

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 27 APRIL 2022



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 27 April 2022
via teleconference
Commencing at 2:00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 13 April 2022	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 APRIL 2022.

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 13 April 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2022/0082 - 39A CUTLER ROAD CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A STUDIO
REPORTING MANAGER	Phil Lane
TRIM FILE REF	2022/231985
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/0082 for alterations and additions to a dwelling house including a studio on land at Lot 2 DP 527793, 39 A Cutler Road CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0082
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 2 DP 527793, 39 A Cutler Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a studio
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Steven James Chadban Sonya Christina Chadban
Applicant:	Steven James Chadban

Application Lodged:	07/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/02/2022 to 25/02/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 36.28%
Recommendation:	Approval

Estimated Cost of Works:	\$ 142,000.00
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EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2022/0082 for alterations and additions to a dwelling house to include an attached studio to an existing double garage. The site is subject to a previous consent under Development Application DA2018/1674 for construction of a secondary dwelling attached to an existing garage. The subject development application has merely been lodged to seek approval for a studio structure as opposed to a secondary dwelling. It is noted that the proposed building envelope remains generally consistent with the previous consent, with the exception of a skillion roof form that differs from the previously approved flat roof.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (188.8sqm). The proposed development

results in a FSR of 0.545:1 (257.3sqm), which represents a 36.28% variation to the development standard. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

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

The proposed development involves minor non-compliances with Clause - 4.1.4 Setbacks (front, side and rear) of the Manly DCP 2013, in particular with front boundary setback and side boundary setback numeric requirements. However, the site is situated approximately 26m to the south of the road edge and sited approximately 9.7m below the road level. This factor, combined with the existing vegetation located within the road reserve, will ensure the development is not visible from the public domain. Furthermore, the variations to the side setback requirements do not result in unacceptable impacts to the amenity of neighbouring properties, specifically with regards to solar access, visual privacy, views and visual bulk.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing detached garage to provide an attached studio structure that occupies the ground and first floors. The works involve:

- A ground living space and sink with new access stairs.
- A first floor office space with a terrace on the front elevation.
- A skillion roof sloping towards the rear of the structure.

It is noted that the proposed building envelope is generally consistent with what was approved under Development Application DA2018/1674, which approved an attached secondary dwelling as opposed to an attached studio.

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 - 4.1.3 Floor Space Ratio (FSR)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 2 DP 527793 , 39 A Cutler Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Cutler Road, Clontarf. The site is situated approximately 26m to the south of the road edge and sited approximately 9.7m below the road level. Vehicular and pedestrian access to the site is provided via a shared driveway that services No's 33 - 37 Cutler Road. The site is irregular in shape with a surveyed area of 472sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a three storey dwelling house including a detached double garage adjacent to the front boundary. The site also accommodates a swimming pool.</p> <p>The site experiences a fall of approximately 2.8m that slopes away from the north-east towards the south-west.</p> <p>The site has various vegetation across the site and within the adjacent road reserve.</p> <p>The site is flood prone and is burdened by a Council stormwater drainage pipeline that traverses through the property.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses), typically 2-3 storeys in height.</p>

Map:



SITE HISTORY

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

- **Development Application No. 245/2008** for Alterations and additions to an existing dwelling including first extension, new decks, swimming pool minor landscape works and double carport with tilting or roller door approved by Council on 16 December 2008.
- **Development Application DA2018/1170** for Construction of detached secondary dwelling was withdrawn by the applicant following a letter sent by Council encouraging withdrawal of the application due to Stormwater and Flooding issues.
- **Development Application DA2018/1674** for construction of a secondary dwelling approved by Council on 13 March 2019.

APPLICATION HISTORY

The Development Assessment Planner examined the site and the surrounds on 17 February 2022.

Additional information was requested in relation to an amended written request pursuant to Clause 4.6 of Manly LEP 2013 to vary the FSR development standard. The amended request was merely to ensure the applicant's calculations correlated with Council's FSR calculations. The amended document was subsequently submitted to Council's satisfaction and assessed accordingly. The amended information did not alter the scope of works proposed and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(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. Additional information was requested in relation to an amended written request pursuant to Clause 4.6 of Manly LEP 2013 to vary the FSR development standard. The amended request was merely to ensure the applicant's calculations correlated with Council's FSR calculations. The amended document was subsequently submitted to Council's satisfaction and assessed accordingly. The amended information did not alter the scope of works proposed and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.</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>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p>

Section 4.15 Matters for Consideration	Comments
environment and social and economic impacts in the locality	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Assessment Report was submitted with the application that included a certificate (prepared by Australian Bushfire Consulting Services, dated 27 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/02/2022 to 25/02/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing garage to create a studio, as described and illustrated in the reports and plans.

Internal Referral Body	Comments
	<p>As identified in the Statement of Environmental Effects, development consent DA2018/1674 was issued for the construction of a detached secondary dwelling within the same building envelope as this development application, and it is now proposed to utilise the building for a studio and not proceed with the secondary dwelling.</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 <p>The proposed additions are to the rear of the existing detached garage and over built upon land and over grass areas, and do not require the removal of any significant vegetation or prescribed trees. Existing trees and vegetation within adjoining properties and within the road reserve shall be retained and protected, and conditions shall be imposed.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed DA generally complies with the flood controls in the LEP and DCP. The proposed works involve alterations and additions to an existing garage to create a studio. DA2018/1674 was previously issued for the construction of a detached secondary dwelling. This DA is the same building envelope however it is now proposed to use the building for a studio and not a secondary dwelling.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The application was referred to Ausgrid, who responded stating that a formal assessment was not required.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with this application (see BASIX Certificate No. A413415_03,

dated 24 January 2022). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 - Coastal Management

The site is located within the 'proximity area for littoral rainforest' pursuant to SEPP (Resilience and Hazards) 2021. Accordingly, the proposal is considered against Clauses 2.8 and 2.12 of the SEPP as follows:

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

Note—

The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal

wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

(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.

(2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

Comment:

The site is located approximately 70m to the north of the nearby littoral rainforest. Sediment and erosion control measures will be in place during construction works to prevent sediment migration towards the nearby littoral rainforest. In addition, Council's Development Engineers have recommended suitable conditions to ensure that stormwater generated from the development is suitably managed and disposed of, which will prevent runoff towards the nearby littoral rainforest.

For these reasons, it is considered that the proposal has been suitably designed, sited and will be managed to avoid an adverse impact upon the nearby littoral rainforest.

2.12 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:

Given the scale of the works, sufficient separation from the littoral rainforest and mitigation measures during construction works (i.e. sediment and erosion control measures), it is concluded that the proposal is not likely to cause increased risk of coastal hazards within the locality.

Chapter 4 - Remediation of Land

4.1 Object of this Chapter

(1) The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land.

(2) In particular, this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—

- (a) by specifying when consent is required, and when it is not required, for a remediation work, and
- (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
- (c) by requiring that a remediation work meet certain standards and notification requirements.

Comment:

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 as the land is considered to be suitable for the residential land use.

Conclusion

Having regard to the above assessment, it is concluded that the proposal is consistent with the relevant requirements within SEPP (Resilience and Hazards) 2021.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.3m	-	Yes
Floor Space Ratio	0.4:1 (188.8sqm)	0.545:1 (257.3sqm)	36.28%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.4:1 (188.8sqm)
Proposed:	0.545:1 (257.3sqm)
Percentage variation to requirement:	36.28% (68.5sqm)

Clause 4.4 of Manly LEP 2013 limits the floor space ratio (FSR) on the site to 0.4:1 (188.8sqm). The proposed FSR equates to 0.545:1 (257.3sqm), which represents a 36.28% variation to the development standard. The additional gross floor area proposed by the attached studio structure is 42.1sqm. It is further noted that the FSR of the existing dwelling house is non-compliant and equates to 0.456:1 (215.2sqm).

Additionally, the site is an 'undersized allotment' as defined within the Manly DCP 2013, noting that the FSR of 0.4:1 is typically applied to an average site area of 750sqm. The subject site is 472sqm in area. Thus, when applying a gross floor area of 257.3sqm against a site area of 750sqm the proposed FSR would be 0.343:1, which complies with the 0.4:1 requirement.

It is further noted that the proposed building envelope is generally consistent with the development approved under Development Application DA2018/1674, which approved an attached secondary dwelling to the existing garage.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

"the (sic) following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported.

In this regard the following has been considered:

- *The non-compliance is a direct result of the reduced allotment size. Strict compliance would hinder any further development of the site and not enable the property to be developed in a way that is compatible with the existing surrounding development.*
- *The proposed envelope/footprint has been previously approved (DA2018/1674) and this consent remains valid. This application does not seek to further increase the approved FSR, rather it seeks to change the use from a secondary dwelling to a studio. The proposed floor area has been approved under DA2018/1674, and this application does not alter the approved floor area.*
- *The proposal does not result in any unreasonable loss of privacy or solar access to the adjoining properties.*

When having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor area.

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the minor numerical variation to the floor area requirement".

Development Assessment Planner Comment:

Council's Development Assessment Planner agrees generally with the applicant's justification to vary Clause 4.4 of Manly LEP 2013.

It is accepted that the size is an 'undersized allotment' as defined by the Manly DCP 2013 and that strict compliance with the FSR development standard would not enable the site to be developed in a way that is compatible with the surrounding environment.

Moreover, the building envelope is generally consistent with the development approved under Development Application DA2018/1674, which the exception of a modified roof form. The subject development application has merely been lodged to seek consent for an attached studio as opposed to an attached secondary dwelling that was previously approved on the site.

The works are also appropriately scaled and sited to prevent unreasonable overshadowing or loss of privacy to adjacent properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The site is situated approximately 26m to the south of the road edge and sited approximately 9.7m below the road level. This factor, combined with the existing vegetation located within the

road reserve, will ensure the development is not visible from the public domain. Figure 1 depicts sight lines to the south (towards the site) from the road edge.

Figure 1: *sight lines towards subject site from road reserve (site screened by vegetation)*



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

Comment:

The proposed studio is attached to an existing garage and does not necessitate the removal of significant landscaped features.

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

Comment:

The proposal maintains a building line that generally relates to buildings to the west and also provides a landscaped area that is compliant with the control provided by the Manly DCP. Given the irregular form to the east in which there is no established building line and the lack of visual impact the proposal has on the streetscape, this is an appropriate formation of building line for the subject site. Additionally, the modulation of the studio and physical separation from both the street and the existing dwelling provides a circumstance in which the proposed studio would result in having an appropriate visual relationship between the new development and character of the area.

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

Comment:

The proposal is located and designed in a way so as to not have any unreasonable amenity or environmental impact. In particular, windows and the terrace area are sited to prevent overlooking into habitable rooms and private open space on adjacent properties to the east and west. Moreover, the proposal also complies with the Manly DCP 2013 solar access provision.

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

Comment:

The site is located within a low density residential area. Therefore, this objective is not relevant to the subject development application.

Zone objectives

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

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

Comment:

The studio is an ancillary function of an existing dwelling house, which is a permissible land use within the R2 zone. The studio provides 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.*

Comment:

The proposal relates to a residential land use.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 472sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 7.3m (based on gradient 1:8)	6.98m	-	Yes
	West: 7.7m (based on gradient 1:5)	7.04m	-	Yes
4.1.2.2 Number of Storeys	2 storeys	studio/garage structure is 2 storeys	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.6m	-	Yes
	Pitch: maximum 35 degrees	5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6m	1.8m (terrace) - 4.7m (studio)	up to 70%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.33m (1/3 wall height)	0m (ground floor decking) - 1.77m (studio)	up to 100%	No
	West: 2.35m (1/3 wall height)	0.9m	61.7%	No
	Windows: no windows within 3m of side boundaries	3x windows setback 1.77m from eastern side boundary	41%	No
4.1.4.4 Rear Setbacks	8m	31.67m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	75.2% (355sqm)	-	Yes
	Open space above ground 25% of total open space	nil (above ground areas are not 3m x 3m in dimension)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	55% (195.2sqm)	-	Yes
	2 native trees	2 native trees	-	Yes
4.1.5.3 Private Open Space	18sqm	> 18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	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
3.7 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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

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

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment size of 750sqm. The subject site is

472sqm in area and thus, is an undersized allotment. When applying a gross floor area of 257.3sqm against a site area of 750sqm the proposed FSR would be 0.343:1, which complies with the 0.4:1 requirement.

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

Description of non-compliance

Front Setback

The control prescribes a 6m front setback. The proposed studio is setback between 1.8m (terrace) - 4.7m (external wall) from the front boundary, which does not meet the prerequisite.

Side Setback

The control requires development to be setback at least 1/3 of the adjacent wall height from side boundaries.

The proposal is setback between 0m (ground floor decking) - 1.77m (studio) from the eastern side boundary, which does not meet the prescribed requirement of 2.33m (1/3 wall height). Furthermore, the studio is setback 0.9m from the western side boundary, which does not meet the prescribed requirement of 2.35m (1/3 of wall height).

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:

Although located toward the front of the site, the proposed studio will not be discernible from the street. This is a result of the site being situated approximately 26m to the south of the road edge and sited approximately 9.7m below the road level. This factor, combined with the existing vegetation located within the road reserve, will ensure the development is not visible from the street. It is further noted that the structure is well modulated at each elevation, which will ensure the development compliments the surrounding character.

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 provides a design which provides orientation of openings and outdoor open space away from neighbouring dwellings. Along with the appropriate separation and design of windows, this ensures that there would be no unreasonable privacy impacts. The proposal also satisfies the Manly DCP 2013 solar access provision and will not have any unreasonable impacts on views as a result of the building being situated below the street level.

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

Comment:

Flexibility is afforded in this circumstance as the studio structure does not give rise to unreasonable streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal complies with the Manly DCP 2013 total open space and landscaped area numeric requirements. In addition, the proposal does not necessitate the removal of significant landscape features.

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

Comment:

A Bushfire Assessment Report was submitted with the application that included a certificate (prepared by Australian Bushfire Consulting Services, dated 27 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bushfire Assessment Report have been included as conditions of consent.

Conclusion

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

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 \$ 710 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 142,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The proposed development involves alterations and additions to an existing dwelling house to provide a studio attached to an existing double garage.

The FSR of the proposed development equates to 0.545:1, which represents a 36.28% variation to the FSR Development Standard. Despite this, the proposed development will not result in any unacceptable streetscape or amenity impacts.

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/0082 for Alterations and additions to a dwelling house including a studio on land at Lot 2 DP 527793, 39 A Cutler Road, 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
A02 (Revision B) - Site Plan	26 May 2021	Scope Architects
A03 (Revision B) - Ground Floor Plan	26 May 2021	Scope Architects
A04 (Revision B) - First Floor Plan	26 May 2021	Scope Architects
A05 (Revision B) - Elevations	26 May 2021	Scope Architects
A06 (Revision B) - Section AA	26 May 2021	Scope Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A413415_03	24 January 2022	BASIX Certificate Centre
Preliminary Geotechnical Assessment	21 December	White Geotechnical Group

Ref. J3973	2021	
Bush Fire Assessment Report Ref. 21-381	27 July 2021	Australian Bushfire Consulting Services

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	October 2021	Nolan Planning Consultants

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 the structure, as nominated on the approved plans, for any land use beyond the definition of a detached studio. This land use is defined as follows:

detached studio means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—

- (a) is established in conjunction with a dwelling house, and
- (b) is on the same lot of land as the dwelling house, and
- (c) is separate from the dwelling house, and
- (d) is not used as a separate dwelling house, and
- (e) does not contain any cooking facilities.

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 \$710.00 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 \$142,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

The applicant is to lodge a bond of \$10,000 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.

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

8. **Stormwater Disposal**

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

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

9. **Flooding**

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

Building Components and Structural Soundness – B1

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

Building Components and Structural Soundness – B2

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

Building Components and Structural Soundness – B3

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

Floor Levels – C1

New floor levels within the development shall be set at or above the relevant Flood Planning Level.

Floor Levels – C3

The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

The flooring of the new decking (between the front gate and the entry doorway to the new studio) must have sufficient opening or gaps so that it is permeable to floodwaters and floodwaters are not channelled to the entry of the new studio.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Design Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management For Development Policy.

Any structures on easement must be lightweight and easily demountable or removable to provide adequate access for Council to reconstruct and maintain the drainage system in accordance with Council Water Management for Development Policy.

Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

11. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available on Council's website.

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

14. **Surrender of Consent**

The applicant shall surrender to Council Development Consent No: DA2018/1674 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site.

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

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.

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:

- 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.

18. **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.

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.

20. **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**

21. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

22. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy. Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only.

Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

23. **Post -Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available on Council's website.

The post-construction / completion dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Occupation Certificate.

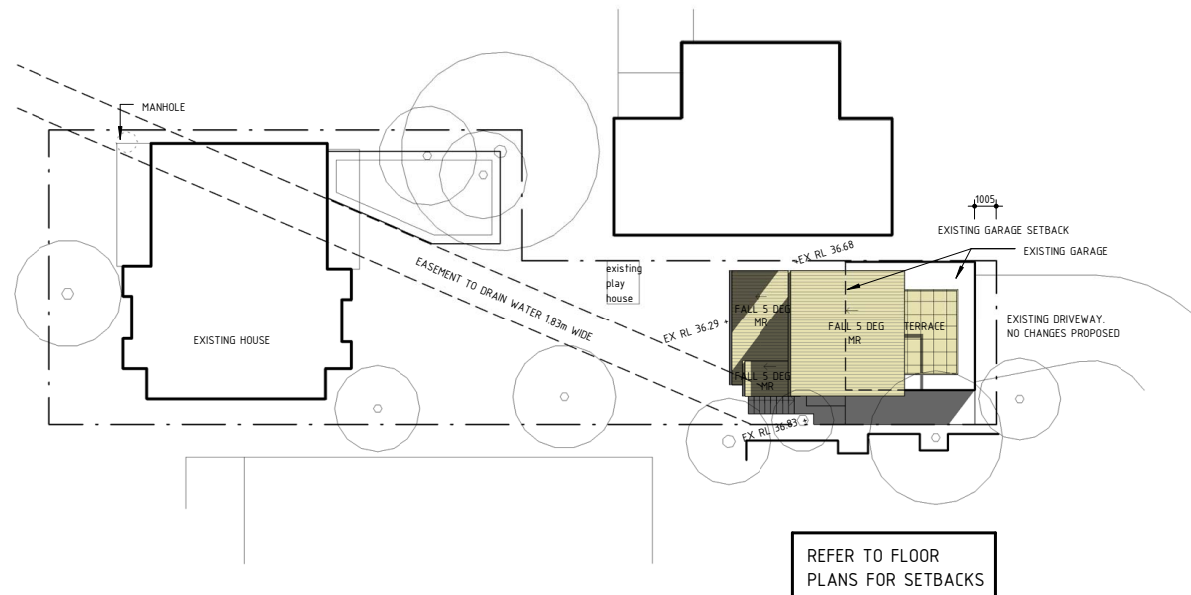
Reason: Protection of Council's infrastructure.

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

24. **Studio not to be used for Separate Occupancy**

The approved studio is not permitted to be used, or adapted to be used, for separate occupancy.

Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.



A	Development Application	11.10.18
B	Section 4.55 Modification	26.05.2021
No	Revision Description	Date

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CLIENT
SONYA & STEVE CHADBAN

PROJECT
Alterations & Additions
39A CUTLER RD CLONTARF
LOT: 2 DP: 527793

DRAWING TITLE
SITE PLAN



DRAWN
Xu

SIZE
A3

PROJECT NO.
01804

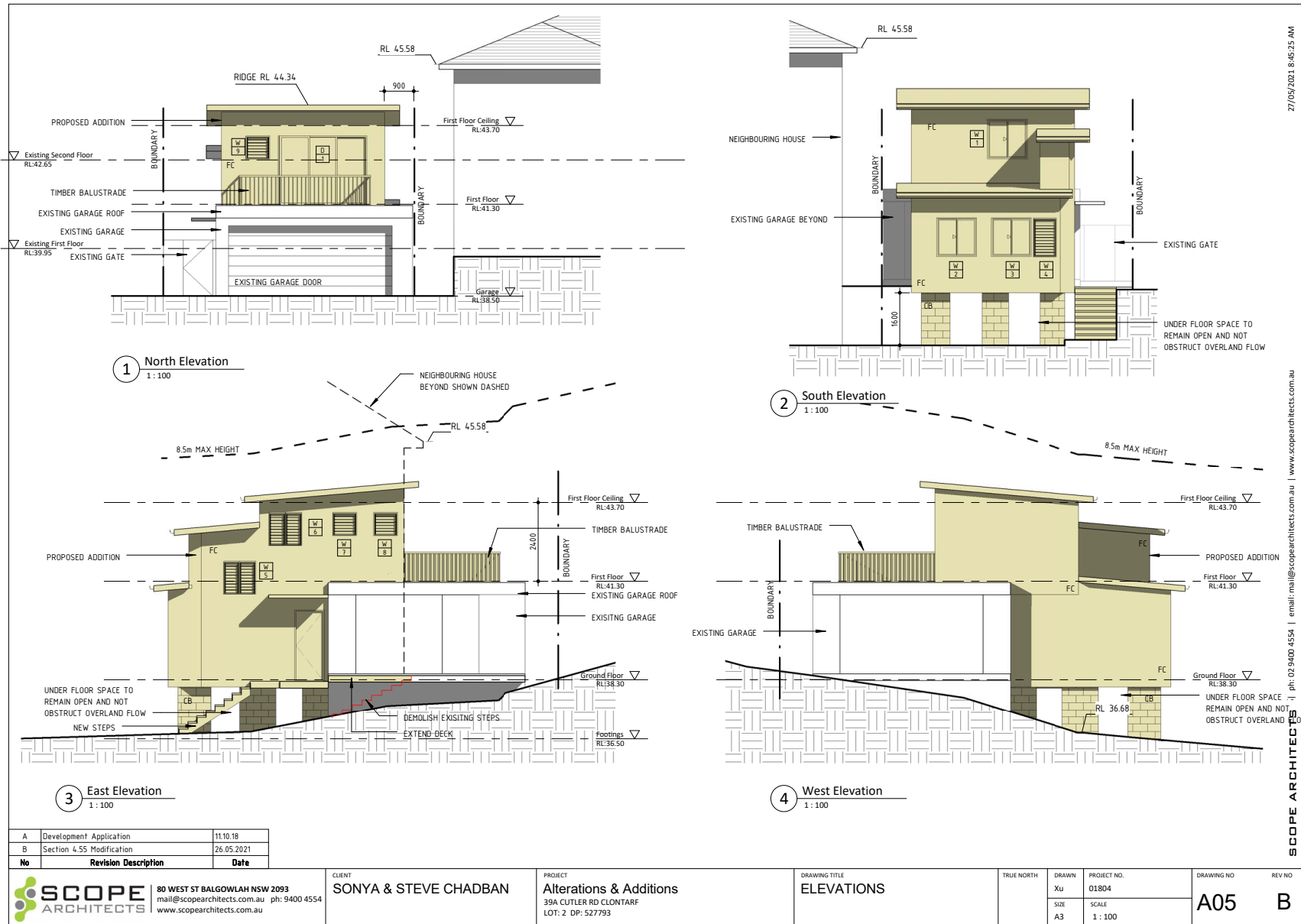
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A02

REV NO
B

27/05/2021 8:45:23 AM

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**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
FLOOR AREA REQUIRED BY CLAUSE 4.4 OF THE MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

For: Proposed Additions to Detached Garage
At: 39a Cutler Road, Clontarf
Applicant: Mr & Mrs Chadban

Introduction

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of additions to an existing detached garage at **39A Cutler Road, Clontarf**.

The specified maximum floor area for the site under Clause 4.4 of the Manly Local Environmental Plan 2013 (the LEP) is 0.4:1.

The development proposes a departure from this numerical standard and proposes a maximum floor area of 257.3m² or 0.545:1.

The floor area requirement is identified as a development standard which requires a variation under Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP) to enable the granting of consent to the development application.

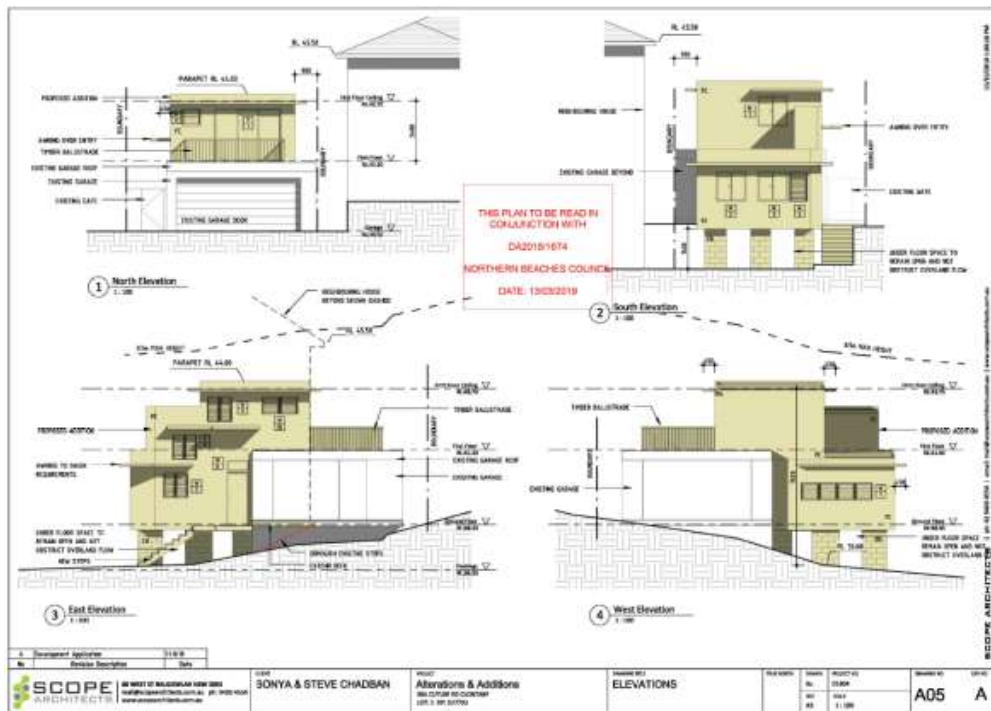
4.4 Floor Space Ratio

- (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](#).*

The floor space ratio map indicated that the maximum floor space ratio that applies to the site is 0.4:1.

The proposal results in a maximum floor space ratio of 0.545:1, a non-compliance of 68.5m² or a 36% variation.

It is noted that the proposed building envelope has been approved under DA2018/1674 and this application merely seeks to change the approved use. An extract of both the approved plans and proposed plans depicting the building envelopes are depicted below.



Stamped approved plans – DA2018/1674



Proposed Plans

This clause 4.6 written request has been prepared having regard to clauses 4.3 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land and Environment Court. It is concluded that the variation is well founded.

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 standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.3 of the Manly Local Environmental Plan 2013 is contained within Part 4 and is titled Development Standards to be complied with. I am of the opinion that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Clause 4.3 does not contain a provision which specifically excludes the application of clause 4.6 and vice versa.

I consider that clause 4.4 is a development standard to which clause 4.6 applies.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard:

(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.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118, Preston CJ sets out ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, although he emphasised that his list was not exhaustive. These include:

- *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

- *The underlying objective or purpose of the standard is not relevant to the development.*
- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*
- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard or*
- *The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.*

The proposal provides additions to the existing detached garage that are consistent with the development previously approved (DA2018/1674). The proposal is compatible with the existing surrounding development in the immediate vicinity. The resultant bulk is compatible with the existing surrounding development which is characterised by two and three storey dwellings.

It is unreasonable and unnecessary to require strict compliance with the development standard given the existing surrounding development and the circumstances of the site. In this regard the Manly Development Control Plan at '4.1.3.1 Exceptions to FSR for Undersized Lots' provides:

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

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3). a) The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots

The subject is identified as within 'R' on the Lot Size Map which requires a minimum allotment size of 750m² and as such the DCP permits a variation with the calculation of FSR based upon a lot size of 750m². In this regard based upon a lot size of 750m² the maximum floor space is 300m². The proposal provides for a maximum floor area of 257.3m² which complies.

The objectives of the Floor Space Ratio standard are set out in clause 4.4(1) of Manly Local Environmental Plan 2013:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The proposal provides for additions to an existing detached garage. Due to the slope of the site, existing vegetation and the wide road verge the subject site is not visible from the street. The proposed works will not have any impact on the streetscape. The proposal is consistent with objective (a).

The proposal provides for a structure that presents as two storeys as viewed from the front elevation. The development does not obscure any landscape or townscape features. The proposal complies with objective (b).

The proposal provides for side setbacks of at least 900mm to ensure appropriate visual separation. As noted above the proposal is not visible from the streetscape. The proposal complies with objective (c).

The proposal will not have adverse impacts on the adjoining land or the public domain. As noted above the proposal will not be visible from the public domain as it is well screened from the street by the slope, vegetation and wide road verge. The proposal will not have adverse impacts on the adjoining properties. This has been achieved by locating only an ancillary living area on the ground floor and an office/study on the upper level. The proposal does not result in any unreasonable solar access. The proposal complies with objective (d).

Objective (e) is not applicable.

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

the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported.

In this regard the following has been considered: -

- The non-compliance is a direct result of the reduced allotment size. Strict compliance would hinder any further development of the site and not enable the property to be developed in a way that is compatible with the existing surrounding development.
- The proposed envelope/footprint has been previously approved (DA2018/1674) and this consent remains valid. This application does not seek to further increase the approved FSR, rather it seeks to change the use from a secondary dwelling to a studio. The proposed floor area has been approved under DA2018/1674, and this application does not alter the approved floor area.

- The proposal does not result in any unreasonable loss of privacy or solar access to the adjoining properties.

When having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor area.

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the minor numerical variation to the floor area requirement.

Is the proposed development 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.

The proposed development is consistent with the objectives of the Height of Buildings development standard, which is demonstrated in the analysis in section 3.

The proposed development is also consistent with the R2 Low Density Residential Zone objectives in Manly Local Environmental Plan 2013.

The objectives of the R2 zone are:-

- *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.*

Comments

The development proposal includes the construction of alterations/additions to an existing garage. The proposal is considered to meet the objectives of the R2 zone for the following reasons:

- Providing minor alterations to the existing detached garage to provide for a additions ancillary to an existing dwelling which are permissible in this zone.
- Retaining the existing amenity to the surrounding residences.
- Providing a development that is compatible in terms of bulk, scale and height to surrounding properties.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice.

The non-compliance with the Floor Space Ratio does not require the concurrence of the Planning Secretary. This is no impediment to the grant of consent by the Council.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

CONCLUSION

The development proposes a departure from the maximum floor area development standard. The proposal produces an appropriate development outcome. The variation to the floor area is a direct result of the reduced allotment size. The DCP specifically indicates that variation to the FSR Development Standard can be sought where the allotment size is below the minimum required by the LEP, as is the case in this instance. This non-compliance will not result in any detrimental impact to the surrounding properties or the character of the locality. Furthermore, the overall design is of good architectural quality and the development satisfies the zone objectives and the objectives of the development standard. The proposal is not visible from the street and provides for a bulk and scale that is compatible with the existing surrounding development.

As there is no material impact on adjoining properties or the public domain arising from the variation to the floor area development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

Natalie Nolan
Grad Dip (Urban & Regional Planning) Ba App Sci (Env Health)
Nolan Planning Consultants
April 2022

ITEM 3.2

**MOD2021/0988 - 2B FRANCIS STREET DEE WHY -
MODIFICATION OF DEVELOPMENT CONSENT DA2020/1441
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
EXISTING COMMERCIAL BUILDING AND CHANGE OF USE
TO A BOARDING HOUSE**

REPORTING MANAGER**Steve Findlay****TRIM FILE REF****2022/232308****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2021/0988 for modification of Development Consent DA2020/1441 granted for alterations and additions to an existing commercial building and change of use to a boarding house on land at Lot A DP 345183, 2B Francis Street DEE WHY, subject to the conditions set out in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0988
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot A DP 345183, 2 B Francis Street DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2020/1441 granted for alterations and additions to an existing commercial building and change of use to a boarding house
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:	Yes
Owner:	CJH Investment Holdings Pty Ltd
Applicant:	Humel Architects Pty Ltd
Application Lodged:	14/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	26/01/2022 to 09/02/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify the consent granted by the Land and Environment Court for the change of use of the existing commercial building to a boarding house. The modification seeks to change the entry to the garbage room which is located within the ground level car park to include a door to Redman Road. The modification complies with condition (No. 13(a)) of the Court approval and is supported by Council's Waste Officer subject to the inclusion of additional conditions. There are no other changes proposed to the approved design.

The application is being referred to the DDP as nine (9) submissions have been received following the exhibition of the application. The submissions raised issues with the use of the building as boarding house and associated traffic and amenity impacts. Other issue included concern about the external



design of the building and poor internal amenity for future residents. The issues raised are not relevant to the subject modification to amend the waste room in accordance with the court condition.

On balance, the application addresses condition 13a of the Court consent and facilitates the inclusion of waste conditions to resolve the outstanding waste issue with the approved design. In summary, the assessment of the application against the applicable planning controls and relevant legislation reveals that the application can be supported subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The subject application seeks to modify Development Consent no. DA2020/1441, which approved alterations and additions to the existing commercial building and a change of use to a boarding house.

The modifications seek to change the layout and forms of entry to the garbage room within the carpark area. In detail, the proposal includes:

- Deletion of the access door from the entry terrace (adjacent to the main building access point).
- Installation of two new entry doors will be located on the angled northwest wall of the garbage room (thereby providing internal access to this space from the approved carpark) and the southern side of the garbage (thereby providing external access to the adjacent Redman Road road reserve)
- A small access pathway between the new external doorway and the footpath within the adjacent road reserve.

As a result of the above, consent condition 1 will require modification to reference the amended plans.

*Note: There are no other changes to the approved 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



Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Warringah Development Control Plan - D14 Site Facilities

SITE DESCRIPTION

Property Description:	Lot A DP 345183 , 2 B Francis Street DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site has an address of 2B Francis Street, Dee Why, and has a legal address of Lot A, DP 345183.</p> <p>The subject site is a regularly-shaped corner allotment; the primary frontage is to the south and adjoins the Redman road road reserve, the secondary frontage is oriented to the east and adjoins the Francis Street road reserve, while the other two boundaries adjoin residential allotments. The site has an area of 469m² and is gently sloped, with a small west-to-east downhill slope.</p> <p>The subject site is located within an R3 Medium Density Residential zone under Warringah Local Environmental Plan 2011 (WLEP 2011). All boundaries adjoin R3-zoned sites, with the nearest zone boundary being an RE1 Public Recreation zone approximately 20 metres south of site and B4 Mixed Use zones approximately 35 and 65 metres southeast and east of the subject site. The site is mapped by WLEP 2011 as being landslip prone (Area A, denoting slopes of less than 5 degrees), and flood affected, though it is not mapped as being affected by any other major hazards or affectations. The subject site does not contain a heritage item, is not within a Heritage Conservation Area, and is not in close proximity to a heritage item.</p> <p>Development on the site consists of a two storey commercial building, with contains parking and commercial activities on the ground floor offices on the first floor. The development covers the entirety of the site.</p> <p>Adjoining sites and surrounding area: Adjoining sites and development on residential-zoned sites within the surrounding area consists predominantly of higher-density residential development (i.e. residential flat buildings and multi-dwelling housing), while sites further to the north, west and south contain lower-density forms of residential development. Commercial-zoned sites to the east and south contain a large variety of commercial and mixed-use developments, including shop-top housing.</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:

- On 3 November 2011: Complying Development Certificate no. CDC2011/0252 approved for businesses, offices and shops.
- On 7 May 2021: Development Application no. DA2020/1441 was refused for the alterations and additions to an existing commercial building and change of use to a boarding house.
- On 21 November 2021, an appeal against the refusal of DA2020/1441 was upheld. Condition 13 (a) of the Court consent requires:

The bin room door shall be amended so that it is able to open flat against the wall and be latched open, alternatively the door can be latched to the wall that runs alongside Redman Road when open.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given



by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1441, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/1441.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2020/1441.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and



Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original 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 in the original 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 in the original 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 in the original 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	(i) The environmental impacts of the proposed



Section 4.15 'Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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 9 submission/s from:

Name:	Address:
Peter Egon Glasner	11 / 18 Redman Road DEE WHY NSW 2099
Emma Clare Glasner	5 / 14 - 16 Redman Road DEE WHY NSW 2099
Ms Georgia Margarita Gajardo	7 Lee Road BEACON HILL NSW 2100
Aimee Lee Wilson-O'Connor	17 / 2 - 4 Francis Street DEE WHY NSW 2099
Ms Susan Lee Cook	38/132 Killeaton Street ST IVES NSW 2075
Ms Hayley Drake	15 / 14 - 16 Redman Road DEE WHY NSW 2099
Susan Elizabeth McDonald	22 / 2 - 4 Francis Street DEE WHY NSW 2099
Mr Christopher El-Hayek	7 Lee Road BEACON HILL NSW 2100
Cheryl Gai Rine	6 Duchess Court BONNY HILLS NSW 2445

The following outlines the list of issues raised by the submissions:



- *The proposal will affect the harmony of the street. An early learning childcare business is about to start up in Redman Road. The site is unsuitable for a boarding house being on a busy corner and people using the building for short periods of time. A lodging house with a transient population is not appropriate for the area.*
- *The development is not aligned with other land uses within the area.*
- *The proposal will cause a lot of congestion, with parking at a premium.*
- *The proposal will mean more cars. The site contains insufficient parking, the Council carpark opposite the site is already very crowded and there is a lot of traffic associated with a nearby childcare centre.*
- *Increased parking demand within the local area may become a safety hazard.*
- *The proposal will introduce additional traffic within the local area.*
- *There is insufficient recreational area for the residents of the boarding house.*
- *Many units do not have a balcony.*
- *The size of the manager's room is insufficient for long-term habitation and could deter a manager from taking on the role.*
- *The cramped conditions of the boarding house are not conducive to resident health and wellbeing.*
- *The size of the common areas makes the proposal unfit for purpose.*
- *There is insufficient ventilation within the building.*
- *Redman Street contains numerous large unit blocks. Additional residences should not be provided as the street already struggles to service the parking demands of residents.*
- *There are numerous boarding house development proposals within small area, which will result in a significant number of additional residents within a small and already overcrowded area.*
- *Another high density residential building will result in overcrowding within the street. Such overcrowding poses issues such as noise.*
- *The existing development should be left as a commercial building.*
- *New age boarding houses are expensive to rent and are not affordable housing options. Councils should not compare the needs of people able to afford such rents with the occupants of traditional boarding houses.*
- *Very little furniture is being provided.*
- *A boarding house should subtly merge into the façade of the community so the building maintains the character of the area. The design of the development is out of place and takes away from the family oriented feel of the street. Signage should be removed so that the building is in sync with the area.*
- *The proposal will take away sunlight and visual privacy of adjoining sites.*
- *The proposal will result in acoustic disturbances.*
- *The proposal will adversely affect local property values.*
- *What provisions are there to prevent loss of light, reduced privacy and increased noise for surrounding sites?*

Comment:

The issues listed above relate to matters that are relevant to the assessment and determination of the original Development Application and not the current modification application which proposes minor changes in relation to waste only. As such, they are not matters for consideration as part of this planning assessment.

- *The notification area does not reach a sufficient number of people who may be affected by the proposal.*

Comment:

Notification of this application was undertaken in accordance with the Act, Regulations and



Council's Community Participation Plan (CPP).

REFERRALS

Internal Referral Body	Comments
Waste Officer	<p>SUPPORTED</p> <p>Acceptable, subject to conditions.</p> <p><u>Planner's Comments</u></p> <p>The Court consent included a condition requiring an amendment of the access to the waste room (condition 13(a)). In detail condition 13 (a) required:</p> <p><i>The bin room door shall be amended so that it is able to open flat against the wall and be latched open, alternatively the door can be latched to the wall that runs alongside Redman Road when open.</i></p> <p>The proposal complies with the condition 13 (a) and modification requires the consent to be modified to add the relevant waste conditions.</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 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 approved commercial land use.

SEPP (Affordable Rental Housing) 2009



Note: The proposal was originally approved subject to the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP); this environmental planning instrument has since been repealed and replaced with *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

The nature of the proposed modifications are such that most provisions of Part 2 Division 2 (Boarding Houses) of the Housing SEPP are not applicable to this modification application. With regard to cl. 25 (2)(a), the external modifications relate to the relocation of a single doorway and a small (i.e. 1.2 x 1.2 metre) pathway within the road reserve.

The approval of DA2020/1441 indicates that the requirements of clause 30A of the now-repealed ARH SEPP (i.e. provisions relating to the consideration of the local area's character) were satisfied. Given that:

- The originally-approved development had a character that will be compatible with the desirable elements of the local area's character, and
- The proposed modifications to the approved development will not significantly alter its external appearance or the consistency of its character with the surrounding area,

the proposal will satisfy relevant considerations within Part 2, Division 2 of the Housing SEPP, and Council may grant consent to the proposed modifications.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal will not alter the commitments of the originally approved BASIX certificate. A new/updated BASIX certificate is therefore not required as part of the proposed amendments.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	11m	10m	Unaltered	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
5.21 Flood planning	Yes

Warringah Development Control Plan

Build Form Controls

--	--	--	--	--

Standard	Requirement	Approved	Proposed	Complies
B2 Number of storeys	2	3	Unaltered	N/A
B3 Side Boundary Envelope	5m	Outside envelope	Unaltered	N/A
	5m	Outside envelope	Unaltered	N/A
B5 Side Boundary Setbacks	4.5m	0m	Unaltered	N/A
	4.5m	0m	Unaltered	N/A
B7 Front Boundary Setbacks	6.5m	0m	Unaltered	N/A
B9 Rear Boundary Setbacks	6m	0m	Unaltered	N/A
D1 Landscaped Open Space and Bushland Setting	40%	0%	Unaltered	N/A

***Note:** The original approval granted consent for the adaptive re-use including a roof addition. There is no change to the approved altered building and a detailed assessment of the built form controls is not therefore required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D14 Site Facilities	Yes	Yes

Detailed Assessment

D14 Site Facilities

Clause D14 requires:

1. Site facilities including garbage and recycling enclosures, mail boxes and clothes drying facilities are to be adequate and convenient for users and services and are to have minimal visual impact from public places. In particular:

- *Waste and recycling bin enclosures are to be durable, integrated with the building design and site landscaping, suitably screened from public places or streets and located for convenient access for collection;*

Comment:

The proposal retains the waste storage area in the car park and it remains to be screened from the public street. The proposal improves access to the waste storage area and is therefore consistent with the following objectives of the control:

- *To make servicing the site as efficient and easy as possible.*
- *To allow for discreet and easily serviceable placement of site facilities in new development.*



THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

The application seeks to change the entry to the garbage room in accordance with condition (No. 13(a)) of the Court approval. The application is supported by Council's Waste Officer subject to the inclusion of additional conditions. There are no other changes proposed to the approved design.

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



RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0988 for Modification of Development Consent DA2020/1441 granted for alterations and additions to an existing commercial building and change of use to a boarding house on land at Lot A DP 345183,2 B Francis Street, DEE WHY, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA05 Rev 7 Floor Plans	08/12/2021	Humel Architects
DA06 Rev 7 Elevations	08/12/2021	Humel Architects

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

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

B. Add Condition 13(a)(i) Waste Recycling Requirements to read as follows:

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

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

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

C. Add Condition 16 (A) Waste / Recycling Requirements to read as follows:

(i) Waste Plan Submitted

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

(ii) 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 and that adequate and appropriate waste and recycling facilities are provided.

**D. Add Condition 47(A) Garbage and Recycling Facilities to read as follows:**

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

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

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity airconditioning, 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.

E. Add Condition 47(B) Waste and Recycling Facilities Certificate of Compliance to read as follows:

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

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

Reason: To ensure waste and recycling facilities are provided.

F. Add Condition 47(C) 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.

G. Add Condition 47(D) 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.

H. Add Condition 47(E) 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.

In signing this report, I declare that I do not have a Conflict of Interest.

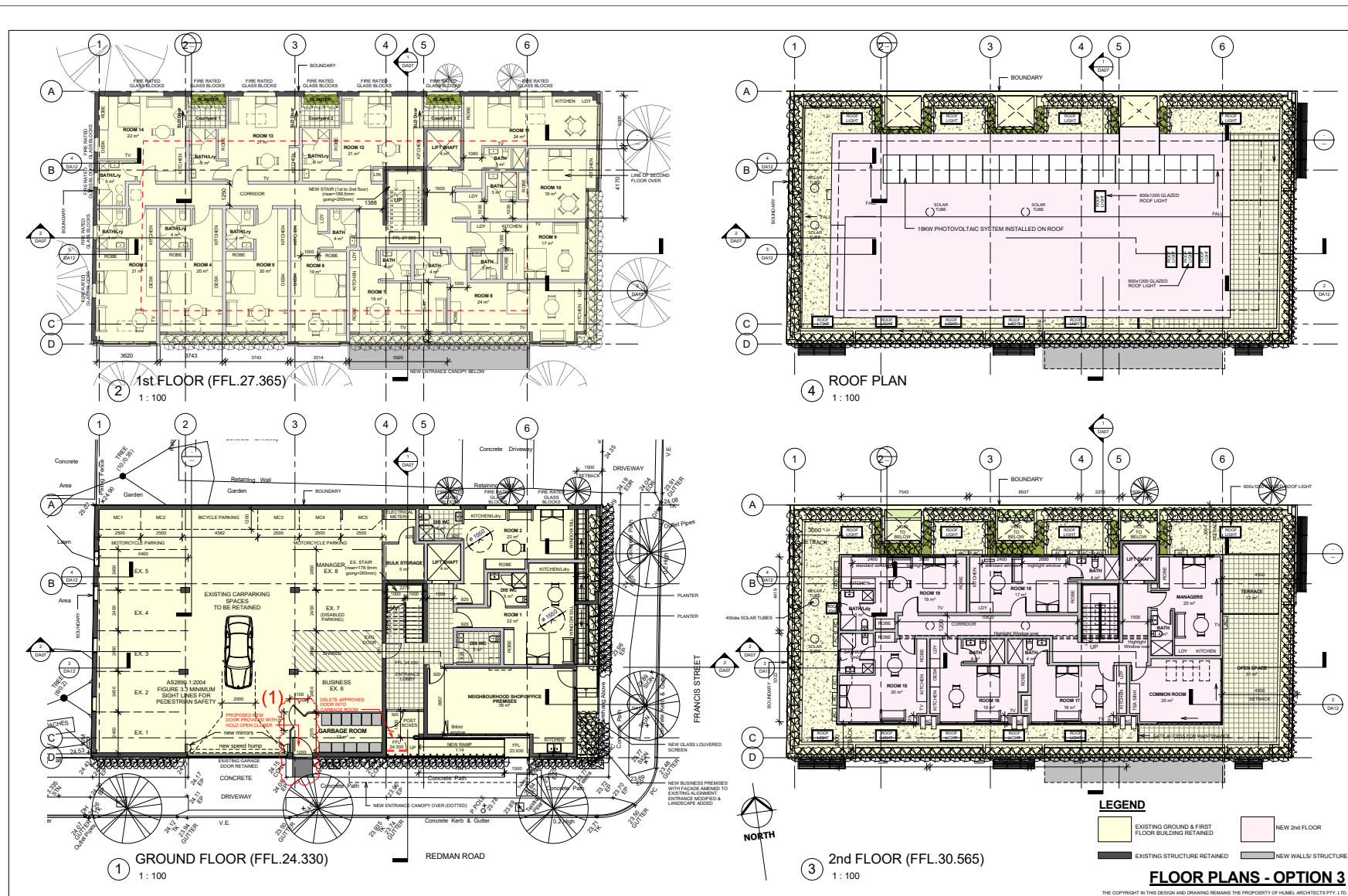


Signed

Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments



S4.55A MODIFICATION TABLE - Rev 2:

(1) Relocation of access into the garbage room.
Noting that external door swinging in will be provided with hold open closer hardware

			OPTION 3: MEC & HUMEL WOP	6	9/11/2021
			MEP AMENDMENTS	5	26/10/2021
			AMENDED DA, SECTION 34 CONFERENCE	4	04/08/2021
			UPRAN DESIGN REVIEW AMENDMENTS	3	28/05/2021
			AMENDMENTS TO PLANS & PACHE PPR COUNCIL COMMENTS	2	02/09/2021
S.4.55A MODIFICATION TO ACCESS GARBAGE ROOM	7	08/12/2021			
Amendment / Issue	No.	Date	Amendment / Issue	No.	Date

PROPRIETOR:	CJH INVESTMENTS PTY LTD
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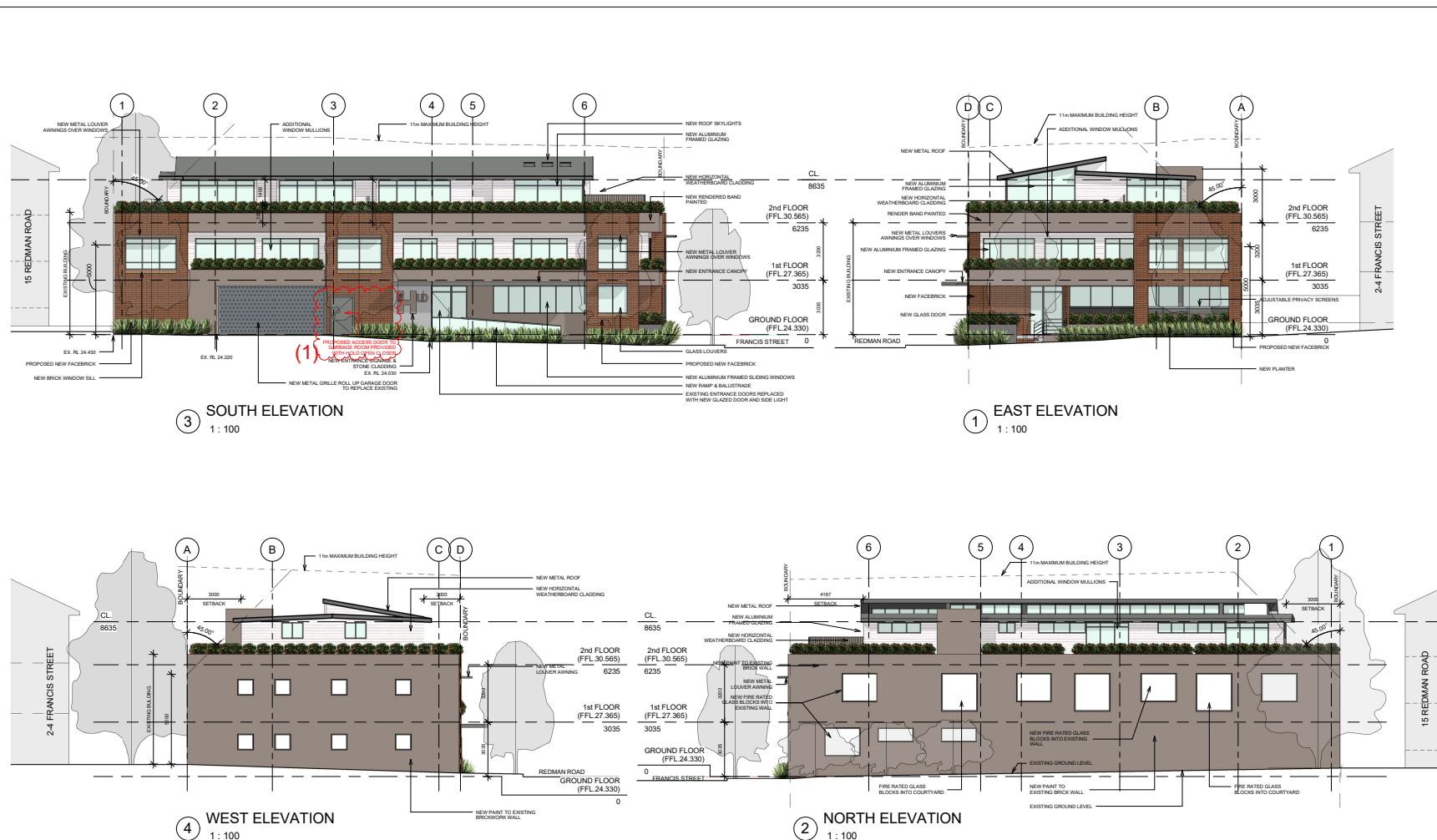
PROJECT TITLE:
NEW GENERATION BOARDING HOUSE
DEVELOPMENT, 28 FRANCIS STREET,
DEE WHY, 2099 (LOT A - DP 345183)

SHEET TITLE:
FLOOR PLANS

SCALE:	1: 100	DATE:	08/12/2021
DRAWN:	SS	CHECKED:	DW
PROJECT NO:	2017/100	REV:	7
DRAWING NO:	DA05		

HUMEL

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E info@humel.com.au



ELEVATIONS

THE COPYRIGHT IN THIS DESIGN AND DRAWING REMAINS THE PROPERTY OF HUMEL ARCHITECTS PTY LTD.

S4.55A MODIFICATION TABLE - Rev 7:

(1) Relocation of access into the garbage room.
Noting that external door swinging in will be provided
with hold open closer hardware

OPTION 3: NEW HUMEL WOP	#	9/11/2021
NEW AMENDMENTS	5	26/12/2021
AMENDED DA, SECTION 34 CONFERENCE	4	04/08/2021
URBAN DESIGN REVIEW AMENDMENTS	3	28/05/2021
AMENDMENTS TO PLANS & PACHE PPR COUNCIL COMMENTS	2	02/09/2021
Amendment / Issue	No.	Date

PROPRIETOR:	CJH INVESTMENTS PTY LTD
-------------	-------------------------

PROJECT TITLE:
NEW GENERATION BOARDING HOUSE
DEVELOPMENT, 28 FRANCIS STREET,
DEE WHY, 2009 (LOT A - DP 345183)

SHEET TITLE:
ELEVATIONS

HUMEL

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SCALE:	1 : 100	DATE:	8/12/2021
DRAWN:	SS	CHECKED:	DW
PROJECT NO:	2017/100	REV:	7
DRAWING NO:	DA06		

ITEM 3.3	DA2021/2326 - 41 CUMBERLAND AVENUE COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2022/232520
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 DA2021/2326 for alterations and additions to a dwelling house on land at Lot 25 DP 12985, 41 Cumberland Avenue COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2326
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 25 DP 12985, 41 Cumberland Avenue COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	David Stolper Lian Anitra Stolper
Applicant:	Matthew Arthur Cliffe
Application Lodged:	02/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/12/2021 to 15/01/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 5.29%
Recommendation:	Approval
Estimated Cost of Works:	\$ 600,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling.

The application is referred to the Northern Beaches Development Determination Panel (DDP) due to the owner of the site being a Council employee and the proposed height exceeding the stipulated height requirements. The application includes a request under Clause 4.6 of the Pittwater LEP 2014 to vary the development standard for building height. The application proposes a variation to the building height development standard of less than 10% and involves a Class 1 Dwelling. The proposed height breach would only relate to a change in roof materials and the overall height of the building would not change from existing.

No submissions have been received in response to neighbour notification.

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

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

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

PROPOSED DEVELOPMENT IN DETAIL

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

- Demolition works
- Removal of the roof to the north and an extension of the first floor to provide two bedrooms, ensuite, WIR and covered balcony
- Internal modifications to ground and upper level including new windows
- New balcony and balcony extension on first floor
- New garage

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 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
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 - C3 Parking Facilities
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 25 DP 12985 , 41 Cumberland Avenue COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Cumberland Avenue.</p> <p>The site is regular in shape with a frontage of 14.935m along Cumberland Avenue and a depth of 45.72m. The site has a surveyed area of 682.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part two, part three storey dwelling and shed in the rear garden.</p> <p>The site has a cross-fall of approximately 3m from the northern boundary (street frontage) to the southern boundary (rear).</p> <p>The site does not contain any significant trees or landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses of varying architectural styles within a landscaped setting.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Regulation 2000 (EP&A Regulation 2000)	<p>consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and a Clause 4.6 Statement.</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 (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	See discussion on “Notification & Submissions Received” in this

Section 4.15 Matters for Consideration	Comments
submissions made in accordance with the EPA Act or EPA Regs	report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Clarke Dowdle & Associates, dated October 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/12/2021 to 15/01/2022 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.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation <p>The property does not contain any prescribed trees and rather the site is dominated by garden planting and lawn. The proposed alterations and additions do not impact upon existing vegetation. The road reserve contains two street trees and conditions shall be imposed for protection measures.</p>
NECC (Bushland and Biodiversity)	The application seeks approval for alterations and additions to existing dwelling including upper level extension and internal

Internal Referral Body	Comments
	<p>modifications. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <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>Warringah Development Control Plan (WDCP)</p> <ul style="list-style-type: none"> • Clause E2 Prescribed Vegetation • Clause E6 Retaining unique environmental features <p>The application does not seek approval to remove any prescribed trees or vegetation, and it is noted that the proposed APZ will not require the removal of any vegetation for establishment.</p> <p>As the application does not require the removal of prescribed trees or vegetation nor is it likely to impact on nearby biodiversity values, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls, subject to conditions</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</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 'Proximity to Coastal Wetlands Area' and 'Coastal Environment Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11, 13 and 15 of the CM SEPP apply for this DA.</p>

Internal Referral Body	Comments
	<p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 11, 13 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Development Engineering)	<p>The proposal is for the alterations and additions to an existing dwelling. The submitted stormwater plan is unsatisfactory. As the site falls to the rear the stormwater management shall be in accordance with Clause 5.5 of Council's Water Management for Development Policy. All stages of the clause shall be addressed. Issues to be addressed with the stormwater plan is as follows:</p> <ul style="list-style-type: none"> • Where an easement to the rear is not feasible a refusal letter shall be provided in accordance with Clause 5.5. • Where an absorption system is proposed a geotechnical engineering report shall be provided in accordance with Appendix 3. Information shall include a measured infiltration rate. • Design and calculations for the absorption system shall be provided. <p>Development Engineers cannot support the application due to insufficient information to address Clause C4 of the Warringah DCP.</p> <p>Additional Information Provided on 30/3/2022</p> <p>An easement refusal letter has been provided. The submitted geotechnical report states infiltration is not suitable for the site. The amended stormwater plan proposes to discharge via a level spreader. However the stormwater plan provides only partial calculations which is not satisfactory. The design of the level spreader shall be in accordance with Appendix 4 of Council's Water Management Policy. The stormwater plan shall be amended to provide the following</p>

Internal Referral Body	Comments																								
	<p>information:</p> <ul style="list-style-type: none">Stormwater flows from the whole site are to be restricted for all storm events up to and including the 1% AEP storm event.Total discharge from the whole site including bypass flows and controlled flows through the level spreader must not exceed the 20% AEP state of nature storm event for all storms including the 1% AEP storm event.The plans are to show calculations for the entire site flows including bypass flows. <p>Additional Information Provided on12/4/2022 The amended stormwater plan has been reviewed. The proposal is for alterations and additions to the existing dwelling and there is no significant increase in the impervious areas. All proposed impervious areas are controlled to less than the 20%AEP state of nature flows which is a significant improvement to the existing site discharge and hence no objections to approval subject to conditions.</p>																								
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. No objection, subject to conditions.</p>																								
Strategic and Place Planning (Heritage Officer)	<table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3"><p>This application has been referred as it is in the vicinity of a heritage item, being Item 118 - Washington Palms (<i>Washingtonia robusta</i>), 861 Pittwater Road, Collaroy, listed in Schedule 5 of Warringah LEP 2011.</p></td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3"><p>Details of this item in the vicinity, as contained within the Warringah Heritage Inventory, are:</p><p><u>Statement of Significance</u> An aesthetically significant group planting which is a dominant feature of the streetscape. Demonstrates the use of endemic species as landmark planting in the area.</p><p><u>Physical Description</u> Group of 3 Washingtonia robusta palms planted in a row along Pittwater Road forming a distinctive feature of the streetscape. All trees are mature specimens being about 15 metres in height</p></td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td>Comment if applicable</td></tr><tr><td>Australian Heritage</td><td>No</td><td></td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			<p>This application has been referred as it is in the vicinity of a heritage item, being Item 118 - Washington Palms (<i>Washingtonia robusta</i>), 861 Pittwater Road, Collaroy, listed in Schedule 5 of Warringah LEP 2011.</p>			Details of heritage items affected			<p>Details of this item in the vicinity, as contained within the Warringah Heritage Inventory, are:</p> <p><u>Statement of Significance</u> An aesthetically significant group planting which is a dominant feature of the streetscape. Demonstrates the use of endemic species as landmark planting in the area.</p> <p><u>Physical Description</u> Group of 3 Washingtonia robusta palms planted in a row along Pittwater Road forming a distinctive feature of the streetscape. All trees are mature specimens being about 15 metres in height</p>			Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable	Australian Heritage	No	
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Internal Referral Body	Comments
	Register
	NSW State Heritage Register
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	This application is for alterations and additions to an existing brick dwelling house. The heritage item is located remote from these works, with more than 50 metres and residential houses between the works and the heritage listed trees which front Pittwater Road. Given this separation this application will have no impact on these heritage trees.
	Therefore, no objections are raised on heritage grounds and no conditions required.
	Consider against the provisions of CL5.10 of WLEP 2011: Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A
	Further Comments
	COMPLETED BY: Janine Formica, Heritage Planner DATE: 6 December 2021

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.A436520 dated 23/11/2021).

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 'Proximity to Coastal Wetlands Area' and 'Coastal Environment Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11, 13 and 15 of the CM SEPP apply. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP

- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP
- The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP
- The proposal is not likely to cause increased risk of coastal hazards on the site or other land as listed in clause 15 of the CM SEPP

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

The proposal has been reviewed by Council's Coast and Catchments Officer and Biodiversity Officer who has raised no objections.

Coastal Management Act 2016

The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.

The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

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	8.95m	5.29%	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
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The maximum height of the proposed development has been measured at 8.95m. This represents a variation of 5.29%. It should be noted that the height breach would only relate to a change in roof materials and the overall height of the building would not change from existing (RL 20.45) . Figure 1 below demonstrates the extent of the existing height breach (highlighted in green): Other proposed additions would be below the 8.5m height requirement.

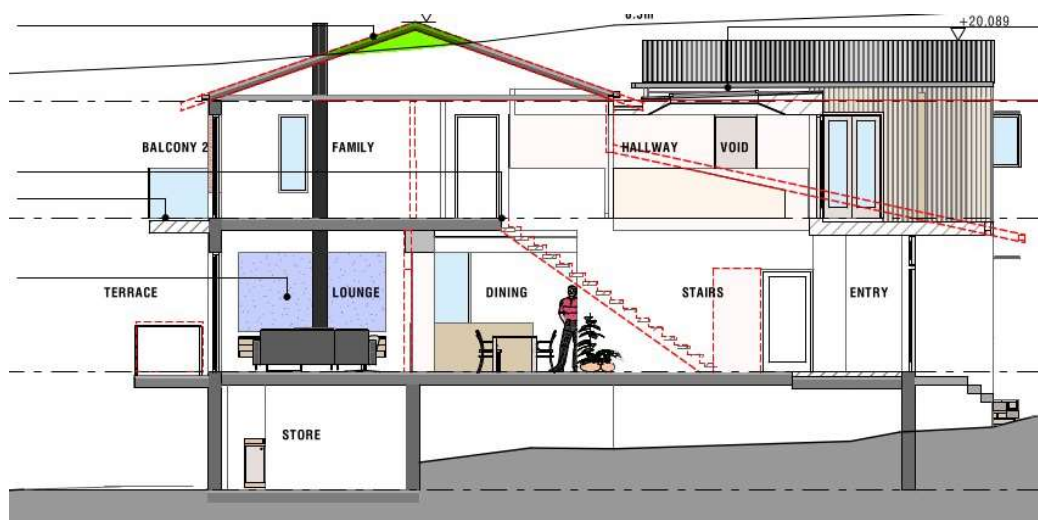


Figure 1 - Existing height breach

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.95m
Percentage variation to requirement:	5.29%

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:

- The building height breaching elements simply represent a changing of materials of an existing roof and does not propose any additional height to that of the existing structure. The ridge of the existing portion of the roof that is over the height limit remains unchanged in the proposal.
- The non-compliant building elements proposed represent a change from a tiled roof to a metal roof sheeting.
- The non-compliance represents an existing situation and does not result in any unacceptable environmental consequences in terms streetscape or residential amenity.

It is agreed that the application seeks only change materials to a portion of roof that exceeds the 8.5m. The proposal would result in an increase in overall building height and would not result in a change in roof formation or other works above the stipulated 8.5m height requirement. It is also agreed that the proposed change in materials would not result in unreasonable environmental consequences in terms streetscape or residential amenity

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,

Comment:

The building height breaching elements simply represent a changing of materials of an existing roof and does not propose any additional height to that of the existing structure. There will be no discernible change as viewed from any position. The dwelling will continue to present as a two-storey dwelling as viewed from Cumberland Ave.

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

Comment:

As above, the building height breaching elements simply represent a changing of materials of an existing roof and does not propose any additional height to that of the existing structure. The existing height breach is limited to the ridge area of this steep roof. The majority of the dwelling sits well below the 8.5m development standard. The proposal does not seek to change the formation of this area above the 8.5m and as such the proposed works above the 8.5m would not result in unreasonable amenity impacts, disruption of views, loss of privacy or loss of solar access. The area of non-compliance will not be readily discernible from the public domain as the

breach simply represents a change in materials.

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

Comment:

As above, the building height breaching elements simply represent a changing of materials of an existing roof and does not propose any additional height to that of the existing structure. The height and character of the proposal would be consistent with that of the existing dwelling. Vegetation would be retained at the front of the property to soften the development and maintain the scenic quality of the site.

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

Comment:

As above, the area of non-compliance will not be readily discernible from the public domain as the breach simply represents a change in materials. The overall height of the dwelling and the character as viewed from public places would remain consistent with the existing development.

Zone objectives

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

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

Comment:

The development will continue to provide a single dwelling house to meet the needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

N/A - the application does not propose a change to land use.

It is considered that the development satisfies this objective.

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

Comment:

The development will provide a two storey dwelling within a landscaped setting. Vegetation would be retained at the front of the property to soften the development and maintain the scenic quality of the site.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020 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%.

6.4 Development on sloping land

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) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

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Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.3m	1.3%	No
B3 Side Boundary Envelope	4m (E)	Outside Envelope	N/A	No
	4m (W)	Outside Envelope	N/A	No
B5 Side Boundary Setbacks	0.9m (E)	1.2m	N/A	Yes
	0.9m (W)	Nil (garage additions)	100%	No
B7 Front Boundary Setbacks	6.5m	6.35m	2.3%	No
B9 Rear Boundary Setbacks	6m	18m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (273.12sqm)	42.2% (288sqm)	N/A	Yes

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed first floor additions has a maximum wall height of 7.3m on the western elevation, which exceeds the maximum permitted wall height of 7.2m by 0.1m (1.3%).

It should be noted that the non-compliance occurs as the land falls away to the south and does not extend for the full length of the side walls.

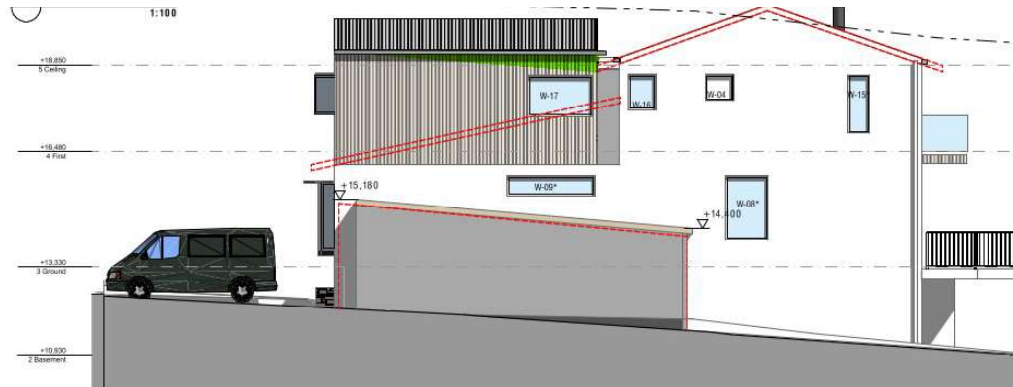
The minor non-compliance occurs centrally on the building wall and does not result in any excessive bulk, visual impact or amenity impacts nor does it impact the existing streetscape. Consistency with the objectives of the control is achieved, despite the minor breach.

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 4m above the existing ground level, measured from the side boundaries. The proposed additions encroaches into the side boundary envelope along the eastern and western elevations as depicted in figures 1 and 2 below.

The figures below show the location and extent of the non-compliance.



2 West Elevation
1:100

Figure 1: Side boundary envelope breach of proposed additions on the western elevation shown in green



2 East Elevation
1:100

Figure 2: Side boundary envelope breach of proposed additions on the eastern elevation shown in green

Merit consideration

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

- To ensure that development does not become visually dominant by virtue of its height and bulk.

Comment:

The apparent size of the proposed development is not inconsistent with the size and scale of more recent development throughout the immediate locality. The proposal would present as two storeys from the street and will maintain the overall character of the dwelling as viewed from the streetscape.

The proposed development would result in a built form in which the building bulk would be adequately broken up by changes in materials, roof formation, varied setbacks, fenestration, open balconies, a modulated built form and landscaping. The envelope breach occurs centrally on the building wall and does not result in any excessive bulk, visual impact or amenity impacts nor does it impact the existing streetscape. The proposed additions would be below the 8.5m height requirements (with the exception of the replacement roof) and the ridge height of the existing building and would maintain a secondary hierarchy to the original building form.

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The proposed envelope non-compliance would not result in unreasonable solar access impacts. Privacy has been addressed within Section D8 of this report. Subject to recommended conditions, it is considered no unreasonable privacy impacts would occur as a result of the development.

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

Comment:

The development is considered to generally respond to the natural topography of the site. The application does not include any significant excavation.

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

B5 Side Boundary Setbacks

Description of non-compliance

The WDCP requires that a side setback of 0.9m is provided. The proposed dwelling alterations are largely compliant with the side setback with the exception of the new garage which would have a nil setback from the western side boundary. The proposed garage would be replacing an existing garage in the same location with a nil setback to this side boundary.

Merit Assessment

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 proposed garage would replace an existing structure and would not facilitate the loss of landscaping. The site retains opportunities for deep soil landscaping throughout.

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

Comment

The encroachment into the side setback is for a single storey garage that complies with the height control of the WLEP, the side boundary envelope and wall height requirements of the WDCP. The garage would replace an existing structure of similar height and scale. The design of the proposal will ensure that development does not become visually dominant.

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

Comment

The proposed garage would be single storey, well below the required height limit, within the required building envelope and wall height requirement. The garage would replace an existing structure of similar height and scale. The garage would incorporate a skillion roof which would fall with the slope of the land. As such, the scale and bulk of the building is adequacy minimised.

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

Comment

The garage is not considered to result in unreasonable amenity impacts to adjoining land. The garage design would be a single storey, non habitable structure with no side facing windows. The garage would replace an existing structure of similar height and scale in the same location. Suitable solar access would be maintained to adjoining neighbours.

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

Comment

The side boundary non-compliance of the garage will not unreasonably impact on any existing views to and from public and private properties. The garage would replace an existing structure of similar height and scale in the same location.

Having regard to the above assessment, the proposal provides a compliant off-street parking arrangement, which the current site fails to provide. While providing a double carport comes at the expense of a compliant side setback, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary SetbacksDescription of non-compliance

The proposed first floor addition is to be setback 6.35m from the front boundary, representing a 2.3% variation. The proposal would maintain the front setback of the existing dwelling.

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 proposed first floor addition would be built on top of the existing building footprint and maintains the front setback of the existing dwelling. This is not expected to unreasonably impact upon the sense of openness of the front setback area.

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

Comment:

As above, the proposed first floor addition would be built ontop of the existing building footprint and maintains the front setback of the existing dwelling. No landscaping is proposed to be removed to facilitate the development. The proposal would maintain visual continuity with the existing site and surrounding dwellings.

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

Comment:

The proposed development would complement the built form of the existing dwelling and is not considered to unreasonably impact upon the visual quality of the streetscape. The height, bulk and scale of the proposal is consistent with the existing site and surrounding development.

- *To achieve reasonable view sharing.*

Comment:

The front building non-compliance is not anticipated to give rise to any unreasonable view loss. This matter has been further addressed within Section D7 of this report.

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

C3 Parking Facilities

Clause C3 of the WDCP 2011 stipulates that dwelling houses are to provide two (2) off-street parking spaces. The proposal provides a single garage which retains the existing arrangement onsite. It should be noted that the development proposes a 8.9m x 3.7m driveway which would be level in front of this proposed garage, which is sufficient in providing an informal tandem parking arrangement.

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	Required	Pro
Dwelling house	2 spaces per dwelling	1 space (w

In order to achieve compliance with the prescribed parking requirements, an informal hardstand space is to be maintained in front of the garage on the proposed driveway. This driveway would have sufficient space to accommodate an additional car space. This will provide adequate off street carparking for the dwelling occupants, thus satisfying this objective.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed garage would be appropriately setback from the street and would be integrated into the design of the dwelling. Further, the informal hardstand space will not detrimentally alter the streetscape appearance, as no structure is proposed above the space. The proposal would be generally consistent with the existing parking arrangement onsite.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The on-site parking provisions will not dominate the streetscape as the garage would be appropriately setback from the street frontage and integrated into the design of the dwelling. The informal hardstand space, being located on the proposed driveway is not considered to dominate the street frontage being located at ground level and remaining an entirely open space. The proposal would be generally consistent with the existing parking arrangement onsite and is similar to other properties within the locality.

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

D7 Views

Ocean, headland lagoon views are available across the subject site towards east and south-east. The proposal would be largely within the footprint of the existing building. The proposal would be below the ridge height of the existing dwelling and is not anticipated to result in unreasonable view loss to neighbours to the north. The proposed balcony additions to the rear are not anticipated to result in unreasonable to adjoining properties to the east and west and these properties are expected to retain view corridors over their rear (southern boundaries). Additionally, no objections have been received from adjoining neighbours in relation to view loss.

D8 PrivacyMerit Assessment

Clause D8 of the WDCP 2011 requires the building layout to be designed to optimise privacy for occupants of the development and occupants of adjoining properties. The Control stipulates that windows of a dwelling are to be located so they do not provide direct or close views (ie. from less than 9 metres away) into the windows or private open space of other dwellings.

No submissions in relation to privacy have been received from adjoining neighbours. Nevertheless, consideration of potential privacy is provided below.

- **Proposed Windows - East Elevation:**

It is considered that the proposed windows on the eastern elevation within the development have been appropriately designed to ensure the privacy of the adjoining neighbours through the use of offset and high sill designs and screening. Additionally, no submissions in relation to privacy have been received by the neighbour to the east.

- **Proposed Windows - West Elevation:**

In plan, proposed first floor window to the Bedroom 1 (W17) on the western elevation would result in a spatial separation of less than 9m between the adjoining dwellings' (No.39 Cumberland Avenue) approved (as approved within DA2020/1635) eastern window. In this respect, it is considered appropriate to impose a condition of consent requiring this window to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), or be either high sill (ie. containing a sill height of 1.65m from the FFL) or obscure glazed.

Windows W16, W08 and W15 would be replacing existing windows of similar sizes and are not considered to result in additional privacy impacts. Additionally, no submissions in relation to privacy have been received by the neighbour to the west.

- **Proposed Balconies**

A "first floor" balcony is proposed on the southern (rear) elevation which is 3.5m from the western boundary and within 9m of the adjoining western neighbours' (No. 39 Cumberland Avenue) balcony. To ensure a reasonable level of visual privacy is maintained between the subject site and this neighbour (No. 39 Cumberland Avenue), a suitable condition has been included with this consent requiring the western elevation of the first floor balcony located off "Family room" to be affixed with a screening device of louver screening with a maximum spacing of 20mm. The screening device must be to a height of 1.5m above the finished floor level.

The proposed first floor balconies located on the southern (rear) elevation are not considered to result in unreasonable privacy impacts to the neighbours to the east (43 Cumberland Avenue) given that they would be elevated above adjoining side facing windows and would be appropriately offset from adjoining private open space. Additionally, no submissions in relation to privacy have been received by the neighbour to the east.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

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 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$6,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$600,000.

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, 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 assessment of the proposal against the provisions of WDCP has found that the proposed development does not strictly comply with the requirements of the applicable controls related to the side boundary envelope, wall heights, front 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 the existing dwelling or surrounding newer development in the immediate area.

No submissions have been received in response to neighbour notification.

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the 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 DA2021/2326 for Alterations and additions to a dwelling house on land at Lot 25 DP 12985, 41 Cumberland Avenue, COLLAROY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 02 Rev.A - Site & Location Plan	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 05 Rev.A - Construction Management & Landscaping Plans	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 100 Rev.A - Demolition Basement/Ground	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 101 Rev.A - Demolition Level 1/Roof	23/11/2021 - Drawn 09/12/2021	C2 Design

DA 102 Rev.A - Proposed Basement/Ground	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 103 Rev.A - Proposed Level 1/Roof	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 104 Rev.A - Proposed Section A	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 105 Rev.A - Proposed Elevations North & East	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 106 Rev.A - Proposed Elevations South & West	23/11/2021 - Drawn 09/12/2021	C2 Design
DA 502 Rev.A - Materials and Colours	23/11/2021 - Drawn 09/12/2021	C2 Design

Engineering Plans		
Drawing No.	Dated	Prepared By
SW01 Rev.B - GENERAL NOTES	12/04/2022	Greenwood Consulting Engineers
SW02 Rev.B - SITE DRAINAGE PLAN	12/04/2022	Greenwood Consulting Engineers
SW03 Rev.B - GROUND FLOW AND LOWER ROOF DRAINAGE PLAN	12/04/2022	Greenwood Consulting Engineers
SW04 Rev.B - UPPER ROOF DRAINAGE PLAN	12/04/2022	Greenwood Consulting Engineers
SW05 Rev.B - DETAILS	12/04/2022	Greenwood Consulting Engineers
SW06 Rev.B - DETAILS	12/04/2022	Greenwood Consulting Engineers
SW07 Rev.B - DETAILS	12/04/2022	Greenwood Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A436520)	23/11/2021	C2 Design
Bush Fire Assessment Report (Ref GO: 24644)	October 2021	Clarke Dowdle & Associates
PRELIMINARY GEOTECHNICAL ASSESSMENT (J3905)	24/11/2021	White Geotechnical Group
Geotechnical Letter (J4150)	28/03/2022	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:

Waste Management Plan		

Drawing No/Title.	Dated	Prepared By
Waste Management Plan	23/11/2021	C2 Design

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 is defined as:

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

(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.

3. **No approval for installation or use of solid/fuel burning heaters**

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

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

4. **No Works on Adjoining Land**

All approved works are to be located entirely within the subject site. No Approval is granted under this consent for any works within or on the property boundaries of adjoining privately owned land.

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

5. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

6. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$6,000.00 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 \$600,000.00.

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.

8. Security Bond

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

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

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

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

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

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

9. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

10. Water Quality Management

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

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

Reason: Protection of the receiving environment.

11. Amendments to the approved plans

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

a) **First Floor Window (W17)** - A privacy screen is to be installed on the "first floor" western window to "Bedroom 1" (W17) as shown on the approved plans. The privacy screen shall be of louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level

b) **Rear Balcony** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "first floor" balcony located off the "Family 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: To ensure development minimises unreasonable impacts upon surrounding land.

12. 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.

13. 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 Greenwood Consulting Engineers, job number 2021283, drawing number SW01 to SW07, dated 12/4/2022. 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.

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. Compliance with Standards

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

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

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

16. External 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.

17. Sydney Water "Tap In"

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

Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

18. Construction Site Management Plan

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages and the two street trees (Paperbark and Bottlebrush) fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum, the tree protection fencing for street tree(s) fronting the development site

shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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.

20. Tree and Vegetation Protection

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

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees

on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

21. Road Reserve

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

Reason: Public safety.

22. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

23. Removing, Handling and Disposing of Asbestos

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

- 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.

24. 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.

25. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

26. 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.

27. Installation and Maintenance of Sediment Control

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

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

28. Vehicle Crossings

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 5EL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. Approval from

service authority to be to be obtained for adjustment of existing Telstra pit to suit driveway levels. 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.

29. 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**

30. 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.

31. 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.

32. 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. (DACPLF01)

33. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

34. Waste Management Confirmation

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

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

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

35. **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.

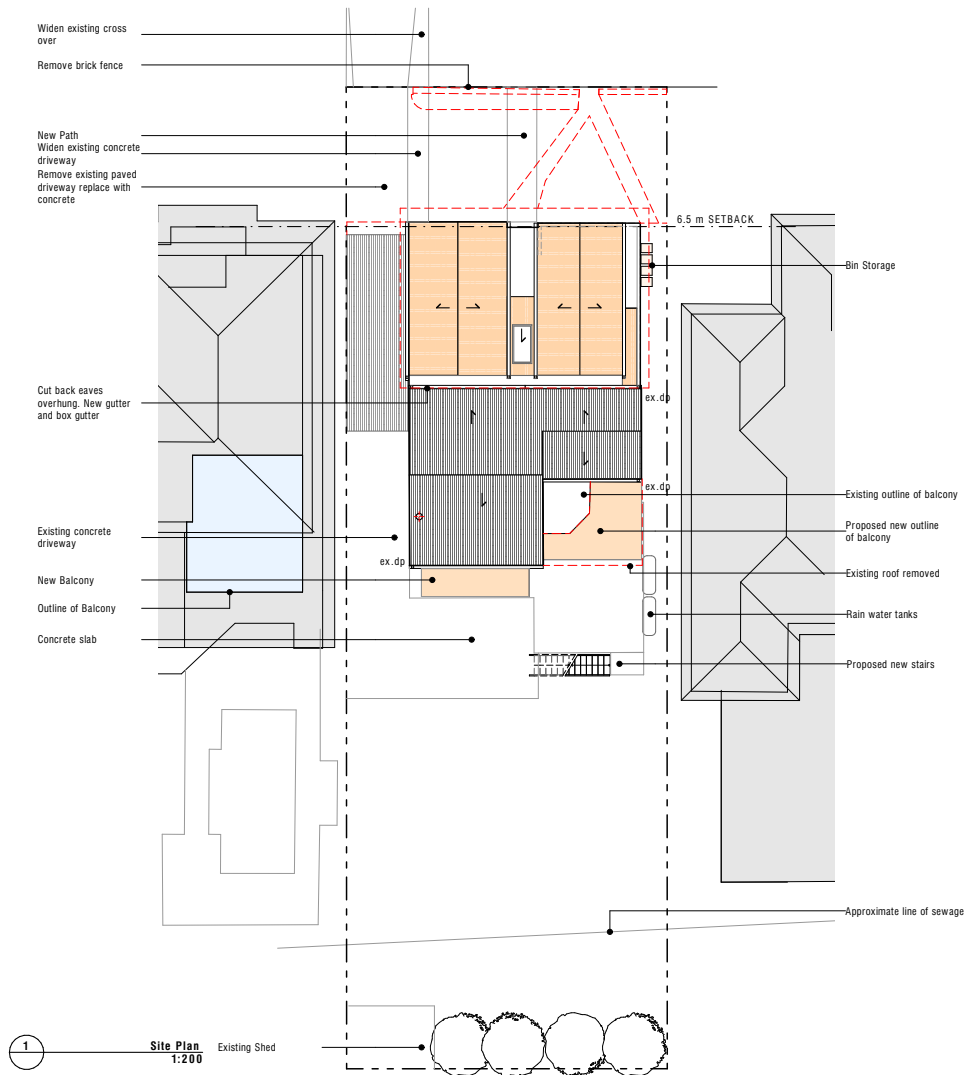
36. **Geotechnical Recommendations**

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.

37. **Use of "Basement level"**

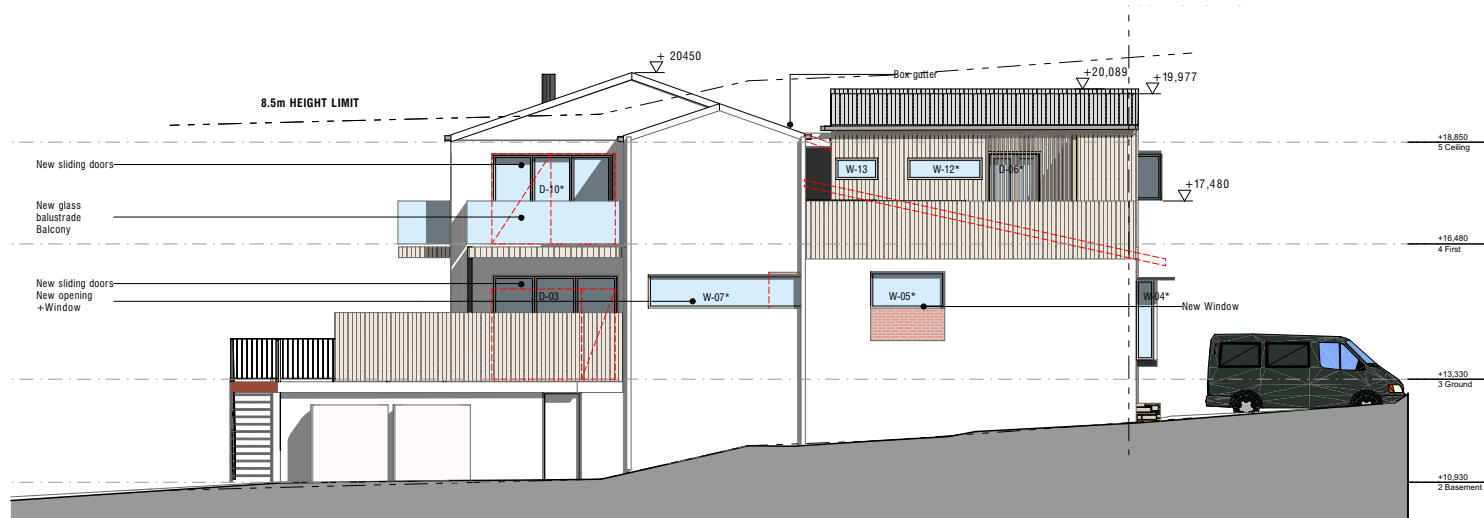
The proposed Lower ground floor "basement level" is not to be used for the purpose of separate habitation (including a secondary dwelling or dual occupancy) and is not to contain any cooking facilities. Reason: To ensure that the ground floor remains ancillary to the dwelling house.



<p>General Notes</p> <p>The Builder shall check all dimensions and levels on the ground to construction before any work commences and if necessary to C2 DESIGN. All dimensions shall be used for construction. On the whole drawings. All boundaries and contours subject to survey.</p>	<p>C2 DESIGN BUILDINGS & INTERIORS</p> <p>ABN 16344 Contact: Paul Address P +61Contact Phone Number (E +61Contact E-mail) W +61Contact Web</p>		<p>A DEVELOPMENT APPLICATION</p> <p>23.11.21</p>	<p>PROJECT NAME: ALTERATIONS AND ADDITIONS</p> <p>CLIENT: DAVID STOLPER</p> <p>+1 CUMBERLAND AVE COLLAROY P</p>	<p>SITE: 41 CUMBERLAND AVE COLLAROY</p> <p>DRAWING TITLE: General Site & Location Plan</p>	<p>PROJECT NO: 178</p> <p>DRAWING NO: DA02</p>	<p>DRAWN BY: P1021</p> <p>CHECKED BY: DA</p> <p>REVISION NO:</p>
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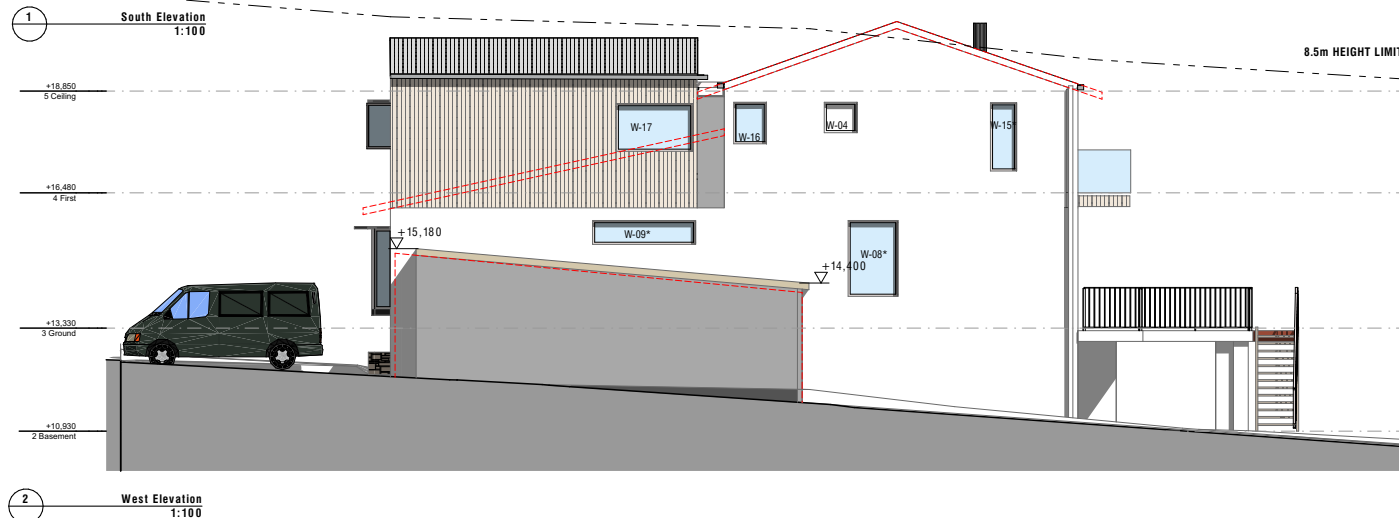


**1 North Elevation
1:100**



**2 East Elevation
1:100**

<p>General Notes</p> <p>The Builder shall check all dimensions and levels on the ground to construction before any work commences and if necessary to C2 DESIGN.</p> <p>Do not make any changes to the construction program and issued for construction.</p> <p>All dimensions and contours subject to survey.</p>	<p>C2 DESIGN BUILDINGS & INTERIORS</p> <p>ABN 16 624 111 111 Contact: Paul Address P: +61 Contact Phone Number (E: #Contact E-mail) M: #Contact Data</p>	<p>A DEVELOPMENT APPLICATION</p>	<p>23.11.21</p>	<p>PROJECT NAME: ALTERATIONS AND ADDITIONS</p> <p>CLIENT: DAVID STOLPER</p> <p>+1 CUMBERLAND AVE COLLAROE P.</p>	<p>SITE: 41 CUMBERLAND AVE COLLAROE</p> <p>DRAWING TITLE: Sketch Plan PROPOSED ELEVATIONS NORTH & EAST</p>	<p>PROJECT NO: 178</p> <p>DRAWING NO: DA 105</p>	<p>DRAWN BY: 9/10/21</p> <p>CHECKED BY:</p> <p>REVISION NO: DA</p>
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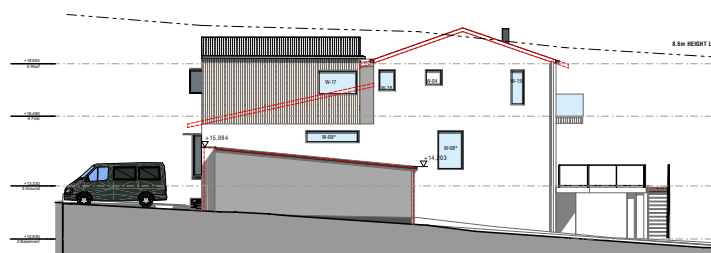
<p>General Notes</p> <p>The Builder shall check all dimensions and levels on the ground to construction before any work commences and if necessary to C2 DESIGN or change and/or for use for construction purposes and issued for construction.</p> <p>On the whole drawings, all dimensions and contours subject to survey.</p>	<p> C2 DESIGN BUILDINGS & INTERIORS</p> <p>ABN 16344 Contact Full Address P +61Contact Phone Number (E +61Contact E-mail) W +61Contact Web</p>		<p>A DEVELOPMENT APPLICATION</p> <p>23.11.21</p>	<p>PROJECT NAME: ALTERATIONS AND ADDITIONS</p> <p>CLIENT: DAVID STOLPER</p> <p>+1 CUMBERLAND AVE COLLARROY P</p>	<p>SITE: 41 CUMBERLAND AVE COLLARROY</p> <p>DRAWING TITLE: DAVID STOLPER PROPOSED ELEVATION SOUTH & WEST</p>	<p>PROJECT NO. 178</p> <p>DRAWING NO. DA 106</p>	<p>DRAWN BY: 9/10/21</p> <p>CHECKED BY:</p> <p>REVISION NO. DA</p>
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1 South Elevation
1:200



3 North Elevation
1-200



2 West Elevation
1:200



4 East Elevation
1:200

114