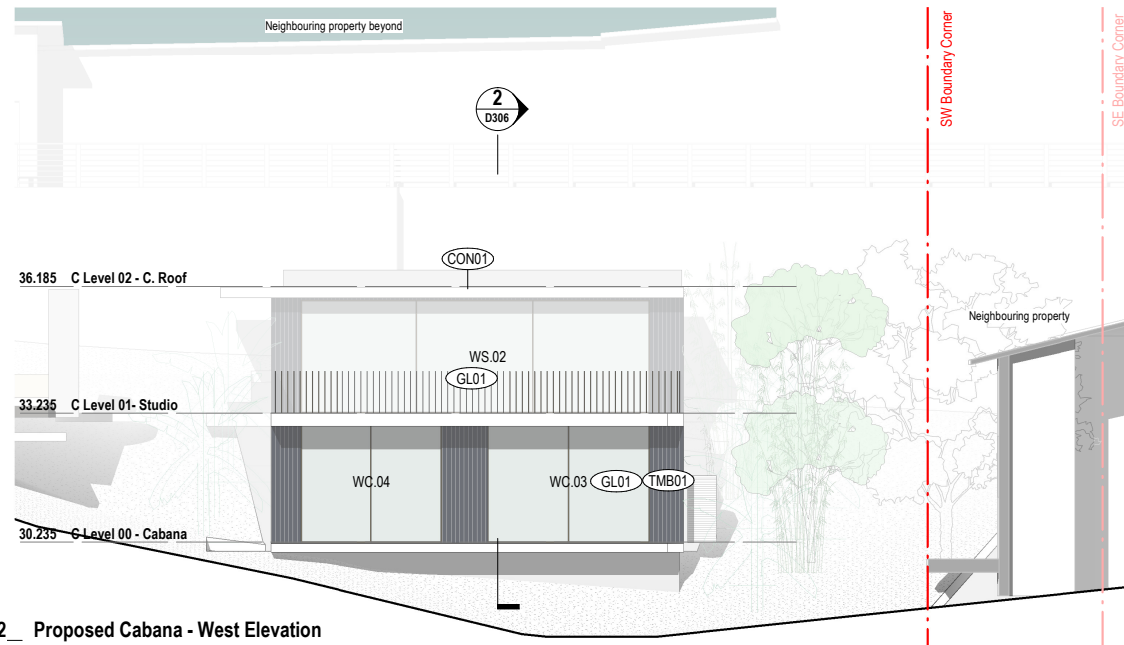
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No.	Description	Date
1	Updated for consultant information and issued for Development Application	18 May 2021
2	Issued for Submission	01 June 2021
3	Updated for DA submission	23 Dec 2021

1 Proposed Cabana - East Elevation
1 : 100



2 Proposed Cabana - West Elevation
1 : 100

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Development Application

Project Bungan Residence		
Location 35 Bungan Head Road, Newport, 2106		
Client Gorazdowski & Verbeek Family		
Drawing Cabana Proposed - East & West Elevations		
Scale @ A3 1 : 100	Drawn by BS	Checked by BS
Project Issue Date May 2020		
Project number 1180	Drawing # D411	Revision 3

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ITEM 3.5

REV2021/0038 - 8/252 ALLAMBIE ROAD ALLAMBIE HEIGHTS - REVIEW OF DETERMINATION OF APPLICATION DA2021/0418 FOR USE OF PREMISES AS A HEALTH SERVICES FACILITY IN CONJUNCTION WITH THE APPROVED USE AS A WAREHOUSE AND DISTRIBUTION CENTRE AND OFFICE PREMISES UNDE

REPORTING MANAGER Rodney Piggott
TRIM FILE REF 2022/206692
ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Site Plan and Elevations](#)

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to REV2021/0038 for review of Determination of Application DA2021/0418 for use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100 on land at Lot 8 SP 34147, 8 / 252 Allambie Road ALLAMBIE HEIGHTS, for the reasons for refusal set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0038
Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 8 SP 34147, 8 / 252 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Review of Determination of Application DA2021/0418 for use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100
Zoning:	Warringah LEP2011 - Land zoned B7 Business Park
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Marianne Holdings Pty Ltd
Applicant:	I Love It Enterprises Pty Ltd
Application Lodged:	01/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/10/2021 to 01/11/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 27,500.00

EXECUTIVE SUMMARY

The application is for the review of determination of DA2021/0418 for the Use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100, as well as associated signage, and as such has been referred to the Development Determination Panel (DDP) for determination.

DA2021/0418 was refused by Council under delegation on the 3 June 2021.

The development application proposed a change of use of an area of the tenancy from a *"warehouse and distribution centre"* for the sale of beauty products to a *"health services facility"*.

The application sought to provide for the provision of skincare services on the subject site, together with the carrying out of some minor internal alterations to the premises with associated signage.

The application was refused as Council disagreed with the applicants categorisation that skin care services use is a *"health services facility"* and the correct characterisation should be a *"business premises"* which is a prohibited use within the B7 Business Park zone. The application was refused for seven (7) reasons outlined in the assessment report and Notice of Determination.

The applicant has provided supporting legal advice prepared by Mills Oakley Lawyers dated 3 June 2021 in an attempt to address concerns raised by Council. However, upon review, the characterisation of the proposed skin care services as a *"health services facility"* is not concurred with and so the review application is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application is for the Review of Determination of DA2021/0418 for the Use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under Development Consent No. DA2021/0100, as well as associated signage.

The proposal involves a change of use of an area of the tenancy from a *'warehouse and distribution centre'* for the sale of beauty products to a *'health services facility'*.

The application involves the provision of skincare services on the subject site, together with the carrying out of some minor internal alterations to the premises with associated signage.

Internal Works

The internal works include the demolition of existing walls to create doorways, and the construction of three (3) internal walls to create a new waiting room, two (2) consulting rooms and a storeroom.

Skin Services '*Health Services Facility*'

The tenancy will provide skin services relating to the maintenance and improvement of the skin. The services include treating conditions such as Acne, Rosacea, skin pigmentation, sun damage, premature skin aging and dry or dehydrated skin conditions.

The services will be carried out onsite within the proposed two (2) consulting rooms.

Hours of Operation

The operating hours for the *'health service facility'* are as follows:

- Monday : Friday: 7:00am - 7:00pm
- Saturday : 8:00am - 4:00pm
- Sunday : Closed

Staff Numbers

The proposal involves eight (8) staff onsite at any one time.

Car Parking

The tenancy has access to eight (8) car parking spaces. It is proposed that the new use as a *'health service facility'* will utilise the existing three (3) parking spaces that are not allocated to the *'warehouse and distribution centre'*.

Business Signage

The application includes additional Business Identification Signage.

The proposed wall signage has dimensions of 0.75m x 2.67m and is to be affixed to the front elevation of the tenancy.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Warringah Local Environmental Plan 2011 - Zone B7 Business Park
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Lot 8 SP 34147 , 8 / 252 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Allambie Road.

The site is regular in shape with an offset frontage of 15.24m along Allambie Road, a width of 122.865m and a depth of 44.195m. The site has a surveyed area of 5,428m². The subject tenancy is Lot 8 within strata plan which has an area of 431.6m². The lot has the provision of eight (8) car parking spaces.

The site is located within the B7 Business Park zone and accommodates a two storey industrial warehouse building and car parking. The site is currently occupied by a warehousing distribution centre and ancillary offices for a beauty product business.

Map:



SITE HISTORY

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

- Development Application DA2021/0418 for the Use of the premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100, as well as associated signage was refused by Council on the 3 June 2021.
- Development Application DA2021/0100 for the use of premises as a Warehouse and Distribution Centre and Office Premises including Business identification signage was approved by Council on the 8 April 2021.
- Development Application DA2020/1314 for the use of the premises as a combined Warehouse and Distribution Centre and Health Services Facility including business identification signage was withdrawn from Council due to Council's position that skincare service use is more suitably defined as a 'business premises' not a 'health service facility' and parking/traffic concerns.
- Development Application 91/347 for the occupation of Unit 8 for the purpose of warehousing of greeting cards and board games, including associated office and showroom was approved on the 11 November 1991.
- Development Application 87/302 for the construction of a warehouse/office complex containing

nine units with associated car parking and landscaping was approved on the 1 September 1087.

Application History

The applicant provided legal advice from Mills Oakley Lawyers to support the argument that the proposed use is a permissible use as a '*health services facility*'. The legal advice was reviewed by Council's Legal Counsel and this planning assessment has taken into consideration that advice.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 3 June 2021 and the notice of determination was issued on 3 June 2021. The review was lodged on 1 October 2021 and is to be considered by Council's Development Determination Panel on 13 April 2022, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal/additional information are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/10/2021 to 01/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Howard Jones	Address Unknown
Jack Albert Kapterian	27 Darley Street FORESTVILLE NSW 2087
Mr Gregory Peter Bury	62 Clontarf Street SEAFORTH NSW 2092

The following issues were raised in the submissions:

- **Change of use from warehouse to retail**
- **Customer car parking**
- **Signage**
- **Loading and unloading**

The above issues are addressed as follows:

- **Change of use from warehouse to retail**

The submissions raised concerns that proposed change of use to include the skincare services will result in congestion within the complex as demand for parking and regularity of customers increases.

Comment:

Council classifies the proposed skincare services to be a "business premises" and is therefore not permissible within the B7 Business Park zone under the WLEP 2011. The proposal is considered to result in direct conflict with the objectives of the zone and will not result in orderly development of land.

See Part 1 Land Use Table for further discussion on this issue.

- **Customer car parking**

The submissions raised concerns that the proposed use will result in increased demand for customer car parking. Concern was also raised that customers may resort to using car parking spots that are not allocated to the premises.

Comment:

The applicant has provided a breakdown of the proposed and existing uses on site against the requirements under Appendix 1 Car Parking Requirements of the Warringah Development Control Plan 2011. The proposal is considered to be consistent with the requirements. See C3 Parking Facilities for further discussion.

In addition, the application was reviewed by Council's Traffic Engineer who provided comments in support of the application, subject to recommended conditions of consent. The recommended conditions require the number of customers on site at any one time to be limited to four (4) and the customer and staff parking to be clearly signposted. Car parking for customers shall be three

spaces immediately in front of the unit and maintained and available for the duration of the approved use.

- **Signage**

The submissions raised concerns that the proposed signage is not consistent with the character of the existing signage within the business park.

Comment:

The proposed signage has been assessed against the relevant environmental planning instruments. See SEPP 64 - Advertising and Signage and D23 Signage within the assessment report for further discussion.

- **Loading and unloading**

The submissions raised concerns that there is already congestion when loading and unloading and the intensification of the use will make it difficult to manoeuvre. It is mentioned the driveway is one way and there is often congestion when more than one truck and a number of employees arrive at the same time.

Comment:

There is no loading and unloading associated with the proposed skincare services use. The existing warehouse/distribution approved use shall operate in accordance with the conditions of consent in relation to loading and unloading.

The application was reviewed by Council's Traffic Engineer who provided comments stating the parking provision is in line with the required numbers under the DCP for this type of facility and the generation is within the identified capacity of the road network adjoining the premises.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Changes in the review do not impact the prior comments and conditions of</p>

Internal Referral Body	Comments
	Environmental Health. No objections.
Environmental Health (Food Premises, Skin Pen.)	General Comments Changes in the review do not impact the prior comments and conditions of Environmental Health. No objections.
Traffic Engineer	The proposal has been assessed against the requirements for the development type and the parking provision requirements and traffic generation impacts. The parking provision is in line with the required numbers under the DCP for this type of facility and the generation is within the identified capacity of the road network adjoining the premises. The concern with the parking layout of the site can be addressed by condition to identify the customer parking for the new use as the spaces immediately in front of the business unit with the lower turnover staff parking on the opposite side of the access driveway. The proposal is supported on traffic grounds

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment

criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The signage is considered to be incompatible with the existing character of the area as it directly relates to a prohibited land use.	NO
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The signage is inconsistent with that of B7 Business Park zoning area as the sign is related to a prohibited land use.	NO
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The signage does not detract from any form of visual quality including those specific areas listed within matters for consideration.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The signage does not compromise nor obscure views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage is not of a scale to cause unreasonable impacts upon the existing views of the skyline.	YES
Does the proposal respect the viewing rights of other advertisers?	The signage respects the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage is of a scale and proportion that does not create visual impacts to the streetscape. Therefore, the signage is appropriate for this context.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposal contributes to the visual interest of the streetscape with a variety of colours and wording. However, the signage relates to a prohibited land use and is therefore not appropriate for the location.	NO
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The outcome for the signage is to increase the amount of signage on the subject site. The business signage relates to a prohibited land use and therefore does not reduce clutter or simplify advertising.	NO

Does the proposal screen unsightliness?	There is no unsightliness to be screened.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The signage does not protrude above the building or structure.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The signage is considered to be incompatible with the surrounding industrial area character and the building of which it is attached to as it relates to a prohibited land use.	NO
Does the proposal respect important features of the site or building, or both?	The signage does not respect the zoning of the site as it is related to a prohibited land use.	NO
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage relates to a prohibited land use and therefore promotes a prohibited business which is considered inconsistent with the relationship to the site.	NO
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No safety devices have been designed as an integral part of the signage or structure.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	N/A	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A	N/A
Is the illumination subject to a curfew?	N/A	N/A
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The signage would not reduce the safety for any road, pedestrian or bicyclist.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal does not obscure sight lines from public areas.	YES

The proposed signage is considered to be of a suitable scale and design.

However, the business signage relates to a land use that is prohibited use within the B7 Business park zone. The proposal is therefore deemed to be inconsistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Division 10 Health Services Facilities

57 Development permitted with consent

(1) Development for the purpose of health services facilities may be carried out by any person with consent on land in a prescribed zone.

(2) Development for any of the following purposes may be carried out by or on behalf of the public authority with consent on State land that is in a land use zone identified by another environmental planning instrument as a "special use" zone for a health services facility:

- (a) biotechnology research or development industries,
- (b) business premises or retail facilities to cater for patients, staff or visitors,
- (c) multi dwelling housing.

(3) Consent must not be granted for development of a kind referred to in subclause (2) unless the consent authority is satisfied that the Director-General has certified in a site compatibility certificate that, in the Director-General's opinion, the development is compatible with the surrounding land uses.

(4) Nothing in this clause:

- (a) presents a consent authority from:
 - (i) granting consent for development on a site by reference to site and design features that are more stringent than those identified in a site compatibility certificate for the same site, or
 - (ii) refusing to grant consent for development by reference to the consent authority's own assessment of the compatibility of the development with the surrounding land uses, or
- (b) otherwise limits the matters to which a consent authority may have regard in determining a development application for development of a kind referred to in subclause (2).

Comment:

The subject site is located within the B7 Business Park zone and is a prescribed zone. Therefore, *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) is applicable to the subject site.

Council does not consider that the skincare service is appropriately defined as a "health services facility" and is more suitably and appropriately defined as a "business premises" as defined within the *Warringah Local Environmental Plan 2011*. The development is not characterised as a "health services facility" and therefore the Infrastructure SEPP is not applicable to the application.

The use of the site as a "business premises" is not permitted under the WLEP 2011 and also within the Infrastructure SEPP.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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

The development proposes additional uses to the existing approved warehouse and distribution centre and office and does not involve any works to the building that require an assessment of the principal development standards.

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	N/A
6.4 Development on sloping land	N/A

Detailed Assessment

Zone B7 Business Park

The applicant has maintained the characterisation of the proposed development as being for a *"warehouse and distribution centre & office premises for the sale of beauty products online and health services facility"*. The applicant has provided legal advice prepared by Mills Oakley Lawyers dated 3 June 2021 arguing that the proposed skin care side of the business is development that should be relevantly characterised as a *"health services facility"* under the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and the Warringah Local Environmental Plan 2011.

The legal advice was reviewed by Council's Legal Counsel and the advices have been taken into consideration as part of the assessment of the application.

The subject site is zoned B7 Business Park (B7 zone) under the Warringah Local Environmental Plan 2011 (WLEP 2011).

The proposal can be characterised as a mixed-use development for dual, independent uses, one being a *"warehouse and distribution centre"* the second being for the *"office premises"* and the other being for a *"health services facility"* for skin care services.

The *"warehouse and distribution centre"*, *"office premises"* and *"health services facility"* are all permitted uses with consent in the B7 zone as they are not prohibited in Item 4 of the land use table for the B7 zone of the WLEP 2011.

Council also acknowledges that a *"health services facility"* is permitted with development consent in the B7 Business Park in a 'prescribed zone' under State Environmental Planning Policy Infrastructure (Division 10).

The development application describes the skincare services use to be provided within the tenancy as a *"health services facility"*. This characterisation is not concurred with, in that the provision of skin treatment services to the public is to be properly characterised as a *"business premises"*. A *"business premises"* is not a permitted use within the B7 zone of the WLEP 2011. The characterisation of the development continues to be fundamental to the approval of the Development Application.

Specifically, a *"health services facility"* is defined in the dictionary to the WLEP 2011 as follows:

"health services facility means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following-

- (a) a medical centre
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) patient transport facilities, including helipads and ambulance facilities,
- (e) hospital."

Council agrees with the legal advice prepared by Mills Oakley that the word "includes" in the definition of "health services facility" means that the listed uses in the definition are not to be read as being exclusive or an exhaustive list.

However, from the definition above, it is clear the uses are intended to refer to primarily medical or allied medical services provided by persons who are generally recognised as having some specialist qualifications to provide such health care. The skin care services will not be principally provided by persons registered under an Act for the purpose of providing health care (as per the WLEP 2011 definition).

The definition of health service in the Health Services Act 1997 (NSW) is defined as follows:

health service means any of the following-

- (a) any hospital service,
- (b) any medical service,
- (c) any paramedical service,
- (d) any community health service,
- (e) any environmental health service,
- (e1) the supply or fitting or any prosthesis or therapeutic device,
- (f) any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons.

It remains the view under this assessment that the skin treatments proposed to be offered as part of the development application, including chemical skin peels, laser skin resurfacing, chemical and physical exfoliation, dermablading, hydradermabrasion, masques and serums and LED light therapy fail to fall within the definition of health services facility.

The Health Services Act 1997 (NSW) does not relate to or regulate salons which provide skin treatments such as those proposed in the development proposal. As a result, the services that are intended are considered to be cosmetic procedures or beauty therapies and are not medical procedures. Therefore, the change of use which entails the provision of skin treatment services to the public is properly characterised as a "business premises" under the WLEP 2011.

The services proposed to be provided at part of the premises, which the Mills Oakley advice refers to as being provided by "dermal clinicians or therapists" are merely an extension of services which are traditionally provided at a beauty parlour, such as facials and peels, and do not constitute health services. The dermal clinicians and therapists performing the services will refer clients to other services, such as medical practitioners should there be any issues identified that require medical assessment or treatment.

The skincare services being offered generally relate directly to the cosmetic appearance of the skin and do not directly relate to the maintenance or improvement of health, or the restoration of health, of persons or the prevention of disease in or injury to persons. "Cosmetic" is defined as "relating to treatment intended to restore or improve a person's appearance". The services proposed directly relate to treating mild to medium acne/breakouts, melasma/hyperpigmentation, mild scarring, skin rejuvenation, stretch marks, wrinkles, aging and pigmented lesions which directly relate to cosmetic treatments

offered by beauty therapists to improve a persons appearance. The characterisation of the skincare services being offered as a "health service" is not correct, particularly as any service directly relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons must be sought elsewhere by medical practitioners.

Business premises is defined in the dictionary to the WLEP 2011 as follows:

"business premises means a building or place at or on which-
(a) *an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*
(b) *a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital."*

A "business premises" is a prohibited use in the B7 zone and is not permissible under the Infrastructure SEPP.

The prohibited "business premises" is in direct conflict with clause 1.2 Aims of Plans of the WLEP 2011 and the objectives of B7 Business Park of the WLEP 2011. The prohibited land use is not considered to be an orderly development of land and has the potential to undermine the strategic planning intent of the B7 zone.

The development is properly characterised as a "**business premises**" which is a prohibited use in the B7 zone and consequently the application should be refused for this reason.

Warringah Development Control Plan

Built Form Controls

The development proposes additional uses to the existing approved warehouse and distribution centre and office does not comprise of any works to the building that require an assessment of the built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B4 Site Coverage	N/A	N/A
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	N/A	N/A
B10 Merit assessment of rear boundary setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	N/A	N/A
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	No	No
E1 Preservation of Trees or Bushland Vegetation	N/A	N/A
E2 Prescribed Vegetation	N/A	N/A
E4 Wildlife Corridors	N/A	N/A
E6 Retaining unique environmental features	N/A	N/A
E10 Landslip Risk	N/A	N/A

Detailed Assessment

A.5 Objectives

The classification of the skincare services as a "business premises" should be maintained and therefore is not a permissible use within the B7 zone.

The development does not satisfy the underlying objectives of cl.A.5 (Objectives) of WDCP. In particular, the development does not respond to the characteristics of the site and the qualities of the surrounding neighbourhood.

C3 Parking Facilities

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Warehouse/distribution centre	1.3 spaces per 100m ² GFA (including up to 20% of floor area as office premises space component. Office premises	4	4	0

	component above 20% determined at the office premises rate)			
Office Premises	1 space per 40m ² GFA above 20%	0.1	0	0
Business Premises	1 space per 40m ² GFA excluding customer service/access areas, plus for customer service access areas 1 space per 16.4m ² GFA	3.7	4	0
Total		7.8	8	+0.2

The proposal has been calculated against the requirements of the Warringah DCP as shown above.

The applicant provided legal advice to breakdown the gross floor space components of the proposal in order to determine the required car parking on site. Council agrees with the method of calculation given the gross floor area calculations provided.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

Existing car parking spaces on site shall be retained and used.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

Existing car parking spaces on site shall be retained and used.

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 satisfactory in this particular circumstance.

D23 Signs

Description of non-compliance and/or inconsistency

The application proposes one (1) business identification sign that relates to the skin care services side of the operation.

The signage consists of the following:

Sign	Requirement	Width	Height	M ²	Complies
Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	<p>Shall not extend within 200mm of the top and sides of the wall.</p> <p>Shall not cover any window or architectural projections;</p> <p>Must be of a size and shape that relates to the architectural design of the building to which it is attached;</p> <p>Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and</p> <p>Shall not project more than 300mm from the wall.</p>	2.67m	0.75m	2	Yes

The proposed sign is located between two previously approved signs (DA2021/0100) with dimensions 2.62m in length and 0.75m in height. This creates an overall signage area of 6m² (8m in length and 0.75m in height).

The combined three (3) pieces of signage continue to satisfy the requirements of the signage control. However, the signage as part of this development application, relates to the "business premises" (skin care service operation) which is a prohibited land use in the B7 zone. Consequently, the land use and associated business signage for that land use cannot be supported.

An assessment of the application has also found the development to be inconsistent with the requirements of *State Environmental Planning Policy No. 64 - Advertising and Signage* due to the signage relating to a prohibited land use.

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 not satisfactory 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

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

The assessment of this application and this report acknowledge the additional information provided by the applicant for the review of determination. The assessment does not concur with the applicant's categorisation of the use as a 'Health Services Facility'. It is considered that the development is properly characterised as a "business premises" which is a prohibited use in the B7 zone and consequently the application should be refused for this reason.

The proposed development is not considered to satisfy the relevant controls for the site and the prohibited land use is not considered to be an orderly development of land and has the potential to undermine the strategic planning intent of the B7 zone. The report concludes with the recommendation that the Development Determination Panel maintain the previous refusal of the development application based on the reasons outlined within this assessment report.

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 REV2021/0038 for the Review of Determination of Application DA2021/0418 for use of premises as a Health Services Facility in conjunction with the approved use as a Warehouse and Distribution Centre and Office Premises under development consent DA2021/0100 on land at Lot 8 SP 34147,8 / 252 Allambie Road, ALLAMBIE HEIGHTS, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 64 - Advertising and Signage.
2. 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.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of the B7 Business Park zone under the Warringah Local Environmental Plan 2011, in that the proposed use is a prohibited use in the zone.
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 D23 Signs of the Warringah Development Control Plan.



LOCALITY PLAN



SITE PLAN

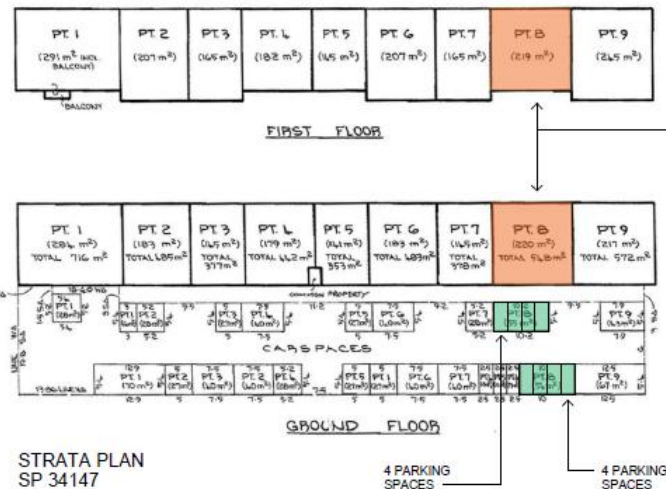
DO NOT SCALE FROM PLANS

M. 0437 275 275
P. 02 9905 5502
E. tony@styleness.com.au
W. www.styleness.com.au

Unit 25, 9 Powells Road
Brookvale NSW 2100 AUSTRALIA
ABN 37 604 270 840

styleness

PROPERTIES
PROPERTY STYLING
PROJECT MANAGEMENT



FRONT ELEVATION



FRONT ELEVATION (EXISTING BIN STORAGE)

UNIT 8
I LOVE IT ENTERPRISES PTY LTD
ALLAMBIE HEIGHTS

OPERATING HOURS:
MONDAY-FRIDAY 7AM – 7PM
SATURDAY 8AM – 4PM

NUMBER OF EMPLOYEES: 8

SUMMARY OF USES:
Warehouse, Storage, Picking and Packing
of Skincare products

Commercial office component for the support
of online retail operations, such as marketing,
inventory management and customer service.

Health services facility used to provide other
services relating to the maintenance and
improvement of the health and restoration to
health of persons.

PROJECT TITLE:
PROJECT No.
AT:
FOR:
DRAWING TITLE
DRAWING No.
SCALE:

PROPOSED CHANGE OF USE
001
8/252 ALLAMBIE ROAD ALLAMBIE HEIGHTS
I LOVE IT ENTERPRISES PTY LTD
SITE PLAN
DA02-01
AS INDICATED

ISSUE
3

DATE
14.9.21

DESCRIPTION
DA-02 ISSUE

DRAWN
TJ

APPROVED
DP



ITEM 3.6**DA2021/1699 - 31 WEST STREET BALGOWLAH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER** Steve Findlay**TRIM FILE REF** 2022/206659**ATTACHMENTS**
1 [↓](#) Assessment Report
2 [↓](#) Site Plan and Elevations
3 [↓](#) Clause 4.6 - Floor Space Ratio
4 [↓](#) Clause 4.6 - Height of Building**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and 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 DA2021/1699 for alterations and additions to a dwelling house including a swimming pool on land at Lot 27 DP 82411, 31 West Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1699
Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 27 DP 82411, 31 West Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Richard Andrew Binch Andrea Jones
Applicant:	Andrea Jones
Application Lodged:	27/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/10/2021 to 22/10/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 10.5% 4.4 Floor space ratio: 13.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 906,500.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house, the construction of a swimming pool and the excavation of a tunnel to provide access from the existing garage to a proposed lift.

The application is referred to the Development Determination Panel (DDP) due to non-compliances with the Height of buildings and Floor space ratio development standards under the MLEP 2013 of more than 10%. The variations are relatively minor, being 10.5% and 13.4% respectively, with the only external change to the height being the joining of the attic dormer windows. The additional floorspace is contained within the roof space with no change to the maximum ridge line height.



Existing

Proposed

There were no objections to this application raised by surrounding and nearby residents.

The only critical assessment issues were the development standard non-compliances and the construction method for the lift access tunnel. The non-compliances with the Height of buildings and Floor space ratio development standards are acceptable and the applicant's clause 4.6 requests are adequate in justifying the variations.

The construction of the lift access tunnel has the risk of significantly damaging a large rock outcrop that sits in the front yard, should the construction method be via a trench. These concerns were raised with the applicant who agreed to a condition required a tunnelling method. This construction method will leave the surface outcrop untouched and resolve this issue.

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

PROPOSED DEVELOPMENT IN DETAIL

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

In detail, the proposal includes:

- The construction of a tunnel from the rear of the garage to a new lift;
- The construction of a new lift;
- The construction of a bin storage area, pathway/stairs and planter at the front of the site;
- The extension of the existing basement rumpus room and bathroom towards the front;
- The extension to and internal reconfiguration of the existing ground floor, including a new outdoor living area;
- The extension to and internal reconfiguration of the existing first floor, including a new balcony;
- The construction of an attic level containing a bedroom and ensuite;
- The construction of a new swimming pool with fencing, decking and pump;
- Associated landscaping, pathways/stairs and retaining walls;
- The construction of new boundary fencing.

While it is noted that the front of the existing garage sits outside the site, on public land, no works are proposed to the garage and Council's Road Assets team have raised no objections.

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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 27 DP 82411 , 31 West Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The site is located on the western side of West Street, has an area of 686.8sqm and slopes down towards the east.</p> <p>Existing on the site is a four storey dwelling and a detached triple garage. The garage sits separated from the dwelling, at the front of the site. A portion of the garage sits over the front boundary, on public land.</p> <p>The site also contains several rock outcrops including one large outcrop between the garage and dwelling. There are no trees on the site.</p> <p>The surrounding development consists of detached residential dwellings in landscaped settings.</p>

Map:



SITE HISTORY

A prelodgement meeting was held on 10 June 2021 to discuss a version of the current proposal.

Comments were provided in the prelodgement notes on a range of issues. Overall, the notes indicate that the proposal could be supported, subject to minor changes and additional details being provided with the application.

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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/10/2021 to 22/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to an existing dwelling. The dwelling alterations and additions include basement, ground floor, first floor and attic proposals and pedestrian access arrangements to the car parking facilities at street level to the house. Alterations to the landscaped area include the construction of a swimming pool and associated decking.</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 • 4.1.9 Swimming Pools, Spas and Water Features <p>The existing site contains no trees prescribed trees protected under the DCP and instead contains perimeter planting, gardens and rock outcrops. A Landscape Plan is submitted with the application detailing enhancement of the existing landscape setting and incorporation of the rock outcrops into the landscape design.</p> <p>It is noted for the Planners consideration that the proposed Garage and roof is forward of the boundary and encroaches into public land.</p> <p>Landscape Referral raise no objections to the proposal.</p>
Road Reserve	There is no apparent impact on existing road infrastructure assets.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A427460_04 dated 22 September 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A response was received from Ausgrid who raised no objection to the proposal, subject to the implementation of safe work practices in the safe work NSW document - 'Work Near Overhead Powerlines: Code of Practice'.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.4m	10.5%	No

Floor Space Ratio	0.5:1 (343.4sqm)	0.567:1 (389.57sqm)	13.4%	No
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Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliances:

Development standards:	Height of Buildings and Floor Space Ratio
Requirement:	8.5m and 0.5:1
Proposed:	9.4m and 0.567:1
Percentage variation to requirement:	10.5% and 13.4%

Assessment of request to vary development standards:

The following assessment of the variations to Clauses 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio development standards 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 and Clause 4.4 Floor Space Ratio are 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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.'

Section 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:

Clause 4.3 Height of Buildings:

- *The proposal represents a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct.*
- *The minor breach in the height control does not result in an adverse impact on view loss to neighbouring properties.*
- *The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived along this side of West Street.*
- *The key design drivers for the development are taken from the Manly LEP and DCP. The development is an improvement to the existing neighbourhood fit and will sit in similar scale and finish to other developments along that adjoin that subject site. The development will be of a high-quality finish and the overall proposal will have a positive impact on the streetscape, neighbouring properties, and surrounding area.*
- *No unacceptable environmental impacts will flow from the proposed development during construction of the alterations and additions and when the development has been completed. The proposal will not contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale.*
- *An approval of this development with a minor variation to the height control would be unlikely to set a precedent of other similar developments in this immediate locality, noting that there are many other residential dwellings along West Street, which are dominant by way of their height, scale and massing.*

Clause 4.4 Floor Space Ratio:

- *The proposal represents a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct.*
- *The minor breach in the FSR control does not result in an adverse impact on view loss to neighbouring properties.*
- *The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived along this side of West Street.*
- *The key design drivers for the development are taken from the Manly LEP and DCP. The development is an improvement to the existing neighbourhood fit and will sit in similar scale and finish to other developments that adjoin the subject site. The development will be of a high-quality finish and the overall proposal will have a positive impact on the streetscape, neighbouring properties, and surrounding area.*
- *No unacceptable environmental impacts will flow from the proposed development during construction of the alterations and additions and when the development has been completed. The proposal will not contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale.*
- *An approval of this development with a minor variation to the FSR control would be unlikely to set a precedent of other similar developments in this immediate locality, noting that there are many other residential dwellings along West Street which are dominant by way of their height, scale and massing.*

It is agreed that the proposal will contribute to the streetscape of this precinct, will not result in adverse impacts on view loss, solar access, overshadowing, visual and acoustic privacy, or bulk and scale to neighbouring properties, is a similar scale and finish to other nearby developments, will have no unacceptable environmental impacts, and would not set an undesirable precedent.

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

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

Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 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 and Floor space ratio development standards and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

Clause 4.3 Height of Buildings

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the MLEP 2013 are addressed as follows:

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

Comment:

The proposed works that result in a non-compliance with the height limit consist of the new window to the attic. This new window replaces two dormer windows and will sit at a lower RL than the peak of the existing dwelling. In this regard, the development will provide a building height and roof form that is consistent with the existing dwelling, surrounding dwellings and the desired future streetscape character.

b) to control the bulk and scale of buildings,

Comment:

The additional works to the dwelling are minor and will result in a development that is largely consistent with the existing bulk and scale of buildings on the site.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal will not result in any disruption to views as the works are taking place almost entirely within the existing building envelope.

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

Comment:

As demonstrated on the submitted shadow diagrams, the development will retain the existing amount of sunlight to the private open spaces and habitable rooms of the neighbouring property to the south.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other

aspect that might conflict with bushland and surrounding land uses.

Comment:

The site is not within an environmental protection zone.

Clause 4.4 Floor Space Ratio

The underlying objectives of the standard, pursuant to Clause 4.4 Floor Space Ratio of the MLEP 2013 are addressed as follows:

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

Comment:

The proposed works that result in a non-compliance with the floor space ratio largely take place within the existing building envelope. As such, the bulk and scale of the proposed development will be consistent with the existing dwelling, surrounding dwellings and the desired future 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 new works are largely within the existing building envelope and/or below the maximum RL of the existing roof. In this regard, the development will 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,

Comment:

The proposed works are largely within the existing building envelope with the works outside this envelope being of a minor nature (eg: the attic window) or near ground level (eg: the pool). As such, the development will maintain an appropriate visual relationship with 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,

Comment:

The accessway to the lift core will be tunnelled underneath the existing rock outcrop that sits in the front yard. All other works are either on the existing building or do not disturb important environmental features. The development as a whole will 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.

Comment:

The site does not sit within a business zone.

Zone Objectives

The underlying objectives of the R1 General Residential zone are addressed as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal will provide for the housing needs of the community in a dwelling that contributes to the variety of housing types and densities and which will not prevent other land uses that provide facilities or services to meet the day to day needs of residents.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular 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 Buildings and Floor Space Ratio Development Standards associated with a single dwelling house (Class 1 building).

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 686.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 300sqm	1 dwelling on existing 686.6sqm site	-	Yes
	Size: Min. 134sqm	395.1sqm	-	Yes
4.1.2.1 Wall Height	N: Max. 7.1m (based on 1:10 gradient)	7.4m	4.2%	No
	S: Max. 7m (based on 1:12 gradient)	6.5m	-	Yes
4.1.2.2 Number of Storeys	Max. 2 storeys	4 storeys	100%	No

4.1.2.3 Roof Height	Height: Max. 2.5m	3m	20%	No
	Pitch: Max. 35 degrees	35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing Building Line / Min. 6.0m	Garage: 0.0m	-	No - Existing
		Stairs: 0.0m	100%	No
		Bin Storage / Planter: 1.3m	78.33%	No
		Terrace: 1.5m	75%	No - Existing
		Dwelling: PBL	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N Garage: Min. 1.33m	6.8m	-	Yes
	N Basement: Min. 800mm	Dwelling: 1.5m	-	Yes
		New rumpus: 1.9m	-	Yes
	N Ground Floor: Min. 1.93m	Dwelling: 1.6m	17.1%	No - Existing
		Seating area: 1.8m	6.74%	No
	N First Floor: Min. 2.46m	Dwelling: 1.6m	34.96%	No - Existing
		Balcony: 3.3m	-	Yes
	N Attic: Min. 3.4m	4.8m	-	Yes
	S Garage: Min. 1.33m	0m	100%	No - Existing
	S Basement: Min. 400mm	Dwelling: 1.8m	-	Yes
		New works: 6.7m	-	Yes
	S Ground Floor: Min. 1.53m	Dwelling: 1.8m	-	Yes
		Terrace: 2.1m	-	Yes
		Lift: 900mm	41.17%	No
	S First Floor: Min. 2.16m	Dwelling: 1.8m	16.67%	No - Existing
		Balcony: 3.7m	-	Yes
	S Attic: Min. 2.83m	3.5m	-	Yes
	Windows: Min. 3m (New windows calculated only)	N Basement: 1.9m	36.6%	No
		N Ground Floor: 1.8m	40%	No
		S Basement: 2m	33.3%	No
4.1.4.4 Rear Setbacks	Min. 8m	Retaining wall: 4.2m	47.5%	No
		Dwelling: 8.0m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space: Min. 55% of site area (377.63sqm)	72.15% (495.4sqm)	-	Yes
	Above ground:	4.5% (22.2sqm)	-	Yes

	Max. 25% of open space (123.85sqm)			
4.1.5.2 Landscaped Area	Landscaped area: Min. 35% of open space (173.39sqm)	31.77% (157.4sqm)	9.22%	No
	Min. 3 native trees	5 trees	-	Yes
4.1.5.3 Private Open Space	Min. 18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage (up to 6.2m)	8.5m	37%	No - Existing
4.1.9 Swimming Pools, Spas and Water Features	Height: Max. 1m above ground	800mm	-	Yes
	Min. 1m to decking	N: 3.4m	-	Yes
		E: 3.2m	-	Yes
	Min. 1.5m to waterline	N: 4.1m	-	Yes
		E: 3.8m	-	Yes
4.1.10 Fencing	Max. 1m / 1.5m where 30% transparent	2.3m where 900mm transparent	53.33%	No
Schedule 3 Parking and Access	Min. 2 spaces	3 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	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	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

The proposed development includes breaches to the maximum wall height, the maximum number of storeys, and the maximum roof height. Clause 4.1.2 of the Manly DCP 2013 does not contain objectives under which variations to the built form controls can be assessed on merit, and instead relies on the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013. See the detailed assessment of the proposed height in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the Manly LEP 2013 as it relates to Clause 4.3 Height of Buildings.

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

Description of non-compliance

The proposed development results in new breaches to the setback controls as follows:

- Stairs immediately on the front boundary and a bin storage area and planter 1.3m from the front boundary, where a setback of 6m is required;
- A seating area 1.8m from the northern side boundary, where a setback of 1.93m is required;
- A lift 900mm from the southern side boundary, where a setback of 1.53m is required;
- Windows within 1.8-2m from the northern and southern side boundaries, where a setback of 3m is required; and
- A retaining wall 4.2m from the rear boundary, where a setback of 8m is required.

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 portions of the proposed development that are not compliant with the relevant setback controls are generally small built form elements (being stairs, retaining walls, seating etc.), rather than significant new portions of the dwelling. In this way, the predominant bulk and scale of the development is as existing and anticipated for the site. Despite its non-compliances, the proposed development maintains and enhances the streetscape by providing an updated presentation, while retaining the desired spatial proportions of built form.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development is designed and sited so as not to unreasonably impact upon the privacy of the sites occupants or the occupants of adjoining land, and to retain suitable access to light, sunshine and air to the subject site and adjoining sites. The proposed development does not unreasonably obstruct views to or from public or private places, thereby facilitating acceptable view sharing. The proposed development generally retains the desired built form, and the existing rhythm or pattern of spaces along West Street. The proposed development does not alter vehicular access to the subject site, so retains safe and adequate traffic conditions.

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

Comment:

The proposed development is designed and sited to allow for flexibility of built form without resulting in any unreasonable amenity impacts to the subject site or adjoining sites.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed development includes landscaped area less than as required by the Manly DCP 2013. This non-compliance is demonstrated as acceptable for the reasons detailed in the section of this report

relating to Clause 4.1.5 Open Space and Landscaping of the Manly DCP 2013. The site retains ample soft open space for planting and vegetation. The subject site and surrounds are not classified as open space lands, national parks or bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed development includes 31.77% of the total open space as landscaped area (157.4sqm), where 35% (173.39sqm) is required.

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:

As modified by conditions of consent, the proposed development retains important landscape features of the site, including the rock outcrop in the front yard. The proposed development retains ample area for the planting of vegetation to support native flora and fauna.

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

Comment:

The proposed development retains a sizable garden in the front setback area, which can be used for planting of trees and other vegetation. The proposed development does not require unreasonable removal of existing vegetation.

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

Comment:

The proposed development is designed and sited so as not to result in unreasonable loss of amenity to the subject site itself, adjoining sites, the streetscape, or locality.

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

Comment:

The proposed development retains soft open space areas in the front and rear yards to assist with water infiltration on site and reduce runoff. The proposal is also supported by a stormwater plan, demonstrating suitable stormwater management for the new works.

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

Comment:

The proposed development is supported by a suitable landscape plan demonstrating that the site will be planted with appropriate species to avoid spread of weeds and degradation of private and public open space.

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

Comment:

The proposed development retains suitable landscaped areas to support existing wildlife habitat and corridors on the site and surrounding areas.

4.1.9 Swimming Pools, Spas and Water Features

The proposed development includes a pool in the front setback area, which is allowable under this control, if it does not detract from the amenity or character of the neighbourhood, and is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

The proposed location of the pool is such that it will not result in unreasonable impacts to the amenity or character of the subject site, adjacent sites, or surrounding area, in that it is small in dimensions, is separated from any living or private open space areas on adjoining sites, and will generally not be visible from the street. The pool is entirely located a maximum of 400mm above ground, and is set 3.2m from the front boundary and 3.4m from the side boundary (to the pool coping).

The proposed pool is compliant with the requirements of this control.

4.1.10 Fencing

The proposed development includes a partial front fence to a height of 2.3m above ground. Clause 4.1.10 of the Manly DCP 2013 provides that fences may achieve a height of 1m, or may be increased to 1.5m, where 30% of its height above 1m is to be transparent. The proposed fences is solid to a height of 1.4m, and then slatted to the maximum height of 2.3m.

Clause 4.1.10 does not contain objectives under which variations to built form controls can be assessed on merit. As such, the proposed development is considered in the context of the streetscape. West Street contains a number of fences higher than 1.5m, including examples of wholly or significantly solid construction. These fences are located along the western frontages of West Street (where the subject site is located) to its intersection with White Street.

Given this predominant fencing character in the locality, the proposed fencing is considered acceptable.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$9,065 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$906,500.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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 requests under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio have adequately addressed and demonstrated that:

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

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

This proposal, for alterations and additions to a dwelling house, the construction of a swimming pool and the excavation of a tunnel to provide access from the existing garage to a proposed lift, has been referred to the DDP due to non-compliances with the Height of Buildings and Floor Space Ratio development standards of more than 10%.

There were no objections raised to this development from surrounding or nearby residents.

The non-compliances with the Height of Buildings and Floor Space Ratio development standards are acceptable and the applicant's Clause 4.6 requests are sufficient to justify the variations.

The construction of the lift access tunnel and the risk of damage to a large rock outcrop that sits in the front yard, has been resolved via a condition (agreed to by the applicant) required a tunnelling method of construction.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clauses 4.3 Height of Building and 4.4 Floor Space Ratio development standards pursuant to Clause 4.6 of the MLEP 2013, as the Applicant's written requests have 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 standards 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 DA2021/1699 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 27 DP 82411, 31 West Street, BALGOWLAH, 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
DA09 Proposed Garage Floor Plan	2 February 2022	Archisoul

DA10 Proposed Garden / Pool Area	2 February 2022	Archisoul
DA11 Proposed Basement Floor Plan	2 February 2022	Archisoul
DA12 Proposed Ground Floor Plan	2 February 2022	Archisoul
DA13 Proposed First Floor Plan	2 February 2022	Archisoul
DA14 Proposed Attic Floor Plan	2 February 2022	Archisoul
DA15 Proposed Roof Plan	2 February 2022	Archisoul
DA16 Section B & D	2 February 2022	Archisoul
DA17 Section A & C	2 February 2022	Archisoul
DA18 Proposed Street Elevation	2 February 2022	Archisoul
DA19 Proposed North & South Elevations	2 February 2022	Archisoul
DA20 Proposed East & West Elevation	2 February 2022	Archisoul

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet-1 Stormwater Management Plan	19 August 2021	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A427460_04	22 September 2021	Efficient Living
Geotechnical Assessment Report	25 August 2021	Crozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 Landscape Plan Revision C	6 August 2021	Space Landscape Designs

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	26 August 2021	Applicant

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

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

2. 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, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

Dwelling house means a building containing only one dwelling.

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.

No existing structures located on public land are approved as part of this consent.

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

3. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than

\$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for

swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,065.00 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 \$906,500.00.

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

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

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

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

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

6. Security Bond

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

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

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

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

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

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

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

7. **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. **Lift Access Tunnel Excavation and Construction Methodology**

The excavation and construction of the access tunnel between the garage and the lift is to be carried out by way of tunnelling and not trenching. Excavation and construction of the tunnel is to ensure the existing rock outcrop above in the front yard is maintained and not damaged.

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.

9. **Compliance with Standards**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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

Reason: Preservation of significant environmental features.

11. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site as shown on the Landscape Plan,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

Trees.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

12. **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.

Despite the above, the access way to the lift shaft must be constructed via tunnelling and the rock outcrop above it must be protected during construction.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **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**

14. **Landscape Completion**

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

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres for small trees and 5.0 metres for larger trees, from buildings, 2.0 metres from structures including walling and paths, and at least 1.5 metres from common boundaries,
- iii) the nominated *Rhapiolepis indica* species shall not be planted and shall be replaced with a similar species that is not seed spreading.

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/>

15. **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.

16. **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

17. **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.

18. **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.

19. **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.



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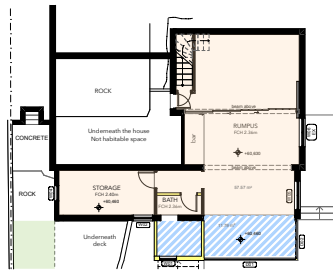
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REV

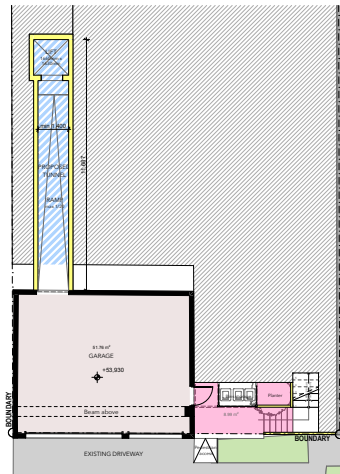
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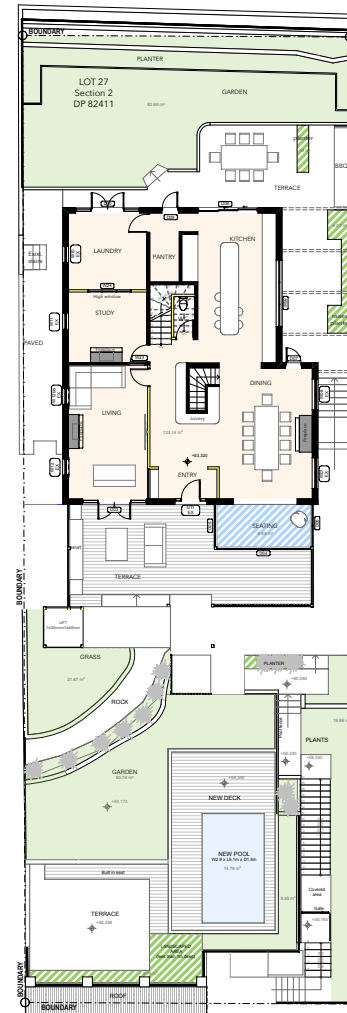
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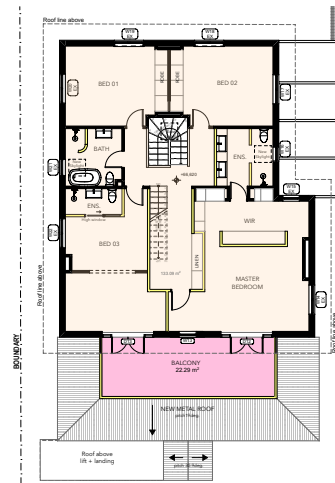
BASEMENT FLOOR PLAN



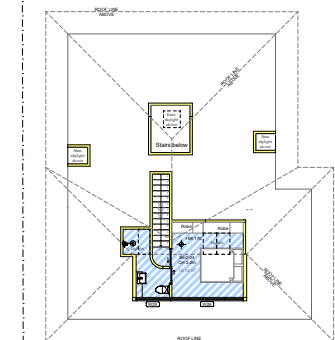
GARAGE FLOOR PLAN



GROUND FLOOR PLAN



FIRST FLOOR PLAN



ATTIC FLOOR PLAN

- LEGEND**
- Site Area (686.8m²)
 - Existing area
 - Existing garage area
 - New area
 - Additional open space (30.95m²)
 - New walls
 - Existing walls

Existing landscape : 276.15m² = 40.2%
Proposed landscape : 221.41m² = 32.3%

Deep soil planting = 192.16m² = 28%
Pool = 13.5m² = 2%
Landscape area (less than 1m deep) = 15.75m² = 2.3%

NOTE
Min open space : min 55% = 377.74m²
Proposed open space: 81% = 555.56m²
Min landscape : 35% of total open space = 35% of 555.56m² = 194.4m²

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REV DATE DESCRIPTION

REV	DATE	DESCRIPTION

PROJECT DETAILS

Drawn | Checked **CH - JG**
Plot Date: **22/02/22**
Project Status **DEVELOPMENT APPLICATION**
Client: **ANDREA JONES + RICHARD BINCH**
Project: **2019**

DRAWING TITLE :

**PROPOSED SITE PLAN /
AREA CALCULATION**

PROJECT NAME :

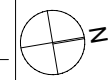
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Lot 27 - Section 2 - DP.82411

REVISION NO.

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DRAWING NO.

DA08



SCALE:
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STREET ELEVATION

1:100

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REV DATE DESCRIPTION

REV	DATE	DESCRIPTION

PROJECT DETAILS

Drawn | Checked CH - JG
Plot Date: 22/02/22
Project Status DEVELOPMENT APPLICATION
Client: ANDREA JONES + RICHARD BINCH
Project: 2019

DRAWING TITLE :

**PROPOSED STREET
ELEVATION**

PROJECT NAME :

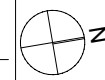
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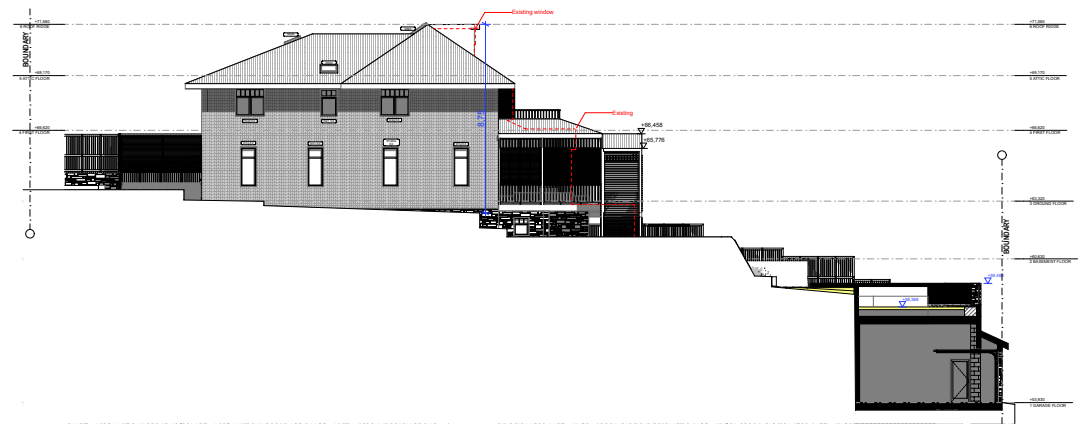
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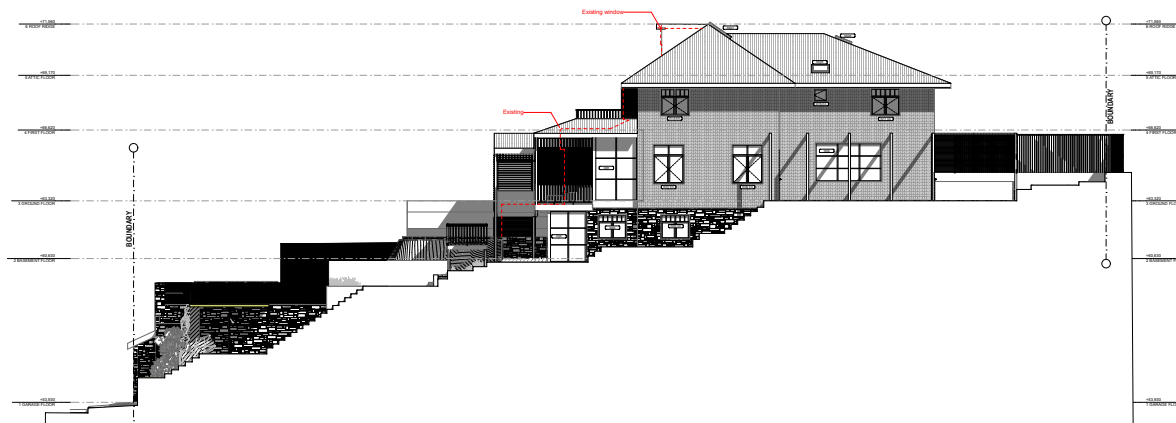


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SOUTH ELEVATION

1:200



NORTH ELEVATION

1:200

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REV	DATE	DESCRIPTION

PROJECT DETAILS

Drawn | Checked CH - JG

Plot Date: 22/02/22

Project Status DEVELOPMENT APPLICATION

Client: ANDREA JONES + RICHARD BINCH

Project: 2019

DRAWING TITLE :

**PROPOSED NORTH &
SOUTH ELEVATIONS**

PROJECT NAME :

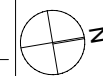
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REVISION NO.

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DA19



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REV	DATE	DESCRIPTION

PROJECT DETAILS

Drawn | Checked CH - JG
Plot Date: 22/02/22
Project Status DEVELOPMENT APPLICATION

Client: ANDREA JONES + RICHARD BINCH
Project: 2019


DRAWING TITLE :
PROPOSED EAST & WEST ELEVATION

PROJECT NAME :
31 WEST STREET, BALGOWLAH
Lot 27 - Section 2 - DP.82411

REVISION NO.
B

DRAWING NO.
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APPENDIX B (REVISED)

CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARD – FLOOR SPACE RATIO - CLAUSE 4.4 MANLY LOCAL ENVIRONMENTAL PLAN 2013

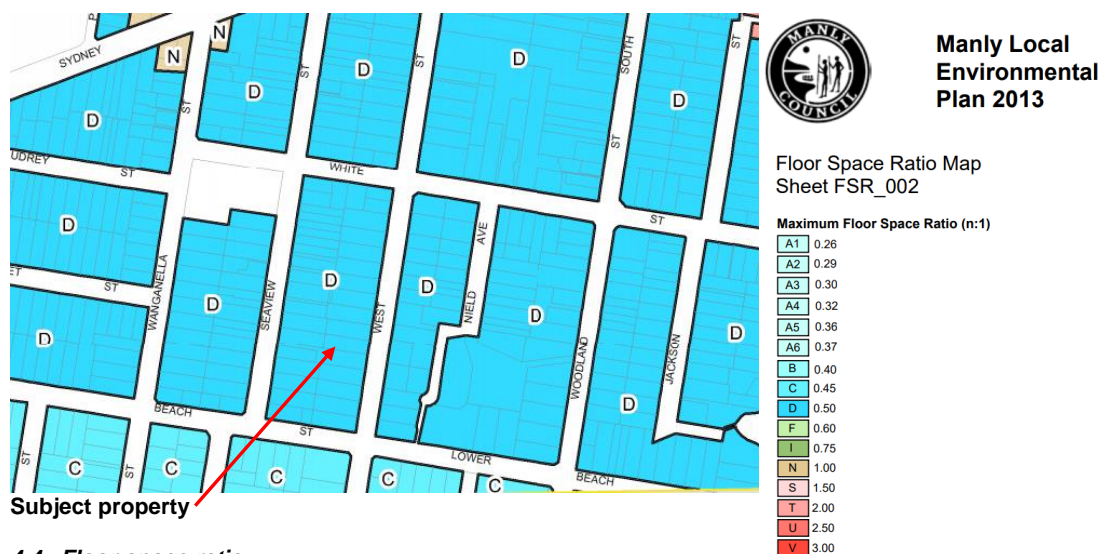
1. Introduction

This Clause 4.6 Application has been prepared on behalf of the applicant in support of a Development Application for alterations and additions to an existing residence including a swimming pool and associated landscaping.

The request seeks to vary the Floor Space Ratio Development Standard (**FSR**) under Clause 4.4 (1) and (2) of MLEP2013 pursuant to Clause 4.6: Exceptions to Development Standards under MLEP2013.

Clause 4.4 (1) and (2) specifies that maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

Floor Space Ratio Map



4.4 Floor space ratio

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

- to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

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(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.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

Comment: It is noted from the above FSR plan that the site is subject to a 0.5:1 FSR which equates to 343.4sqm. The revised proposed floor space ratio is 0.567:1 (389.57sqm), which represents a 13.4% increase in the development standard. The additional GFA includes the internal floor area (15.39sqm), internal staircases and surplus additional car parking area of 18sqm. This breach is considered to be justified having regard to the bulk, scale and height of other dwellings in this immediate locality and noting Council's comments in the pre-DA notes as set out below:

"In reviewing the gross floor area/floor space ratio it is noted that two features which are included in the calculation are concealed from view in that they don't readily add to the overall bulk and scale of the development (namely the surplus area within the garage and proposed attic which is contained wholly within the roof space)."

Source: Northern Beaches Council Pre-DA Notes PLM2021/0119.

Note: the FSR calculations have been revised, following receipt of advice from Council's Assessment Officer indicating that:

"In relation to the stairs, in *Chami v Lane Cove Council* [2015] NSWLEC 1003 the Court held that the floor area of stairs and a lift well:

- inside of a dwelling house;
- at each habitable level; and
- which were **not** shared between multiple occupancies;

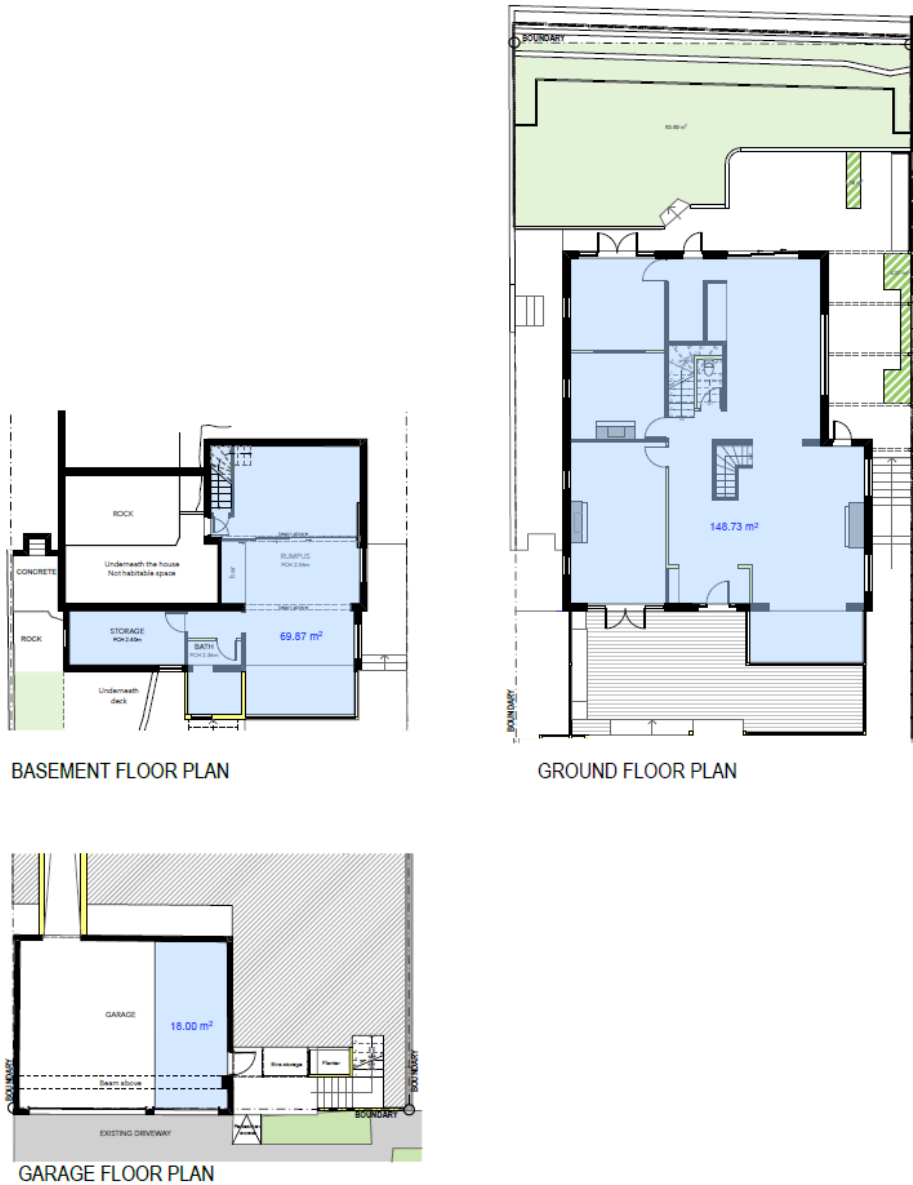
were to be **included** in the calculation of GFA (at [273] – [280])."

In the past, various Development Applications have been submitted to Council with areas of vertical circulation excluded from the FSR calculations.

It is submitted that the dwelling is of a bulk, scale and height compatible with the immediate precinct both existing and future character of the locality. The development has been designed to maximise landscaping while ensuring adequate setbacks which in turn minimise impacts on neighbouring properties and the natural environment. The FSR of the proposal represents a reasonable exceedance of the prescribed standard; however, the increase is justified by way of the following documentation. The variation of a Development Standard has been pursuant to Clause 4.6 Exceptions to a Development Standard under Manly LEP 2013.

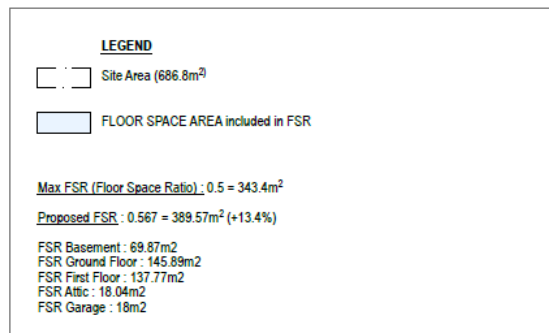
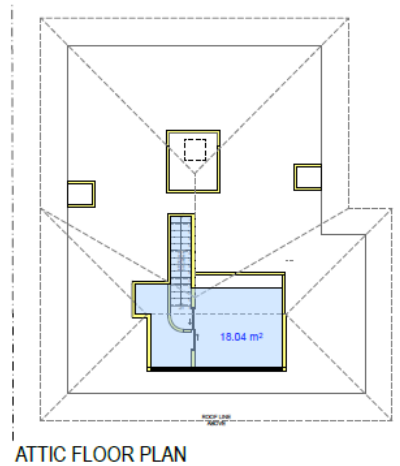
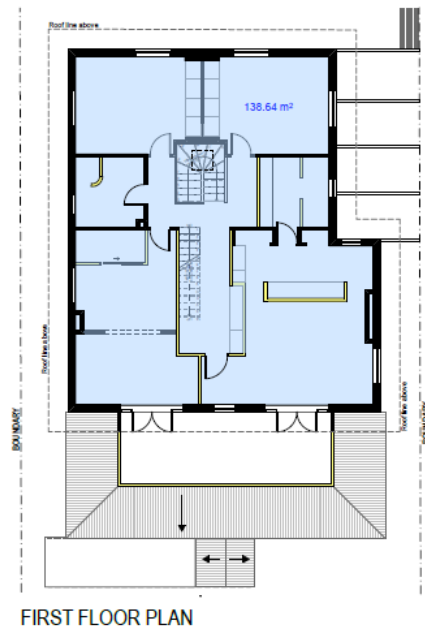
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2. Variation to the FSR requirement



Source: Archisoul Drawing DA33 – Floor Space Ratio

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Source: Archisoul Drawing DA33– Floor Space Ratio

Comment: The above calculations and supporting diagrams confirm there is a breach to the FSR by way of a 13.4% variation.

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Clause 4.6: Exceptions to Development Standards contends that strict compliance with the FSR control, as prescribed within Clause 4.4 (1) and (2) of Manly Local Environmental Plan 2013, is unreasonable and unnecessary in the circumstances of the case and that exceedance of the FSR standard by way of a minor variation can be supported by Council in considering the merits of the proposal.

The FSR control is a development standard to which exceptions can be granted pursuant to Clause 4.6 of the LEP. The relevant Objectives and Provisions of the Clause 4.6 are as follows:

1. *The Objectives of this Clause are as follows:*
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a. *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b. *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - a. *the consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - b. *the concurrence of the Secretary has been obtained.*
5. *In deciding whether to grant concurrence, the Secretary must consider:*
 - a. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. *the public benefit of maintaining the development standard, and*
 - c. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

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31 West Street, Balgollah**3. Compliance with Clause 4.6(4) Exceptions to Development Standards****3.1 The applicant's written request has adequately addressed the matters required to be demonstrated by Subclause (3)(a). Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Subclause (3)(a) of Clause 4.6 prescribes that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC118 the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in **one or more** of the following ways:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- The underlying objective or purpose would be thwarted if compliance with the standard was required.
- The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.
- The zoning of the land is unreasonable or inappropriate.
- Some other way.

3.1.1 The objectives of the development standard are achieved notwithstanding non-compliance with the 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.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises

A comment on the relevant objectives is set out below.

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

Comment: The proposed alterations and additions are consistent with the desired character of this locality. It is important for Council to understand that the FSR variation is minor, being 13.4% compliance with Objective (a), and is justified in terms of the following:

- *The key design drivers for the development are taken from the Manly LEP and DCP. The development is an improvement to the existing neighbourhood fit and will sit in similar scale and finish to other developments located on either side of the subject site. The development will be of a high-quality finish and the overall proposal will have a positive impact on the streetscape, neighbouring properties, and surrounding area.*
- *The proposal will allow the occupants to enjoy the site to its full potential through clever and thoughtful design.*
- The development comprises a high-quality, architectural design that responds and contributes to its context and in particular, the topography of the site.
- The development contributes in a positive manner to the character of the area that exists along West Street.
- The proposed alterations and additions have been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping, and location of the swimming pool respond thoughtfully to the immediate locality.

The consistency of the development with the desired future character is further justified in terms of the following:

- The character of the locality has been carefully analyzed in preparing the site analysis plan and considering any unique characteristics of the individual site and its opportunities and constraints that have been clearly identified prior to the design being undertaken. A real appreciation of the neighbourhood character was an essential ingredient in determining what the character of this precinct is and, in particular, West Street. The proposed development does contribute positively to the overall character of the area; in other words, it is deemed to be a "good neighbourhood fit".
- This conclusion is based upon the fact that along the entire stretch of West Street, the built environment comprises single detached dwellings of substantial scale, height, and massing. The adjoining developments are dominant in built form when viewed from a public place.

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- (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: Refer to comments above relating to Objective (a), which demonstrate that the proposal is compatible with the height and scale of surrounding and nearby developments, in particular No. 29 West Street. This development exceeds the height limitation. Please refer to the architectural drawing below and to the photographs on the following page which show the height, bulk and scale of buildings that adjoin the subject development.



Source: Archisoul Cover page – Drawing 00

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Source: Archisoul Drawing DA01 – Existing Site Photos

The proposal will not obscure important landscape features and due to its location will have no impact upon township features.

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

Comment: See comments above.

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

Comment: There will be no adverse impact on adjoining land or 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: Not applicable.

Additional Matters to be addressed under Clause 4.6 Requirements

3.1.2 The underlying objective or purpose is not relevant to the development

The underlying objective or purpose of the development standard is not relevant to the development application and this is demonstrated in the matters raised above.

3.1.3 The underlying objective or purpose would be thwarted if compliance with the standard was required.

The underlying objective or purpose of the standard would not be defeated or thwarted if compliance with the standard were required.

3.1.4 The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard

Comment: Within the West Street precinct, there are a number of residential dwellings that are of considerable bulk, height and scale and in particular, the buildings at No 29 and No 33 West Street, which adjoin the subject site. It is evident by way of observation of the built form of dwellings in this immediate locality that the development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that deviate from the standard.

3.1.5 The zoning of the land is unreasonable or inappropriate

Not applicable. The zoning of the land is R1 General Residential, which allows dwelling houses as a permissible land use. Accordingly, the proposal fits within the parameters of the legal framework for Manly Local Environment Plan 2013. The proposal represents a development that is typified and expected within the R1 General Residential zoning, having regard to the existing built environment that prevails in this precinct.

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3.1.6 Some other way

Not applicable. The above represents that these five ways are not exhaustive of the ways in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance, it is sufficient to establish only one way, which is compliance with the objectives of the development standard. In this regard, this report demonstrates that the development standard is unreasonable and unnecessary. Refer to Section 3 of the report titled, "Compliance with Clause 4.6(4) Exceptions to Development Standards. Section 3.1.1".

3.2 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(b). That there are sufficient environmental planning grounds to justify contravening the development standard.

Subclause (3)(a) of Clause 4.6 prescribes that 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 that there are sufficient environmental planning grounds to justify contravening the development standard.

Also, in the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC118* the position that there are sufficient environmental planning grounds to justify contravening the development standards identifies that in *Four2Five Pty Ltd. v. Ashfield Council [2015] NSWLEC90* it is necessary to determine:

- 'Environmental planning grounds' by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* including Section 1.3 of the EPA Act;
- Must be 'sufficient'
 - Firstly, the environmental planning grounds advanced in the written request must be sufficient to 'justify contravening the development standard'. The focus of Clause 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.
 - Secondly, 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 Clause 4.6(4)(a)(i).

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3.2.1 Sufficient environmental planning grounds to justify contravening the development standard.

In preparing this report, consideration has been given to the relevant Objectives of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) – under Section 1.3 of the Act. The relevant sections that are applicable to this proposal are set out below:

1.3 Objects of Act

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.

In respect to the objectives referred to above, the following is submitted to demonstrate that there are sufficient environmental planning grounds to justify the variation in the Development Standard under the provisions of Clause 4.6 of Manly LEP 2013.

- The exceedance of the FSR control requirement under Manly LEP 2013 is supportable in that the variation is considered to be of a minor nature, and the proposed residential development has been designed to respond cohesively to the existing neighbourhood and streetscape. The development is compliant with the relevant DCP in terms of the following:
 - Deep Soil Planting
 - Visual privacy
 - Car parking requirements
 - Solar access
 - Natural ventilation
 - Private open space and terraces
 - Landscape design
 - Energy efficiency
 - Waste management
 - Rear building line setback

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- Side boundary setbacks as per existing
- Character of area as viewed from a public space
- The proposal represents a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct.
- The minor breach in the FSR control does not result in an adverse impact on view loss to neighbouring properties.
- The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived along this side of West Street.
- The key design drivers for the development are taken from the Manly LEP and DCP. The development is an improvement to the existing neighbourhood fit and will sit in similar scale and finish to other developments that adjoin the subject site. The development will be of a high-quality finish and the overall proposal will have a positive impact on the streetscape, neighbouring properties, and surrounding area.
- No unacceptable environmental impacts will flow from the proposed development during construction of the alterations and additions and when the development has been completed. The proposal will not contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale.
- An approval of this development with a minor variation to the FSR control would be unlikely to set a precedent of other similar developments in this immediate locality, noting that there are many other residential dwellings along West Street which are dominant by way of their height, scale and massing.
- It is important to acknowledge that the breach in FSR was discussed at the pre-DA meeting and Council included the following comments in the Pre-DA notes:

“In reviewing the gross floor area/floor space ratio it is noted that two features which are included in the calculation are concealed from view in that they don’t readily add to the overall bulk and scale of the development (namely the surplus area within the garage and proposed attic which is contained wholly within the roof space).”

Source: Northern Beaches Council Pre-DA Notes PLM2021/0119.

In considering the above, there are sufficient environmental planning grounds to justify the minor contravention to the development standard.

3.3 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

The following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4 Floor Space Ratio Control under Manly LEP 2013 and the R1 General Residential zone.

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3.3.1 The Objectives of Clause 4.4 Floor Space Ratio

Refer to Section 3.1.1 of Clause 4.6: Exceptions to Development Standards for detailed assessment.

3.3.2 The Objectives of R1 General Residential zone under Manly LEP 2013**1 Objectives of zone**

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents

Comment: The proposal is a permissible land use (dwelling house) under the Provisions of the R1 General Residential Zone, Manly LEP 2013. The development is consistent with the objectives of the zone in that it provides for a variety of housing types and housing needs of the community. The development is also compatible in height, bulk and scale with other developments in this immediate precinct.

It is submitted that the proposal therefore meets the relevant Objectives of the R1 General Residential zone.

It is further submitted that adequate justification has been provided to allow a variation to the FSR Development Standard under Manly LEP 2013. It is considered that strict compliance with the FSR Development standard is considered both unreasonable and unnecessary in the circumstances of the case and that exceedance of the FSR standard by way of a minor variation should be supported by Council having considered the merits of the proposal as set out in this report.

APPENDIX A (REVISED)

CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARD – HEIGHT OF BUILDINGS - CLAUSE 4.3 MANLY LOCAL ENVIRONMENTAL PLAN 2013

1. Introduction

This Clause 4.6 Application has been prepared on behalf of the applicant in support of a Development Application for alterations and additions to an existing residence including a swimming pool and associated landscaping.

The request seeks to vary the Height of Buildings Development Standard (**HoB**) under Clause 4.3 (1) and (2) of MLEP2013 pursuant to Clause 4.6: Exceptions to Development Standards under MLEP2013.

Clause 4.3 (1) and (2) specifies that 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, which is shown below.

HEIGHT OF BUILDING



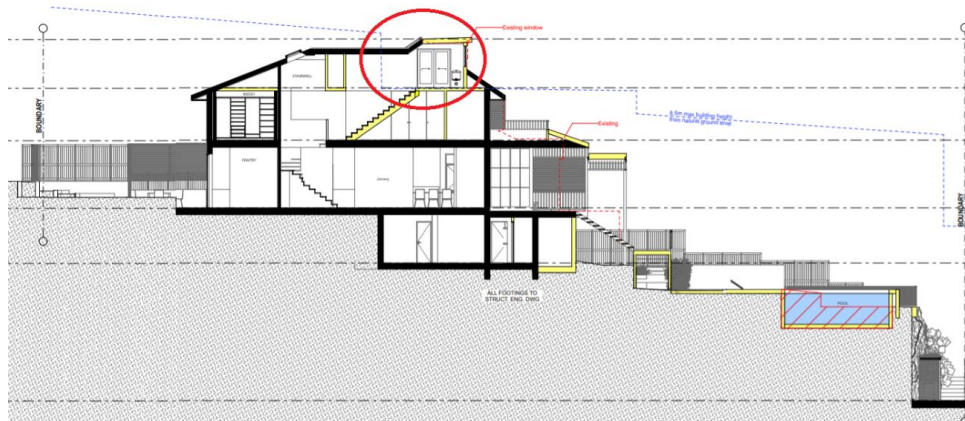
Comment: The development has a maximum building height of 9.4m, which represents a breach of the 8.5m height limitation by 0.9m (10.85%). The proposal has been skilfully designed by the project architects to meet the clients brief of modernising the external look of the house by squaring off a few of the angles of the house, upgrading materials and colours along with the conversion of the attic space into a habital space. This conversion includes the

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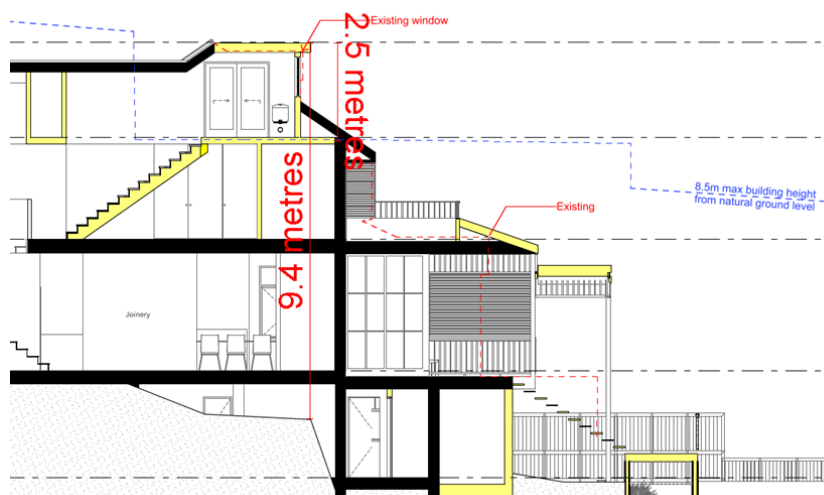
replacement of two small “cosmetic only” dormers with a long dormer type window which significantly enhances the aesthetic values of the building when viewed from a public place. The proposed works associated with the construction of a long dormer type window to the attic area do not exceed the height of the existing ridgeline of the building. It is important to acknowledge that the existing maximum height of the building at ridgeline level is not exceeded by any works associated with the alterations and additions of this application.

The proposal retains solar access to neighbouring properties and complements the character of the locality in both the natural and built environments. The bulk and scale of the proposal are consistent with other single detached residential dwellings along West Street, noting that three storey developments are commonplace in this immediate locality. The height of the proposal represents a very minor exceedance of the prescribed standard; however, the minor increase is justified by way of the following documentation. The variation of a development standard has been pursuant to Clause 4.6 Exceptions to a Development Standard under MLEP2013.

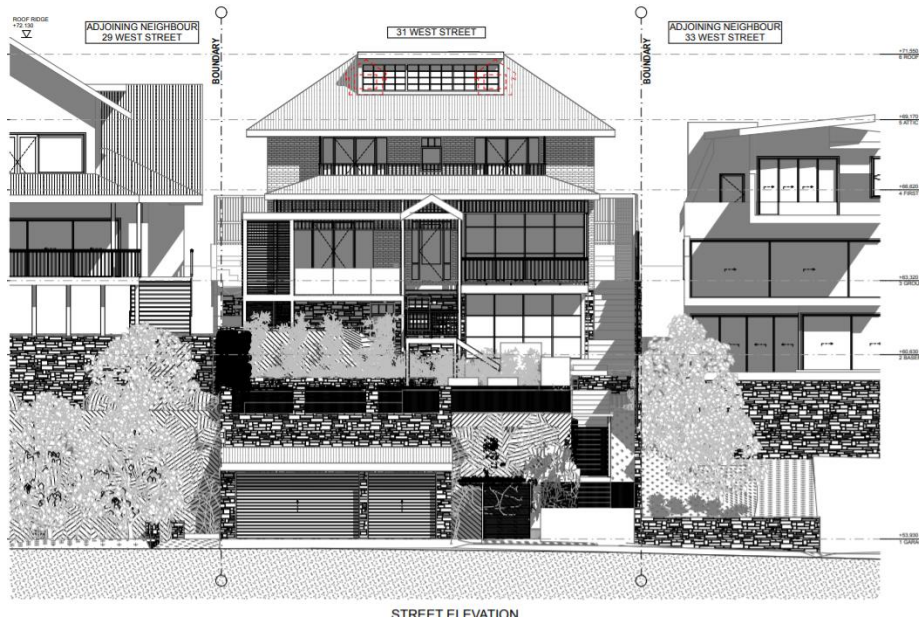
2. Variation to the maximum height of buildings requirement



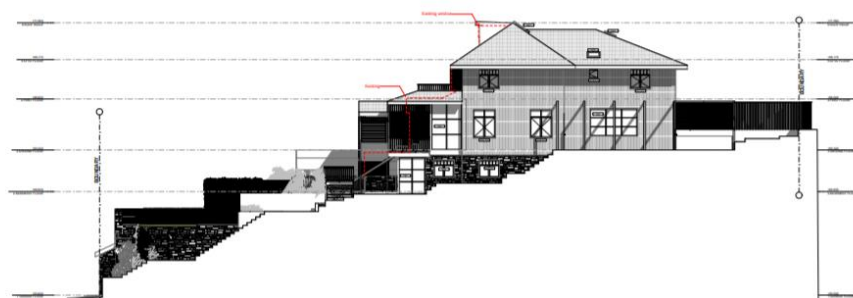
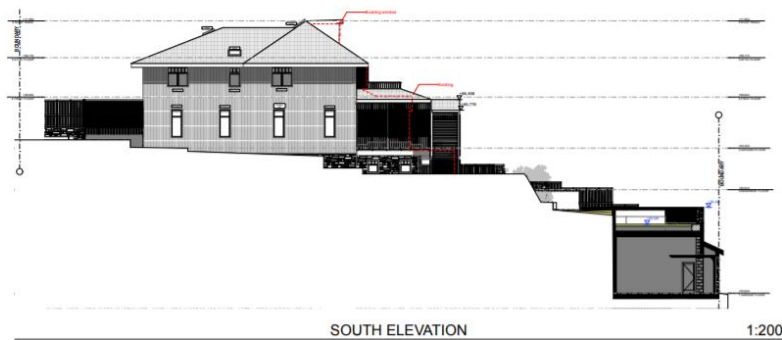
The area circled in red in the above drawing DA-16 represent the minor breach.



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Source: Archisoul Drawing DA18 – Proposed Street Elevation



Source: Archisoul Drawing DA19 –Southern and Northern Elevation

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Comment: The above section and elevations clearly depict where there is a minor breach of the 8.5m height limitation by way of 25mm. It is also noted that the dwelling No. 29 that adjoins the subject site is substantially higher than the subject building. It is further noted that there is no increase in the height than what currently exists.

Clause 4.6: Exceptions to Development Standards contends that strict compliance with the height of buildings control, as prescribed within Clause 4.3 (1) and (2) of Manly Local Environmental Plan 2013 is unreasonable and unnecessary in the circumstances of the case and that exceedance of the maximum height standard by way of minor variations can be supported by Council in considering the merits of the proposal.

The maximum height of buildings control is a development standard to which exceptions can be granted pursuant to Clause 4.6 of the LEP. The relevant Objectives and Provisions of the Clause 4.6 are as follows:

1. *The Objectives of this clause are as follows:*
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a. *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b. *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - a. *the consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - b. *the concurrence of the Secretary has been obtained.*
5. *In deciding whether to grant concurrence, the Secretary must consider:*
 - a. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. *the public benefit of maintaining the development standard, and*

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

3. Compliance with Clause 4.6(4) Exceptions to Development Standards

3.1 The applicant's written request has adequately addressed the matters required to be demonstrated by Subclause (3)(a). Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Subclause (3)(a) of Clause 4.6 prescribes that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC118 the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in **one or more** of the following ways:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- The underlying objective or purpose would be thwarted if compliance with the standard was required.
- The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.
- The zoning of the land is unreasonable or inappropriate.
- Some other way.

3.1.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The Objectives of Clause 4.3 (1) and (2) are as follows:

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following:
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

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

A comment on each of the objectives is set out below.

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

Comment: The proposed alterations and additions are consistent with the desired character of this locality. It is important for Council to understand that the height variation is minor, being 25mm.

Compliance with objective (a) is justified in terms of the following:

In addition to the above comments from the project architect, the following is also submitted:

- The development comprises a high-quality, architectural design that responds and contributes to its context.
- The development contributes in a positive manner to the character of the area that exists along Bower Street.
- The proposed alterations and additions have been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping, and building alignment are used to respond thoughtfully to the immediate locality.
- *The key design drivers for the development are taken from the Manly Council LEP and DCP. The development is an improvement to the existing neighbourhood fit and will sit in similar scale and finish to other developments located on either side of the subject site. The development will be of a high-quality finish and the overall proposal will have a positive impact on the streetscape, neighbouring properties, and surrounding area.*
- *The proposal will allow the occupants to enjoy the site to its full potential through clever and thoughtful design.*
- The development comprises a high-quality, architectural design that responds and contributes to its context and, in particular, the topography of the site.
- The development contributes in a positive manner to the character of the area that exists along West Street.
- The proposed alterations and additions have been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping, location of the swimming pool respond thoughtfully to the immediate locality.

The consistency of the development with the desired future character is further justified in terms of the following:

- The character of the locality has been carefully analyzed in preparing the site analysis plan and considering any unique characteristics of the individual site and its opportunities and constraints that have been clearly identified prior to the design being undertaken. A real appreciation of the neighbourhood character was an essential ingredient in determining what the character of this precinct is and, in particular, West Street. The proposed development does contribute positively to the overall character of the area; in other words, it is deemed to be a "good neighbourhood fit".

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- This conclusion is based upon the fact that along the entire stretch of West Street, the built environment comprises single detached dwellings of substantial scale, height, and massing. The adjoining developments are dominant in built form when viewed from a public place.

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

Comment: Refer to comments above relating to Objective (a), which demonstrate that the proposal is compatible with the height and scale of surrounding and nearby developments, in particular No 29 West Street. This development obviously exceeds the height limitation and is substantially higher than the proposal to which this application relates.

Photographs showing the bulk, scale and height of buildings that adjoin the subject development and are in close proximity are set out below:



Source: Archisoul Cover page – Drawing 00

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Source: Archisoul Drawing DA01 – Existing Site Photos



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(c) to minimise disruption to the following:

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

Comment: The subject proposal does not result in any adverse impacts upon views or view corridors from nearby residential development. The proposed works associated with the minor changes to the front elevation do not require a view analysis to be undertaken consistent with the NSW Land and Environment Court Principles established in *Tenacity Consulting Pty Ltd v Warringah Council* {2004} NSWLEC140 and *Davies v Penrith City Council* {2013} NSWLEC 1141.

It is submitted that the proposed development, which has a very minor breach to the prescribed height of building standard, does not result in a disruption of views as outlined in C (1), (2) or (3).

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

Comment: The subject proposal takes into consideration the topography of the land and the development that has been designed to complement the landform. The shadow diagrams prepared by the project architect demonstrate there will be no adverse impacts on the private open space areas of adjoining dwellings, or on any land that has been set aside for public open space.

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

Comment: Not applicable.

Additional Matters to be addressed under Clause 4.6 Requirements

3.1.2 The underlying objective or purpose is not relevant to the development

The underlying objective or purpose of the development standard is not relevant to the development application, and this is demonstrated in the matters raised above.

3.1.3 The underlying objective or purpose would be thwarted if compliance with the standard was required.

The underlying objective or purpose of the standard would not be defeated or thwarted if compliance with the standard were required.

3.1.4 The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard

Comment: Within the West Street precinct, there are a number of residential dwellings that are of considerable bulk, height and scale and in particular, the buildings at No 29 and No 33 West Street, which adjoin the subject site. It is evident by way of observation of the built form

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of dwellings in this immediate locality that the development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that deviate from the standard.

3.1.5 The zoning of the land is unreasonable or inappropriate

Not applicable. The zoning of the land is R1 General Residential, which allows dwelling houses as a permissible land use. Accordingly, the proposal fits within the parameters of the legal framework for Manly Local Environment Plan 2013. The proposal represents a development that is typified and expected within the R1 General Residential zoning, having regard to the existing built environment that prevails in this precinct.

3.1.6 Some other way

Not applicable. The above represents that these five ways are not exhaustive of the ways in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance, it is sufficient to establish only one way, which is compliance with the objectives of the development standard. In this regard, this report demonstrates that the development standard is unreasonable and unnecessary. Refer to Section 3 of the report titled, "Compliance with Clause 4.6(4) Exceptions to Development Standards. Section 3.1.1".

3.2 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(b). That there are sufficient environmental planning grounds to justify contravening the development standard.

Subclause (3)(a) of Clause 4.6 prescribes that 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 that there are sufficient environmental planning grounds to justify contravening the development standard.

Also, in the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC 118 the position that there are sufficient environmental planning grounds to justify contravening the development standards identifies that in *Four2Five Pty Ltd. v. Ashfield Council* [2015] NSWLEC90 it is necessary to determine:

- 'Environmental planning grounds' by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* including Section 1.3 of the EPA Act;
- Must be 'sufficient'
 - Firstly, the environmental planning grounds advanced in the written request must be sufficient to 'justify contravening the development standard'. The focus of Clause 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.
 - Secondly, 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 Clause 4.6(4)(a)(i).

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3.2.1 Sufficient environmental planning grounds to justify contravening the development standard.

In preparing this report, consideration has been given to the relevant Objectives of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) – under Section 1.3 of the Act. The relevant sections that are applicable to this proposal are set out below:

1.3 Objects of Act

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.

In respect to the objectives referred to above, the following is submitted to demonstrate that there are sufficient environmental planning grounds to justify the variation in the Development Standard under the provisions of Clause 4.6 of Manly LEP 2013.

- The exceedance of the building height control requirement under Manly LEP 2013 is supportable in that the variation is considered to be of a minor nature, and the proposed residential development has been designed to respond cohesively to the existing neighbourhood and streetscape. The development is compliant with the relevant DCP in terms of the following:
 - Deep Soil Planting
 - Visual privacy
 - Car parking requirements
 - Solar access
 - Natural ventilation
 - Private open space and balconies
 - Landscape design
 - Energy efficiency
 - Waste management
 - Rear building line setback

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- Side boundary setbacks as per existing
- Character of area as viewed from a public space
- The proposal represents a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct.
- The minor breach in the height control does not result in an adverse impact on view loss to neighbouring properties.
- The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived along this side of West Street.
- The key design drivers for the development are taken from the Manly LEP and DCP. The development is an improvement to the existing neighbourhood fit and will sit in similar scale and finish to other developments along that adjoin that subject site. The development will be of a high-quality finish and the overall proposal will have a positive impact on the streetscape, neighbouring properties, and surrounding area.
- No unacceptable environmental impacts will flow from the proposed development during construction of the alterations and additions and when the development has been completed. The proposal will not contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale.
- An approval of this development with a minor variation to the height control would be unlikely to set a precedent of other similar developments in this immediate locality, noting that there are many other residential dwellings along West Street, which are dominant by way of their height, scale and massing.

In considering the above, there are sufficient environmental planning grounds to justify the minor contravention to the development standard.

3.3 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

The following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 Height of Buildings Control under Manly LEP 2013 and the R1 General Residential Zone.

3.3.1 The Objectives of Clause 4.3 Height of Buildings

Refer to Section 3.1.1 of Clause 4.6: Exceptions to Development Standards for detailed assessment.

3.3.2 The Objectives of R1 Residential zone under Manly LEP 2013

1 Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents

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Comment: The proposal is a permissible land use (dwelling house) under the Provisions of the R1 General Residential Zone, Manly LEP 2013. The development is consistent with the objectives of the zone in that it provides for a variety of housing types and housing needs of the community. The development is also compatible in height, bulk and scale to other developments in this immediate precinct.

It is submitted that the proposal therefore meets the relevant Objectives of the R1 General Residential zone.

It is further submitted that adequate justification has been provided to allow a variation to the Height of Building Development Standard under Manly LEP 2013. It is considered that strict compliance with the Height of Building Development standard is considered both unreasonable and unnecessary in the circumstances of the case and that exceedance of the Height standard by way of a minor variation should be supported by Council having considered the merits of the proposal as set out in this report.