



northern
beaches
council

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 4 MAY 2022

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.

Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 4 May 2022

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 20 APRIL 2022

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 20 April 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/1991 - 12 BIRKLEY ROAD, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF A DUAL OCCUPANCY (ATTACHED) INCLUDING STRATA SUBDIVISION
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2022/248666
ATTACHMENTS	1 Assessment Report 2 Site Plans and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DADA2021/1991 for demolition works and construction of a dual occupancy (attached) including strata subdivision on land at Lot 5 DP 2428, 12 Birkley Road, Manly subject to the conditions set out in the Assessment Report .

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1991
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 2428, 12 Birkley Road MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dual occupancy (attached) including strata subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Daniel Alexander Moore Susan Margaret Moore Connected Benefits Pty Ltd
Applicant:	Stacey Marston Architects Pty Ltd

Application Lodged:	28/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	09/11/2021 to 23/11/2021
Advertised:	Not Advertised
Submissions Received:	14
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,514,400.00
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EXECUTIVE SUMMARY

The application seeks consent for demolition works, construction of a new dual occupancy (attached) and strata subdivision.

As the proposal attracted fourteen (14) submissions in objection to the development, the application is referred to the Northern Beaches Local Planning Panel.

The fourteen submissions received in response to the notification of the application generally relate to:

- The proposed built form non-compliances and associated bulk and scale

- Streetscape and heritage impacts
- Amenity impacts including view loss, overshadowing and privacy
- Tree removal

As detailed in the report, none of the concerns raised in submissions warrant the refusal of the application subject to the recommended conditions of consent.

The proposal maintains an appropriate visual relationship with surrounding development and will not result in unreasonable amenity impacts to surrounding properties, notwithstanding the proposed DCP built form non-compliances.

The proposal does not seek any variations to the development standards.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works, construction of a dual occupancy (attached) and strata subdivision as follows:

Unit 1 (Birkley Road)

Level 1 (RL31.05)

- Beds 2, 3 & 4
- Laundry
- Bathroom
- Study nooks
- Northern courtyard
- Southern side deck

Level 2 (RL34.20)

- Bed 1 with ensuite and robe
- Study
- WC
- Entry foyer & store
- Double garage
- New driveway & pedestrian path
- Northern and southern side stair access

Level 3 (RL37.35)

- Kitchen, living & dining
- Eastern & western terraces

Unit 2 (Park Avenue)

Level 1 (RL28.90)

- Bed 4
- Laundry / WC
- Double Garage
- New driveway & pedestrian path/stair
- Courtyard

Level 2 (RL32.05)

- Bed 1 with balcony, ensuite and robe
- Beds 2 & 3
- Study
- Shower & WC
- Entry foyer
- Courtyard

Level 3 (RL35.20)

- Kitchen, living & dining
- Eastern & western terraces

Amendments to proposal

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

- Dwelling 01 level 1 laundry & bath reduced, Bed 4 store added
- Dwelling 02 level 1 Bed 4 reduced
- Dwelling 02 lift setback increased to 1.2m
- Dwelling 01 front setback increased to 6m with additional landscaping, lift replaced with store
- Dwelling 01 northern void screen deleted
- Dwelling 02 northern courtyard screen amended and lowered by 1.3m
- Dwelling 02 eastern courtyard and entry stair amended
- Dwelling 02 Bed 1 balcony balustrade lowered
- Dwelling 01 lift replaced with pantry, northern privacy screen to terrace
- Dwelling 02 terrace wall lowered
- Dwelling 02 southern parapet and box gutter replaced with eaves gutter
- Western batten screen deleted, changes to doors and windows
- Stormwater design amended and OSD added

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 5 DP 2428 , 12 Birkley Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Birkley Road.</p> <p>The site is regular in shape with a frontage of 12.19m along Birkley Road, a depth of 38.55m and an eastern frontage of 12.19m to Park Avenue. The site has a surveyed area of 469.4m².</p> <p>The site is located within the R1 General Residential zone and accommodates an existing dwelling house.</p> <p>The site slopes 4.42m from front (west) to rear (east) and includes a crossfall of up to 0.86m from north to south.</p> <p>The site one significant tree, several exempt species and a variety of smaller planted vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a range of residential development including semi-detached dwellings, dual occupancies and residential flat buildings. Ivanhoe Park is located across Park Avenue to the east.</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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<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 clause is not relevant to this application.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/11/2021 to 23/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 14 submission/s from:

Name:	Address:
Proprietors of Strata Plan 22578	14 Birkley Road MANLY NSW 2095
Ms Jessica Elyse Florence Good	3 / 14 Birkley Road MANLY NSW 2095
Mr James Lovell Mrs Susan Jacqueline Green	PO Box 716 TURRAMURRA NSW 2074
Mr Mark Farrell	22 Pacific Parade MANLY NSW 2095
Mr Corey Scott Allen Jennifer Mary Ellard	2 / 14 Birkley Road MANLY NSW 2095
Ms Emma Holloway Martin	PO Box 1063 JINDABYNE NSW 2627
Mr Paul Adam Dundon Mrs Lucy Natalie Dundon	17 Birkley Road MANLY NSW 2095
Mr William Stewart Prentice Mrs Franzine Ione Prentice	7 Birkley Road MANLY NSW 2095
Mrs Alexandra Jessie Ann Lock	5 Birkley Road MANLY NSW 2095
Mr James Stirling Whyte	9 Birkley Road MANLY NSW 2095
Julie Stewart	8 Birkley Road MANLY NSW 2095
Mr Kemble Stewart Cowan Mrs Katrina Patricia Cowan	21 Birkley Road MANLY NSW 2095
Mrs Denise Robyn Mackie	2 / 15 Birkley Road MANLY NSW 2095
Mr Thomas Olaf Severin Sherington	11 Birkley Road MANLY NSW 2095

Name:	Address:
Mr Weir Phillips	

The issues raised in the submissions are addressed as follows:

- **FSR and setback breaches, bulk and scale, overdevelopment**

The submissions raised concerns that the proposed FSR and setback breaches result in a level of bulk and scale that will adversely impact the amenity of the locality and represents an overdevelopment of the site.

Comment:

At the request of Council, the proposal has been amended to provide a compliant FSR and reduced front and side setback non-compliances. Conditions are imposed requiring greater side setbacks and articulation at the southern elevation to improve building separation. The northern side setbacks are comparable to the southern setback of the adjoining building at 14 Birkley Road, and are not considered to unreasonably impact the streetscape or the amenity of No. 14. Given the proposal's compliance with the building height and FSR development standards and the Manly DCP residential density control and car parking requirements, the proposal does not represent an overdevelopment of the site.

This matter is not considered to warrant refusal of the application.

- **Streetscape character and heritage impacts**

The submissions raised concerns that the design of the proposed development is inconsistent with and will adversely impact the character and heritage value of the streetscape and surrounding properties.

Comment:

The proposal largely complies with the front setback controls, and the height and design of the building minimises the bulk of the development within the streetscape. New planting is also provided within the front setbacks to soften the visual impact of the building. The subject site is not listed as a heritage item or located within a heritage conservation area, but is in proximity to a number of heritage items. As such, Council required the provision of a Heritage Impact Statement and an assessment of the impact on the surrounding items has been completed by Council's Heritage Officer. A full assessment of the streetscape and heritage impacts of the development is completed in this report.

This matter is not considered to warrant refusal of the application.

- **View loss impacts**

The submissions raised concerns that the proposal will impact to the available views from surrounding properties, including those of the Ivanhoe Park, St Andrews Church, the Pacific Ocean and Shelly Beach.

Comment:

An assessment of the view loss impacts resulting from the development is completed in this report against the view loss planning principle. The assessment finds that the level of view loss is not unreasonable in this case.

This matter is not considered to warrant refusal of the application.

- **Overshadowing impacts**

The submissions raised concerns that the proposal will reduce sunlight access to adjoining properties.

Comment:

An assessment of the overshadowing impacts of the development is completed in this report. Given the compliant height of the building and the recommended conditions requiring the provision of compliant level 3 setbacks at the southern elevation, the resulting overshadowing impacts are not unreasonable in the context of the site. With regard to the adjacent upper floor unit of 14 Birkley Avenue (unit 3), the south-facing windows of this unit do not receive any direct sunlight on June 21 and the proposal will not cause any overshadowing of these windows. Whilst there will be some reduction in natural light to the windows of unit 3, the proposed Dwelling 02 northern wall is commensurate in height and setback to the adjacent southern wall of No. 14, and is 6m less in length than that of No. 14. The articulation provided at the north-eastern and north-western corners of Dwelling 02 ensures that adequate natural light and outlook will be maintained to the southern windows of No. 14.

This matter is not considered to warrant refusal of the application.

- **Privacy impacts**

The submissions raised concerns that the proposal will impact the privacy of adjoining and surrounding properties.

Comment:

An assessment of the privacy impacts of the development is completed in this report. The proposal is appropriately designed to maintain an acceptable level of visual and acoustic privacy for the occupants of the subject site and adjoining properties.

This matter is not considered to warrant refusal of the application.

- **Tree removal**

The submissions raised concerns that the proposal includes the removal of trees on the site and within the adjoining road reserve.

Comment:

The proposal includes the removal of 1 tree within the site and 3 trees within the Park Avenue road reserve. No street trees within the Birkley Road road reserve are proposed to be removed. The application was referred to Council's Landscape Officer, who raised no objection to the proposed tree removal, subject to the proposed compensatory planting and recommended conditions of consent.

This matter is not considered to warrant refusal of the application.

- **Construction impacts**

The submissions raised concerns that the proposal will result in construction impacts on surrounding properties.

Comment:

Conditions are included to ensure compliance with the relevant standards in relation to construction impacts. The preparation of pre and post-construction dilapidation reports is also required to identify any damage to adjoining properties.

This matter is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>Supported with conditions.</p> <p>The application seeks consent for the demolition of the existing dwelling and detached garage and construction of a new attached dual occupancy development.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environmental Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> I 3.3.1 Landscaping Design I 3.3.2 Preservation of Trees or Bushland Vegetation I 4.1.5 Open Space and Landscaping <p>The Arborist's Report prepared by Blues Bros Arboriculture is noted.</p> <p>The Report indicates that one tree within the site is to be removed and 3 trees within the Park Avenue road reserve are to be removed to accommodate the new driveway crossover. A number of exempt species (<5m) are to be removed within the site as well.</p> <p>Specific tree protection measures are included in the report to protect street trees and trees adjoining the property.</p> <p>The Landscape Plan prepared by Edwina Stewart indicates replanting</p>

Internal Referral Body	Comments
	<p>of trees, shrubs and groundcovers across the site.</p> <p>No objections are raised subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>Supported with conditions.</p> <p>The application seeks approval for the demolition of existing dwelling and garage and construction of a 2 dual occupancy strata title dwellings.</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) Manly Development Control Plan (MDCP)</p> <ul style="list-style-type: none"> • Clause 3.3.1. a) iv) Landscaping Design • Clause 5.4.2 (Threatened Species and Critical Habitat Lands) <p>The Aboricultural Impact Assessment Report (Blue Bros 2021) identifies 8 trees within or adjoining the site. Of these, 3 prescribed trees (T 1, 4, 5) are proposed for removal.</p> <p>No objection is raised by NEU-Biodiversity to the removal of these trees subject to replacement, however it is noted that Tree 4 and 5 (<i>Calistemon citrinus</i>) are located within the road reserve, therefore Biodiversity defer to the Landscape Referral Team for comment.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p><u>1st Development Engineering</u> The submitted stormwater plan has been reviewed. The submitted plan stated that on site stormwater detention system (OSD) is excepted due to the proposed lot size. However, the applicant proposed a strata subdivision to the subjected land. The lot size is remained. As such, an OSD is required as the proposed impervious areas of the development.</p> <p>In this regard, Development Engineer cannot support the application due to clause 3.7 of Council's Manly DCP.</p> <p><u>2nd Development Engineering referral</u> Development Engineering has no objection to the application subject to the following conditions of consent.</p>
NECC (Stormwater and Floodplain Engineering –	<p>Supported without conditions.</p>

Internal Referral Body	Comments			
Flood risk)	The property has a very small area of Low Flood Precinct on the southern boundary. There are no flood related development controls for the proposed subdivision.			
NECC (Water Management)	Supported with conditions. This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The development is subject the Water Management for Development Policy. The proposal includes two rainwater tanks (1000L), the tanks must be connected to re-use for second quality water uses. A sediment pit will be required within the lot prior discharge to Birkley Road.			
Parks, reserves, beaches, foreshore	Supported with conditions. The development property is downslope of Ivanhoe Park and all development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and road reserve and into the Park Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.			
Strategic and Place Planning (Heritage Officer)	Supported with conditions. <u>Planning Comments</u> The proposed 1.8m fence at the Park Avenue frontage is conditioned to be a maximum of 1.5m high to minimise the associated streetscape/heritage impact. Concern was also raised by Council's Heritage Officer in relation to the three-storey building presentation to Park Avenue associated with the proposed upper level (level 3) pergola, with a condition recommended that the height of the pergola be reduced by 600mm. However, it is apparent from the plans that this height reduction would be in conflict with the head height of the adjacent living and dining room glazed doors. The recommendation of Council's Urban Designer that the pergola be set back a further 1m from the eastern boundary is considered to achieve a comparable outcome. As such, it is not considered necessary to reduce the height of the pergola. <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td>The proposal has been referred to Heritage as the subject property is within the vicinity of heritage items:</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject property is within the vicinity of heritage items:
HERITAGE COMMENTS				
Discussion of reason for referral				
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Internal Referral Body	Comments
	<p>Item I85 - Group of dwellings - 1–25 Birkley Road</p> <p>Item I161 - The Ivanhoe Loop (former tram track route) - Ivanhoe Park</p> <p>Item I162 - Ivanhoe Park - Ivanhoe Park (bounded by Sydney Road, Belgrave Street and Raglan Street)</p> <hr/> <p>Details of heritage items affected</p> <p>Details of the items as contained within the Manly inventory are as follows:</p> <p>Item I85 - Group of dwellings <u>Statement of Significance:</u> This is a heritage item. The contribution made by these buildings to the streetscape is of major significance in that they are unified by period, massing and scale and because they represent a strong visual link with post Federation architecture of the 1920's-30's. <u>Physical Description:</u> Group of substantial brick, stucco, slate or tiled roof buildings representing Post Federation architecture of the 1920's and 1930's. Much original detail intact. The buildings are unified by style (period), massing and scale. No. 23 Birkley is a particularly fine example of Spanish Mission style architecture. Eastern side of Birkley Road, between Sydney Road and Raglan Street (odd numbers)</p> <p>Item I161 - The Ivanhoe Loop (former tram track route) <u>Statement of Significance:</u> Site of Manly Flower Show and early open space planned as a Resort element by HG Smith. Major association with the development of trams/transport in Manly, and indicates the way steep terrain was traversed when suitable public roads were not available <u>Physical Description:</u> Open space, oval cricket ground and picket fence with memorial gateway. Upper slopes now Ivanhoe Park - passive recreation area with mature trees, both indigenous and cultural. Eucalyptus sp., Ficus sp. And Araucaria Heterophylla. ** SB 29/08/2014 - Incorporated inventory entry for The Ivanhoe Loop (SHI No 2020397) - "The tramline from Manly to the Spit left Manly via Raglan Street, entering Ivanhoe Park near the entrance to the Bowling Club, and then formed a reserved track curving around the north east corner of the Park as a passing loop or duplication. The site of the Loop survives at the northern end of Park Avenue, up which the original line continued until it reached Sydney Road."</p> <p>Item I162 - Ivanhoe Park <u>Statement of Significance:</u></p>

Internal Referral Body	Comments
	<p>Ivanhoe Park (including Manly Oval) cultural landscape, is important in the course of New South Wales cultural history combining a 'pleasure garden' park, a traditional 'village green' community and sporting venue, and a passive recreational garden, demonstrating the principal characteristics of a Victorian-era park adapted to the Australian setting. This landscape is unique within New South Wales as a place with a combined history of Aboriginal heritage and 150 years of recreation, sport and community use. With its natural land formation of sandstone outcrops and overhangs and watercourse flowing into what was a low-lying swamp area, the site has high potential to reveal tangible Aboriginal heritage of the Kay-ye-my people, and with its close proximity to three identified aboriginal heritage sites the site relates to intangible cultural heritage of the local Aboriginal people.</p> <p>Ivanhoe Park (including Manly Oval) cultural landscape demonstrates the importance of public recreation and pleasure grounds in the development of townships remote from Sydney and the importance of sport, and the establishment of sporting venues in the ongoing development of community life in Australia. Ivanhoe Park is one of the few planned colonial era 'pleasure grounds' surviving in New South Wales. Since its establishment in the 1860s Ivanhoe Park has been an important destination for pleasure and healthy recreation for vast numbers of visitors to Manly from Sydney and beyond. The 'village green' oval and Ivanhoe Park pavilion became the centre of sporting and community functions and events, not just for Manly residents but for the region and NSW.</p> <p><u>Physical Description:</u></p> <p>The 4.58ha Ivanhoe Park (including Manly Oval) cultural landscape consists of two distinct areas; the passive recreation area of Ivanhoe Park Botanic Gardens, and the active sport and recreation facilities of Manly Oval (the "Village Green"), tennis courts and lawn bowling greens. Along the western and northern edge of the park is a former tramway corridor.</p> <p>The gardens rise westwards in the park and contain sandstone outcrops and overhangs, small open lawns, majestic and rare trees, exotic under-plantings, a scout hall (1973), child care centre (1962), and a War Memorial monument and lawn (1953). The gardens were dedicated as the Manly War Memorial Park in 1953. Along the western and northern edge of the park is the former tramway corridor. Its charm is due to the expansive lawns, and natural and heritage values. The gardens provide a quiet space away from the busy pace of Manly.</p> <p>The eastern section is on low land, (a former swamp) and contains the Lawn Bowls clubhouse, outbuildings and greens, the "Village Green" of Manly Oval surrounded by a picket fence, grandstand and clubhouse (2002) with memorial gateway (1927), Manly Lawn Tennis clubhouse with 6 tennis courts lined by mature Melaleucas, and the park entrance - a former croquet lawn now planted with a variety of trees and shrubs and containing a number of small memorial plaques. This area is the sport and community hub of</p>

Internal Referral Body	Comments		
	Manly and region.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for the demolition of existing structures and construction of a new attached dual occupancy development on the subject site, including two driveway entries from Birkley Road and Park Avenue. The proposal also seeks consent for a Strata Title subdivision. The subject site is in close proximity to the heritage listed Ivanhoe Park to the east and a group of two storey heritage listed buildings, representing Post Federation architecture of the 1920's and 1930's, are located across Birkley Road to its west. The existing property on the subject site is also from the late Federation era and is considered to contribute to the established heritage streetscape of Birkley Road. An internal research, into the history of the existing property, has revealed, that it is a possibility to establish a link between the existing building and the architect (F Trenchard Smith) of a group of four houses in Birkley Road. Therefore, Heritage had required an investigation into the history of the house and an assessment for its significance against the NSW Heritage Criterion, in the PLM Heritage Comments. However, the applicant has not considered to undertake this investigation or address this matter in the SEE or a heritage report assessing the impact of the proposal upon the significance of the heritage items and the streetscape.</p> <p>The bulk and scale of the proposed development is considered to be visually dominant within the context of the streetscape, when viewed from both streets (Birkley Road and Park Avenue), as it does not correspond with the existing pattern of relationships between the buildings and their sites in the area and it does not integrate into the established character of the area. The proposed development is in the vicinity of heritage items and must respect the visual curtilage and must be designed in this context, after a careful analysis of the surrounding buildings. A new development in the heritage context can be contemporary in design, however, must</p>		

Internal Referral Body	Comments
	<p>be complementary to the heritage value of the surrounding buildings and must not visually dominate the original form and scale of the existing buildings of heritage significance or the contributory value of the neighbouring buildings.</p> <p>Therefore, Heritage requires a more considerate approach to the form, bulk, scale and detailing, respecting the character of the area and the existing buildings of heritage significance, accompanied by a report assessing if the existing building is of potential significance, and assessing the impact of the proposal upon the significance of the heritage items within the vicinity.</p> <p>Revised Comments - April 2022</p> <p>Amended plans and a heritage report into the property and its potential significance was submitted on 04 April 2022 . The Heritage Impact Assessment by BIARCHITECTS, concluded that the property was not of heritage significance. This conclusion is not fully supported by Heritage as it is stated in the report that <i>"The dwelling exhibits late federation bungalow attributes which were typical for the time and location of the building. Some typical, albeit limited, Arts and Crafts details are also evident"</i>. The report also states that the dwelling is very intact at the front portion facing the heritage park: <i>The front elevation (along Park Ave) is dominated by the gable roof form which also contains an attic window (which was most likely was added at a later date). The main verandah also fronts Park Ave which is characterised by carved timber posts, and segmented arch timber verandah brackets."</i></p> <p><i>"The eaves are constructed of exposed rafters with timber weatherboard lining above, being typical at this time. Windows, doors and trims are predominately timber, with many windows facing the main facade having leadlight sashes."</i></p> <p>The report also states that: <i>"there is a possibility that the house was design by Frederick Trenchard Smith, who was a renown local architect within the Manly area during the 1910's to 1940's. This cannot be fully substantiated."</i></p> <p>Although, the form of the proposed building is not complementary to the heritage listed group of houses, given the lower scale building form at the Birkley Road elevation, the proposal is not considered to impact upon the significance of the heritage items across the road.</p> <p>It is considered that the original building could be retained at the front portion, which faces the heritage listed Ivanhoe Park, as it contributes to the existing streetscape along with the neighboring buildings and this contribution is considered to be retained when viewed from the park. The proposed 1800mm high fence to the Park Avenue frontage could be softened by articulation or soft landscaping insertion to the fence design. The proposed bulk and scale of the 3 storey building form on this facade is not considered to be sympathetic to the neighbours or the streetscape or the heritage listed park.</p>

Internal Referral Body	Comments
	<p>Whilst, the proposal is not considered to be complementary to the heritage items or the streetscape, given that the existing building is not a heritage item or within a conservation area, if the assessment officer is of the opinion that the development is to be approved, the following conditions should be applied.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor DATE: 20 December 2021, Revised 13 April 2022</p>
Strategic and Place Planning (Urban Design)	<p>Supported with conditions.</p> <p><u>Planning Comments</u></p> <p>The conditions recommended by Council's Urban Designer have been suitably amended and incorporated into the conditions of consent.</p> <p><u>Urban Design Comments - Second Referral</u></p> <p>The application seeks consent for the demolition of the existing dwelling and detached garage, and construction of two new attached dwellings.</p> <p>The applicant has provided revised drawings and justifications for non-compliances, which are noted. Council's Urban Design referral section has considered the application against the Manly Local Environmental Plan, and Manly DCP 2013.</p> <p>The applicant has provided amended drawings that reduce the amount of non-compliance with Side-boundary setbacks (side building envelope), and Side-building setbacks, but there are still some areas of non-compliance. Solely from an urban design perspective, the remaining breaches are acceptable subject to conditions.</p> <p>The site has two street frontages, and proposes two front setbacks. The front setback to the east is marginally breached by a planter bed and small balcony cantilevered from the main bulk of the building. The front setback to the west is breached by 500mm on the upper level by a cantilevered top floor. Solely from an urban design perspective, the breaches are acceptable subject to conditions.</p>

Internal Referral Body	Comments
	<p>Please note: Regarding any view impacts, and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officer.</p> <p><u>Urban Design Comments</u></p> <p>The proposal has to address the following issues:</p> <p>1. The proposal has not demonstrated compliance with the following controls: Manly Development Control Plan 2013 - Clause 3.1.1 <i>Streetscape (Residential Areas) - Setback Principles in Low Density Areas...b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings...</i></p> <p>- Side Boundary Setbacks ... <i>Objective 2) To ensure and enhance local amenity by:</i></p> <ul style="list-style-type: none"> • <i>providing privacy;</i> • <i>providing equitable access to light, sunshine and air movement; and</i> • <i>facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.</i> • <i>defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces...</i> <p>2. Side building setbacks have been breached on both the northern and southern boundaries. Full compliances should be demonstrated to provide bigger gaps between adjacent existing developments to ensure adequate amenities and landscape buffer are provided.</p> <p>3. Front setbacks to both street fronts has breached the 6m required resulting in less landscaped area and a lesser contextual fit to the streetscape.</p> <p>4. The breach in side and front setbacks has resulted in an increase in bulk and scale of the built form leading to possible view loss from surrounding developments to the west which are located higher up the hill slope. Future proposal should demonstrate view sharing by maintaining adequate spaces between buildings to limit impacts on views and vistas.</p>
Traffic Engineer	<p>Supported with conditions.</p> <p>The proposed development is a for a dual occupancy, creating 2 x 4 bedroom dwellings in place of the existing single dwelling on the site. Serate driveways and double garages are proposed to serve each dwelling. Each driveway will be 3m in width at the kerb, one accessed off the site's Birkley Road frontage and the other from its Park Ave</p>

Internal Referral Body	Comments
	<p>frontage.</p> <p>Parking</p> <p>The Manly DCP requires that each dwelling provide 1.5 resident spaces and 0.25 visitor spaces rounded up this would equate to 2 resident spaces and 1 visitor space for each dwelling.</p> <p>Both dwellings provide for 2 resident spaces within a garage and have space on the driveway between the dwelling and the boundary within which a visitor parking space could be accommodated. There are no concerns with regard to the quantum of parking available on the site.</p> <p>Access</p> <p>both driveways are only 3m in width at the kerb and widen within the property to allow for access to the garage. This minimises loss of parking on-street. AS2890.1 requires that the gradient of a driveway across a footpath should be no more than 2.5%. The driveway gradients shown on the plans have gradients of 4.5% across the footpath and amended driveway plans will be required to ensure compliance.</p> <p>Traffic Generation</p> <p>There are no concerns regarding the development in terms of traffic generation</p>

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

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 (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

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:	11m	9.3m	N/A	Yes
Floor Space Ratio	0.75:1 352.05m ²	0.748:1 349.7m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

The proposed earthworks are generally located within the development footprint and are not anticipated to adversely impact the natural environment or adjoining properties, subject to compliance with the recommendations of the submitted geotechnical report.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 469.4m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 9.7m (1:8.6)	Unit 1 L3: 7.1m - 8.3m	N/A	Yes
		Unit 1 terrace: 8m - 8.5m	N/A	Yes
		Unit 1 L2: 6.6m	N/A	Yes
		Unit 2 L3: 7.1m - 7.5m	N/A	Yes
		Unit 2 Lift: 7.6m	N/A	Yes
	S: 9.7m (1:8.4)	Unit 1 L2: 5.3m - 6.8m	N/A	Yes
		Unit 1 L3: 7.6m - 9m	N/A	Yes
		Unit 2 L2: 5.4m - 6.4m	N/A	Yes
		Unit 2 L3: 6.7m - 7.4m	N/A	Yes
		Unit 2 terrace: 8m - 8.3m	N/A	Yes
4.1.2.2 Number of Storeys	3	3	N/A	Yes
4.1.4.1 Street Front Setbacks	West: 6m	L2: 6.2m	N/A	Yes
		L3: 5.5m	8.3%	No
	East: 6m	Balcony/Planter: 5m	16.7%	No
		Building: 6m	N/A	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages (North)	Unit 1 L3: 2.37m - 2.77m	1m	63.9%	No
	Unit 1 Pergola: 2.67m - 2.83m	3m	N/A	Yes
	Unit 1 L2: 2.2m	3m	N/A	Yes
	Unit 2 L3: 2.37m - 2.5m	1m	60%	No
	Unit 2 Lift: 2.53m	1.2m	52.6%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages (South)	Unit 1 L2: 1.77m - 2.27	1.4m	38.3%	No
	Unit 1 L3: 2.53m - 3m	2.5m	16.7%	No
	Unit 2 L2: 1.8m - 2.13m	1.4m	34.3%	No
	Unit 2 L3: 2.23m - 2.47m	2.5m	N/A	Yes
	Unit 2 Pergola: 2.67m - 2.77m	2.5m	9.7%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area 234.7m ²	50.3% 236.1m ²	N/A	Yes
	Open space above ground 40% of total open space	29.4%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space 70.83m ²	80.3% 189.7m ²	N/A	Yes
4.1.5.3 Private Open Space	12m ² per dwelling	> 12m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m (6.1m)	5.4m	N/A	Yes
Schedule 3 Parking and Access	2 spaces per dwelling (4 spaces)	4 spaces	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
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Compliance with control

3.1.1.5 Garbage Areas

The proposed bin storage areas are located internally within the dwellings and are not visible off site.

3.1.1.1 Complementary Design and Visual Improvement

The proposal does not seek to replicate the style of the nearby heritage dwellings, but is compatible with surrounding developments with regard to building form, bulk and finishes. The proposal complies with the building height and floor space ratio development standards, ensuring a level of bulk and scale that is compatible with surrounding development and will not detract from the scenic amenity of the locality. The building setbacks, as conditioned, maintain adequate separation to minimise amenity impacts to surrounding properties.

3.1.1.2 Front Fences and Gates

The proposed front fences, as conditioned, are considered to reflect the fencing characteristics of the locality .

3.1.1.3 Roofs and Dormer Windows

The proposed flat roof design is appropriate in the context of the site, particularly given the potential for a greater level of view loss that would result from a pitched roof form.

3.1.1.4 Garages, Carports and Hardstand Areas

The proposed garages are suitably designed and set back to minimise their impact on the street frontage.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance**3.4.1.1 Overshadowing Adjoining Open Space**

In relation to sunlight to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

Comment:

The proposal results in approximately 10m² of additional overshadowing of the western yard and some additional overshadowing of the eastern patio of 10 Birkley Road at 9am. At 12pm there is approximately 17m² of additional solar access to this western yard as a result of the removal of the existing garage on the subject site. At 3pm there is a reduction of approximately 7m² in solar access to the eastern yard of No. 10. As such, there is a minor net reduction in solar access to the private open spaces of No. 10 of less than one third throughout the day and the proposal complies with this control.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June).

Comment:

The proposal results in additional overshadowing of the north-facing living room and kitchen windows of No. 10 during part of the morning and throughout the afternoon. Between 12pm and 1pm there is also additional overshadowing of the west-facing living room glazing of No. 10, however, the removal of the existing garage on the subject site allows for a significant increase in sunlight access to this west-facing glazing from 1:30pm onwards. Despite this increase in sunlight during the afternoon, the proposal is not considered to comply with this control.

3.4.1.3 Overshadowing Solar Collector Systems

A minimum of 6 hours solar access be retained to solar collectors on neighbouring properties.

Comment:

The solar collectors located on the north-facing roof of No. 10 are overshadowed significantly during the morning and afternoon, and partially during the middle of the day. The proposal does not maintain the required 6 hours of sunlight to the solar collectors and is non-compliant with this control.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposal is considered to provide reasonable access to sunlight in the context of the site, noting the generally single-storey height of the dwelling at No. 10 being within the R1 zone with an 11m

building height control. The ground floor location of the windows of No. 10 and the positioning of the solar collectors low on the roof further increases their vulnerability to overshadowing. It is noted that a substantial proportion of the overshadowing is a result of compliant elements of the proposed development. Conditions have been imposed to improve the compliance of the development with the southern side setback control and reduce the associated shadow impacts.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposal maintains a compliant level of sunlight access to the private open spaces of No. 10 and based on the above discussion, the development is considered to maintain reasonable sunlight access to the living spaces.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

Given the proposal's full compliance with the building height control, the articulation of the southern elevation and the recommended conditions to ensure that the upper level complies with the southern side setback control, the impacts to sunlight access are not considered to be unreasonable in this case.

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

3.4.2 Privacy and Security

Compliance with control

The proposal is appropriately designed to maintain privacy to the occupants of the subject site and surrounding properties.

3.4.2.1 Window Design and Orientation

The proposed side-boundary facing windows are suitably located and incorporate screening devices and frosted glazing where necessary. The primary window openings are orientated east and west of the site to minimise privacy impacts.

3.4.2.2 Balconies and Terraces

The Dwelling 01 Bed 1 Juliet balcony is set back 3m from the northern boundary and is offset from

windows of the adjoining building. The Dwelling 02 Bed 1 balcony is orientated to the eastern frontage and will not overlook windows or private open spaces of 10 Birkley Road. The proposed level 3 terraces are orientated towards the available views to the east and are centrally located away from the side boundaries of the site. The unit 1 terrace is set back a compliant distance from the northern and southern side boundaries, includes a privacy screen to the northern elevation and a non-trafficable planter pot area at the southern elevation for supplementary screening. The unit 2 terrace includes privacy screens at both the northern and southern elevations. The use of these terraces is not anticipated to result in visual or acoustic privacy impacts beyond those associated with residential use.

3.4.3 Maintenance of Views

Merit consideration:

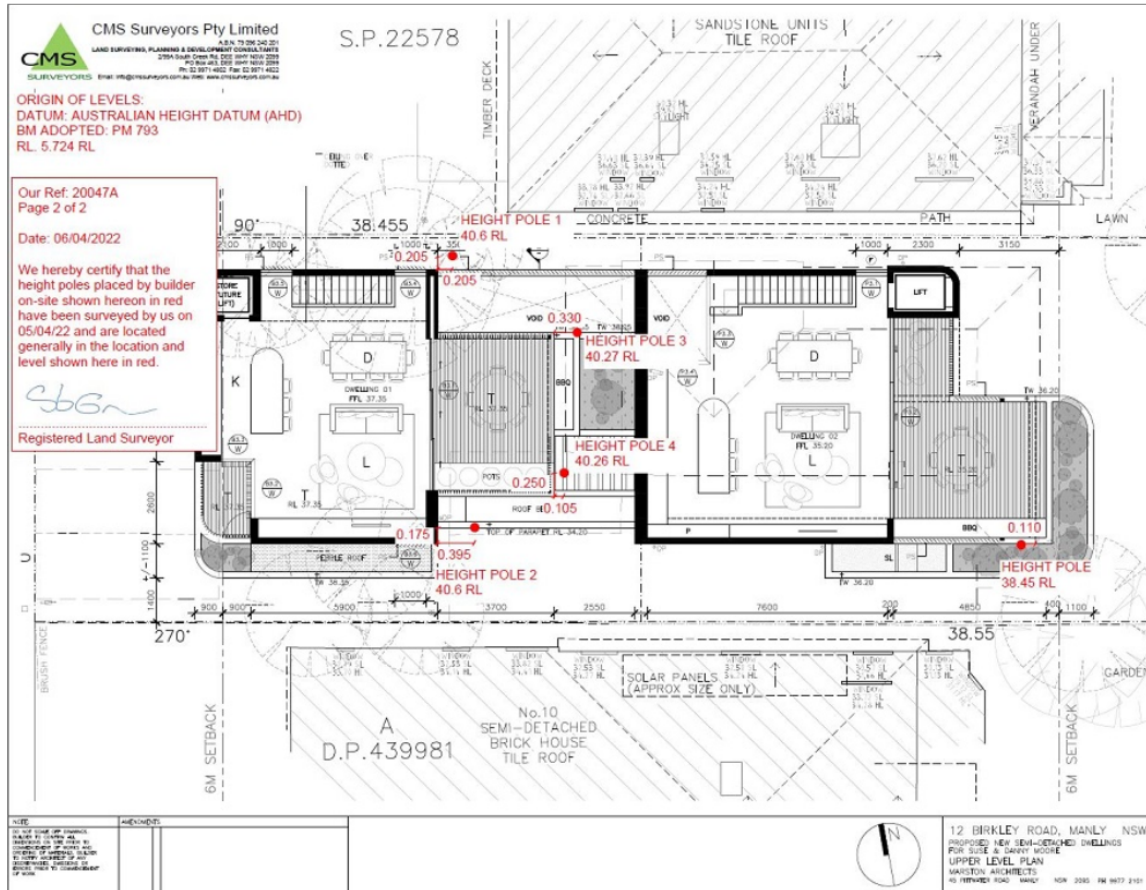
The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Note: Height poles were erected on the site at the request of Council in the positions indicated on the below surveyor's certification.



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

1. Nature of the views affected

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

Comment:

Objections relating to view loss were received from nine properties on the western side of Birkley Road between No. 5 and No. 21, with the exception of No. 19. As part of this assessment, height poles were constructed on the subject site and view loss inspections of the following properties were undertaken:

- 5 Birkley Road
- 7 Birkley Road

- 9 Birkley Road
- 11 Birkley Road
- 13 Birkley Road
- 2/15 Birkley Road

Access was not available to Nos. 1/15, 17 or 21 Birkley Road. Given the level of view loss experienced by the inspected properties and the further considerations below, it is not anticipated that any of these properties would experience unreasonable loss of views.

5 Birkley Road

The affected views from No. 5 include vegetation within the upper part of Ivanhoe Park adjacent the Park Avenue. The views are partial as they are disrupted by the existing developments on the subject site and adjoining properties.



Photo 1. Affected views from 5 Birkley Road ground floor.



Photo 2. Affected views from 5 Birkley Road first floor.

7 Birkley Road

The affected views from No. 7 include vegetation within the upper part of Ivanhoe Park adjacent the Park Avenue. The views are partial as they are disrupted by the existing developments on the subject site and adjoining properties.



Photo 3. Affected views from 7 Birkley Road ground floor.



Photo 4. Affected views from 7 Birkley Road first floor.

9 Birkley Road

The affected views from No. 9 include vegetation within the upper part of Ivanhoe Park adjacent the Park Avenue. The views are generally whole views but are somewhat disrupted by the existing developments on the subject site and adjoining properties.



Photo 5. Affected views from 9 Birkley Road first floor.

11 Birkley Road

The affected views from No. 11 include views of the Pacific Ocean and Ivanhoe Park. The views are partial views as the park views are disrupted by the existing developments on the eastern side of Birkley Road and the ocean views are disrupted by vegetation within Ivanhoe Park and developments further to the east in Manly, primarily the Manly National and Manly Pacific Buildings.



Photo 6. Affected views from 11 Birkley Road ground floor.



Photo 7. Affected views from 11 Birkley Road first floor.

13 Birkley Road

The affected views from No. 13 include views of the Pacific Ocean, Shelly Beach headland and Ivanhoe Park. The views are partial views as the park views are disrupted by the existing developments on the eastern side of Birkley Road and the ocean views are disrupted by vegetation within Ivanhoe Park and developments further to the east in Manly, primarily the Manly National and Manly Pacific Buildings.



Photo 8. Affected views from 13 Birkley Road ground floor.



Photo 9. Affected views from 13 Birkley Road first floor.

2/15 Birkley Road

The affected views from No. 2/15 include views of Shelly Beach headland and Ivanhoe Park. The views are partial views as the park views are disrupted by the existing developments on the eastern side of Birkley Road and the ocean views are disrupted by vegetation within Ivanhoe Park and developments further to the east in Manly, primarily the Manly National Building.



Photo 10. Affected views from 2/15 Birkley Road (ground floor level)

2. From what part of the affected property are the views obtained

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

Comment:

5 Birkley Road

The affected views are available from the ground floor living room and first floor bedroom. The views are obtained across a side and front boundary from a sitting and standing position.

7 Birkley Road

The affected views are available from the ground floor bedroom and first floor living room. The views are obtained across a side and front boundary from a sitting and standing position.

9 Birkley Road

The affected views are available from the first floor enclosed verandah. The views are obtained across a front boundary from a sitting and standing position.

11 Birkley Road

The affected views are available from the ground floor sunroom, first floor bedroom and rear yard. The views are obtained across a front boundary from a sitting and standing position.

13 Birkley Road

The affected views are available from the ground floor sunroom and deck and first floor bedroom/sunroom. The views are obtained across a front boundary from a sitting and standing position.

2/15 Birkley Road

The affected views are available from the ground floor deck. The views are obtained across a front boundary from a sitting and standing position.

3. Extent of impact

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

Comment:

5 Birkley Road

The view loss is limited to vegetation visible above the roof of the existing dwelling on the subject site. The extent of the impact is considered to be minor.

7 Birkley Road

The view loss is limited to vegetation visible above the roof of the existing dwelling on the subject site. The extent of the impact is considered to be minor.

9 Birkley Road

The view loss is limited to vegetation visible above the roof of the existing dwelling on the subject site. The extent of the impact is considered to be minor.

11 Birkley Road

The view loss from the ground floor and rear yard includes vegetation and the partial water views available between the Manly National and Manly Pacific Buildings. The view loss from the first floor is limited to vegetation visible above the roof of the existing dwelling on the subject site. There is no impact to the water views available from the first floor. The extent of the impact is considered to be minor.

13 Birkley Road

The view loss from the ground floor includes the part of the views of Shelly Beach headland and the partial water views available between the Manly National and Manly Pacific Buildings. The impact from the first floor is limited to vegetation visible above the roof of the existing dwelling on the subject site. The impact to the Shelly Beach headland views will be somewhat reduced by the recommended conditions requiring increased level 3 southern side setbacks. The extent of the impact is considered to

be moderate.

2/15 Birkley Road

The view loss includes the land-water interface available at Shelly Beach and the adjacent headland. Some ocean views will likely be retained above the roof of the proposed development. The extent of the impact is considered to be moderate.

Overall impact:

Based on the view inspections undertaken, the overall impact of the proposal is considered to be minor to moderate, taking into account the extent to which the available water views are obstructed by existing developments and vegetation. It is also noted that the loss of water views is limited to the ground floor levels of the affected properties, with the impact from the upper levels being only views of Ivanhoe Park. The distance between the views and the affected properties also contributes to the vulnerability of those views.

4. Reasonableness of the proposal that is causing the impact

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

Comment:

The proposal is non-compliant in relation to the front setback control and the northern and southern side setback controls. The development achieves full compliance with the building height and floor space development standards, and the DCP wall height and number of storeys controls. The front setback breaches have minimal relevance to view impacts. The northern side setback non-compliance makes a minor contribution to view loss from the ground floor levels Nos. 11 and 13, however the affected view corridor is heavily obscured by existing developments and trees beyond the subject site. The proposed level 3 southern side setback non-compliance contributes to the loss of views of Shelly Beach from Nos. 13 and 15. As discussed above, the recommended conditions require the provision of a compliant level 3 southern setback, meaning that the remaining view loss through the southern side setback would occur as a result of compliant elements of the building. The articulation and compliant level 3 setbacks (as conditioned) at the southern elevation of level 3 are acceptable and any further reduction of this built form would unreasonably constrain development potential and internal amenity.

The view loss resulting from the development occurs largely due to the Dwelling 01 portion of the building. This portion of the building ranges in height from 7m to 9m and remains significantly below the 11m building height control, with the Dwelling 02 building stepped further down the site. The flat roof design of the proposal also minimises the height of bulk of the building. As such, the proposal is considered to be appropriately designed to minimise view impacts to surrounding properties.

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

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

Description of non-compliance

Front

The proposed Dwelling 01 level 3 front setback of 5.5m to Birkley Road is non-compliant with the 6m control. The proposed Dwelling 02 5m front setback to the level 2 balcony and level 3 planter is non-compliant with the 6m control. The remainder of the building complies with the front setback requirements.

The proposal includes various side setback non-compliances as follows:

Northern Side

- The proposed 1m setback to the Dwelling 01 level 3 wall is non-compliant with the 2.37m-2.77m requirement
- The proposed 1m setback to the Dwelling 02 level 3 wall is non-compliant with the 2.37m-2.5m requirement
- The proposed 1.2m setback to the Dwelling 02 lift is non-compliant with the 2.53m requirement

Southern Side

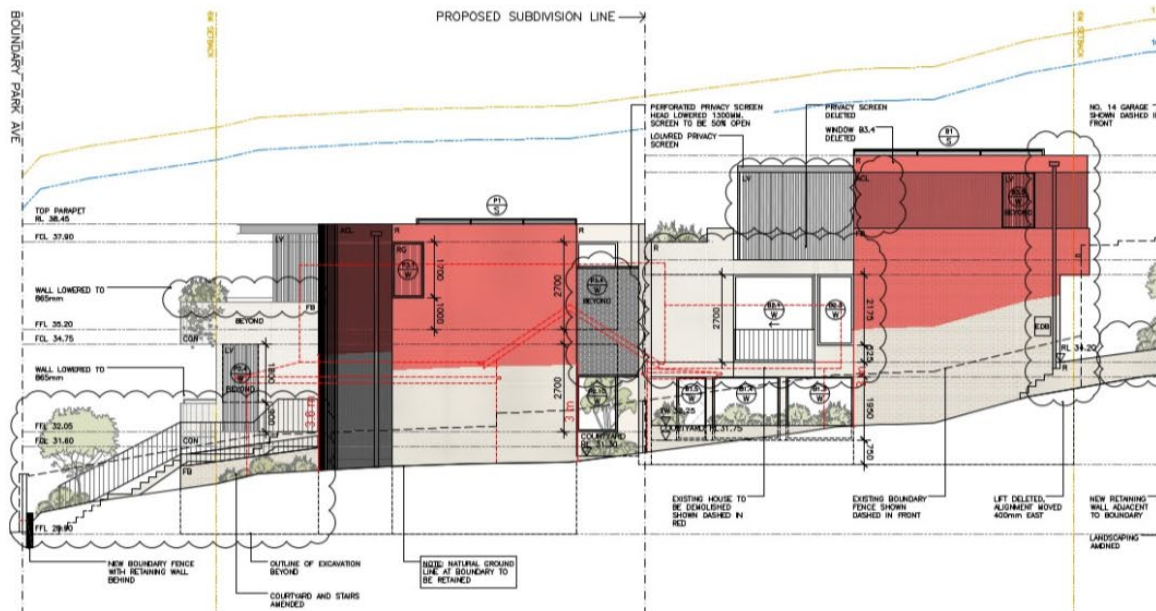
- The proposed 1.4m setback to the Dwelling 01 level 2 wall is non-compliant with the 1.77m-2.27m requirement
- The proposed 2.5m setback to the Dwelling 01 level 3 wall is non-compliant with the 2.53m-3m requirement
- The proposed 1.4m setback to the Dwelling 02 level 2 wall is non-compliant with the 1.8m-2.13m requirement
- The proposed 2.5m setback to the Dwelling 02 terrace is non-compliant with the 2.67m-2.77m requirement

The recommended conditions require the following changes to the built form that will reduce/remove the southern side setback non-compliances:

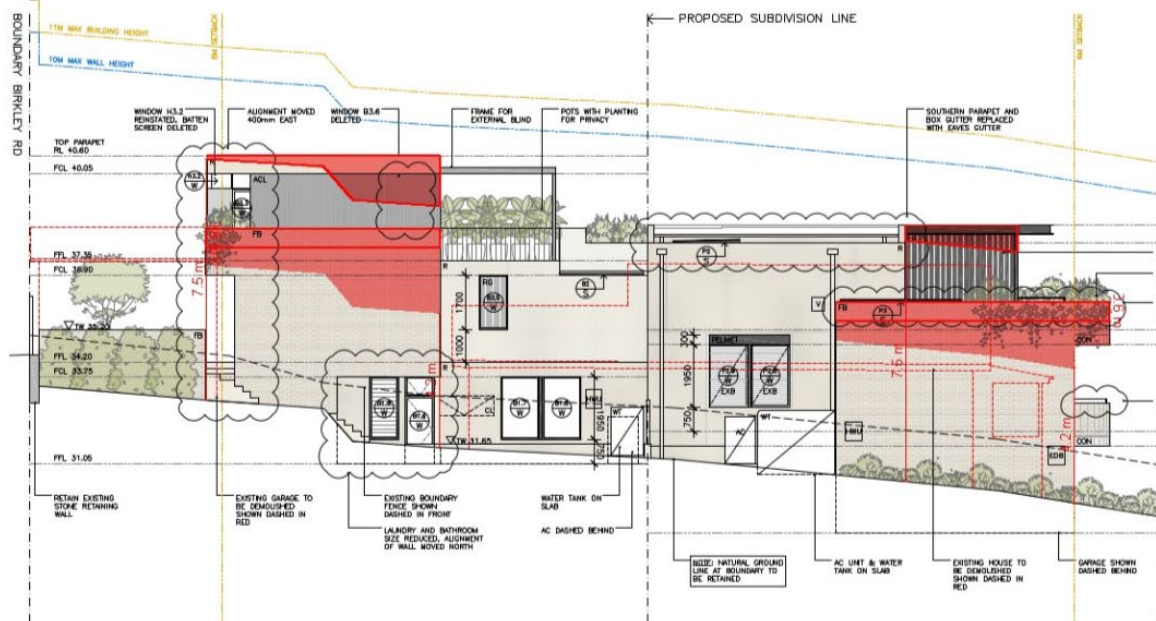
- The proposed Dwelling 01 level 2 outer parapet wall is to be lowered by 600mm. This will reduce the setback requirement to 2.07m
- The proposed Dwelling 01 level 3 southern setback is to be increased to 3m. This will result in a compliant setback
- The proposed Dwelling 02 level 2 outer parapet wall is to be lowered by 600mm. This will reduce the setback requirement to 2.13m
- The proposed Dwelling 02 level 3 terrace setback is to be increased to 2.8m. This will result in a compliant setback.

The proposed setback non-compliances are highlighted on the plans below. The shaded areas indicate the non-compliant wall areas, while the solid red outlines indicate the areas of non-compliance that are reduced or removed as a result of the amendments required by condition.

Northern Elevation



Southern Elevation



Merit consideration:

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

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

Comment:

The proposed front setback breaches are minor in extent and are generally consistent with the streetscape and prevailing setback patterns. The proposed side setbacks, as conditioned, provide adequate building separation to maintain the spatial proportions of the street.

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:

Notwithstanding the proposed side setback breaches, the proposal will not result in unreasonable impacts in relation to privacy, sunlight access, view loss, streetscape character or traffic conditions. Each of the amenity considerations are discussed in detail in this report under 3.4 Amenity.

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

Comment:

The proposed northern side wall heights and setbacks are consistent with those of the adjoining property, 14 Birkley Road. The articulation of the northern elevation provides adequate visual relief and limits the length of the walls that breach the setback control; the proposed Dwelling 01 wall is 7.4m in length and is offset from the adjoining building, while the Dwelling 02 wall is 6m in length with an additional 2.3m privacy screen/blade wall and 2m lift. Given the lack of privacy and overshadowing impacts resulting from northern side setback breaches, it is considered appropriate to allow flexibility in this case.

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:

Each of the setback breaches occur above ground level and a compliant landscaped area is provided.

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

Comment:

N/A

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

4.1.8 Development on Sloping Sites

The site is mapped as Landslip Hazard Areas G2 and G4. A Geotechnical Investigation has been prepared in relation to the proposal, the recommendations of which are incorporated into the conditions of consent.

4.1.10 Fencing

Description of non-compliance

The control permits a maximum fence height of 1m, or up to 1.5m where at least 30% of the fence is open/transparent above 1m.

The proposal includes new front fences to the Birkley Road and Park Avenue frontages. The Birkley Road fence ranges in height from 1.2m up to 1.8m, while the Park Avenue fence is 1.8m high.

Merit consideration

With regard to the consideration for a variation, the development is considered against control 3.1.1.2 Front Fences and Gates (a), which provides that notwithstanding the maximum fence height control, the siting, height and form of boundary fences should reflect the fencing characteristics of the locality and be compatible with the landscape character and appearance of the streetscape.

The Birkley Road streetscape consists of a variety of fence heights and forms. The proposed fence design is compatible with the surrounding streetscape and is consistent in height with the adjoining properties to the north and south.

The Park Avenue streetscape consists of stone walls with timber fences above. The proposed timber paling fence is compatible with the fencing characteristics of the streetscape, but is considered to be excessive in height, noting the concerns raised by Council's Heritage Officer. As such, the fence is conditioned to reach a maximum height of 1.5m at the boundary.

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 \$45,144 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,514,400.

CONCLUSION

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

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

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

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

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

The application seeks consent for demolition works and the construction of a dual occupancy (attached).

The key planning issues considered within the assessment are the proposed built form non-compliances and the resulting amenity impacts of the proposal.

Fourteen (14) submissions were received in relation to the development, and are addressed within the report with suitable conditions imposed where necessary.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1991 for Demolition works and construction of a dual occupancy (attached) including strata subdivision on land at Lot 5 DP 2428, 12 Birkley Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Subdivision Plan	Rev. A, September 2021	Marston Architects
DA03 Demolition and Excavation Plan	Rev. B, 1 April 2022	Marston Architects
DA04 Roof Plan	Rev. B, 1 April 2022	Marston Architects
DA05 Park Avenue Level Plan	Rev. B, 1 April 2022	Marston Architects
DA06 Birkley Road Level Plan	Rev. B, 1 April 2022	Marston Architects
DA07 Upper Level Plan	Rev. B, 1 April 2022	Marston Architects
DA08 Section A-A	Rev. B, 1 April 2022	Marston Architects
DA09 Section B-B	Rev. B, 1 April 2022	Marston Architects
DA10 Driveway Crossover Plans	Rev. B, 1 April 2022	Marston Architects
DA11 North Elevation	Rev. B, 1 April 2022	Marston Architects
DA12 South Elevation	Rev. B, 1 April 2022	Marston Architects
DA13 East Elevation	Rev. B, 1 April 2022	Marston Architects
DA14 West Elevation	Rev. B, 1 April 2022	Marston Architects
DA18 Schedule of External Materials and Finishes	Rev. A, September 2021	Marston Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1245326M_03	5 October 2021	Efficient Living Pty Ltd
Arboricultural Impact Assessment Report	Ver. 1, 9 August 2021	Blues Bros Arboriculture
Geotechnical Investigation and Stability Assessment	Rev. 1, 22 September 2021	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LP 01 Landscape Plan - Park St	Rev. 0, 16 September 2021	Edwina Stuart Landscape Design
LP 02 Landscape Plan - Birkley Road	Rev. 0, 16 September 2021	Edwina Stuart Landscape Design
LP 03 Landscape Plan - Roof	Rev. 0, 16 September 2021	Edwina Stuart Landscape Design
PS 01 Planting Schedule	Rev. 0, 16 September 2021	Edwina Stuart Landscape 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. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	17 November 2021

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

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

3. **Prescribed Conditions**

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$45,144.00 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 \$4,514,400.00.

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

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

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

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

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

6. Security Bond

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

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

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

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

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

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

7. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

8. **Stormwater Treatment Measures – Minor**

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.

9. **Photographic Archival Record**

A photographic archival record of the site is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the NSW Office of Environment & Heritage (OEH).

This record must be submitted and approved by the Certifying Authority prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

10. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays in the garage and gradients on the driveways are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

11. **Car Parking Finishes**

All driveways, car parking areas and pedestrian paths are to be surfaced and sealed. Details of treatment to these areas are to be submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

12. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890.1 for the respective type of vehicle. The gradient across the footpath shall not exceed 2.5% as per clause 3.3(d)

Plans prepared by a suitably qualified Engineer shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

13. **Amendments to the approved plans**

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

- The proposed Dwelling 01 level 3 southern wall shall be set back a minimum of 3m from the southern side boundary;
- The proposed Dwelling 01 level 2 outer parapet wall shall be lowered from RL38.35 to

RL37.65

- The proposed Dwelling 02 level 2 outer parapet wall shall be lowered from RL36.20 to RL35.5. Skylight P3 shall also be lowered accordingly;
- The proposed Dwelling 02 level 3 terrace and pergola shall be set back a minimum of 2.8m from the southern side boundary;
- The proposed pergola roof over the Dwelling 02 terrace shall be set back a further 1m from the eastern front boundary;
- The proposed front fence to Park Avenue shall be a maximum height of 1.5m above natural ground level at the street frontage.

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **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.

16. **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 Stellen Consulting, drawing number DR-001 to DR-004, dated 25/3/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer.

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.

17. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

18. **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.

19. **External Material Finishes - Samples**

The external materials are noted on drawing DA18 of the plans;

- Physical materials samples are to be provided for approval prior to issue of Construction Certificate.

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

Reason: To ensure that high-quality materials and finishes are used in the proposal.

20. **Waste Management Plan**

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

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

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

21. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **Project Arborist**

a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated 9th August 2021 prepared by Blues Bros Arboriculture and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

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

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

d) All tree protection measures specified must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

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

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

Reason: Tree protection.

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

a) This consent approves the removal of the following three trees within the road reserve as recommended in the Arboricultural Impact Assessment dated 9th August 2021 prepared by Blues Bros Arboriculture:

T4 *Melaleuca linearis*, T5 *Callistemon citrinus* x2

b) Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from

Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

24. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

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

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

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

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

26. **Work Zones and Permits**

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

A separate application is required with a Traffic Control Plan for the standing of construction vehicles on the road reserve.

Reason: To ensure Work zones and Stand Plant permits are obtained and implemented correctly.

27. **Pre-Construction Dilapidation Report**

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

Properties:

- 10 Birkley Road, Manly;
- 14 Birkley Road, Manly;
- Any other properties identified in the Geotechnical Report referenced in condition 1 of this consent.

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

properties prior to any works commencing.

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

28. Protection of Existing Street Trees

a) All existing street trees in the vicinity of the works not approved for removal shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

b) 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.

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

d) 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: Tree protection.

29. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not indicated for removal in the Arboricultural Impact Assessment dated 9th August 2021 prepared by Blues Bros Arboriculture, 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 not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 9th August 2021 prepared by Blues Bros Arboriculture and Australian Standard 4970-2009 Protection of Trees on Development Sites

- including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must:
 - i) be in place before work commences on the site, and
 - ii) be maintained in good condition during the construction period, and
 - iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

30. **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.

31. **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.

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

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

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

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

33. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **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.

35. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

36. **Vehicle Crossings**

The Applicant is to construct two vehicle crossings 3 metres wide on Birkley Road and Park Avenue in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

37. **Landscape Completion**

a) Landscaping is to be implemented in accordance with Landscape Plans LP01, 02, 03, 04 and PS01 dated 16.09.21 prepared by Edwina Stewart,

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

Reason: Environmental amenity.

38. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

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

Reason: Tree protection.

39. **Certification of Landscape Plan**

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

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

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

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

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

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

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

41. **Installation of Rainwater Tanks**

Rainwater tanks shall comply with the following:

- a) Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted to connect to the stormwater system
- b) Have a sign affixed to the tank stating the contents is rainwater
- c) Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
- d) Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
- e) Pumping equipment must be housed in a soundproof enclosure
- f) Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross connection prevention requirements

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

42. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,

- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

43. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

45. **House / Building Number**

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

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

Reason: Proper identification of buildings.

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

The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

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

47. **Landscape Maintenance**

a) Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

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

Reason: To maintain local environmental amenity.

48. **Replacement of Canopy Trees**

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

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

Reason: To replace locally native trees.

49. **Geotechnical Recommendations**

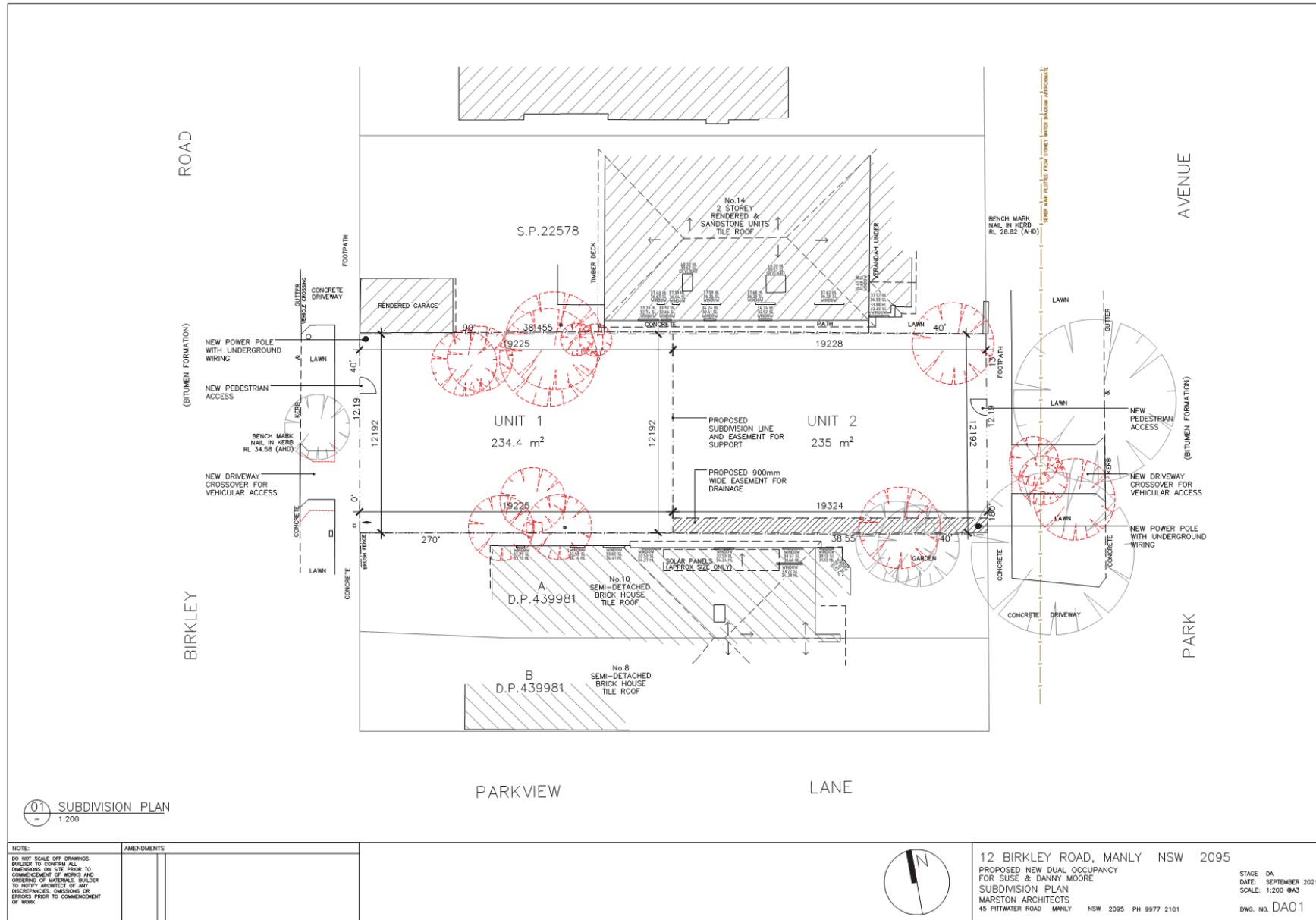
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

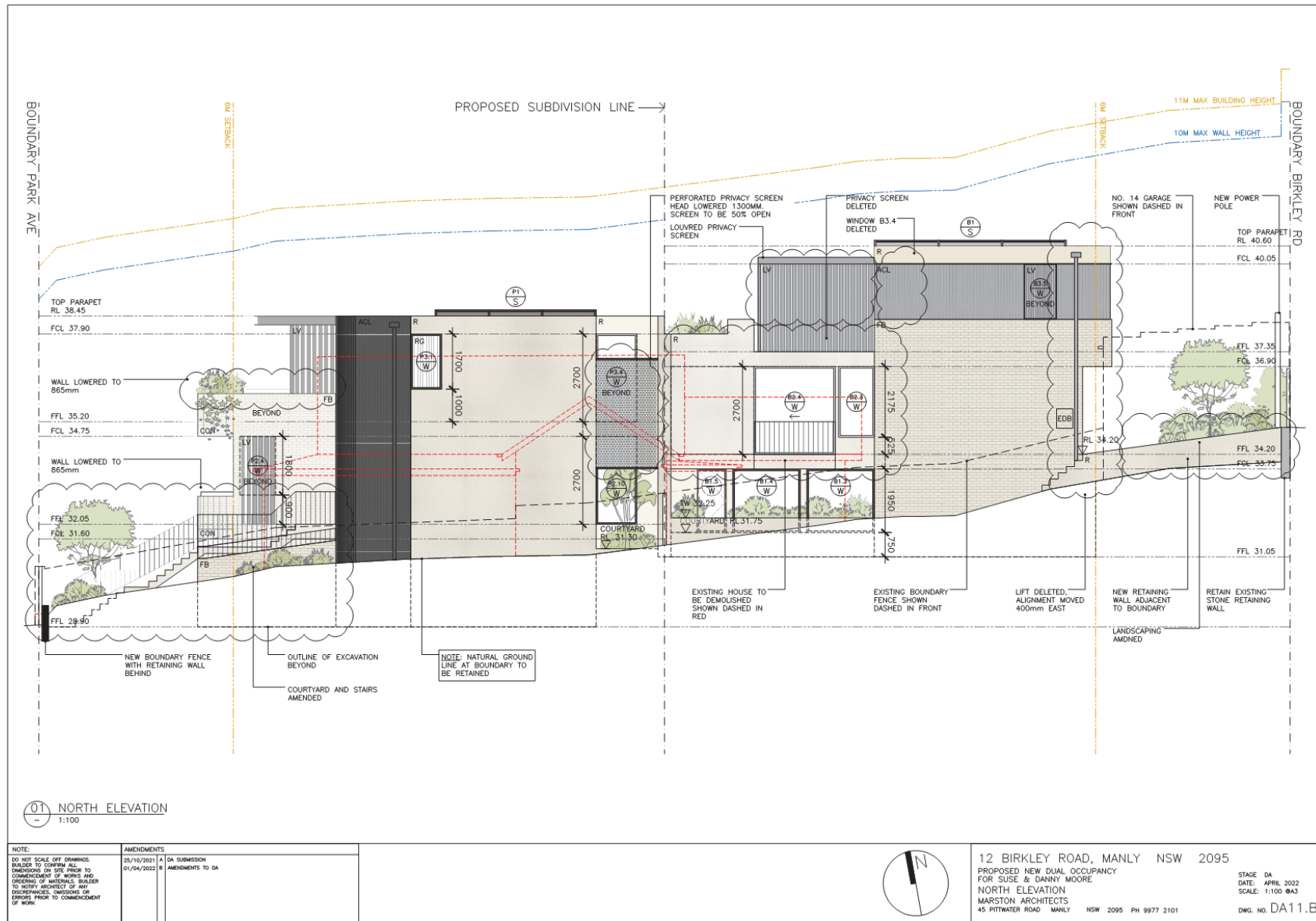
Reason: To ensure geotechnical risk is mitigated appropriately.

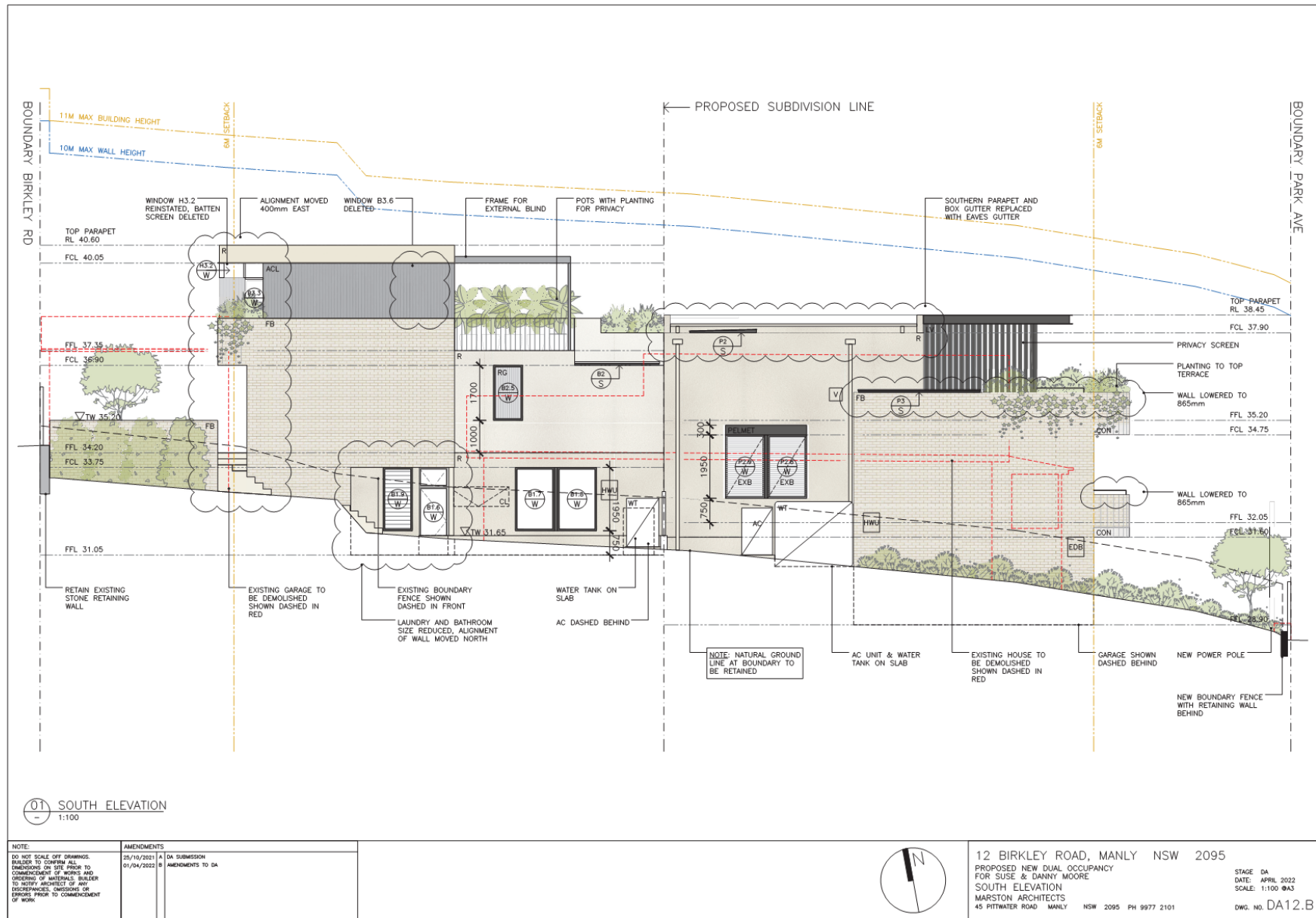
50. **Mechanical Plant**

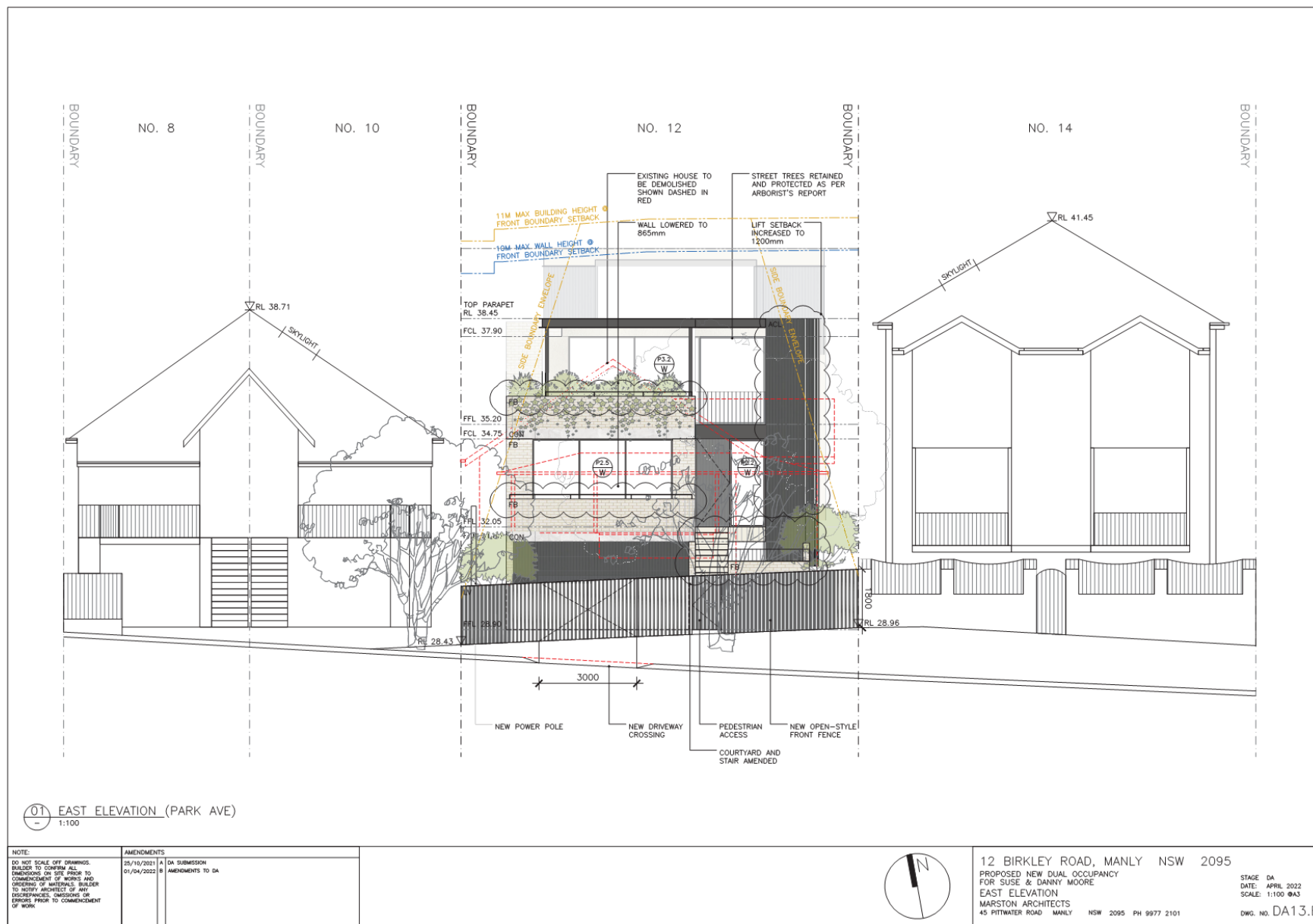
Any mechanical plant equipment shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

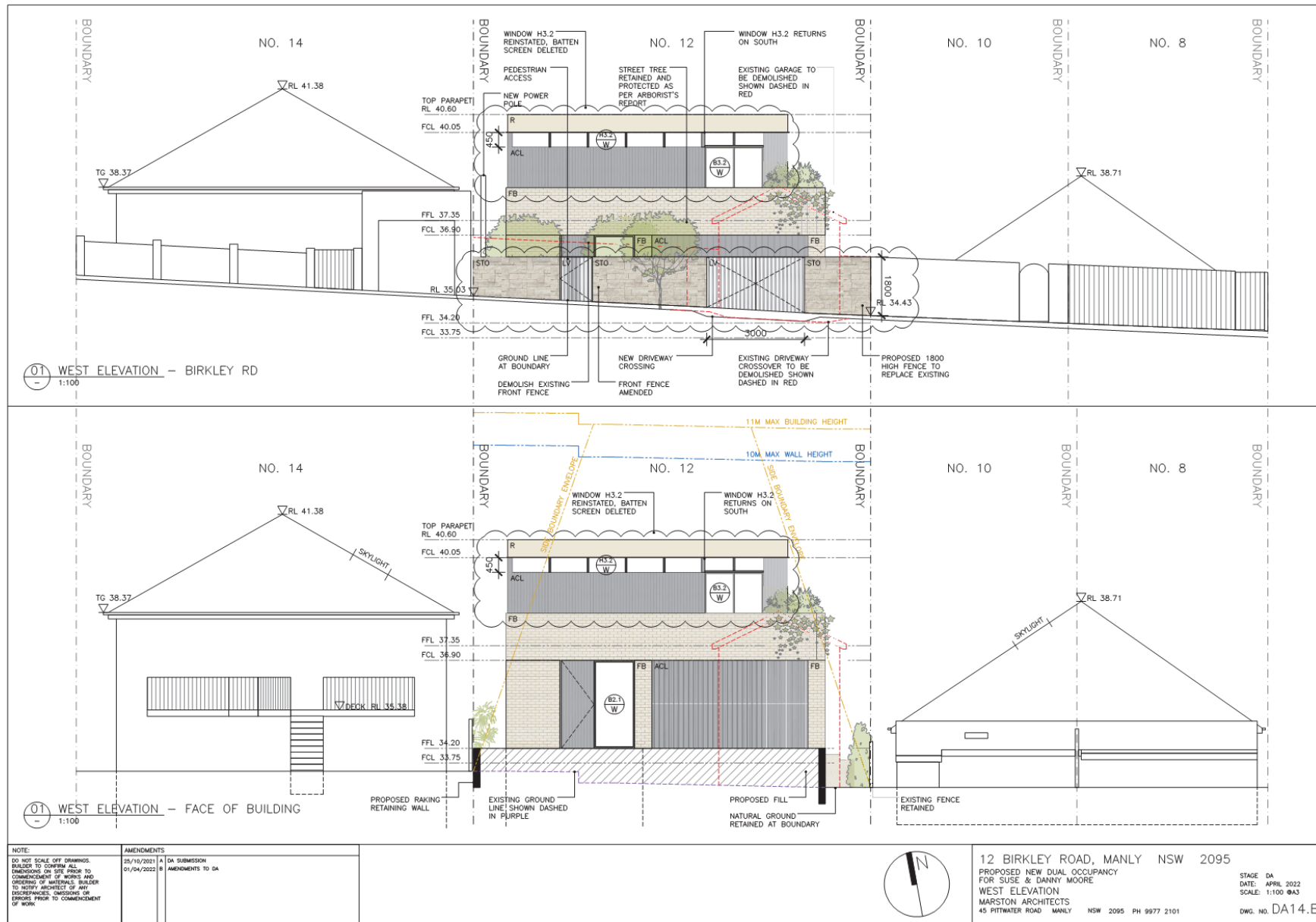
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.











ITEM 4.2

**MOD2021/1009 - 82 - 84 BOWER STREET, MANLY -
MODIFICATION OF DEVELOPMENT CONSENT DA2020/0211
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
ATTACHED DUAL OCCUPANCY INVOLVING LANDSCAPE
WORKS.**

AUTHORISING MANAGER Rodney Piggott
TRIM FILE REF 2022/248810
ATTACHMENTS
1 Assessment Report
2 Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a determination or decision made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. MOD2021/1009 for Modification of Development Consent DA2020/0211 granted for alterations and additions to an attached dual occupancy on land at Lot 5 DP 8075, 82 - 84 Bower Street, for the reasons for refusal set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/1009
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 8075, 82 - 84 Bower Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/0211 granted for alterations and additions to an attached dual occupancy
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney 82-84 Bower Street Pty Ltd
Applicant:	Michael Bushell
Application Lodged:	01/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/02/2022 to 18/02/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

EXECUTIVE SUMMARY

The application seeks to modify DA2020/0211, which was approved by the Northern Beaches Local Planning Panel (NBLPP) on 15 September 2020. A further modification, Mod2021/0317 was approved by the NBLPP on 18 August 2021.

The subject application involves the revision of privacy screening to the balcony and requires the amendment of conditions of consent imposed by the NBLPP.

As the subject modification application has been made under Section 4.55(2) of the EPA Act and seeks to amend conditions of consent imposed by the NBLPP, the application is referred back to the NBLPP

for determination.

Two submissions on behalf of one property were received by way of objection in response to the notification of the application, generally relating to the privacy impacts to the adjoining property as a result of the revised privacy screening.

The amended privacy screen design would result in unreasonable privacy impacts and is not considered to achieve the objectives of MDCP Clause 3.4.2 Privacy and Security. As such, the application is not supportable and is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks consent for the revision of privacy screening to the rear balcony as required by condition 8 and 9 imposed by the NBLPP.

DA2020/0211 was approved by the Northern Beaches Local Planning Panel with the following conditions imposed in relation to privacy screening:

7. The 'Ground & Level 1 Revision B' plan and 'Elevations Revision B' plan are conditionally amended so that any subsequent construction certificate application is to indicate that the West Elevation Ground Floor windows accessible from the kitchen, dining and living areas of No. 84 Bower Street, Manly are fitted with external screens which shall have vertical angled fins that cover the windows. The individual vertical fins shall have a width of 200mm and be positioned top to bottom at an angle of 20 degrees orientated to the north with 50mm overlaps so as there can be no vision and overlooking onto the adjoining property to the west No. 86 Bower Street, Manly.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly.

8. The external screens with vertical fins referred to in (7) above shall be replicated in size and continued in a northerly direction from the external wall of the dwelling along the western edge of the external balcony accessible from the living area of No. 84 Bower Street, Manly.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly and to also maintain design consistency with the similar edge type screening along the adjoining dwelling.

Mod2021/0317 sought to revise the design of the required privacy screening and was approved by the Northern Beaches Local Planning Panel, with conditions 7 and 8 subsequently amended and condition 9 added as follows:

7. Any subsequent construction certificate application is to indicate that the West Elevation Ground Floor windows accessible from the kitchen, dining and living areas of No. 84 Bower Street, Manly are fitted with external screens which shall be solid up to 1.6m above the FFL and above that shall have vertical angled fins that cover the windows, and otherwise in accordance with Approved Modified Plans referenced in Condition 2A of this modified consent. The screens are to be maintained for the life of the development and are to be in place prior to the issue of any Occupation Certificate. The Approved Modified Plans shall be amended to reflect this condition and submitted to Council prior to the issue of the Construction Certificate.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly

8. Any subsequent construction certificate application is to incorporate the provision of a planter box and timber screens to the Ground Floor Balcony of No. 84 Bower Street, Manly in accordance with Approved Modified Plans referenced in Condition 2A of this modified consent and subject to the

following amendment:

a. The planter box and screens are to extend the full length of the western elevation of the Ground Floor Balcony. The screen panels to the balcony shall be solid up to 1.6m above the FFL of the balcony.

The planter box and screens are to be retained for the life of the development and are to be in place prior to the issue of any Occupation Certificate. The Approved Modified Plans shall be amended to reflect this condition and submitted to Council prior to the issue of the Construction Certificate.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly.

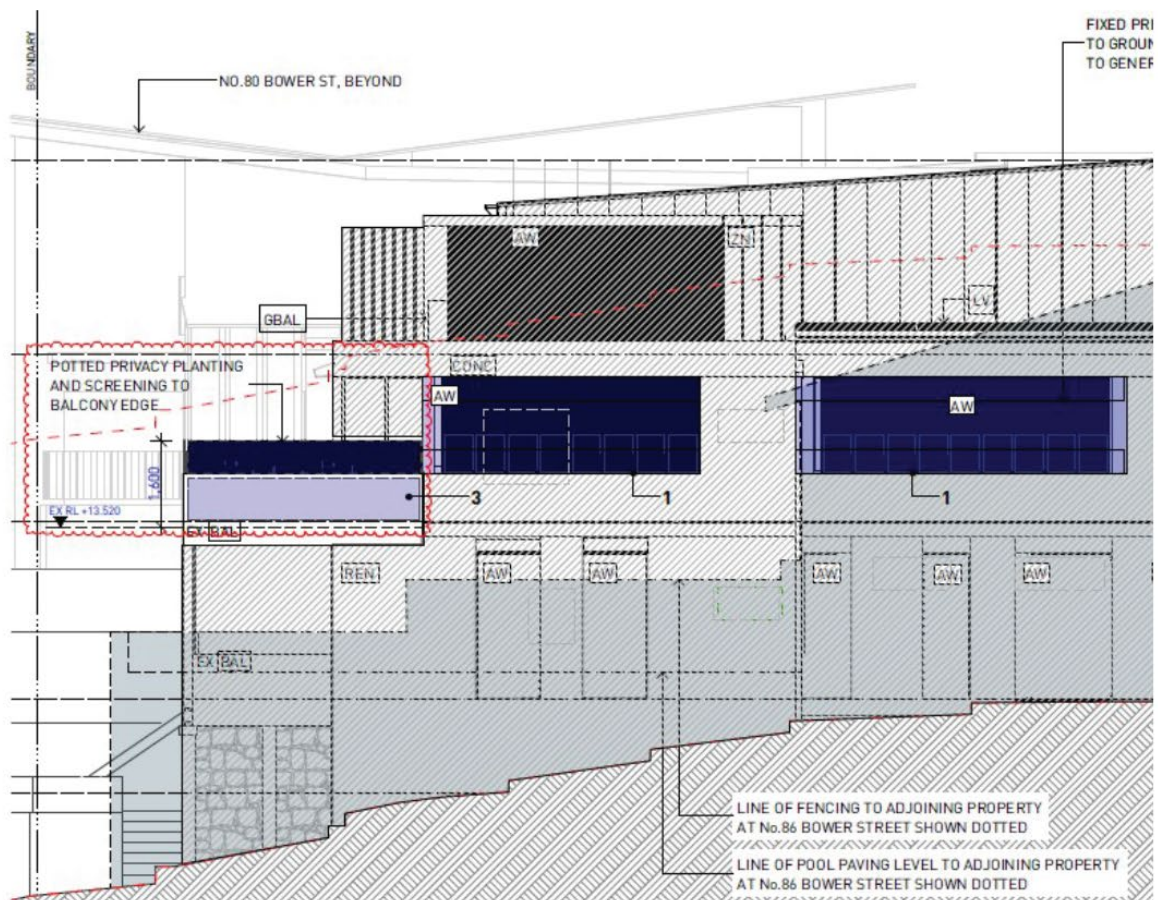
9. The planter box is to contain plantings with a minimum height of 400mm.

Details including species, mature height, planting, pot size and spacing to provide continuous screening are to be provided to the Certifying Authority.

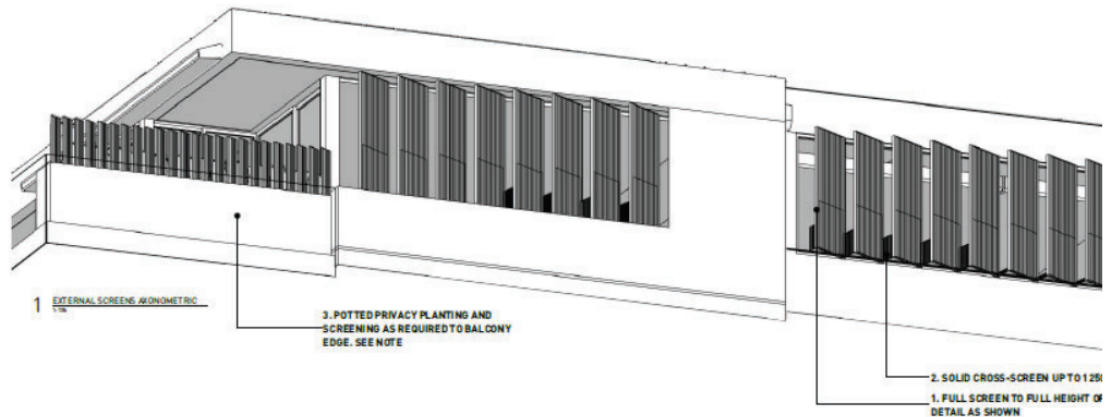
Plantings within the planter box are to be retained for the life of the development, and are to be replaced if any plants die or are destroyed/removed.

Reason: To ensure that the selected species are capable of providing suitable visual screening to the adjoining property to the west at No. 86 Bower Street, Manly.

The below plans reflect the form of the privacy screening required by conditions 7, 8 and 9 of the approved Mod2021/0317.



Plan 1. West Elevation of approved Mod2021/0317 (Construction Certificate plan).



Plan 2. Axonometric plan of approved Mod2021/0317 (Construction Certificate plan).

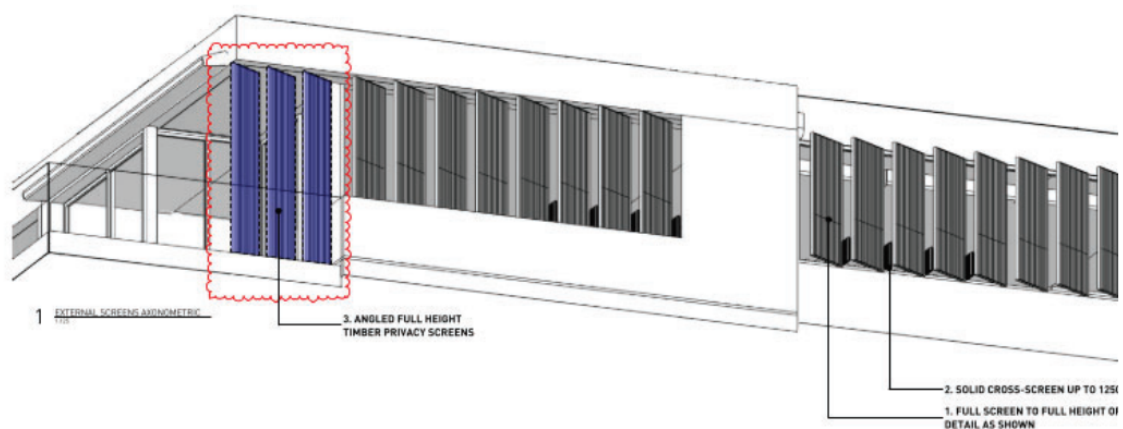
Mod2021/1009, the subject modification, seeks to further revise the balcony privacy screen design, including a reduced screening length and deletion of the adjacent planter box. The proposed modification would require the further amendment of condition 8 and the deletion of condition 9. No change is proposed to the window privacy screening required by condition 7 of Mod2021/0317.

The proposal seeks to amend condition 8 to read as follows:

8. The external screens with vertical fins referred to in (7) above shall be replicated in size and continued in a northerly direction for a length of 1.62 metres from the external wall of the dwelling along the western edge of the external balcony accessible from the living area of No. 84 Bower Street, Manly as depicted on plans S4.55-A-101 and S4.55-A-203 prepared by Smith and Tzannes.

Reason: To preserve and maintain visual privacy and amenity to the immediate adjoining property to the west at No. 86 Bower Street, Manly and to also maintain design consistency with the similar edge type screening along the adjoining dwelling.

The below plan reflects the form the privacy screening proposed by the subject modification.



Plan 3. Axonometric plan of subject modification Mod2021/1009.

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 - Zone C3 Environmental Management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views

SITE DESCRIPTION

Property Description:	Lot 5 DP 8075 , 82 - 84 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment (No. 82-84 Bower Street) located on the northern side of Bower Street.</p> <p>The site is irregular in shape with a frontage of 16.365m along Bower Street and a depth of 45.83m. The site has a surveyed area of 698.4m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates an existing dual occupancy (attached).</p> <p>The site slopes 7.57m from front (south) to rear (north).</p> <p>The site planted vegetation generally within the front setback. No significant trees are located on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.

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:

DA0034/2016 - Alterations and additions to an existing semi-detached dwelling including new upper level internal reconfiguration and new roof, reconstruction of the existing ground floor entry, partial demolition of rear of dwelling, new plunge pool, terrace, new double garage and landscaping - No 84 Bower Street, Manly only - Approved on 27 April 2016 by the former Manly Development Assessment Unit.

DA0168/2017 - Alterations and additions to the existing dual occupancy - Approved 14 November 2017 under staff delegation.

Mod2018/0547 - Modification of Development Consent No. DA168/2017 granted for alterations and additions to the existing dual occupancy - Approved 10 January 2019 under staff delegation.

DA2019/0126 - Alterations and additions to a dual occupancy - Approved 10 July 2019 by the Development Determination Panel.

DA2019/0125 - Demolition works and construction of two garages - Approved 10 July 2019 by the Development Determination Panel.

EPA2019/0374 - A Stop Works Order was issued by Council when the unauthorised works were brought to the attention of the Building Control Team - Dated 21 November 2019 (revoked), and re-issued 19 December 2019.

BC2020/0048 - Reconstruction of existing walls and existing floors - Approved 15 September 2020.

DA2020/0211 - Development Application seeking consent for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt - Approved 15 September 2020 by the Northern Beaches Local Planning Panel.

DA2021/0868 - Alterations and additions to an attached dual occupancy involving landscape works - Approved 11 August 2021 under staff delegation.

Mod2021/0317 - Modification of Development Consent DA2020/0211 granted for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt - Approved 18 August 2021 by the Northern Beaches Local Planning panel.

Mod2021/1009 - Subject application under assessment.

NSW LEC Proceedings No. 2022/97178 - On 5 April 2022, the Applicant commenced Class 1 appeal proceedings against Council's deemed refusal of the Development Application.

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 DA2020/0211 and Mod2021/0317, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before	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 DA2020/0211

Section 4.55 (2) - Other Modifications	Comments
that consent as originally granted was modified (if at all), and	<p>and Mod2021/0317 for the following reasons:</p> <p><i>"(2) Other modifications 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—</i></p> <p><i>(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"</i></p> <p><u>Comment:</u></p> <p>The proposed changes maintain the approved dual occupancy use and do not alter the intent of the lot to be developed. The resulting built form and general appearance of the development is materially the same as previously approved. The modifications relate to changes to the privacy screening that is required by the conditions of consent imposed by the consent authority.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/0211 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	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.
(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	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided	See discussion on "Notification & Submissions Received" in this report.

Section 4.55 (2) - Other Modifications	Comments
by the development control plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

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

Section 4.15 'Matters for Consideration'	Comments
	<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 the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will 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 unsuitable 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Manly DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

The application of existing use rights for the ongoing use of the site as a dual occupancy was established by the approval of DA2020/0211, which the subject application seeks to modify.

This approved consent remains valid and the works on-site and lodgement of subsequent S4.55 modification applications indicate that the existing use rights have not been abandoned

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 04/02/2022 to 18/02/2022 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 1 submission/s from:

Name:	Address:
McCullough Robertson Lawyers	Level 16 55 Hunter Street SYDNEY NSW 2000

The issues raised in the submission are addressed as follows:

- **Privacy/overlooking impacts**

The submission raised concerns that the revised balcony privacy screen design does not provide adequate privacy to the occupants of 86 Bower Street, noting the context and history of the development on the subject site including previous decisions by the Northern Beaches Local Planning Panel.

Comment:

This assessment finds that the revised privacy screen design would result in excessive overlooking of No. 86 that would not achieve an appropriate level of privacy. The assessment has given regard to the context of the site and the necessity of effective privacy screening at the western elevation of the subject dwelling and balcony. Due to the potential privacy impacts to No. 86 it is considered necessary to maintain the balcony privacy screening as previously approved by the NBLPP. The proposal is found to be inconsistent with the objectives of MDCP Clause 3.4.2 and is recommended for refusal.

- **Height of previously approved balcony privacy screen**

The submission raised concerns that the height of the previously approved balcony privacy screen is insufficient to provide privacy to the occupants of 86 Bower Street.

Comment:

Based on the inspections undertaken at the subject site and No. 86, the previously approved privacy screening is considered to maintain adequate privacy to the adjoining property. No amendment to the approved screening is necessary and the changes sought by the applicant are not supportable. As such, the application is recommended for refusal.

REFERRALS

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 (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is classified as land within the coastal environment area and the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed modified privacy screen is located within the existing building footprint and will not unreasonably impact the coastal environment area.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed modification is consistent with this Clause.

14 Development on land within the coastal use area

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform*

- for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed modified works are minor in extent and will not adversely impact the coastal use area in relation to any of the above matters.

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

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

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on the site or surrounding land.

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

Manly Local Environmental Plan 2013

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

The proposed modifications relate to privacy screening and do not result in any changes to the approved building height or floor space ratio. As such, there are no development standards under Part 4 of the Manly LEP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
6.5 Terrestrial biodiversity	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone C3 Environmental Management

The proposal is permissible under the provisions of existing use rights.

6.5 Terrestrial biodiversity

The privacy screen that is proposed to be modified is located above ground level and will not impact existing vegetation of biodiversity values on the site.

6.9 Foreshore scenic protection area

The proposal relates to an approved privacy screen and would result in no adverse impacts in relation to visual aesthetic amenity or views from public places.

Manly Development Control Plan

Built Form Controls

There are no built form controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

The approval of Mod2021/0317 required the provision of a planter box and 1.6m high privacy screen extending the full length of the western elevation of the balcony. The proposed modification includes full height privacy screening for a length of 1.62m from the external wall of the dwelling, with the remaining 2.8m of the western edge of the balcony being unscreened. The reduction in the length of the proposed screen is not considered to adequately limit overlooking of the adjoining property, noting the existing non-compliant side setback to the balcony and the resulting proximity to the swimming pool and private open space areas of No. 86.

The visual privacy interface between the subject site and No. 86 is shown in the below photos provided by the adjoining property owner.



Photo 1. The balcony of the subject site as viewed from 86 Bower Street, prior to the installation of any screening. The proposed privacy screen extends from the dwelling wall to the northern edge of the roof element above.



Photo 2. Overlooking of 86 Bower Street from the subject site balcony prior to the installation of any screening.

Note: The photo is not taken from the proposed unscreened northern section of the balcony, but demonstrates the proximity of the balcony to No. 86 and the extent of the resulting privacy impact.

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The amended screen design allows for unobstructed overlooking of No. 86 from the 2.8m northern section of the balcony that is unscreened. Given the limited separation between the balcony and the private open space area of No. 86, the proposal does not minimise loss of privacy by providing appropriate screening and mitigating direct viewing between the outdoor living areas of the adjacent properties. The proposal would also allow view lines from the balcony to the north-facing glazing of the dwelling at No. 86.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposal seeks to reduce the impact to the available views from the subject site but does so at the expense of the privacy of the adjoining property. It is noted that the balcony previously benefitted from views of Marine Parade and the Manly foreshore. However, given the history of the subject site - whereby the existing dwelling was largely demolished and rebuilt - the previously imposed privacy screening is considered to achieve a more appropriate outcome in relation to privacy and views. It is also noted that the affected views from the subject site are obtained across a side boundary and that the expansive views available towards the north and north-west across the rear boundary remain unaffected.

The below photos demonstrate the level of impact to the available views from the subject site as a result of the previously imposed screening requirements. Based on these photos and the assessment undertaken against the requirements and objectives of the control, the privacy screening conditions imposed under Mod2021/0317 are seen to achieve a more appropriate balance between privacy, sunlight access, outlook and views in comparison to the proposed screen design.



Photo 3. Obstruction of the available views from the subject site balcony by the privacy screen conditions imposed by Mod2021/0317.



Photo 4. Obstruction of the available views from the subject site balcony by the privacy screen conditions imposed by Mod2021/0317.



Photo 5. Obstruction of the available views from the subject site living room by the privacy screen conditions imposed by Mod2021/0317.



Photo 6. Obstruction of the available views from the subject site living room by the privacy screen conditions imposed by Mod2021/0317.



Photo 7. Obstruction of the available views from the subject site living room by the privacy screen conditions imposed by Mod2021/0317.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not adversely impact opportunities for passive surveillance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.4.3 Maintenance of Views

The revised screening proposed as part of this application would not result in any adverse view impacts from adjoining properties. However, the application is recommended for refusal due to the privacy impacts to 86 Bower Street. The view impacts to the subject site are not unreasonable as considered against the view loss planning principle.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- 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 proposal seeks modifications to the privacy screening required by the conditions of consent imposed by Mod2021/0317.

The revised privacy screening proposed in this application would not maintain a reasonable level of privacy to the adjoining property in accordance with the objectives of MDCP Clause 3.4.2.

One submission was received in response to the notification of the application, and is addressed in detail within this report.

Based on the assessment completed within this report the application is not supportable and is recommended for refusal.

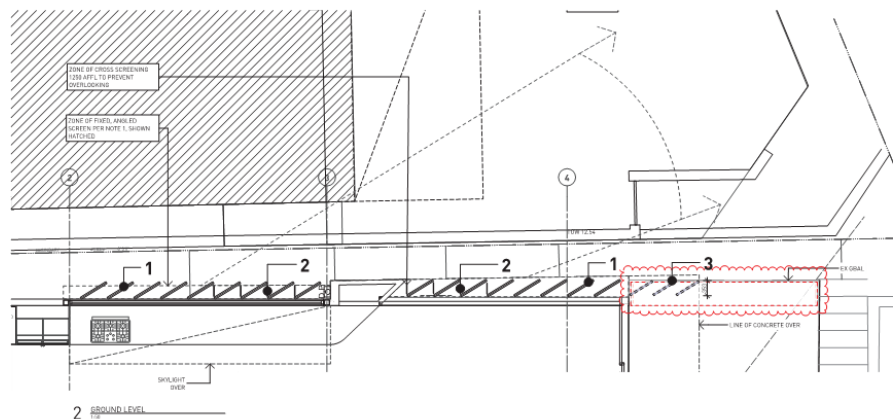
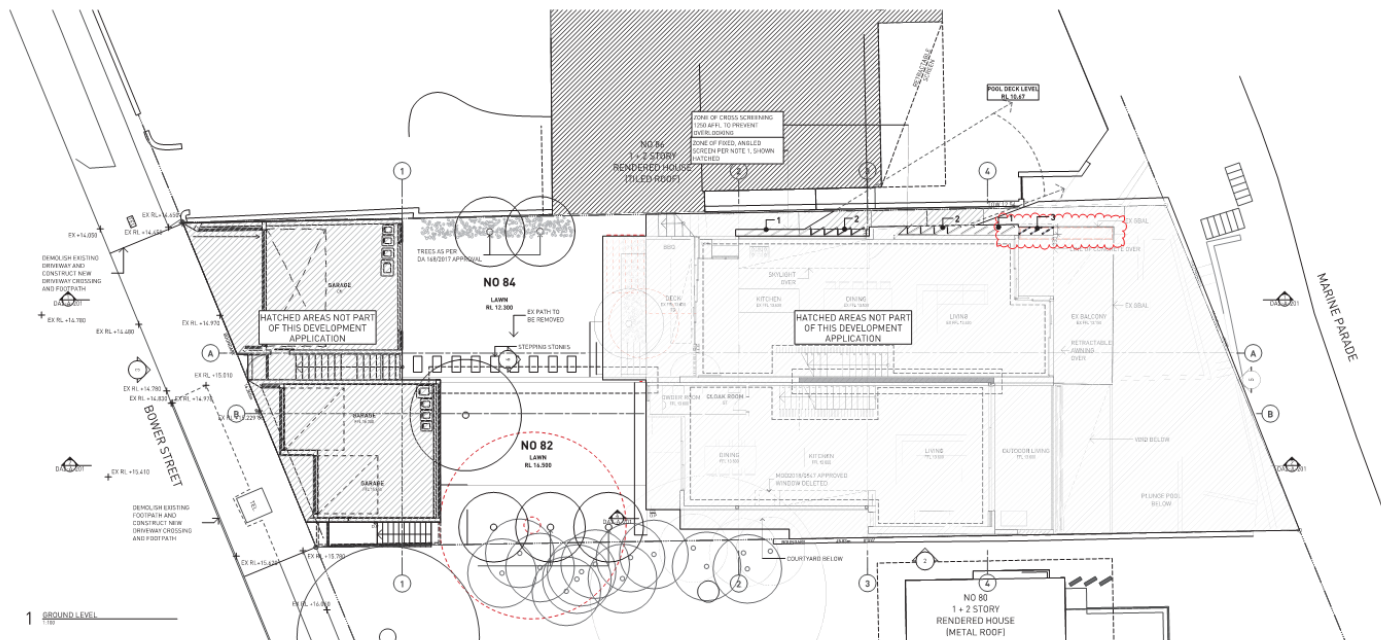
It is considered that the proposed development does not satisfy the appropriate controls and that all

processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2021/1009 for Modification of Development Consent DA2020/0211 granted for alterations and additions to an attached dual occupancy on land at Lot 5 DP 8075,82 - 84 Bower Street, MANLY, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan. Specifically, the proposed modification would not afford a reasonable level of privacy to the adjoining property in accordance with Clause 3.4.2 and the previously imposed conditions of consent.



S4.55 MODIFICATION TO EXISTING CONSENT NOTES

1. ANGLED TIMBER PRIVACY SCREENS TO FULL HEIGHT OF WINDOW, 20 DEGREES FROM TRUE NORTH

2. SOLID TIMBER CROSS SCREENING TO 1250mm ABOVE FINISHED FLOOR LEVEL

3. ANGLED FULL HEIGHT TIMBER PRIVACY SCREENS

General Notes

1. NEVER scale off drawings, use figured dimensions only.

2. Verify all dimensions on site prior to commencement & report discrepancies to the architect.

3. Drawings show the scope of works and general set out. These drawings are not shop drawings. Set out to be undertaken by surveyor on site. Shop drawings should be prepared where required or necessary.

LEGEND

Refer to the notes page for legend that includes further notes and explanation of abbreviations.

NOT PART OF DEVELOPMENT APPLICATION

PROPOSED AMENDMENTS

DOCUMENT

GROUND PLAN

DOCUMENT

S4.55 APPLICATION

REV D 25/10/2021

STAGE

DA SUBMISSION

PROJECT

82- 84 Bower Street Manly

CLIENT

Michael & Jenny Bushell John & Anna Lake

ARCHITECTURE URBAN PLANNING

15/11/21 McQuay St Alexandria NSW 2015

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15_117 S4.55-A-101

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1 **DA2021/0708 - 36 STURDEE LANE, LOVETT BAY -
DEMOLITION WORKS AND THE CONSTRUCTION OF A NEW
DWELLING HOUSE, INCLUDING THE RELOCATION OF AN
EXISTING OUTBUILDING.**

AUTHORISING MANAGER **Steve Findlay**

TRIM FILE REF **2022/248985**

ATTACHMENTS **1 Assessment Report
2 Site Plans and Elevations
3 Clause 4.6**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards under Clause 7.8 – Limited Development on Foreshore Area.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. to DA2021/0708 for Demolition works and the construction of a new dwelling house, including the relocation of an existing outbuilding on land at Lot 5 DP 552628, 36 Sturdee Lane, LOVETT BAY, Lot LIC 354632, 36 Sturdee Lane, LOVETT BAY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0708
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 5 DP 552628, 36 Sturdee Lane LOVETT BAY NSW 2105 Lot LIC 354632, 36 Sturdee Lane LOVETT BAY NSW 2105
Proposed Development:	Demolition works and the construction of a new dwelling house, including the relocation of an existing outbuilding
Zoning:	C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Paravit Investments Pty Ltd
Applicant:	Dods & Zuccon Architects Pty Ltd
Application Lodged:	02/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	21/02/2022 to 07/03/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Clause 7.8 –Limited Development on Foreshore Area
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,030,842.00

EXECUTIVE SUMMARY

The subject development application seeks consent for the demolition of an existing two storey dwelling and shed and the construction of a new two storey dwelling.

The application is referred to the Northern Beaches Local Planning Panel for determination, as the proposal seeks to vary a non-numerical development standard, that being Clause 7.8 –Limited Development on Foreshore Area of the Pittwater LEP 2014. Clause 7.8 specifies that a building footprint must not extend further into the designated foreshore area. The proposed dwelling footprint will extend further into the foreshore area than the existing dwelling.

Following notification and preliminary assessment of the proposal, a number of concerns were raised with the applicant. These concerns included; tree removal & biodiversity protection, works in the foreshore area, view sharing, front building line, building envelope, landscaped area, proposed fencing and insufficient/inconsistent documentation. Amended plans and additional information were submitted to address these concerns. The assessment of the application is based on the amended plans.

A total of seven (7) submissions were made in response to the original notification and three (3) were made to the notification of the amended plans. These submissions all raised concerns with the proposal. The principle issues that were raised within the submissions are; works within the foreshore area, the reliance on unapproved structures, view loss, landscaped area, impacts to trees, the environment and wildlife, height and bulk, setbacks, impacts on the adjoining heritage item, impacts of the waste water management system, the proposed use of the site and the proposed fencing.

Overall, it is considered that the design and appearance of the proposed dwelling (as amended) is generally suitable and appropriate on the site and in the wider locale. The proposed dwelling house will remain a two storey, low density residential structure, built primarily upon the existing footprint and will not result in the removal of any significant vegetation or require significant alteration to the landform.

With regards to the proposed works within the foreshore area, the proposed dwelling will be primarily built over existing building footprint and the elements of the proposal which extend further into the foreshore area relate to an open terrace area and a minor portion of the ground floor wall. The proposal will result in a net reduction of the footprint of the existing building within the foreshore area.

Concern has been raised in the submissions in relation to unauthorised structures within the foreshore area and the reliance on these structures to permit the rebuilding of a dwelling partially within the foreshore area. In 2013, a Building Information Certificate (BC0121/12) was issued which certified the existing unauthorised works within the foreshore area, including a workshop and deck and ground and first floor additions to the existing dwelling.

The application is also supported by a Clause 4.6 variation which argues the case for the encroachment within this area on the basis of the site being irregularly shaped, the location of the foreshore building line which renders a large portion (490sqm) of the site below the line, which constrains the developable area, when also considering the location of existing structures, protected trees and biodiversity protection areas. The Clause 4.6 is supported under this assessment and for the reasons detailed later in the report. It is noted that the works have been located outside DPIE's Biodiversity Values mapping area located on the eastern portion of the site. The elements encroaching into the foreshore area do not result in the loss of protected or significant vegetation, nor will they impact on foreshore processes or result in unreasonable amenity impacts. The design will allow for a functional dwelling, similar to the siting and design of that existing on site, with minimal environmental impacts.

Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for demolition works the construction of a new two storey dwelling. Specifically, the proposed development consists of:

Demolition works

Demolition of the existing two storey house and shed. The existing outbuilding on the north-eastern portion of the site is proposed to be retained. No works are proposed to this outbuilding and so does not form part of the works under this application.

Construction of a new two storey dwelling, consisting of:

Ground Floor:

- Open Plan kitchen/living/dining with pantry and cool room. Opens out to a new terrace/deck.
- Laundry/Utilities Room
- Bedroom with ensuite and deck
- Entry with powder room

First Floor:

- 2 bedrooms with ensuites. Bedroom 3 will include a walk-in-robe. Both bedrooms will access the upper level terrace which includes a garden. A smaller terrace is access only via bedroom 3.
- Upper level entryway with cellar adjacent

External

- Excavation, retaining walls and landscaping works
- New effluent management system
- New fencing
- Stormwater infrastructure

Note:

The Development Application initially also included the relocation of an existing outbuilding. After concerns were raised by Council in relation to the status and use of this structure, this element was deleted via amended plans.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites
Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential
Pittwater 21 Development Control Plan - B3.8 Estuarine Hazard - Medium Density Residential
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.13 Pollution Control
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D8.5 Front building line
Pittwater 21 Development Control Plan - D8.8 Building envelope
Pittwater 21 Development Control Plan - D8.9 Landscaped Area
Pittwater 21 Development Control Plan - D8.10 Fences
Pittwater 21 Development Control Plan - D8.15 Site disturbance

SITE DESCRIPTION

Property Description:	Lot 5 DP 552628 , 36 Sturdee Lane LOVETT BAY NSW 2105 Lot LIC 354632 , 36 Sturdee Lane LOVETT BAY NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Sturdee Lane. The site has frontage to an unmade portion of Sturdee Lane with access to the site via boat.</p> <p>The site is irregular in shape with a frontage of 18.29m along Sturdee Lane and a depth of 61.48m. The site has a surveyed area of 1182m². The site adjoins Lovett Bay and Pittwater Waterway to the north-west.</p> <p>The site is located within the C3 Environmental Management zone and accommodates a one & two storey dwelling and two single storey detached outbuildings. The site is accessed via an adjoining jetty and pontoon to Pittwater waterway.</p>

The site has a crossfall of approximately 10.0m from the east (rear) to the west (waterfront)

The existing site vegetation is within the Spotted Gum Forest vegetation community, and two typical canopy tree species (Spotted Gum identified as T13, and Turpentine identified as T19) exist within the property, and additional native canopy trees (Brushbox identified as T20) exist. The site comprised one Plant Community Type (PCT) in the eastern corner identified as PCT 1214 Spotted Gum - Grey Ironbark open forest in the Pittwater and Wagstaffe area, Sydney Basin Bioregion. This vegetation community is also mapped as Biodiversity Value (BV) Mapped Land and is associated with the NSW-listed Endangered Ecological Community (EEC) Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one and two storey dwellings of varying architectural styles within landscaped settings. Many surrounding properties adjoin (and have access to) Pittwater Waterway.

The property adjoins a heritage item located to the north-east which is known as "Myuna" (house) - 38 Sturdee Lane, Lovett Bay

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:

- **A616/75** - Building Approval for the erection of a Dwelling (1975)
- **1701/78** - Building Approval for additions and the conversion of an existing cottage to a boatshed, storeroom and sauna (1978)
- **BC0121/12** - Building Information Certificate for additions and alterations to a 2 storey dwelling; a storeroom addition to a detached home office/living area outbuilding; a detached workshop addition on the western side of the dwelling and a 1.8m steel and timber retaining wall at the rear of the dwelling

APPLICATION HISTORY

1/09/2021

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

- The use of the existing outbuilding
- Works in the foreshore area
- View sharing
- Front building line
- Building envelope
- Landscaped area
- Fences
- Environmental Health and Biodiversity concerns
- Insufficient documentation

1/11/2021

- Height poles were erected on the subject site and a site visit was undertaken by Council's Planner at the subject site and neighbouring properties of those who objected to the proposal.

15/02/2022

Amended plans and additional information were submitted to address Council's concerns. The amended plans resulted in:

- Deletion of the proposed relocated gardener's tool shed, retaining walls, hard surface landscaping and boundary fence extension within the Biodiversity Value defined area in the eastern corner of the property as identified in the accompanying Ecological Assessment Report.
- The reconfiguration of the proposed building footprint and floor plates to achieve a minimum 3.0 metre ground floor level and 6.5 metre first floor level setback to Sturdee Lane and the retention of the existing boundary fence adjacent to this frontage.
- The replacement of the pitched roof forms with a flat roof, the lowering of the ground floor gallery floor level, reduction of the ceiling heights on the ground floor level and lowering of the first floor level to facilitate an overall reduction in building height of 960mm.
- Increase in landscaped area.
- The relabelling of the retained outbuilding as "Detached Home Office/Outbuilding" as described in Building Certificate BC0121/12.
- A reduction in the height of proposed fence between No's 36 and 34 Sturdee Lane to 1.0 metre for the first 6.5 metres measured from the Sturdee Lane frontage.

- The nomination of the proposed fireplace and associated chimney as being compliant with Australian Standards 4012 and 4013.

16 February 2022

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	<p>relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire

Environmental Management Consultancy, dated 11/01/2022) 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 21/02/2022 to 07/03/2022 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:
Keren Rockman	34 Sturdee Lane LOVETT BAY NSW 2105
Mr Ashley Brett Rockman	34 Sturdee Lane LOVETT BAY NSW 2105
Mrs Margaret Wendy Haigh	104 Jersey Road PADDINGTON NSW 2021
Renovation Solutions	Po Box 487 GORDON NSW 2072
West Pittwater Community Association	PO Box 289 CHURCH POINT NSW 2105
Mr Peter William Andrew Cumming Mrs Christine Evelyn Cumming	PO Box 319 CHURCH POINT NSW 2105
Karen Jane Lambert	PO Box 132 CHURCH POINT NSW 2105
Mr Richard Dennis Leplastrier	PO Box 132 CHURCH POINT NSW 2105
David Bennett	Address Unknown

The following issues were raised in the submissions:

- Height
- Unauthorised structures
- Works within the foreshore area
- Impact to trees
- Side boundary fence
- Impacts to wildlife
- View Loss
- Overdevelopment and impact to character of the area
- Site coverage and landscaped area
- Rear setback
- Non-compliance with DCP Controls
- Relocation of Gardeners Shed
- Impact on adjoining heritage item
- Privacy
- Use of the site as multiple dwellings
- Waste water management system and impact on environment
- Height Poles

The above issues are addressed as follows:

- **Height**

Submissions were received which raised concern with the proposed height of the proposal, specifically in relation to the proposed gable roof formation, floor to ceiling heights and roof gardens.

Comment:

Following these submissions, amended plans were received which reduced the overall height of the dwelling by 960mm to a maximum height of 7.5m. This was achieved by changing the previously pitched roof forms with a flat roof design, the lowering of the ground floor level, reduction of the ceiling heights on the ground floor level and lowering of the first floor level.

The amended height is considered acceptable and is not considered to give rise to unreasonable amenity, as detailed throughout this report. The proposed terrace roof garden is considered a positive design feature which will positively contribute to the character of the area.

- **Unauthorised structures**

Multiple submissions were received which raised concern with unauthorised structures within the foreshore area and the reliance on these structures to permit the rebuilding of a dwelling partially within the foreshore area. Concern was also raised that this would set a precedent for future foreshore development.

Comment:

In 2013, a Building Information Certificate (BC0121/12) was issued which certified existing unauthorised works within the foreshore area including a workshop and deck, ground and first floor additions to the existing dwelling.

The proposed works within the foreshore area have been assessed within Clause 7.8 and Clause 4.6 of this report and the proposed works have been deemed acceptable in this instance. The proposed works within the foreshore area have been assessed against relevant planning controls and is supported on merit. Each development application is assessed on its individual merits, including compliance with the relevant controls of the P21DCP and PLEP, as well as site constraints.

Conditions have been imposed to ensure that this consent does not regularise any existing unauthorised works within the foreshore area or on Crown Land.

- **Works within the foreshore area**

Submissions have been raised with the proposed works within the foreshore area.

Comment:

The proposed works within the foreshore area have been assessed within Clause 7.8 and Clause 4.6 of this report and the proposed works have been deemed acceptable in this instance. The proposed works within the foreshore area have been assessed against relevant planning controls and are supported on merit.

- **Impact to trees**

Comment:

Concern was raised regarding the potential impact of the proposed works on adjoining trees. The application is accompanied by an Aboricultural Impact Assessment which recommends tree protection measures during development. The proposal is also accompanied by a Ecological Report which determined that the proposed works would not result in unreasonable impact to wildlife or biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent.

Specific concern has been raised with regards to T13 Spotted Gum on the boundary and the proposed fencing and works in its vicinity. The proposed arborist report has recommended that the root zone of this is isolated and manage root zone and that boundary fencing must be Pier and beam with hand digging for piers to avoid roots 4cm or greater). Conditions have also been imposed by Council's Landscape Officer to ensure the tree protection measures during development and compliance with the recommendations of the arborist.

- **Side boundary fence**

Submissions have been received raising concerns with the proposed side boundary fencing along the southern boundary.

Comment:

The proposed fencing has been assed within *clause D8.10 Fences* of this report and is considered acceptable subject to recommended conditions limiting the height and specifying the design of this fence. Council's Biodiversity Officer has reviewed the proposed fence and has raised no objection subject to conditions requiring openings for ground animals. No owners consent has been granted from adjoining properties for this fence, and as such, a condition is to be imposed ensuring that all works are constructed entirely on the subject site. However, it should be noted that the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary.

- **Impacts to wildlife**

Comment:

The proposal does not require the removal of any significant trees or vegetation. The application is accompanied by an Aboricultural Impact Assessment which recommends tree protection measures during development. The proposal is also accompanied by a Ecological Report which determined that the proposed works would not result in unreasonable impact to wildlife or biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent

- **View Loss**

Comment:

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

- **Overdevelopment and impact on the character of the area**

Comment:

The proposed development would retain a single dwelling house and ancillary structures within

a landscaped setting. The proposal involves minimal environmental impact, is set below the general tree canopy height, includes adequate building modulation, articulation and changes in finishes to minimise bulk, does not involve significant earthworks, and provides an appropriate balance between respecting the landform and encouraging development. The development has also been designed to enable the retention of protected trees. The proposal is therefore considered to maintain the character of the locality.

- **Site coverage and landscaped area**

The submissions raised concerns that the proposal would have excessive site coverage and insufficient landscaped area.

Comment:

The proposed development is acceptable in relation to landscaped area for the reasons detailed in the section of this report relating to *Section D8.9 Landscaped Area* of the P21 DCP. The proposal represents an overall increase in the landscaped area from existing site conditions. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

Concern was also raised that there would be insufficient landscaped area for the dispersion of effluent from septic systems. The proposal is supported by a Wastewater Management Report which assesses the proposed effluent management system. The proposed report specifies that the proposed effluent management system will provide a considerably higher level of effluent treatment and more efficient means of land application over a larger area. The new arrangement will result in a much improved scenario and beneficial effects with regards to both public health and the environment. The proposed system has been reviewed by Council's Environmental Health Officer who has raised no objections subject to recommended conditions.

- **Rear setback**

The submissions raised concern that the proposed development does not comply with the 6.5m rear setback control.

Comment:

Given the configuration of the site and location on a waterfront lot, the site is not considered to have a rear setback control. However, the proposed dwelling will be over 12.0m from the NE side boundary (which is the furthest boundary from Sturdee Lane).

- **Non-compliance with DCP Controls**

Comment:

For each of the numerical non-compliances, a merit assessment was carried out against the objectives of that control in this report. The assessment has found the proposed non-compliances to be reasonable in this instance (subject to conditions).

- **Relocation of Gardeners Shed**

Concern was raised in regards to the proposed relocation of the existing gardeners shed to the eastern portion of the site and its associated impacts on neighbouring amenity and the adjoining heritage item.

Comment:

Following concerns raised by Council, amended plans were received which deleted the

gardeners shed relocation from the plans.

- **Impact on adjoining heritage item**

The submissions raised concerns that the proposed development would have unreasonable impacts to the adjoining heritage item,

Comment:

Adjoining the subject property, at No. 38 Sturdee Lane, is the house "Myuna" listed as Heritage item No. 2270082 in Pittwater LEP 2014. This house shares a lot boundary with the subject property. As such, the proposal has been referred to Council's Heritage Officer.

Please refer to Council Strategic and Place Planning (Heritage Officer) referral comments in this report for further details. In summary, Council's Heritage Officer has recommended approval as the proposal (as amended) would not result in impact to the adjoining heritage item.

- **Privacy**

Comment:

The proposal is not considered to result in unreasonable privacy impacts. The proposal would comply with the requirements of clause C1.5 *Visual Privacy* of P21DCP

- **Use of the site as multiple dwellings**

Comment:

The existing site contains an existing detached outbuilding which is proposed to be retained as part of this development. A search of the sites history reveals that this outbuilding was converted from a cottage to a boatshed, storeroom and sauna in 1978. A Building Information Certificate was subsequently issued in 2013 which described this building as a "home office". The subject application proposes to retain this outbuilding as a "home office/outbuilding". No works are proposed to this outbuilding as part of this application. No consent is granted under this application for the change of use of this outbuilding or for the use of this outbuilding for the purposes of separate habitation including a secondary dwelling/granny flat or dual occupancy.

Furthermore, the development consent will be conditioned over the life of the development so to ensure this outbuilding will not be used for the purposes of separate habitation including a secondary dwelling/granny flat or dual occupancy. An additional condition will be applied to remove and prohibit the installation of cooking facilities. A condition has also been imposed to ensure that no consent is granted for the use of the site beyond the definition of a dwelling house. A request has also been sent to Council's Compliance department for further investigation and to ensure this building is not used as an unauthorised separate occupancy.

- **Waste water management system and impact on environment**

Comment:

Concern was raised that the proposed on-site wastewater management system would pose an environmental risk. The application is supported by a Wastewater Management Report which assesses the proposed effluent management system. The proposed report specifies that the proposed effluent management system will provide a considerably higher level of effluent treatment and more efficient means of land application over a larger area. The new arrangement will result in a much improved scenario and beneficial effects with regards to both public health and the environment. The proposed system has been reviewed by Council's Environmental Health Officer who has raised no objections subject to recommended conditions.

The proposal has also been reviewed by Council's Riparian Officer in relation to potential impacts to the waterway who has raised no objection subject to conditions

- **Height Poles**

Comment:

Following the submission of amended plans, requests were made that additional height poles should be erected to demonstrate the revised height of the proposal. As the amended plans resulted in a reduction in overall height, the erection of additional height poles was not considered necessary in this instance. Council is satisfied that it has sufficient information to properly assess the view loss associated with the amended design when compared with the location of the height poles for the original scheme.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>Supported</p> <p><u>General Comments</u></p> <p>Minor excavation in Class 5 area is considered low risk. Environmental Health request that any acidic soils be stockpiled in a way that will not caused environmental contamination, and are neutralised if disposed-of or re-used.</p>
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported</p> <p><u>General Comments</u></p> <p>Plans have been amended to nominate a fireplace and chimney compliant with Australian Standards 4012 and 4013. We support this proposal, subject to the below conditions.</p>
Environmental Health (unsewered lands)	<p>Supported</p> <p><u>General Comments</u></p> <p>Minor amendments have been made to the on-site wastewater management report, including the relocation of the AWTS tanks to allow for the retaining of a shed in the south-eastern corner. No overall changes to the LAA, nor capacity, nor DLR, no objections to the proposal. Condition updated to reflect the amended report.</p>
Landscape Officer	<p>Supported</p> <p><u>updated comments:</u></p> <p>Updated plans and reports are submitted, including Landscape Plans revision B dated 17.12.21, and Arboricultural Impact Assessment</p>

Internal Referral Body	Comments
	<p>dated January 2022.</p> <p>The Landscape Plans include enhancement of the understorey with native understorey planting and continue to propose the transplanting of existing small trees (Frangipani) and palms (Bangalow and Majestic Palms). The Landscape Referral assessment is undertaken relative to the C3 land zone objectives and C1.1 DCP control, with the knowledge that these trees/palms will be retained by transplanting within the property, and conditions shall be imposed that these trees/palms shall be retained under the development application, and that any utilisation of the Exempt Species DCP provisions for removal will require 1:1 replacement with a locally native tree.</p> <p>The Arboricultural Impact Assessment confirms the request to remove one prescribed tree (Pepper Tree identified as T7) and five Exempt Species that do not require Council consent for removal including T5 - Lime Tree, T9 - Frangipani, T18 - Olive Tree, T21 - Bangalow Palm, and T22 - Jacaranda.</p> <p>Landscape Referral raise no objections subject to protection of trees and vegetation, and completion of landscape works.</p> <p><u>previous comments:</u></p> <p>The development application is for demolition and construction of a dwelling house.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan 2014 zone C3 Environmental Management, and against the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D8 Lower Western Foreshores & Scotland Island Locality <p>The site is within zone C3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of ecological communities and threatened species.</p> <p>The existing site vegetation is within the Spotted Gum Forest vegetation community, and two typical canopy tree species (Spotted Gum identified as T13, and Turpentine identified as T19) exist within the property, and additional native canopy trees (Brushbox identified as T20) exist, that in combination with the proposed native understorey planting contained in the Landscape Plan satisfy the landscape objectives of zone C3 Environmental Management.</p>

Internal Referral Body	Comments
	<p>A Arboricultural Impact Assessment is provided with recommendations for removal of one prescribed tree requiring Council consent (Pepper Tree identified as T7), as well as Exempt Species that do not require Council consent. The Landscape Plan provides recommendations for transplanting of various existing palm species and conditions shall be imposed requiring transplanting methodology and additional information for replacement should the transplanting fail.</p> <p>Landscape Referral raise no objections subject to protection of trees and vegetation, and completion of landscape works.</p>
NECC (Bushland and Biodiversity)	<p>Supported</p> <p><u>Comments</u></p> <p>Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related legislation and controls:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 (BC Act) • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community • Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area <p>The Development Application seeks consent for demolition of the existing two-storey dwelling house, relocation of an existing gardener's tool shed and the construction of a new dwelling house. as well as establishment of an Asset Protection Zone (APZ) and landscaping works within the site.</p> <p><u>Updated Recommendation - 17/02/2022</u></p> <p>All proposed works, including construction, landscaping and Asset Protection Zones (APZ) are now located outside DPIE's Biodiversity Values mapping, therefore the Biodiversity Offset Scheme (BOS) is not triggered by the proposal. No objections are raised over the proposed Landscape Plan, which complies with the provisions of B4.7 of the PDCP.</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> <p><u>Original Recommendation - 16/07/2021</u></p> <p>It is noted the following documents submitted with the application have been reviewed in relation to this referral:</p> <ul style="list-style-type: none"> • Ecological Assessment Report (Anderson Environment &

Internal Referral Body	Comments
	<p>Planning, May 2021);</p> <ul style="list-style-type: none"> • Landscape Plan (Garden Life, May 2021); • Architectural Plans (Dods and Zuccon Architects, May 2021); • Bush Fire Assessment Report (Bushfire Environmental Management Consultancy, April 2021); • Arboricultural Impact Assessment (Tree Talk Arboricultural Consulting, March 2021); • Statement of Environmental Effects (BBF Town Planners, May 2021). <p>The Ecological Assessment Report states that <i>"the Subject Site does contain land mapped "Biodiversity Values added within the last 90 days. As the 90 days has not expired, and no clearing will be undertaken in land mapped "Biodiversity Values that have been mapped for more than 90 days", this proposal does not trigger the BOS under these criteria"</i>. This statement is contradictory to what is presented in the BOSET report located in Appendix A of the Ecological Assessment Report, which identifies that the BV Mapped area within the site is classified as Biodiversity Values that have been mapped for more than 90 days. As such, the BV mapped area does apply to the proposal.</p> <p>The Landscape Plan depicts a number of construction activities within the BV mapped area including proposed retaining walls, steps, graveled areas and planting of vegetation. These construction activities have not been discussed in the Ecological Assessment Report in relation the removal of vegetation. Clear identification and discussion of any vegetation required to be removed to facilitate the development of the shed and associated construction activities (walls, steps etc) within the BV mapped area is required to be included in the Ecological Assessment Report. Evidence may be provided in the form of a BAM plot and/or photographic evidence of the area proposed for development within the BV mapped area.</p> <p>It is noted and acknowledged that the Bush Fire Assessment Report has excluded the BV mapped area from the proposed Asset Protection Zone, therefore protecting important biodiversity within the site. As such, proposed APZ requirements do not trigger the requirement for a BDAR.</p> <p>Upon receipt of updated information from the Ecological Consultant, Council's Biodiversity referrals team will recommence assessment of the proposal.</p>
NECC (Coast and Catchments)	<p>Supported</p> <p><u>General Comments</u></p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>

Internal Referral Body	Comments
	<p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u> On internal assessment, as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Flemming Pty. Ltd. dated May 2021 and as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021, the DA satisfies requirements under clauses 13, 14 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>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021, an estuarine planning level (EPL) of RL 2.42 m AHD has been adopted</p>

Internal Referral Body	Comments
	<p>at the subject site considering the design life of 60 years. These have further been confirmed through an Additional Estuarine Risk Management Advice prepared by Horton Coastal Engineering Pty. Ltd. dated January 2022,</p> <p>The proposed development is therefore still subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Flemming Pty. Ltd. dated May 2021 states that, the vast majority of the replacement dwelling house is located within the footprint established by existing built form structures on the site. However, as per the submitted Supplementary Statement of Environmental Effects prepared by Boston Blyth Flemming Pty. Ltd. dated February 2022, the ground floor terrace and minor section of the ground floor still encroach into the foreshore area.</p> <p>In this regard, a clause 4.6 request was prepared in May 2021 and further updated clause 4.6 request dated 15 February 2022 has been submitted in support of the foreshore building line variation such that the existing use will not significantly impact on natural foreshore processes, and will not affect public access as the works are entirely on private property.</p>
NECC (Development Engineering)	<p>Supported</p> <p><u>Comments 21/2/22</u> No objections to the proposed new dwelling subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>Supported</p> <p><u>Updated comments 18/02/22</u> This application has been assessed against relevant legislation and policy relating to water management, waterways, riparian areas, and groundwater. The proposal is demonstrating water reuse and infiltration of stormwater complying with current water quality and water conservation guidelines. The infiltration trench is to be located above the mean high water mark and on the upper section of the lawn area to increase infiltration benefits. No objection to the application, subject to conditions.</p>
Parks, reserves, beaches,	Supported

Internal Referral Body	Comments								
foreshore	<p><u>General Comments</u></p> <p>The development application is for demolition and construction of a dwelling house.</p> <p>The development site adjoins the western foreshores of the Pittwater waterway that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the waterway and it is noted that such conditions are included in recommended Council conditions.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>The development is not detrimental to the landscape character of the adjoining Pittwater waterway as the proposed development is substantially upon the existing built envelope and existing native trees within the foreshore and to the rear of the property are preserved and contextually the development is secondary to the landscape setting, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>								
Road Reserve	<p>Supported</p> <p><u>General Comments</u></p> <p>There appears to be no new work or impact on Council's road reserve. Some minor inconsequential existing landscaping appears to exist within the road reserve.</p>								
Strategic and Place Planning (Heritage Officer)	<p>Supported</p> <table><tr><td>HERITAGE COMMENTS</td></tr><tr><td><u>Discussion of reason for referral</u></td></tr><tr><td>The proposal has been referred to Heritage as the property adjoins a heritage item</td></tr><tr><td>"Myuna" (house) - 38 Sturdee Lane, Lovett Bay</td></tr><tr><td><u>Details of heritage items affected</u></td></tr><tr><td>Details of the item as contained within the Pittwater inventory is as follows:</td></tr><tr><td><u>Statement of Significance</u></td></tr><tr><td>Myuna at 38 Sturdee Lane in Lovett Bay was built after the 1915 subdivision as a holiday house. Myuna is a weatherboard Federation holiday house with a terracotta tiled roof and carved timber valance. It has historic and aesthetic significance as a good</td></tr></table>	HERITAGE COMMENTS	<u>Discussion of reason for referral</u>	The proposal has been referred to Heritage as the property adjoins a heritage item	"Myuna" (house) - 38 Sturdee Lane, Lovett Bay	<u>Details of heritage items affected</u>	Details of the item as contained within the Pittwater inventory is as follows:	<u>Statement of Significance</u>	Myuna at 38 Sturdee Lane in Lovett Bay was built after the 1915 subdivision as a holiday house. Myuna is a weatherboard Federation holiday house with a terracotta tiled roof and carved timber valance. It has historic and aesthetic significance as a good
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Internal Referral Body	Comments																					
	<p>example of Federation holiday house built following the early 1915 subdivision of the Flood's Peninsula Estate.</p> <p><u>Physical Description</u></p> <p>Myuna at 38 Sturdee Lane is located on the Lovett Bay waterfront with a small private jetty providing direct access from the sea. It is a one storey terracotta tiled roof with an elegant carved timber valanced front veranda.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> <p><u>Consideration of Application</u></p> <p>This proposal for a new dwelling, replacing an existing house on the western shore of Pittwater, has been referred for Heritage comment as the subject property is situated adjacent to a heritage item, the house "Myuna", and thus is within its vicinity. The setting of Lovett Bay is an historic and sensitive natural environment in itself, which adds to the necessity of comprehensively considering how the proposal will affect the context of its intended site.</p> <p>Adjoining the subject property, at No. 38 Sturdee Lane, is the house "Myuna" listed as Heritage item No. 2270082 in Pittwater LEP 2014. This house shares a lot boundary with the subject property. There are no other individually listed items so close to the property. Three listed cottages, Nos. 29, 31 and 32 (Items 2270442, 2270443 and 2270444) are sited across Sturdee Lane to the south of No. 36, but due to the topography and nature of their separated siting from No. 38, no impact could be said to occur for these properties from the development.</p> <p>The demolition of the existing house upon the site is assessed within a supporting Heritage Impact Statement, which although departing from the recommendations of the NSW Heritage Office for the inclusions of such a Statement, concludes reasonably that the existing dwelling may be demolished.</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
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Internal Referral Body	Comments
	<p>The assessment of the new dwelling's impacts is more assertion of opinion than demonstration of impacts. One primary influence of concern must be any adverse impact upon "Myuna" and its setting, and as acknowledged in the Statement, the currently dense planting between the two houses is the key means of separation. Even so it is possible in the report's photographs to see through to "Myuna". While showing a materials palette of dark colours and stained boarding the new dwelling is wider than "Myuna" and less articulated in its modelling. The modification of its large, comparatively planar elements to a composition of smaller elements, and being able to "see through and between" the upper levels might assist in the perception of the house as a more responsive occupant of its site.</p> <p>The second concern is the larger setting. Considered together with the many submissions in response to the proposal from neighbouring property owners and occupants, expressing concern about its height, interference with views, non-compliant landscaping and infringement of the building line crossing the site, there appears to be a substantive argument that on a comprehensive reconsideration, including heritage concerns - the form, massing, scale and extent of the proposed dwelling should be reviewed. Recessive materials and finishes proposed are a positive.</p> <p>Considering the provisions of CL5.10 of the LEP, it is possible to conclude that some adverse impact upon the significance of the adjacent heritage item could be considered to occur from the development and that reasonable action to address this is desirable.</p> <p>In heritage terms, in my opinion the proposal has some impacts upon the significance of "Myuna" through its scale, massing and relative visibility near the Item. It would appear that these matters might be addressed in responses to the submissions regarding planning non-compliances.</p> <p>Comments on Amended Plans</p> <p>While it may be possible to conclude that no adverse heritage impact of substance occurs for the neighbouring heritage item "Myuna" from the amended plans, there is an impact of the dwelling upon the overall setting of Lovett Bay - which is an important place in itself and vulnerable to detrimental impact from unhelpful development.</p> <p>If the applicant was willing, it would seem that measures to reduce the impacts of the proposal in broader planning terms - its height, width and impact on views - could also address its impact on the values of the Bay. To that end amendments to reduce the overall height of the dwelling, in respect of neighbours' amenity and its visual width and lack of transparency, allowing views through the</p>

Internal Referral Body	Comments
	<p>building, would have planning and accompanying benefits and could be pursued.</p> <p>However as the impact on Myuna is resolved, Heritage will recommend approval.</p> <p>Is a Conservation Management Plan (CMP) Required? No</p> <p>Has a CMP been provided? No</p> <p>Is a Heritage Impact Statement required? No</p> <p>Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Robert Moore</p> <p>DATE: 9 September 2021 - Amended 15 March 2022</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

External Referral Body	Comments

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.1189449S dated 20 January 2022). The BASIX Certificate is supported by an NatHERS Certificate (see Certificate No. 0006011217-01).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. 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.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. Proposed site disturbance is largely limited to the existing building footprint. The proposal does not seek excessive excavation or modification to the existing landform. The proposed works will not result in the removal of any significant or protected trees. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

The proposed development is also unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore and beach for members of the public, including persons with a disability. No approval is granted for new fencing or the authorisation of existing fencing within the foreshore area. This is to be conditioned within any consent.

The development site has not been identified to contain any Aboriginal cultural heritage, practices or places, however, a condition has been included to ensure that if any Aboriginal engravings or relics are unearthed as part of the development, works will cease immediately and the relevant authorities will be notified. Furthermore, the proposed development is unlikely to cause an adverse impact on the use of the surf zone.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

As detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause 1. The proposed works are predominantly limited to the existing building footprint.

14 Development on land within the coastal use area

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is also unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore and beach for members of the public, including persons with a disability. No approval is granted for new fencing or the authorisation of existing fencing within the foreshore area. This is to be conditioned within any consent.

Subject to conditions, the proposed development will maintain the existing, safe access to and along

the foreshore and beach and will not cause any overshadowing, wind funnelling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands, will be preserved. As mentioned above, the development site has not been identified to contain any Aboriginal cultural heritage, practices or places, however, a condition has been included to ensure that if any Aboriginal engravings or relics are unearthed as part of the development, works will cease immediately and the relevant authorities will be notified.

The proposed development will also not have an adverse impact on the cultural and built environmental heritage. Council's Heritage Officer has recommended approval as the proposal would not result in impact to the adjoining heritage item.

As such, it is considered that the proposed development has been designed, sited and will be managed to avoid an adverse impact on the aforementioned cultural and environmental aspects.

Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the existing site and surrounding coastal and built environment, which consist of low-density residential dwellings with a maximum of two storeys. The proposed dwelling is appropriate modulated and articulated and incorporates recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

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

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

Comment:

This application is accompanied by a geotechnical report and estuarine risk management report which states the risk associated with the development is acceptable subject to recommendations. The application has been reviewed by Council's Coastal Engineer, Development Engineer and Riparian Lands Officer who are satisfied that the development is not likely to cause increased risk of coastal hazards on other land subject to conditions.

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	7.5m	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Clause 7.8 - Limited development on foreshore area
Requirement:	Building footprint must not extend further into the foreshore area
Proposed:	Non-numerical development standard - proposed dwelling footprint will extend further into the foreshore area
Percentage variation to requirement:	N/A - Non-numerical development standard

Assessment of Request to Vary a Development Standard:

The following assessment of the variation to Clause 7.8 - Limited development on foreshore area 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 7.8 - Limited development on foreshore area 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 vast majority of the replacement dwelling house is located within the footprint established by existing built form structures on the site with only minor encroaching elements associated with wall and outdoor paving elements extending slightly further into the foreshore area.*
- *The foreshore building line is highly irregular on this particular site and has little regard to the long-established built form circumstances and the logical developable area of the land. The minor breaches are reflective of creating a functional dwelling of high amenity for the occupants.*
- *Should strict compliance be enforced it would result in an unworkable Architectural design and reduced amenity for the occupants. The areas of non-compliance do not give rise to any significant amenity impacts with regard to views, privacy or overshadowing.*
- *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- *The variation facilitates good design and enhanced amenity (1.3(g)).*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

- *The foreshore building line breaching elements will not impact on natural foreshore processes given their significant setback from mean high water mark.*
- *The proposed works have been designed to limit the impact to the local environment. The arborist report provided details 6 prescribed trees with only 1 to be removed due to poor condition. Other species identified on the site are either palms or exempt species.*

Planners Comments:

The applicants justification is concurred with. The proposed dwelling will be primarily over existing building footprint and the elements of the proposal which would extend further into the foreshore area would relate to an open terrace areas and a minor portion of the ground floor wall. The site is irregularly shaped and the location of the foreshore building line, intersecting through a large portion (490sqm) of the site, constrains the developable area, when also considering the location of existing structures, protected trees and biodiversity protection areas. The elements encroaching into the foreshore area do not facilitate the loss of protected or significant vegetation nor would they impact foreshore processes or result in unreasonable amenity impacts. The design would allow for a functional dwelling, similar to the siting and design of that existing on site with minimal environmental impacts.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and 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 Limited Development on Foreshore Area development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 7.8– 'Limited development on foreshore area' of the PLEP 2014 are:

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

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment:

The proposed dwelling house will remain a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The development is sited below tree canopy height and the proposal would be well below the stipulated 8.5m height control. The proposed dwelling is appropriately modulated and articulated and incorporates recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The design of proposed dwelling is consistent with the existing dwelling on site and surrounding buildings and would not substantially change the appearance of the site as viewed from the Pittwater waterway and adjacent foreshore areas. The additional elements within the foreshore area are not considered unreasonably impact the amenity of surrounding properties.

The proposal was referred to Council's Parks, Reserves, Beaches, Foreshore; Coast and Catchments; Riparian Lands and Creeks and Bushland & Biodiversity Officers who raised no objection to the proposal with regards to impact on natural foreshore processes.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:

The proposed works are entirely on private property would not impact upon public access along the foreshore area and to the waterway. The proposed works would be over 8m from mean high water mark (and associated property boundary). No approval is granted for new fencing or the authorisation of existing fencing within the foreshore area under this application. This is to be conditioned within any consent.

Zone Objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposed dwelling house will remain a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. All proposed works, including construction, landscaping and Asset Protection Zones (APZ) are located outside DPIE's Biodiversity Values mapping area located on the eastern portion of the site. The landscape plan provides for an enhancement of native species on the site which add to the biodiversity value of the local area. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. Council's Heritage Officer has recommended approval as the proposal would not result in impact to the adjoining heritage item. The proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the existing site and surrounding coastal and built environment.

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

values.

Comment:

As above, the proposal would not result in unreasonable impacts to the ecological, scientific or aesthetic values of the area.

- *To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.*

Comment:

The proposed dwelling house will remain a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The building has been appropriately sited and designed to retain most of the prescribed trees on the site with only one proposed to be removed, however, this tree has been identified as being in poor condition. The development is sited below tree canopy height and the proposal would be well below the stipulated 8.5m height control. The proposed dwelling is appropriately modulated and articulated and incorporates recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. During the assessment of the application, amended plans were received to reduce the height and scale of the proposal by incorporating a flat roof design. Overall, it is considered that the bulk and scale of the proposal would not be out of character with the existing site and wider locale.

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

Comment:

As above, the building has been appropriately sited and designed to retain most of the prescribed trees on the site with only one proposed to be removed, however, this tree has been identified as being in poor condition. An Arboricultural Impact Assessment report and a Ecological report has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. All proposed works, including construction, landscaping and Asset Protection Zones (APZ) are located outside DPIE's Biodiversity Values mapping area located on the eastern portion of the site. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form.

The proposal was referred to Council's Parks, Reserves, Beaches, Foreshore; Coast and Catchments; Riparian Lands and Creeks and Bushland & Biodiversity Officers who raised no objection to the proposal with regards to impact on riparian or natural foreshore processes.

- *To ensure the continued viability of ecological communities and threatened species.*

Comment:

As above, the building has been appropriately sited and designed to retain most of the prescribed trees on the site with only one proposed to be removed, however, this tree has been identified as being in poor condition. An Arboricultural Impact Assessment report and a Ecological report has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. All proposed works, including construction, landscaping and Asset Protection Zones (APZ) are located outside DPIE's Biodiversity Values mapping area located on the eastern portion of the site. The application is also supported by a landscape plan, which demonstrates an enhancement of

vegetation to ensure the continued viability of ecological communities.
The proposal was referred to Council's Bushland & Biodiversity Officers who raised no objection to the proposal.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Limited development on foreshore area Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

Adjoining the subject property, at No. 38 Sturdee Lane, is the house "Myuna" listed as Heritage item No. 2270082 in Pittwater LEP 2014. This house shares a lot boundary with the subject property. As such, the proposal has been referred to Council's Heritage Officer.

Please refer to Council Strategic and Place Planning (Heritage Officer) referral comments in this report for further details. In summary, Council's Heritage Officer has recommended approval as the proposal would not result in impact to the adjoining heritage item.

7.2 Earthworks

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

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent

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

Comment: The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment.

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

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

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

Comment:

The proposed earth works will not result in an adverse impact on Myuna House

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

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

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

- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

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

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

Comment:

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

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

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

Comment:

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

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans and stormwater management plans that demonstrate all geotechnical risks have been taken into account.

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

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

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

Comment:

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

(b) the consent authority is satisfied that:

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

Comment:

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

7.8 Limited development on foreshore area

Under Clause 7.8 "Limited Development on Foreshore Area", development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for the rebuilding of an existing building partly in the foreshore area. The proposed new dwelling will be primarily over existing building footprint, inline with the requirements of this control. However, the proposal seeks to extend the footprint of the building further into the foreshore area, which is contrary to the provisions of Clause 7.8 of the Pittwater LEP. A request to vary this development standard for has been made under Clause 4.6 of the Pittwater LEP 2014. As discussed further within this report, the departure from the standard is supported in this instance, given the nature of the proposed works and the irregularly shaped lot in conjunction with the location of the foreshore building line. Additionally, the elements encroaching into the foreshore area do not facilitate the loss of protected or significant vegetation nor would they impact foreshore processes or result in unreasonable amenity impacts. The design would allow for a functional dwelling, similar to the siting and design of that existing on site with minimal environmental impacts. This is discussed further in Clause 4.6 of the Pittwater LEP of this report.

Clause 7.8 also specifies that development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, or*
 - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment

The proposed development is consistent with the objectives of the C3 Environmental Management zone. The appearance of the proposed development is compatible with the existing site and surrounding area, remaining a two storey, low density residential build and will not result in the removal of significant vegetation or require significant alteration to the landform.

The proposed development is not considered to result in adverse environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposal was referred to Council's Parks, Reserves, Beaches, Foreshore; Coast and Catchments; Riparian Lands and Creeks and Bushland & Biodiversity Officers who raised no objection to the proposal with regards to impact on riparian or natural foreshore processes and flora or fauna habitats.

The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway nor will it limit continuous public access along the foreshore. The proposed works would be over 8m from mean high water mark (and associated property boundary). No approval is granted for new fencing or the authorisation of existing fencing within the foreshore area under this application. This is to be conditioned within any consent.

The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. All proposed works, including construction, landscaping and Asset Protection Zones (APZ) are located outside DPIE's Biodiversity Values mapping area located on the eastern portion of the site. The landscape plan provides for an enhancement of native species on the site which add to the biodiversity value of the local area. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer,

Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. Council's Heritage Officer has recommended approval as the proposal would not result in impact to the adjoining heritage item. The proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the existing site and surrounding coastal and built environment.

The proposed development will not have an unreasonable impact on the amenity or aesthetic appearance of the foreshore. As above, the proposed dwelling house will remain a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The building has been appropriately sited and designed to retain most of the prescribed trees. The development is sited below tree canopy height and the proposal would be well below the stipulated 8.5m height control. The proposed dwelling is appropriately modulated and articulated and incorporates recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposed works would be over 8m from mean high water mark and the foreshore would remain predominantly landscaped, retaining the aesthetic appearance of the existing site and adjoining properties.

The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, and Development Engineers who have raised no objection in this regard. The application is supported by a Estuarine Risk Assessment report which deems the proposed works acceptable. The recommendation of this report will be included within any consent.

Clause 7.8 further specifies that in deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will not impact public access to and along the foreshore. The proposed works would be over 8m from mean high water mark (and associated property boundary). No approval is granted for new fencing or the authorisation of existing fencing within the foreshore area under this application. This is to be conditioned within any consent. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions. The proposed dwelling house will be a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The proposal will remain generally compatible with the existing site and surrounding coastal and built environment.

Pittwater 21 Development Control Plan

Built Form Controls

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Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (Sturdee Lane)	3.0m (ground floor) 3.6 (Roof top terrace) 6.5m (First floor)	53.85% (Max)	No
Rear building line	N/A	N/A	N/A	N/A
Side building line	2.5m (NE)	12.0m	N/A	Yes
	1.0m (S)	1.2m	N/A	Yes
Building envelope	3.5m (S)	Outside envelope	N/A	No
	3.5m (NE)	Within envelope	N/A	Yes
The maximum area not provided as landscaped area:	230sqm (site coverage)	405.3sqm or 34% (site coverage)	43.3%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	No	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	No	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	No	Yes
D8.9 Landscaped Area	No	Yes
D8.10 Fences	No	Yes
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D8.12 Companion animals	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes

Detailed Assessment

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

Adjoining the subject property, at No. 38 Sturdee Lane, is the house "Myuna" listed as Heritage item No. 2270082 in Pittwater LEP 2014. This house shares a lot boundary with the subject property. As such, the proposal has been referred to Council's Heritage Officer.

Please refer to Council Strategic and Place Planning (Heritage Officer) referral comments in this report for further details. In summary, Council's Heritage Officer has recommended approval as the proposal would not result in impact to the adjoining heritage item. As the proposal will have no direct and/or

adverse impacts on the heritage item, the objectives of the control will be satisfied and the proposal is therefore considered to be satisfactory and supportable.

B3.7 Estuarine Hazard - Low density residential

In accordance with the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021, an estuarine planning level (EPL) of RL 2.42 m AHD has been adopted at the subject site

The proposal and accompanying report has been reviewed by Council's Coast & Catchments Officer who has raised no objection subject to recommended conditions.

B3.8 Estuarine Hazard - Medium Density Residential

In accordance with the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021, an estuarine planning level (EPL) of RL 2.42 m AHD has been adopted at the subject site

The proposal and accompanying report has been reviewed by Council's Coast & Catchments Officer who has raised no objection subject to recommended conditions.

B4.22 Preservation of Trees and Bushland Vegetation

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

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

B8.6 Construction and Demolition - Traffic Management Plan

A condition has been imposed requiring a Construction Management Plan to be prepared and submitted prior to works commencing on site.

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

C1.1 Landscaping

The proposal has been appropriately sited and designed to retain most of the prescribed trees on the site with only one proposed to be removed, however, this tree has been identified as being in poor condition. An Arboricultural Impact Assessment report and a Ecological report has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. All proposed works, including construction, landscaping and Asset Protection Zones (APZ) are located outside DPIE's Biodiversity Values mapping area located on the eastern portion of the site. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The proposal was referred to Council's Council's Landscape Officer, Parks, Reserves, Beaches, Foreshore Officer and Biodiversity Officers who raised no objection to the landscaping outcome of the proposal.

Please refer to the referral comments prepared by Council's Landscape Officer for further details.
Subject to recommended condition the proposal is considered to meet the objectives of this control.

C1.3 View Sharing

Merit Consideration

Three (3) submissions were received from the following properties which included concerns regarding view loss from a private property:

- 30 Sturdee Lane, Lovett Bay
- 32 Sturdee Lane, Lovett Bay
- 34 Sturdee Lane, Lovett Bay

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



Figure 1: View angles over the subject site

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

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

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

**It should be noted that the photos below and height poles depict the original design of the proposal. Following these photos, amended plans were received which reduced the height of the proposed dwelling by 960mm.*

1. Nature of the views affected

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

Comment to Principle 1:

No.30 Sturdee Lane

The views from No.30 Sturdee Lane that are the concern are to the north-west and include views of Pittwater Waterway and Lovett Bay Foreshore. The view is heavily obstructed by existing vegetation. Views of Pittwater Waterway, and foreshore areas to the north remain unaffected by the proposal. This is demonstrated in the photos below.

*It should be noted that the photos below and height poles depict the original design of the proposal. Following these photos, amended plans were received which reduced the height of the proposed dwelling by 960mm.



Photo 1: Existing views from No.30 Sturdee Lane to the north-west (first floor balcony and principle private open space located off the living and dining room). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 2: Existing views from No.30 Sturdee Lane to the north-west (first floor balcony and principle private open space located off the living and dining room). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 3: Existing views from No.30 Sturdee Lane to the north (first floor living room). No view loss



Photo 4: Existing views from No.30 Sturdee Lane to the north-west (rear garden). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 5: Existing views from No.30 Sturdee Lane to the north-west (ground floor secondary living area). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

No.32 Sturdee Lane

The views from No.32 Sturdee Lane that are the concern are to the north and north-west and include views of Pittwater Waterway and Lovett Bay Foreshore. The view is partially obstructed by existing vegetation. This is demonstrated in the photos below.

*It should be noted that the photos below and height poles depict the original design of the proposal. Following these photos, amended plans were received which reduced the height of the proposed dwelling by 960mm.

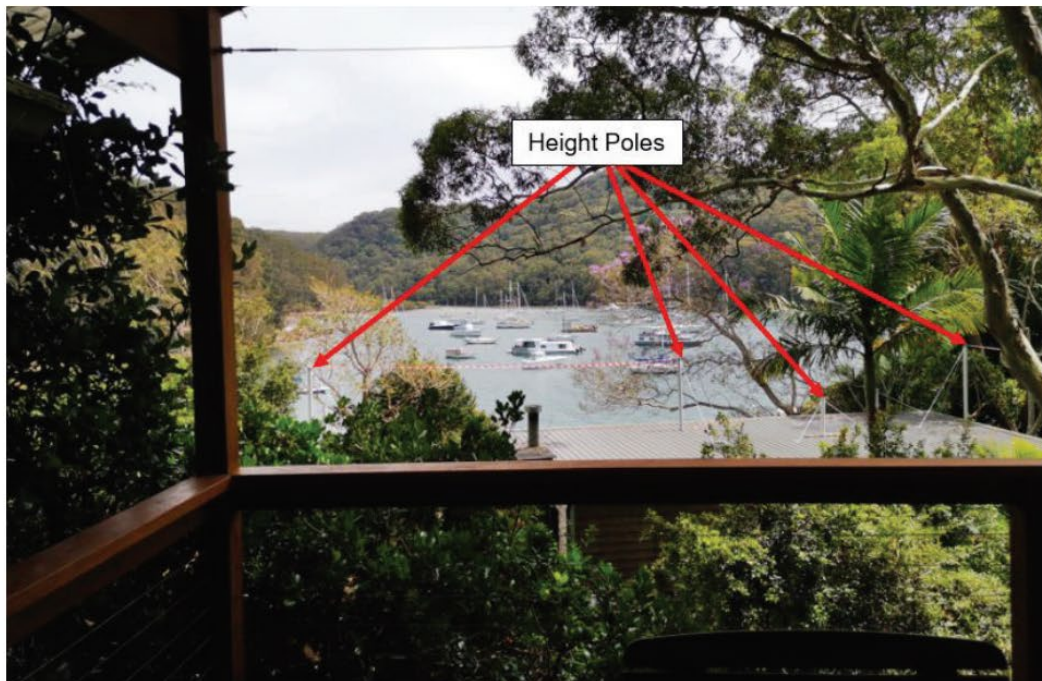


Photo 6: Existing views from No.32 Sturdee Lane to the north-west (ground floor balcony and principle private open space). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 7: Existing views from No.32 Sturdee Lane to the north-west (ground floor balcony and principle private open space). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

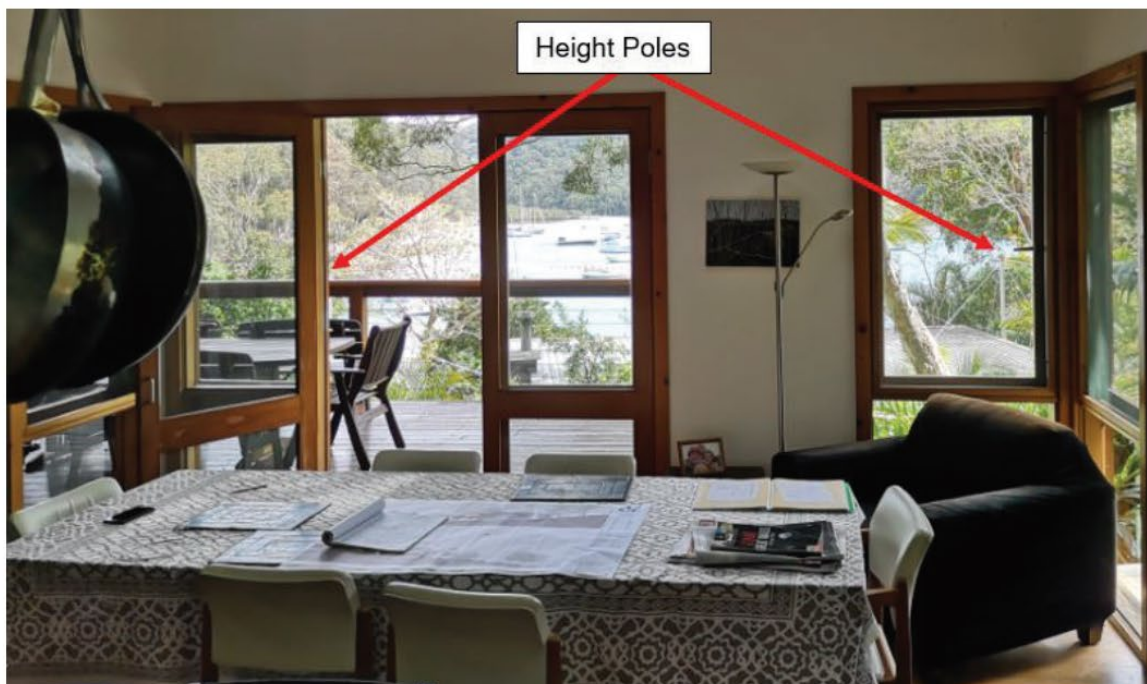


Photo 8: Existing views from No.32 Sturdee Lane to the north-west (ground floor kitchen/dining room). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received)

which reduced overall height of the proposed dwelling)



Photo 8: Existing views from No.32 Sturdee Lane to the north-west (ground floor dining room). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 9: Existing views from No.32 Sturdee Lane to the north (ground floor living room). Height pole

indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

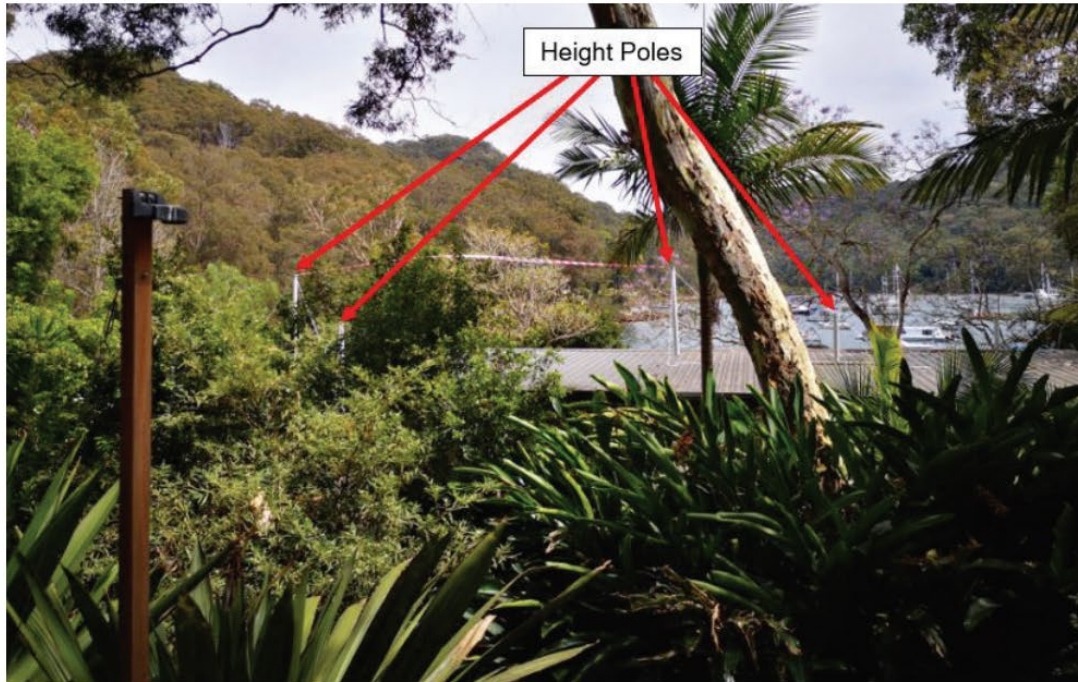


Photo 10: Existing views from No.32 Sturdee Lane to the north-west (rear garden deck). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

No.34 Sturdee Lane

The views from No.34 Sturdee Lane that are the concern are to the north and north-east and include views of Pittwater Waterway and Lovett Bay Foreshore. The view is partially obstructed by existing vegetation. Views of Pittwater Waterway and foreshore areas to the west and north-west remain unaffected by the proposal. This is demonstrated in the photos below.

*It should be noted that the photos below and height poles depict the original design of the proposal. Following these photos, amended plans were received which reduced the height of the proposed dwelling by 960mm.



Photo 11: Existing views from No.34 Sturdee Lane to the north (elevated ground floor floor balcony and principle private open space located off the living room). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

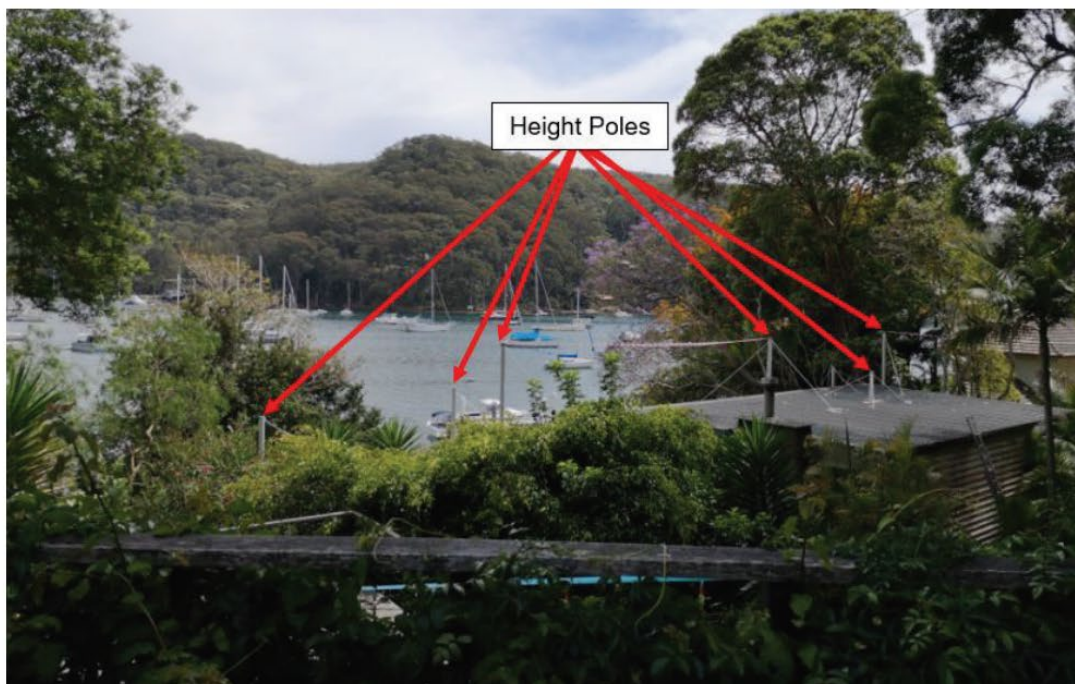


Photo 12: Existing views from No.34 Sturdee Lane to the north (elevated ground floor floor balcony and principle private open space). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 13: Existing views from No.34 Sturdee Lane to the north (elevated ground floor floor balcony and principle private open space located off the living room). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

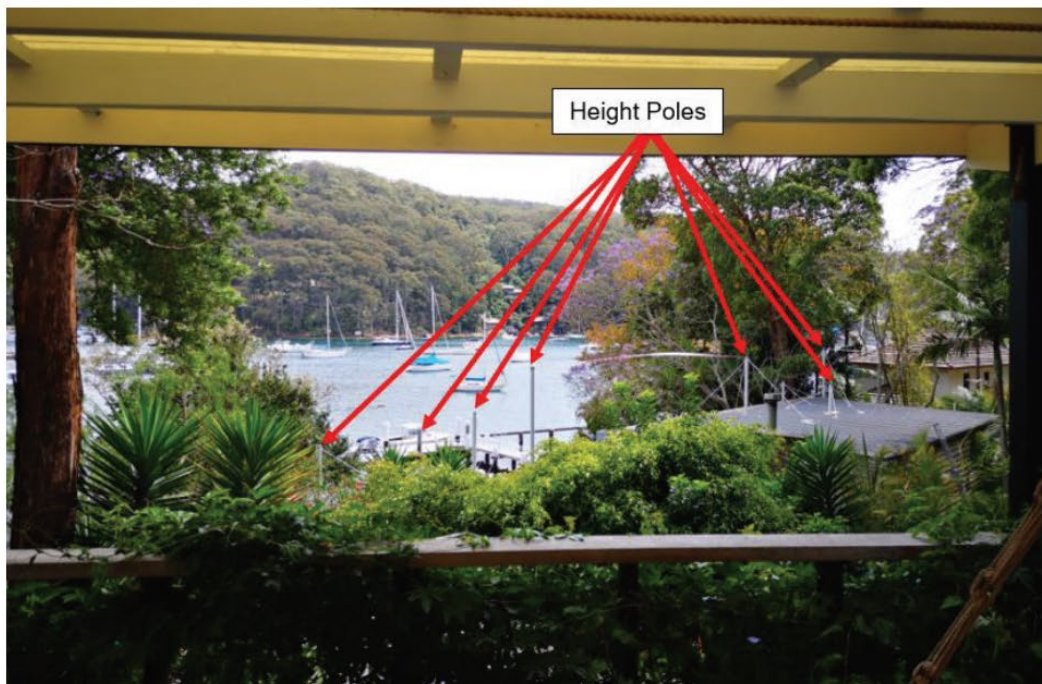


Photo 14: Existing views from No.34 Sturdee Lane to the north (elevated ground floor floor balcony and

principle private open space). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 15: Existing views from No.34 Sturdee Lane to the north (elevated ground floor floor balcony and principle private open space). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)



Photo 16: Existing views from No.34 Sturdee Lane to the north (rear garden deck). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

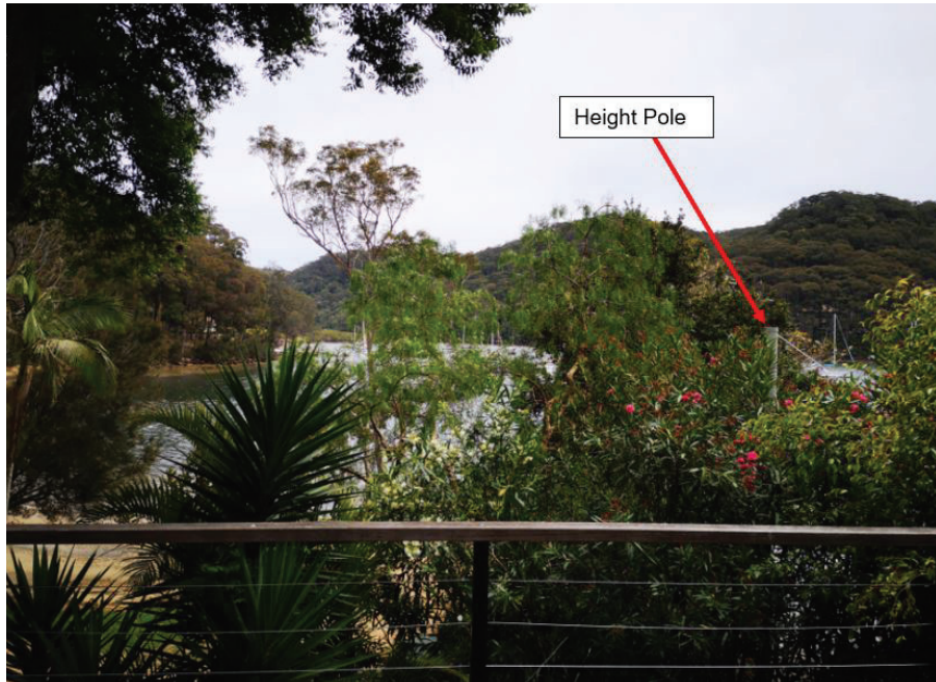


Photo 17: Existing views from No.34 Sturdee Lane to the north-west (rear garden deck). Height pole indicates extent of view loss from initial proposal (amended plans subsequently received which reduced overall height of the proposed dwelling)

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

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

Comment to Principle 2:

No.30 Sturdee Lane

Views are primarily obtained from the first floor balcony (and principle private open space) located off the living and dining room, the first floor living room, first floor dining room, ground floor secondary living area and rear garden. The view of Pittwater waterway and Lovett Bay Foreshore is obtained from both a sitting and standing position over the northern rear boundary and western side boundary. Views of Pittwater Waterway and foreshore areas to the north from the first floor balcony located off the living and dining room, the first floor living room, first floor dining room, remain unaffected by the proposal.

No.32 Sturdee Lane

Views are primarily obtained from the ground floor floor balcony (and principle private open space)

located off the living and dining room, the ground floor living room, ground floor dining room, kitchen and entrance hallway and rear garden deck. The view of Pittwater waterway and Lovett Bay Foreshore is obtained from both a sitting and standing position over the northern rear boundary and western side boundary.

No.34 Sturdee Lane

Views are primarily obtained from the elevated ground floor balcony (and principle private open space) located off the living and dining room, the ground floor living room, ground floor dining room and kitchen and rear garden deck. The view of Pittwater waterway and Lovett Bay Foreshore is obtained from both a sitting and standing position over the northern rear boundary. Views of Pittwater Waterway and foreshore areas to the west from the ground floor balcony located off the living and dining room, the first floor living room, first floor dining room, remain unaffected by the proposal.

3. Extent of impact

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

Comment to Principle 3:

***Note: The height pole structures is reflective of the initial proposal, not the amended proposal being assessed as part of the application. As discussed throughout this report, amended plans were received which reduced the overall height of the proposed dwelling by 960mm.**

No.30 Sturdee Lane

As viewed from No.30 Sturdee Lane, the proposed dwelling would result in the partial loss of Pittwater Waterway views available from the first floor balcony (and principle private open space) located off the living and dining room, ground floor secondary living area and rear garden. These views are already partially obstructed by the existing dwelling and vegetation. Views of Pittwater Waterway and foreshore areas are expected to be retained over the proposed dwelling. The proposed dwelling would not have an impact on existing expansive views of Pittwater Waterway and Lovett Bay Foreshore enjoyed by primary living areas on the first floor. This can be seen within photos 1 to 5 above.

As above, during the assessment, amended plans were received which reduced the height of the proposed dwelling by 960mm to allow for a greater degree of water views to be retained.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **negligible to minor**.

No.32 Sturdee Lane

As viewed from No.32 Sturdee Lane, the proposed dwelling would result in the partial loss of Pittwater Waterway views available from the ground floor balcony (and principle private open space) located off the living and dining room, the ground floor living room, ground floor dining room, kitchen and entrance hallway. The proposal would also result in the loss of the majority of water and foreshore views from the rear garden deck. These views are already partially obstructed by the existing dwelling and vegetation. Views of Pittwater Waterway and foreshore areas are expected to be retained

over the proposed dwelling from the principle living rooms and private open space. This can be seen within photos 6 to 10 above.

As above, during the assessment, amended plans were received which which reduced the height of the proposed dwelling by 960mm to allow for a greater degree of water views to be retained.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **minor to moderate**.

No.34 Sturdee Lane

As viewed from No.34 Sturdee Lane, the proposed dwelling would result in the partial loss of Pittwater Waterway views available from the elevated ground floor floor balcony (and principle private open space) located off the living and dining room, the ground floor living room, ground floor dining room and kitchen and rear garden deck.

These views are partially obstructed by the existing vegetation. Views of Pittwater Waterway and foreshore areas are expected to be retained over the proposed dwelling from the principle living rooms and private open space. The proposed dwelling would not have an impact on existing views of Pittwater Waterway and Lovett Bay Foreshore west and north-west

This can be seen within photos 11 to 17 above.

As above, during the assessment, amended plans were received which which reduced the height of the proposed dwelling by 960mm to allow for a greater degree of water views to be retained.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

No.30 Sturdee Lane

The proposal is not considered to result in an unreasonable view loss for No.30 Sturdee Lane and will satisfy the provisions of this clause.

No.32 Sturdee Lane

The proposed dwelling house will be a two storey, low density residential build, built primarily upon existing building footprint which will be well below the stipulated 8.5m height requirement. The proposed dwelling is appropriately modulated with varied setbacks and breaks in built form and open balconies to minimise bulk and scale.

As discussed throughout this report, during the assessment, amended plans were received which replaced the previously proposed pitched roof forms with a flat roof design and the overall height of the development further reduced through the lowering of the floor levels and ceiling heights to facilitate an overall reduction in building height of 960mm.

It is recognised that a portion of the southern elevation does not meet the required building envelope requirement. However, as described elsewhere in this report, the dwelling is considered to meet the objectives of this control and this non-compliance is largely confined to the roof parapet and can be attributed to the slope and configuration of the site. This area of non-compliance is considered to result in unreasonable view loss in this instance as expansive water views would be retained over the proposed dwelling from principle living areas and principle areas of private open space. Additionally, any view loss associated with this element would occur over the side boundary of No.32 and No.34.

As discussed in section *Clause 7.8 Limited development on foreshore area* of this report, the two storey element of the dwelling proposed within the foreshore area would be primarily built over existing building footprint and would not extend further into the foreshore area than existing structures in line with the requirements of the control. The elements of the proposal which would extend further into the foreshore area would relate to open terrace areas and a minor portion of the ground floor wall which would not result in any view additional loss.

The front building line non-compliance would not result in unreasonable view loss from principle living areas and principle areas of private open space given its positioning and design. Amended plans were received which set the first floor element back to the required 6.5m from the front setback and reduced the height and scale of the proposed terrace privacy screen.

Overall, the proposed dwelling (as amended) would represent a modest increase to the existing built form as viewed No.32 and the loss of water views are considered reasonable when put in context of the entirety of views obtained from this property. A fully compliant new dwelling situated further upslope, outside the foreshore area to the south and south west, to a maximum height of 8.5m would likely result in greater view loss than the current design. As such, the proposal is not considered to result in an unreasonable view loss for the neighbouring dwelling at No.32 Sturdee Lane and will satisfy the provisions of this clause.

No.34 Sturdee Lane

The proposed dwelling house will be a two storey, low density residential build, built primarily upon existing building footprint which will be well below the stipulated 8.5m height requirement. The proposed dwelling is appropriately modulated with varied setbacks and breaks in built form and open balconies to minimise bulk and scale.

As discussed throughout this report, during the assessment, amended plans were received which replaced the previously proposed pitched roof forms with a flat roof design and the overall height of the development further reduced through the lowering of the floor levels and ceiling heights to facilitate an overall reduction in building height of 960mm.

Overall, the proposed dwelling (as amended) would represent a modest increase to the existing built form as viewed No.34 and the loss of water views are considered minor when put in context of the entirety of views obtained from this property. As such, the proposal is not considered to result in an unreasonable view loss for the neighbouring dwelling at No.34 Sturdee Lane and will satisfy the provisions of this clause.

- ***Views and vistas from roads and public places to water, headland, beach and/or bush***

views are to be protected, maintained and where possible, enhanced.

Comment:

The proposed development will not impact upon views and vistas from roads and public places.

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

Comment:

The proposed development does not unreasonably impact upon trees.

Overall, Council is satisfied that the proposed development achieves consistency with the outcomes of Clause C1.3 View Sharing of P21DCP and the Land and Environment Court's Planning Principle for view sharing *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*

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

C1.13 Pollution Control

The proposed fire place and wastewater system have been reviewed by Councils Environmental Health Officers who have raised no objection subject to recommended conditions.

C1.14 Separately Accessible Structures

The existing site contains an existing detached outbuilding which is proposed to be retained as part of this development. A search of the site's history reveals that this outbuilding was converted from a cottage to a boatshed, storeroom and sauna in 1978. A Building Information Certificate was subsequently issued on the site which described this building as a home office. The subject application proposes to retain this outbuilding as a "home office/outbuilding". No works are proposed to this outbuilding as part of this application. No consent is granted under this application for the change of use of this outbuilding or for the use of this outbuilding for the purposes of separate habitation including a secondary dwelling or dual occupancy.

In order to achieve compliance with this control, the development will be conditioned over the life of the development so to ensure this outbuilding will not be used for the purposes of separate habitation including a secondary dwelling or dual occupancy. An additional condition will be applied over the life of the development to remove and prohibit the installation of cooking facilities. A request has also been sent to Council's Compliance department for further investigation and to ensure this building is not used as an unauthorised separate occupancy.

C1.23 Eaves

The control requires dwellings to incorporate 450mm wide eaves on all elevations. The proposed dwelling does not incorporate 450mm wide eaves on all elevations, which fails to meet this requirement.

Despite this non-compliance, consideration has been given that the roof form will continue to reflect the coastal character of the locality. The proposal is supported by a valid BASIX Certificate to demonstrate

suitable energy efficiency. Additionally, the proposed development allows for compliant solar access to the subject site and adjacent properties, whilst also providing covered outdoor private open space to ensure appropriate shading.

For the reasons outlined above, it is concluded that the outcomes of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D8.5 Front building line

Description of non-compliance

The control requires built structures other than driveways, fences and retaining walls to be setback a minimum of 6.5m from the front boundary.

The proposed dwelling would have a setback of 3.0m to the ground floor and 3.6m to the first floor terrace to the front boundary (adjoining Sturdee Lane), representing a maximum variation of 53.85%.

It should be noted that the dwelling would be replacing an existing shed/workshop structure with a similar setback. The site is also irregularly shaped. Clause D8.5 specifies that where the outcomes of this control are achieved, Council may accept variation to the front building line for irregular shaped blocks; when considering established building lines; and in order to retain of trees and vegetation

Merit consideration

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

- *Achieve the desired future character of the Locality.*

Comment:

The proposed dwelling house will be a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The development is sited below tree canopy height and the proposal will be well below the stipulated 8.5m height control. The proposed dwelling is appropriately modulated and articulated and incorporates recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. Overall, it is considered that the bulk and scale of the dwelling would not be out of character with the existing site and wider local and would retain the desired future character of the locality.

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

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Clause C1.5 View Sharing of the Pittwater 21 DCP 2014.

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

Comment:

The proposal retains most of the prescribed trees on the site with only one proposed to be removed, however, this tree has been identified as being in poor condition. An Arboricultural

Impact Assessment has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal.

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

Comment:

The bushland character of the locality is not unreasonably affected by the proposal. As above, the proposed works would be primarily over existing building footprint and existing vegetation and trees are to be retained and enhanced. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

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

Comment:

The front building line variation does not compromise pedestrian amenity or the streetscape character of Sturdee Lane which in this particular location is unformed and serves as a loading, unloading and storage area for goods and construction materials which arrive via barge from Church Point. The encroachment would relate to a single storey element and open terrace which would replace an existing structure of a similar setback.

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

Comment:

The setbacks proposed to Sturdee Lane reinforce and sensitively relate to the spatial characteristics of the existing urban environment in particular the setbacks established by the existing site and immediately adjoining property to the south which has a similar setback.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8.8 Building envelope

Description of works

This control requires development to be sited within a building envelope (measured from the boundary at a height of 3.5m with an inward angle of 45 degrees). The proposed development will result in numeric non-compliance to this control for the proposed dwelling house along the southern elevation as demonstrated in figure1 below.



Merit consideration:

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

- *To achieve the desired future character of the Locality. (S)*

Comment:

The proposed dwelling house will be a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The development is sited below tree canopy height and the proposal would be well below the stipulated 8.5m height control. The proposed dwelling is appropriate modulated and articulated, with varied heights and setbacks and incorporates recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. Overall, it is considered that the bulk and scale of the dwelling would not be out of character with the existing site and wider local and would retain the desired future character of the locality.

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

Comment:

The proposed dwelling is comparable with that of the built form of the existing dwelling and surrounding dwellings in the vicinity. The dwelling is considered appropriate in the context of the site with the proposed development being two storey and well below the 8.5m height requirement. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposed development is generally set below the height of the trees adjoining the site and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing site and wider locale.

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

Comment:

As above, the proposed dwelling house will remain a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The development is sited below tree canopy height and the proposal would be well below the stipulated 8.5m height control. The proposal involves the retention of large trees on the site and additional landscaping that ensures that the proposed sensitively relates to spatial characteristics of the existing natural environment.

- *The bulk and scale of the built form is minimised. (En, S)*

Comment:

The proposal involves compliance with the development standard for building height and is well set back from side boundaries. the proposed dwelling is appropriate modulated and articulated, with varied heights and setbacks and open balconies and incorporates recessive and dark colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. During the assessment of the application, amended plans were received to reduce the height and scale of the proposal by incorporating a flat roof design. Overall, it is considered that the bulk and scale of the proposal would not be out of character with the existing site and wider locale

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

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

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

Comment:

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

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

Comment:

The building has been appropriately sited and designed to retain most of the prescribed trees on the site with only one proposed to be removed, however, this tree has been identified as being in poor condition. An Arboricultural Impact Assessment has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form.

The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal.

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

D8.9 Landscaped Area

Description of non-compliance

The control requires a maximum of 230sqm of site area not provided as landscaped area.

The proposal involves a built upon area of 405.3sqm, representing a 43.3% variation to the control.

The existing site has a built upon area of 459.8sqm. As such, the proposal represents and overall increase in the landscaped area from existing site conditions.

The variations provision of the control allows for impervious areas less than 1m wide and up to 6% of the site area to be counted as impervious landscape treatment, provided the outcomes of the control are achieved and such areas are used for outdoor recreational purposes only. The variations provisions also permit the maximum area not provided for landscaping may be increased up to 23% on sites larger than 1000 square metres.

Upon application of such provision, the control for the maximum site area not provided as landscaped area becomes 271.83sqm and the proposal includes a built upon area of 335sqm, representing a 18.9% variation to the control.

Merit consideration

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

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

Comment:

The proposed dwelling house will be a two storey, low density residential build, built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform. The development is sited below tree canopy height and the proposal would be well below the stipulated 8.5m height control. The proposed dwelling is appropriate modulated and articulated and incorporates recessive and dark colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. As such, the desired future character of the locality is considered to be achieved.

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

Comment:

The proposal involves compliance with the development standard for building height and is well set back from side boundaries. The proposed dwelling is appropriate modulated and articulated with varied heights and setbacks and open balconies and incorporates recessive colours and materials to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. During the assessment of the application, amended plans were received to reduce the height and scale of the proposal by incorporating a flat roof design. Overall, it is considered that the bulk and scale of the proposal would not be out of character with the existing site and wider locale

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

Comment:

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

- *Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation including tree canopy.*

Comment:

The building has been appropriately sited and designed to retain most of the prescribed trees on the site with only one proposed to be removed, however, this tree has been identified as being in poor condition. An Arboricultural Impact Assessment has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal.

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

Comment:

The site is considered capable of maintaining function to infiltrate and capture stormwater runoff thus preventing soil erosion and siltation of natural drainage channels. The application has been reviewed by Council's Development Engineer and Riparian Officer who have raised no objections to the proposal.

- *To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.*

Comment:

The proposal involves compliance with the development standard for building height and is well set back from side boundaries. The proposed dwelling is appropriate modulated and articulated with varied heights and setbacks and open balconies. Proposed site disturbance is largely

limited to the exiting building footprint. The proposal does not seek excessive excavation or modification to the existing landform. The proposed works will not result in the removal of any significant or protected trees. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

- *To conserve significant natural features of the site and contribute to effective management of biodiversity.*

Comment:

As above, no significant vegetation is impacted, therefore conserving the natural vegetation and biodiversity within the site. Council's Biodiversity Officer has provided support for the application, subject to conditions. This ensures appropriate conservation of natural features and biodiversity. All proposed works, including construction, landscaping and Asset Protection Zones (APZ) are located outside DPIE's Biodiversity Values mapping area located on the eastern portion of the site.

- *The area of site disturbance is minimised.*

Comment:

Proposed site disturbance is largely limited to the exiting building footprint. The proposal does not seek excessive excavation or modification to the existing landform. The proposed works will not result in the removal of any significant or protected trees. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

- *Soft surface is maximised.*

Comment:

The proposed development increases the site landscaped area. Adequate soft surface will be retained for the management of stormwater, recreation and enhancement of vegetation for local wildlife.

Having regard to the above assessment, it is concluded the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8.10 Fences

Description of non-compliance

The proposed development includes metal mesh fencing along the southern side boundary. The fencing is proposed to be 1m in height within the front setback (6.5m in length) from Sturdee Lane and then 1.8m in height for the remainder of the boundary.

The plans also seek to retain existing boundary fencing along the western front boundary adjoining Sturdee Lane which also extends in the foreshore area.

The site is located within a Flora and Fauna Category 2 area within P21DCP. The control states that within this area, no front fences are permitted, that vegetation is preferred to any fencing and that where

side fences are necessary, they are to be constructed of dark coloured materials and shall not obstruct the passage of wildlife. The control also states that fencing required for the containment of companion animals should be minimised.

Given existing and proposed landscaping and vegetation along the southern boundary, fencing to a height of 1.8m is not considered necessary or warranted in this instance. The area is characterised by open gardens which are delineated by landscaping and open style fences of minimal height. As such a condition is recommended that the proposed fence along the southern boundary does not exceed 1.0m in height from existing ground levels, is to be constructed of light weight and dark coloured materials and is to be 50% or more open and transparent. Conditions are also to be imposed to ensure the fence is designed with openings to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Council's Biodiversity Officer has reviewed the proposal and has raised no objection subject to conditions. Subject to conditions, the proposed fence is considered to meet the objectives of this control.

Note: As owner's consent from the adjoining property owners at 30, 32 and 34 Sturdee Lane has not been provided with the development application, a condition of consent will be placed to ensure that the proposed fencing is located entirely within the boundaries of the subject site. However, it should be noted that the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary.

No approval is granted for new fencing or the authorisation of existing fencing along the western front boundary (adjoining Sturdee Lane) or within the foreshore area under this application. This is to be conditioned within any consent. Development Applications are unable to retrospectively approve existing works and the design and height of the existing fence is not considered to be compatible with the requirements of this control, the locality or the foreshore area.

D8.15 Site disturbance

Proposed site disturbance is largely limited to the existing building footprint. The proposal does not seek excessive excavation or modification to the existing landform. The proposed works will not result in the removal of any significant or protected trees. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$10,308 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,030,842.

CONCLUSION

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

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

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

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

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

In summary, the application has been assessed with regard to the relevant Pittwater LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

The issues raised in the public submissions are considered to be addressed by way of the amended plans and conditions of consent.

Subject to the recommended conditions of consent, it is considered that the amended proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

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

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0708 for Demolition works and the construction of a new dwelling house, including the relocation of an existing outbuilding on land at Lot 5 DP 552628, 36 Sturdee Lane, LOVETT BAY, Lot LIC 354632, 36 Sturdee Lane, LOVETT BAY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Issue A - Demolition Plan	December 2021	Dods and Zuccon Architects
DA02 Issue A - Ground Floor and Site Plan	December 2021	Dods and Zuccon Architects
DA03 Issue A - First Floor Plan	December 2021	Dods and Zuccon Architects
DA04 Issue A - Roof Plan	December 2021	Dods and Zuccon Architects
DA05 Issue A - NW & SE Elevations	December 2021	Dods and Zuccon Architects
DA06 Issue A - NE & SW Elevations	December 2021	Dods and Zuccon Architects
DA07 Issue A -Sections A-A	December 2021	Dods and Zuccon Architects
DA08 Issue A -Sections B-B	December 2021	Dods and Zuccon Architects
DA13 Issue A - External Materials	December 2021	Dods and Zuccon Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
DR-001 Rev.2 - Pipe Layout	24/12/2021	Stellen Consulting
DR-002 Rev.0 - Details	07/05/2021	Stellen Consulting
SD-100 Rev.0 - Sediment and Erosion Control Plan	07/05/2021	Stellen Consulting

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Report - Investigation and Assessment for the Siting Of A Proposed Effluent Management System (REF. No. 210403B)	February 2022	Blue Mountains Geological and Environmental Services Pty Ltd
Geotechnical Assessment Report (33905SErpt Rev 1)	25/01/2022	JK Geotechnics
Ecological Assessment Report (AEP Ref 2237.00 Rev: 05)	28/01/2022	Anderson Environment & Planning (AEP)
Bush Fire Assessment Report Rev.5	11/01/2022	Bushfire Environmental Management Consultancy
Arboricultural Impact Assessment	January 2022	TreeTalk Arboricultural Consulting
BASIX Certificate (1189449S_02)	20/01/2022	The House Energy Rating Company of Aust Pty Ltd
NatHERS Certificate (0006011217-01)	December 2021	The House Energy Rating Company of Aust Pty Ltd
Estuarine Risk Management Report	13/05/2021	Horton Coastal Engineering Pty Ltd
Additional Estuarine Risk Management Advice	05/01/2022	Horton Coastal Engineering Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LP01 Rev.B - LANDSCAPE PLAN	17/12/2021	Garden Life
LP02 Rev.B - LANDSCAPE SPECIFICATIONS	17/12/2021	Garden Life

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	24/05/2021	William Zuccon

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 Pittwater Local Environment Plan 2014 (as amended)
Dictionary)

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

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

3. **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 land. No approval is granted for any works on Crown owned land.

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

4. **On-site wastewater maintenance requirements**

The following items are mandatory for the system while in operation:

- clean watering of grass and other vegetation in and adjacent to the area comprising the absorption trenches must not be carried out; and
- maintenance as per the manufacturer's recommendations is to be carried out by a service agent who meets the criteria outlined in NSW Health "Advisory Note 5 - Servicing of Single Domestic Secondary Treatment Sewage Management Facilities (SMF)".

Reason: To protect the effective operation of the wastewater management system.

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 \$10,308.42 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,030,842.00.

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

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

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

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

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

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

9. **Transplanting Methodology Plan**

A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting of selected species as proposed in the Landscape Plan, including:

- i) Preparation of the trees/palms to be transplanted,
- ii) transplanting methodology and installation works,
- iii) post-transplanting care and duration,
- iv) ongoing maintenance program,
- v) replacement strategy if transplanting fails in the long term, and this shall provide the replacement with species typical of the Pittwater Spotted Gum Forest community, ie. Cabbage Tree Palms (*Livistona australis*)

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

10. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development generally in accordance with the stormwater concept plan prepared by Stellen consulting DRW NO DR-001, DR002 dated 24/12/21, prepared by a suitably qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site. Additionally the proposed level spreader is to be located a minimum 3m from any boundary.

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

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

11. **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.

12. **Delineation of Asset Protection Zones**

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries, and must not extend into DPIE's Biodiversity Values mapping located within the east of the site.

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

Reason: To protect native vegetation and wildlife.

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment

fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.

- o North point and scale.

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

Reason: Protection of the receiving environment.

14. 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.

15. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **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.

18. **Waste Management Plan**

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

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

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

19. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

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

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Stormwater management Plan (STELLEN rev 0, 07/05/2021) and Council's Water Management for Development Policy.

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

Reason: Protection of the receiving environment.

21. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

22. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.42m AHD has been recommended through both Estuary Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021 & Additional Estuarine Risk Management Advice prepared by Horton Coastal Engineering Pty. Ltd. dated January 2022. This has been accepted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- o All structural elements below 2.42m AHD shall be of flood compatible materials;
- o All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.42m AHD or waterproofed to this level; and .

Reason: To ensure aspect of the development are built at the appropriate level

23. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the both the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021 & Additional Estuarine Risk Management Advice prepared by Horton Coastal Engineering Pty. Ltd. dated January 2022 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

24. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 60years as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

25. **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.

26. **External Finishes to Walls and Roof**

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

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

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

27. **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
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- 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.

28. **Fencing**

Any new permanent fencing is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

New fencing shall not exceed 1.0m above existing ground level and shall be constructed of dark coloured materials and shall be at least 50% open and transparent.

Plans are to be certified as complying with this condition and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

29. **Project Arborist**

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

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

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

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

Reason: Tree protection.

30. **Tree Removal Within the Property**

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

- i) tree 7 Pepper Tree - *Schinus molle*

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact

Assessment do not require Council consent for removal, pruning or transplanting.

Reason: To enable authorised building works.

31. Dead or Injured Wildlife

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

Reason: To protect native wildlife.

32. Installation and Maintenance of Sediment and Erosion Control

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

33. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site nominated for retention (T3, T4, T13, T15, T19, T20 and T23) are not approved for removal,
- ii) all trees and palms proposed for transplanting,
- iii) all trees and vegetation located on adjoining properties,
- iv) all trees and vegetation within the foreshore (including T1 and T2),
- v) any exempt species vegetation proposed for retention and subsequently removed shall be replaced at a ratio of 1:1 with a locally native tree species, planted at a 25 litre container size and selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide.

b) Tree protection shall be undertaken as follows:

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

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, including as listed in the following sections:
i) section 7.0. Possible Impact on Retained Trees
ii) section 8.1 Protection Measures and Modified Distances for Retained Trees, 8.2 Specific Protection Measures for Retained Trees, 8.3 Standard Protection for Retained Trees, 8.4 Standard Tree Protection at Work Phases,
iii) section 9.0 Conclusions,
iv) section 10.0 Recommendations.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

34. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Stellen Consulting 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.

35. **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.

36. **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.

37. **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.

38. **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.

39. 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.

40. 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.

41. Requirement to notify about new Acid Sulfate Soils evidence

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: protection of the environment.

42. Site Contamination – Acid Sulfate Soils

All stockpiles of potentially contaminated soil must be stored in a secure area in a way that is not likely to cause pollution or be a public health risk.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines.

Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

Note: The following Acts and Guidelines applied at the time of determination:

- i) Protection of the Environment Operations Act 1997;
- ii) Environment Protection Authority, *Waste Classification Guidelines* (2014);
- iii) Water Quality Australia, *National Acid Sulfate Soils Guidance* (2018); and
- iv) Acid Sulfate Soil Advisory Committee, *Acid Sulfate Soil Manual* (1998).

Reason: to protect environment and public health.

43. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

44. **Stockpiling of Topsoil**

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

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

45. **Landscape Completion**

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

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

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

46. **Condition of Retained Vegetation**

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

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

Reason: Tree and vegetation protection.

47. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all the approved Construction certificate stormwater management plans by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

48. **Protection of Habitat Features – Certified by Ecologist**

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.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

49. **Certification of Landscape Plan**

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

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

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

50. **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.

51. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

52. **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.

53. Removal of All Temporary Structures/Materials and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds 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 Occupation Certificate.

Reason: To protect reserve amenity and public safety

54. Fencing for Wildlife Passage

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 5m intervals.

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

Reason: To preserve wildlife corridors.

55. Installation of solid/fuel burning heaters

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

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

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

56. Wastewater System Approval to Operate

The owner and/or operator of the on-site wastewater management system must have a current Local Government Act Section 68 'approval to operate' at all times.

Reason: To ensure the premises a maintained in an appropriate manner.

57. On-site wastewater management system installation

The wastewater treatment system must be installed as per the *Blue Mountains Geological and Environmental Services Pty Ltd* report number 210403B dated February 2022. Specifically including, but not limited to:

- 2 X 14 m trenches that are 0.6 metres in width and depth, located within the prescribed setback distances outlined in pages 6 and 7;
- 100 mm full length mounds on top of the trenches as outlined in page 14.
- Upslope runoff of surface water must be directed away from the land application area via

a dish drain or contour bank;

- Twin outlet rota valve and timed pressure dosing system;
- PVC standpipes in the trenches, for inspection;
- High water alarm in the pump well;
- Malfunction alarm/s for the AWTS tank/s;
- Decommission of existing septic tank/s as per NSW Health "Advisory Note 3 - Destruction, Removal or Reuse of Septic Tanks, Collection Wells, Aerated Wastewater Treatment Systems (AWTS) and other Sewage Management Facilities (SMF)";
- Lime and gypsum to be applied at suggested rates of approximately 0.2 - 0.3kg/m² (i.e. 2 - 3kg/m³) and 0.1kg/m² respectively (i.e. 1kg/m³) in the in the trenches proper and surrounding parts (particularly downslope sides); and
- Turf laid immediately after trench construction.

The Principal Certifier must provide evidence from a suitably qualified person that the on-site wastewater management system has been installed according to the design approved design as part of the development application determination.

Reason: Compliance with relevant standards and NSW Health Guidelines.

58. Plaque on tank

The tank associated with the Wastewater System shall have the following information permanently and legibly marked on a non-corrosive plaque attached to the lid:

- a) The brand name of the system,
- b) The manufacturer's name or registered trademark,
- c) The month and year of manufacture.

Reason: Compliance with Australian Standards and NSW Health Guidelines.

59. Works as Executed - Stormwater Treatment Measures

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

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

Reason: Protection of the receiving environment.

60. House / Building Number

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

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

Reason: Proper identification of buildings.

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

61. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

62. **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.

63. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

64. **Maintenance of Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment.

65. **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.

66. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of both the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated May 2021 & Additional Estuarine Risk Management Advice prepared by Horton Coastal Engineering Pty. Ltd. dated January 2022 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment

67. **No Works in Biodiversity Mapped area**

No works are permitted within the the Biodiversity Values Mapped area, located in the within south-eastern portion of the subject site and as identified within Ecological Assessment Report (AEP Ref 2237.00 Rev: 05) dated 28 January 2022 prepared by Anderson Environment & Planning (AEP).

Reason: Biodiversity protection

68. **Use of "detached home office / outbuilding"**

The existing "detached home office / outbuilding" structure 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 outbuilding remains ancillary to the dwelling house.

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

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

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

Reason: To reduce the risk of smoke nuisance and impacts on the health of the community.

70. **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.

71. **Fencing for Wildlife Passage**

Any new fencing is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reason: Management of wildlife corridors.

72. **No Approval for Existing Works**

This consent does not approve or regularise the existing boundary fence located adjacent to Sturdee Lane and within the foreshore area as shown on the approved plans.

This consent does not approve or regularise any works or use associated with the "detached home office / outbuilding" as show on the the approved plans.

Reason: To ensure that this consent grants approval only for future works.



Attachment 1 – Clause 4.6 variation request - Limited development on foreshore area

Clause 4.6 variation request - Limited development on foreshore area

Foreshore building line

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Pittwater Local Environmental Plan 2014 (“PLEP”)

2.1 Clause 7.8 – Foreshore building line

Pursuant to clause 7.8(2) of PLEP development consent must not be granted for development on land in the foreshore area except for the following purposes -

- (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes—*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
 - (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The objectives of the foreshore building line control are as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

The ground floor terrace and minor sections of the ground floor will encroach further into the foreshore building line than the existing dwelling to be demolished. The extent of the proposed works within the foreshore building line as depicted in Figure 1 over page.

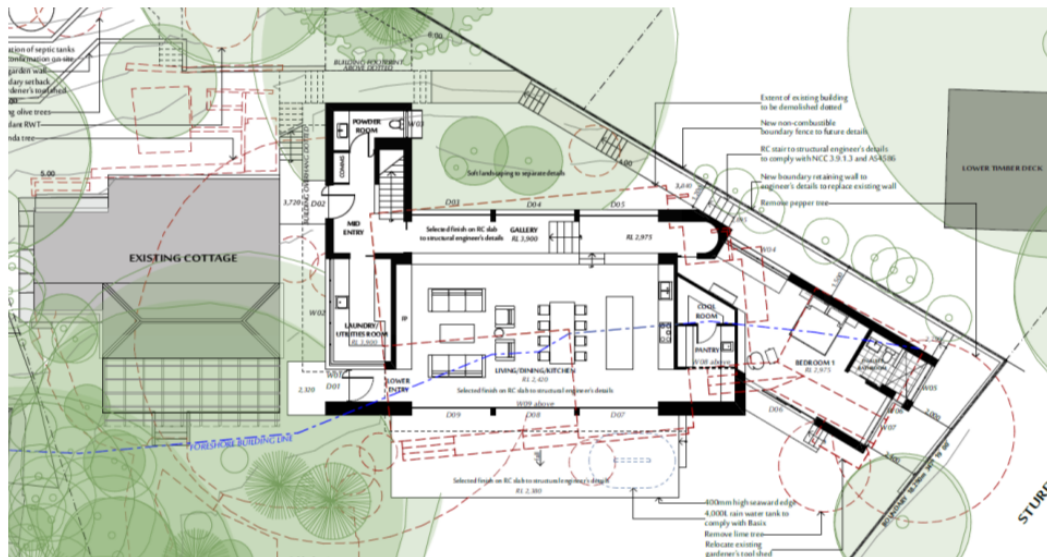


Figure 1 - Plan extract showing the existing and proposed building outline relative to the foreshore building line shown in blue existing building outline relative Foreshore building line map extract with subject site shown by red star

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

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

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

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

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

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

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

Clause 4.6(2) of PLEP provides:

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

This clause applies to the clause 7.8 Foreshore building line standard.

Clause 4.6(3) of PLEP provides:

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

The proposed development does not comply with the foreshore building line provisions at clause 7.8 of PLEP however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) of PLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act.

Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 7.8 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

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

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

1. Is clause 7.8 of PLEP development standards?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 7.8 standard and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 7.8 of PLEP?

4.0 Request for variation

4.1 Is clause 7.8 of PLEP development standards?

Clause 7.8 prescribes a provision that seeks to limit the extent of development with the foreshore area and accordingly is considered to be a development standard to which clause 4.6 PLEP applies.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the foreshore building line standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

Comment: The ground level terrace and minor encroachments at ground level will not impact on natural foreshore processes or affect the significance and amenity of the area given that the dwelling predominately sits within the footprint of the dwelling to be demolished. Given the established built form circumstance within the foreshore area the consent authority can be satisfied that the non-compliant portion to the ground floor will not impact on natural foreshore processes or the natural significance of the foreshore area.

Further, in terms of potential amenity impacts, we note that the non-compliant portion of the ground floor will not give rise to adverse visual or aural privacy impacts to neighbouring properties given the significant spatial separation maintained between living and private open space areas with no adverse shadowing impacts arising as demonstrated by the shadow diagrams submitted in support of the application. Having inspected the site and its surrounds to identify potential view lines I am also satisfied that the non-compliant portion to sections of the ground floor will not give rise to any public or private view impacts.

The geometry of the existing dwelling makes strict compliance with regard to encroaching further into the foreshore building line challenging while providing a dwelling of exceptional amenity and functionality.

I am satisfied that the non-compliant portion of the building will not impact on natural foreshore processes or affect the significance and amenity of the area. This objective is achieved.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment: The proposed minor encroachments further into the foreshore building line do not impact on any public access to the foreshore and waterways.

Consistency with zone objectives

The subject site is zoned E3 Environmental Management Zone pursuant to the provisions of PLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the E3 zone are as follows:

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

Response: The proposed works have been designed to limit the impact to the local environment. The arborist report provided details 6 prescribed trees with only 1 to be removed due to poor condition. Other species identified on the site are either palms or exempt species. The landscape plan provides for an enhancement of native species on the site which add to the biodiversity value of the local area.

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

Response: A new dwelling is proposed to replace the existing one.

- *To provide for residential development of a low density and scale, integrated with the landform and landscape and not visually prominent.*

Response: The development provides for a 2 storey residential dwelling that is consistent with the bulk and scale of development along this foreshore area. Landscaping treatments, couple with existing landscaping features, will soften and screen the built form and reduce its visual impact.

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

Response: The proposal retains most of the prescribed trees on the site with only 1 proposed to be removed. The landscape plan details the proposed native species to be planted on the site. In this regard, the proposal represents an enhancement of foreshore vegetation and wildlife corridors with an increase in native species contributing to the biodiversity value of the area.

- *To ensure the continued viability of ecological communities and threatened species.*

Response: As mentioned above, an enhancement of native species on the site will contribute to the biodiversity value of the area and create more opportunities for habitat for native fauna.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to foreshore building line, demonstrates consistency with objectives of the E3 Environmental Management zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

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

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

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

Sufficient environment planning grounds

In this regard, I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the fact that the vast majority of the replacement dwelling house is located within the footprint established by existing built form structures on the site with only minor encroaching elements associated with wall and outdoor paving elements extending slightly further into the foreshore area.

The foreshore building line is highly irregular on this particular site and has little regard to the long-established built form circumstances and the logical developable area of the land. The minor breaches are reflective of creating a functional dwelling of high amenity for the occupants.

Should strict compliance be enforced it would result in an unusual architectural design and reduced amenity for the occupants. The areas of non-compliance do not give rise to any significant amenity impacts with regard to views, privacy or overshadowing.

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

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The variation facilitates good design and enhanced amenity (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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

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

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

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 7.8 and the objectives of the E3 Environmental Management Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.5 Secretary’s concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the foreshore building line standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the foreshore building line standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and foreshore building line standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a foreshore building line variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

ITEM 5.2**DA2021/1892 - 68-90 EVANS STREET, FRESHWATER -
ALTERATIONS AND ADDITIONS TO ALTERATIONS AND
ADDITIONS TO A MIXED USE DEVELOPMENT****AUTHORISING MANAGER** Rodney Piggott**TRIM FILE REF** 2022/249004**ATTACHMENTS**
1 Assessment Report
2 Site Plans and Elevations
3 Clause 4.6**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1892 for Alterations and additions to alterations and additions to a mixed use development on land at Lot 20 DP 1242304, 68 - 90 Evans Street, FRESHWATER subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1892
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 20 DP 1242304, 68 - 90 Evans Street FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to alterations and additions to a mixed use development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Mount Pritchard & District Community Club Ltd
Applicant:	Chrofi
Application Lodged:	14/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	29/10/2021 to 12/11/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 78.8%
Recommendation:	Approval
Estimated Cost of Works:	\$ 228,836.50

EXECUTIVE SUMMARY

This development application seeks consent for the construction of three (3) awnings adjacent to residential apartments on Level 3 and 4 of an existing building (Harbord Diggers). The proposed incorporates retractable awning and posts to ensure the bulk and scale of the development is further minimised when the awnings are not in use.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application proposing a variation to the Height of Buildings development standard of more than 10%. In

this regard the variation is 78.8%

One (1) objection was received raising concern in regards to view loss.

Critical assessment issues included Building Height non-compliance, building bulk and view loss. A detailed planning assessment has been conducted and the matters raised in the submissions have been addressed in detail, and no matters were found to warrant the refusal of the subject application, and as such is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the construction of three (3) awnings adjacent to residential apartments on Level 3 and 4 of an existing building.

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 Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 20 DP 1242304 , 68 - 90 Evans Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site is a large land holding on the Freshwater Beach Headland and is bound by Carrington Parade, Evans Street and Lumsdaine Drive.

The site is upon land zoned for R2 Low Density Residential development and benefits from additional permitted uses.

Presently the site is occupied by seniors housing, child care centre, and registered club and associated uses.

Surrounding developments consist of residential buildings varying from residential flat buildings to detached dwelling houses.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- Development Application **DA2013/0412** for Stage One redevelopment of the Harbord Diggers Site for seniors housing, new club facility, child care, gymnasium, community centre and respite care was approved on 20/09/2013 by the Sydney East Joint Regional Planning Panel.
- Development Application **DA2014/0875** for the demolition and excavations works and construction of Seniors Housing, Registered Club, Childcare Centre and associated carparking and landscaping (Harbord Diggers Club site) was approved on 01/12/2014 by the Sydney East Joint Regional Planning Panel. This application was subsequently modified by applications **Mod2015/0152** (23/11/2015), **Mod2016/0298** (05/01/2017), **Mod2017/0063** (01/06/2017) and **Mod2020/0312** (29/09/2020).
- Development Application **DA2020/0101** for the stratum subdivision of the Harbord Diggers Development Site was approved on 20/03/2020.
- Development Application **DA2020/1238** for the change of use of an existing club space to a health care facility was approved on 09/11/2020.
- Development Application **DA2021/0749** for the alterations and additions to a mixed use development was approved on the 06/07/2021.

CURRENT APPLICATION

Following a preliminary assessment of the application Council wrote to the applicant on 10 February 2022, outlining concerns that would not allow for Council to support the application in its current form. The concerns related to building height non-compliance, bulk and scale and insufficient information. Following receipt of the letter the applicant advised Council that they intended to amend the development application. Council agreed to accept amendment to the application.

Amended plans were provided to Council on 24 March 2022 and 21 April 2022. The changes proposed reduced the overall bulk and scale of the proposed awnings, and such renotification was not required in accordance with the Northern Beaches Council Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to bulk and scale of the proposed awnings.</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 clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<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 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 29/10/2021 to 12/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Ms Johanna Maria Reynolds Mr Reece Reynolds	22 The Drive FRESHWATER NSW 2096

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

- **View sharing**

The matters raised within the submissions are addressed as follows:

- **View sharing**

Comment:

A submission has been received from the property owner at 22 The Drive, located to the north of the subject site, raising concern with regard to the potential for the proposed south awning on Building E impacting on views to North Head. A site inspection of the concerned resident's property was conducted, including from various rooms within the dwelling. The proposal has been assessed against the view loss provisions under Part D7 (Views) of the WDCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report.

In summary, having regard to the relevant planning principle *Tenacity Consulting v Warringah Council*, the views in question, including North Head are considered of high value; however, the concerned property will continue to be provided with an interrupted view corridor between the subject site and an adjacent site to the west. Any potential impact will be largely imperceptible with the roof structure creating a negligible impact with either end of the awning remaining open and continuing to afford views through and past the area beneath the awning. In light of the above, this assessment finds the proposed amended awnings to be acceptable in relation to view sharing. View sharing continues to be maintained for the concerned resident.

This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	The applicant has amended their design and provided additional drawings and analysis in support of their application. The revised drawings revision G, and amended Design Statement Revision 03 have addressed the concerns raised by Urban Design and no further objections are raised.

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 19 - Bushland in Urban Areas

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

- (c) *the need to retain any bushland on the land,*
- (d) *the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) *any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Comment:

The proposed awning does not necessitate ground disturbance or the removal of bushland on nearby public open space. Therefore, the proposal is considered to demonstrate consistency with SEPP 19.

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 (Housing for Seniors or People with a Disability) 2004

The site was subject to a Site Compatibility Certificate and then approved pursuant to a comprehensive Development Application for the development of the seniors housing. There is no change to the approved land use as seniors housing as the proposed awning structures are ancillary to this approved development. Accordingly, the proposal is permissible with consent.

The original Development Application considered the applicable provisions of the SEPP (Housing for Seniors or People with a Disability) 2004 and given the minor nature of the proposal, there are limited relevant considerations for the subject application. The proposal remains consistent with the objectives of the SEPP and the design principles.

The proposed awning structure is considered to align with the relevant requirements of the SEPP.

Savings Provisions

On 26 November 2021 State Environmental Planning Policy (Housing) 2021 (SEPP Housing) was gazetted, repealing State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. *Schedule 7A Savings and transitional provisions* of SEPP Housing states that this Policy does not apply to development application made, but not yet determined, on or before the commencement date. This application was lodged on 11 October 2021 and as such the savings provisions apply.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

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

Comment:

The subject site is located within the coastal environment area. The proposed development is minor in nature consisting of three awnings extending over an existing balcony servicing a residential apartment. The proposed development does not alter the existing approved development with the built form and envelope remaining largely consistent. The development will maintain the integrity of the land within the coastal environment area while satisfying the provisions of clause 13(1).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

This assessment finds the development to be suitably designed, sited and managed to ensure consistency the provisions under subclause 1.

14 Development on land within the coastal use area

- (1)
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited*

- and will be managed to minimise that impact, or*
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The development comprises three awnings extending over existing balconies servicing approved residential apartments. The awnings will not detrimentally affect the coastal use area by ensuring consistency with the provisions of clause 14(1). This assessment is satisfied that the proposed awnings are well designed, sited and will be managed to ensure minimal impact to those provisions under subclause 1.

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

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

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

Comment:

The minor nature of the proposed development will reduce any potential risk or impact of coastal hazards on the land or any surrounding land.

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	12m - 15.2m	78.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	15.2m
Percentage variation to requirement:	78.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the 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:

- *"Given the established building height (as approved in DA2014/0875) exceeds the building height control of 8.5m, and the proposed light weight form of the awnings are below the roofline of the existing Building E, the awnings are consistent and compatible with the current built form.*
- *The breach in building height is consistent with the existing residential building, providing essential amenity for cooling the private residential space and increasing useability in the summer months.*
- *The shades will be installed on the already established balcony, they can not be lowered to below the building height as the balcony surpasses the controlled height (as approved DA2014/0875).*
- *The awnings will enhance the liveability and privacy for the residence of the three apartments.*
- *The awnings will provide for natural cooling for the three apartments, potentially reducing detrimental cooling methods such as air conditioning.*
- *Retractable nature of the shade cloth allows for the flexibility to limit shading in the cooler months, maintaining warming of residence naturally.*
- *Materials used will complement the existing façade of the building.*
- *There is no view loss or adverse shadow impacts to adjoining properties given the scale of the structures being lightweight in form, not enclosed and submissive architecturally to the existing building form. Mid –winter sun studies prepared by CHROFI show the awnings fall within the existing shadow".*

Planner's Comment

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed awning will allow for the effective use of private open space for occupants of the site;
- The development promotes good design and amenity of the built environment, noting that the awnings will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.

In this regard, the applicant's written request has not 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 not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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 proposed awning are proposed under the maximum ridge line of the existing building. However, the proposed amended awning will not have appearance of an additional storey. The awning is recessed and retractable and consistent with the height of with the existing building. The amended proposal is sufficient in reducing the visibility of the awning from the street.

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

Comment:

The proposed design complies with the relevant controls for sunlight under the WDCP 2011 and involves a design with sufficient physical separation from neighbouring properties to sufficiently minimise privacy loss. The proposed development will not unreasonably compromise views to and from the subject site and adjoining properties.

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

Comment:

The awnings are unlikely to have any unreasonable impact on Warringah's coastal and bush environments.

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

Comment:

The amended awning will not have an unreasonable visual impact when viewed from the the

street and adjoining reserve.

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 residential use remains unchanged

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:

Not applicable.

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 proposal will retain important landscape features on 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, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	%	Complies
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			Variation*	
B1 Wall height	7.2m	14.9m	100%	No
B3 Side Boundary Envelope	5m	Within envelope	-	Yes
	5m	Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m	>0.9m	-	Yes
	0.9m	>0.9m	-	Yes
B7 Front Boundary Setbacks	6.5m	11.5m	-	Yes
B9 Rear Boundary Setbacks	6m	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	No change from existing	N/A	N/A

***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: $38/40 \times 100 = 95$ 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	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C4 Stormwater	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	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 of the WDCP 2011 stipulates that walls are not to exceed 7.2m from the natural ground level to the underside of the ceiling on the uppermost floor.

The proposed fourth floor awning would result in a maximum wall height of 14.9m above the existing ground level along the western elevation, non-compliant with the numeric control. This represents a 100% variation to the numeric control.

Merit consideration:

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

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

Comment:

The amended proposal has minimised the visual impact of the development when viewed from adjoining properties and streets. The proposal has reduced the size of the awning frames mitigate the the visual impact when viewed from adjoining properties.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

Due to the height of the existing building the awnings sit above the tree canopy of some existing trees, however given the existing height of the building the proposal is deemed to be satisfactory.

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

Comment:

The proposed development does not result in any unreasonable impacts to views currently enjoyed from private or public spaces.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-compliant walls (awning pillars) are located centrally within the development site and will not adversely impact surrounding properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The awning sits atop of an existing building. No excavation is proposed.

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

Comment:

The awning is flat which is consistent with the the roof design of the existing development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and 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.

D6 Access to Sunlight

Solar diagrams were provided by the applicant on 7 February 2022 and 19 April 2022 as part of the amended plans. The proposed development does not result in any unreasonable overshadowing of adjoining properties and is consistent with the objective of this control that aim to ensure that reasonable access to sunlight is maintained. The proposal does not unreasonably overshadow the public domain, and is consistent with the objective of this control that aims to ensure the amenity of the public domain.

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

No. 22 The Drive, Freshwater

The nature of the view affected from this property would be ocean and headland views. The existing views are filtered through existing development and vegetation.

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

"The second step is to consider from what part of the property the views are obtained. For

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

Comment to Principle 2:

No. 22 The Drive, Freshwater

The views affected from this property are obtained over the front boundary from the first floor living rooms and private open space. It should be noted that the views obtained from the sitting position are of a lesser value than those obtained in the standing position.

3. Extent of impact

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

Comment to Principle 3:

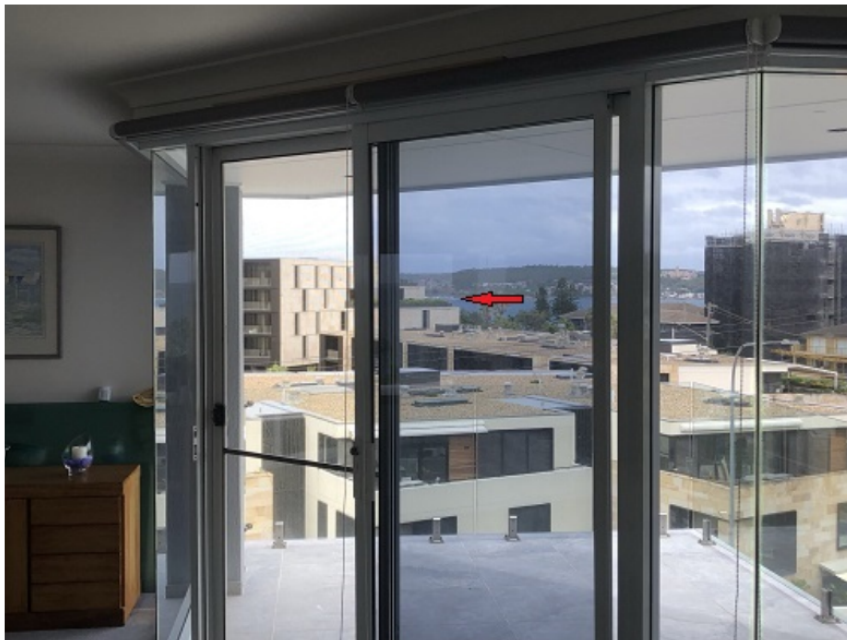


Image 1 - View from first floor living room



Image 2 - View from first floor balcony



Image 3 - View from first floor living room

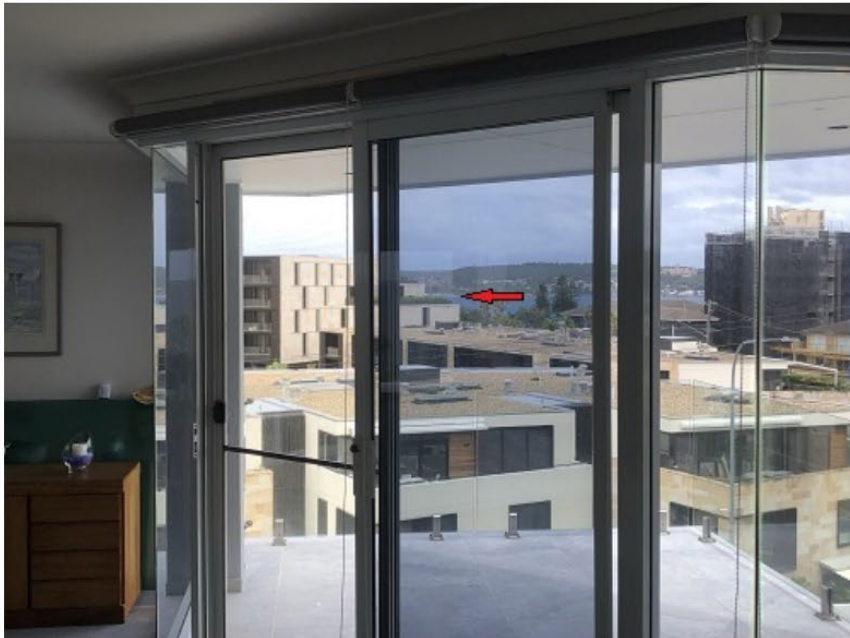


Image 4 - View from first floor living room



Image 5- View from first floor living looking south.



Image 6 - View from first floor living looking north

No. 22 The Drive, Freshwater

This property currently enjoys panoramic oceans, beach (Freshwater and Curl Curl), headland and land water interface views from the first floor living and private open space. The views are obtained to the north, east and southern side of the first floor. The development will result in a negligible to minor loss of ocean and headland view currently enjoyed from the first floor living rooms and balcony.

Qualitatively and in consideration of the collective existing panoramic views available from 22 The Drive, the extent of view loss is negligible, noting that views from the first floor including that of Curl Curl and Freshwater Beach will be retained in full.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

In consideration of the existing views from this property it is noted that the view in question is vulnerable to view loss from any type of awning proposed to the subject apartments. The total severity of impacts upon water views is not considered to be unreasonable, with proposed view loss considered negligible. A more skilful design is not required in this instance.

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

Comment:

Scaling back the bulk and scale of the proposed awnings is unlikely to improve view corridors from neighbouring properties.

- *To ensure existing canopy trees have priority over views.*

Comment:

There are existing canopy trees on the subject site and surrounding causing significant obstruction to views. The proposal does not include the removal of any canopy trees in order to gain views.

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.

D9 Building BulkMerit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The amended plans submitted with the application have reduced the overall size and scale of the proposed awnings. While inconsistent with the Height of Buildings development standard under the WLEP and wall height control under the WDCP, the awning has been sited and designed to integrate with the streetscape, without unreasonably compromising the amenity of adjoining properties. A more skillful design which further minimises the bulk and scale of the proposed awning while providing a similar design potential is not warranted. Council's Urban design officer has reviewed the amended proposal and is supportive of the reduced bulk and scale of the proposal.

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

Comment:

The development is adequately separated from property boundaries and incorporates an appropriate design, which minimises the visual impact of the development when viewed from the public domain or adjoining properties.

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.

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 \$2,288 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$228,837.

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.

CONCLUSION

The proposed awnings are inconsistent with the Height of Buildings Development Standard under WLEP 2011 and Wall height control of WDCP 2011. The proposed development has been suitably minimised to reduce the bulk and scale of the development and justify the variation to the controls and considered to warrant the approval of the subject application.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1892 for Alterations and additions to alterations and additions to a mixed use development on land at Lot 20 DP 1242304, 68 - 90 Evans Street, FRESHWATER, 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
Site Plan, A-DA01, Rev G	19/04/2022	Chrofi
Building E - Level 3 - West Awning Detail, A-DA02, Rev G	19/04/2022	Chrofi
Building E - Level 4 - South Awning Detail, A-DA03, Rev G	19/04/2022	Chrofi
Building E - Level 4 - East Awning Detail, A-DA04, Rev G	19/04/2022	Chrofi

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	14 May 2021	Katie Francis

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

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

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$2,288.37 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 \$228,836.50.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **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.

7. **External Finishes to Roof**

The awning roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **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

9. **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)

10. **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.







**ANGEL PLACE
LEVEL 8, 123 PITT STREET
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

30 September 2021

General Manager
Northern Beaches Council
Pittwater Road
DEE WHY NSW 2097

Dear Sir/Madam,

WATERMARK FRESHWATER - CLAUSE 4.6 VARIATION

1. INTRODUCTION

This Clause 4.6 Variation Request has been prepared on behalf of CHROFI (**the applicant**) and accompanies a Development Application (**DA**) for minor additions to the approved Watermark Freshwater Development, adjoining Harbord Diggers Club at 68-90 Evans Street Freshwater.

The Request seeks to vary the maximum building height prescribed for the site under clause 4.3 of the Warringah Local Environmental Plan (**WLEP**) 2011. The variation request is made pursuant to clause 4.6 of the WLEP.

This report should be read in conjunction with the Statement of Environmental Effects (**SEE**) prepared by Urbis Pty Ltd and dated 30 September 2021.

The following sections of this report include:

- Description of the site and its local and regional context, including key features relevant to the proposed variation.
- Brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- Identification of the development standard which is proposed to be varied, including the extent of the contravention.
- Outline of the relevant assessment framework for the variation in accordance with Clause 4.6 of the LEP.
- Detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- Summary and conclusion.



2. SITE CONTEXT

2.1. SITE CHARACTERISTICS

The proposed development site is located at 68-90 Evans Street Freshwater and is legally described as Lot 20 in Deposited Plan 1242304. It is irregular in shape and has an approximate total area of 15,696m². The site is owned by Mounties Group.

The Harbord Diggers Club site is located in a prominent location on the coastal headland between Freshwater and Curl Curl Beach. It is surrounded by a mix of residential development of varying forms and density and bounded by Carrington Parade (north), McKillop Park and at grade car park (south), Lumsdaine Drive (east) and Evans Street (west). The subject site is outlined in red in the aerial context image and Building E is marked X in the Figure 1 below.

The proposed works are located along the most southern point of the site bounded by Evans Street.

Figure 1 Site aerial



Source: Sixmaps



2.2. DEVELOPMENT APPROVAL HISTORY

Multiple development applications have been approved for the site to achieve the club use and mixed use development currently on site, with the following of note:

- A development application was proposed and approved (DA2013/0412) on 16 September 2013 for stage 1 building envelope and redevelopment of the site;
- A substantial redevelopment of the Club was proposed and approved (DA2014/0875) on 1 December 2014 and modified in 2015 (MOD2015/0152) for:

Demolition and Excavation works and Construction of Seniors Housing, Registered Club, Childcare Centre and associated carparking and landscaping (Harbord Diggers Club site).

Further modified in 2017 (MOD2016/0298):

Modification of Development Consent DA2014/0875 granted for Demolition and Excavations works and Construction of Seniors Housing, Registered Club, Childcare Centre and associated carparking and landscaping (Harbord Diggers Club site).

Further modified in 2017 (MOD2017/0063):

Modification of Development Consent DA2014/0875 granted for Demolition and Excavations works and Construction of Seniors Housing Registered Club Childcare Centre and associated carparking and landscaping Harbord Diggers Club site.

Further modified in 2020 (MOD2020/0312):

A modification application was proposed and approved for demolition and excavation works for construction of seniors housing, registered club, childcare centre and associated car parking.

- A development application was approved (DA2019/1066) for the construction of awning and pergola structures for the senior housing development;
- A development application was approved (DA2020/1233) for the alteration and addition to the central open space on the Club land to formalise use of bowling green;
- A development application was approved (DA2021/0749) for the addition of a shade structure over the Porte-cochere.



3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for the installation of three canopy awnings on the balconies of residential apartments at Building E of the Watermark Freshwater.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 30 September 2021. The proposal is also detailed within the architectural drawings that form part of the DA.

The details of the proposed awnings for Building E are provided below:

- **Level 3 West awning** – retracting from the balcony entry an area of approximately 6,100 x 7,300 with a **height of 2,940** (above FFL); The maximum height of the awning is 12m (RL 35,513), as measured from existing ground level. This represents a breach of 3.5m above the maximum height limit.
- **Level 4 South awning** – retracting from the balcony entry an area of 5,390 x 8,800 with a slanted **height of about 2,520** (above FFL); The maximum height of the awning is 15.2m (RL 38,917), as measured from existing ground level. This represents a breach of 6.7m above the maximum height limit.
- **Level 4 East awning** – placed on the balcony frontage with an area of 8,135 x 3,850 with a minimal slanted **height of 2,520** (above FFL); The maximum height of the awning is 13.6m (RL 38,092), as measured from existing ground level. This represents a breach of 5.1m above the maximum height limit.

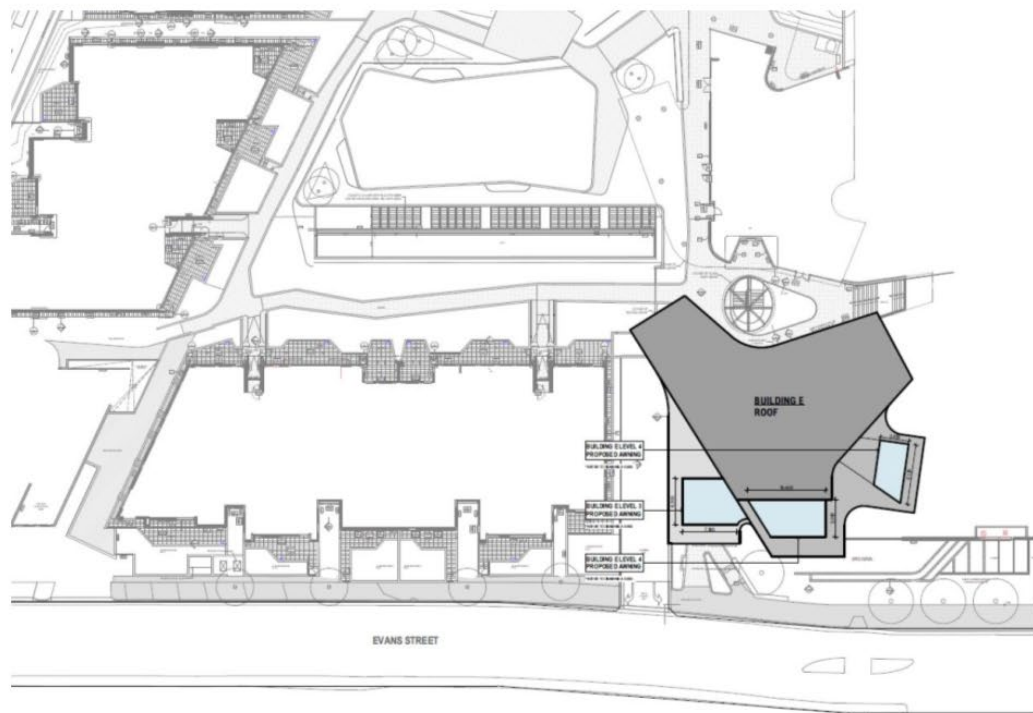
The top of the existing Building E/roof level is RL 39,050 or 15.33m, which is above the maximum awning height of all three awnings.

The awning structure is of aluminium material and the retractable fabric is translucent in colour.

Figure 2 displays the location of the awnings. **Figure 3** displays the proposed works in reference to the 8.5m height plane.



Figure 2 Proposed works



Picture 1 Site Plan of Proposed awnings

Source: CHROFI



Figure 3 Height plane



Picture 2 Proposed awnings in reference to the 8.5m height plane



Picture 3 The site in reference to the 8.5m height plane

Source: CHROFI



4. VARIATION OF BUILDING HEIGHT STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. DEVELOPMENT STANDARD

The Height of Building development standard for the site is 8.5m, as displayed in **Figure 4**. The building height control has been measured in accordance with the WLEP 2011 definition:

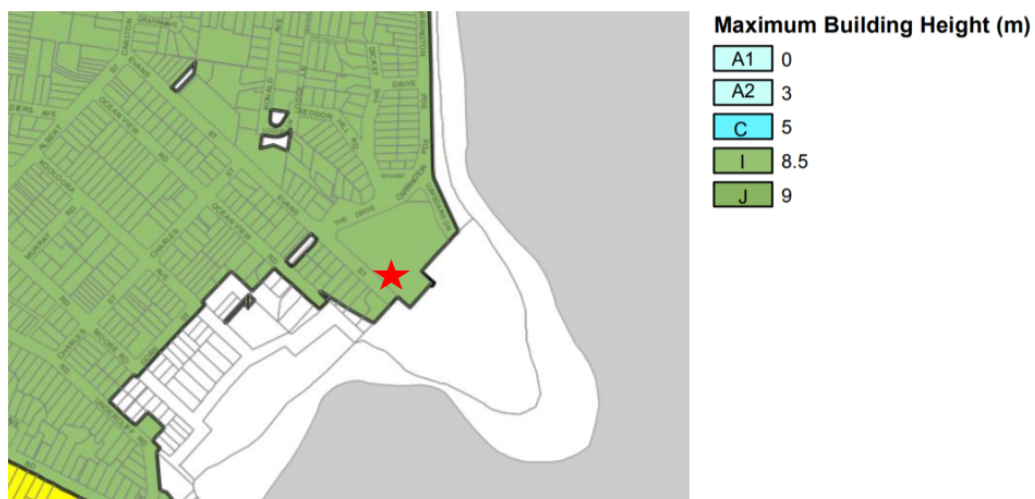
building height (or height of building) means—

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

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

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

Figure 4 Height of Buildings Map (denoting maximum building height of 8.5m)



Source: WLEP



4.2. PROPOSED VARIATION TO CLAUSE 4.3 OF THE WLEP

The proposed development comprises additional awning structures to three existing and approved Watermark Freshwater residences in Building E.

The awnings range in height of 12m to 15.2m representing a non compliance with the building height control of 3.5m to 6.7m. A detailed description of each awning structure is provided in Section 3.

The proposed awning structures exceed the building height control in the WLEP 2011, yet do not exceed the existing building envelope of Building E, which is non compliant with the 8.5m control and has a maximum height of RL 39,050 or 15.33m.

We submit that the variation in height is below the existing building. It will add additional benefit to the current residence as demonstrated in our assessment in Section 6.



5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of WLEP 2011 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of WLEP are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that 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 it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

This clause 4.6 request demonstrates that compliance with the Building Height prescribed for the site in clause 4.3 of WLEP is unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the existing building, development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the Building Height development standard be varied.



6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the maximum building height in accordance with Clause 4.6 of WLEP 2011.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The Building Height prescribed by clause 4.3 of WLEP is a development standard capable of being varied under clause 4.6(2) of WLEP.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of WLEP.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary*”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed



non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the Height of Building development standard as specified in clause 4.3 WLEP 2011 are detailed in **Table 1** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 1 Assessment of consistency with clause 4.3 (1) objectives

Objectives	Assessment
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,	<p>The existing building has been approved (under DA2014/0875, as modified) with a height greater than the 8.5m development standard and proposed awnings. The awnings will be compatible with the building height (being less than the established building height) and the building continuity and form will remain unchanged given the awnings are light weight and subservient to the main building structure.</p> <p>The awnings are not enclosed and retract, consequently providing minimal scale and bulk. The view loss is negligible as the surrounding view remains generally the same as illustrated in the architectural drawings (Appendix A).</p>
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,	<p>The awnings will have minimal visual impact as they are retractable, use a translucent fabric and do not enclose the space, providing minor additional bulk.</p> <p>The view impacts are minor for residence to the west, with the view remaining much the same with no obstruction of iconic views.</p> <p>Mid winter sun studies prepared by CHROFI demonstrate that the proposed awnings do not contribute to additional shadow beyond the existing building.</p> <p>The awning structures provide greater internal amenity and improved useability and potentially privacy for the residence.</p> <p>The retractable function of the awnings will allow for solar access in the cooler months. It will provide shading for the residence for the warmer months. There will be minimal shading impact to any surrounding areas.</p>



Objectives	Assessment
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,	As the awnings are retractable, do not enclose the space, do not protrude above the existing building height and use materials that complement the building façade. They are considered to have minimal or no effect to important view lines of Warringah's Coast.
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.	<p>There are no adverse impacts of the proposed awnings, they do not obstruct any important view lines and adhere to the principles of view sharing especially considering they are able to retract. The Architectural Plans inform the view analysis of the proposed awnings to illustrate the impacts as displayed below. There is minimal visual impact from surrounding public locations such as Evans Street or adjoining Carrington Parade. The slight protrusion from the current built form only disrupts the sky view at a very minor scale. There are no surrounding parks, reserves or community facilities that would be impacted.</p> 

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.



- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

As table 1 outlines, the underlying purpose of the proposed development is consistent with the objectives. The existing built form is beyond the awning structure height proposed, and the proposed works are within the building envelope. The proposed awnings are therefore compatible with the approved bulk and form of the building. It is unreasonable to consider a height that is within the building height controls as the awning's sit beyond this height as illustrated in the height plane in

Figure 5.

Figure 5 Building Height Plane



Source: CHROFI

The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The impacts to the public domain and adjoining properties are negligible as the awning sits within the established built form and are a light weight structure, with translucent retractable fabric in a form that is not enclosed or bulky. It would be unreasonable to consider the outcome consequential to the surrounding community. The calculated benefit for the immediate users is far greater, providing privacy and shading for the residence, limiting the use of detrimental cooling systems such as air conditioning.



6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- Given the established building height (as approved in DA2014/0875) exceeds the building height control of 8.5m, and the proposed light weight form of the awnings are below the roofline of the existing Building E, the awnings are consistent and compatible with the current built form.
- The breach in building height is consistent with the existing residential building, providing essential amenity for cooling the private residential space and increasing useability in the summer months.
- The shades will be installed on the already established balcony, they can not be lowered to below the building height as the balcony surpasses the controlled height (as approved DA2014/0875).
- The awnings will enhance the liveability and privacy for the residence of the three apartments.
- The awnings will provide for natural cooling for the three apartments, potentially reducing detrimental cooling methods such as air conditioning.
- Retractable nature of the shade cloth allows for the flexibility to limit shading in the cooler months, maintaining warming of residence naturally.
- Materials used will complement the existing façade of the building.
- There is no view loss or adverse shadow impacts to adjoining properties given the scale of the structures being lightweight in form, not enclosed and submissive architecturally to the existing building form. Mid –winter sun studies prepared by CHROFI show the awnings fall within the existing shadow.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed Building Height non-compliance in this instance.



6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 1** above. The proposal is also consistent with the land use objectives that apply to the site under WLEP. The site is located within the R2 Low Density Residential zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 2** below.

Table 2 Assessment of compliance with land use zone objectives

Objective	Assessment
<i>To provide for the housing needs of the community within a low-density residential environment.</i>	<p>The proposed awnings will enhance the existing residential units, providing shade to cool the apartments in the warmer months.</p> <p>The shade structures are intrinsically linked and form part of the approved residential land use that provides housing for the Northern Beaches community.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<p>The proposed awnings are consistent with the approved residential land use and form part of the broader mixed use development at the Harbord Diggers site.</p>
<i>To ensure that low density residential environments are characterised by landscaped</i>	<p>The proposed awnings will use materials to complement the built form and are of minimal</p>



Objective	Assessment
<i>settings that are in harmony with the natural environment of Warringah.</i>	<p>bulk and scale, having minimal impact of the surrounding environment.</p> <p>The awnings are characteristics of residential apartments and also generally consistent with other awning structures at other units in the development.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the Building Height as 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.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by the consent authority in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the Building Height will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the building height and the land use zone objectives despite the technical non-compliance.

The awnings will provide benefit to the residence of the apartments where the awnings will be installed, providing a natural form of cooling and shade when necessary. The public will not be adversely impacted from the development (including privacy, view loss or overshadowing), yet the potential benefits from reduction in cooling could have a positive impact on the environment (through potential reduced use of air conditioning units) and therefore the public.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**



Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.



7. CONCLUSION

For the reasons set out in this written request, strict compliance with the Building Height contained within clause 4.3 of WLEP is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the Building Height to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal is consistent with the objectives of the height of building development standard.
- The proposed awning structures do not protrude above the already approved built form. Importantly, Council have approved the building height beyond the 8.5m under DA2014/0875, as modified, and the awnings do not exceed this established position.
- The design complements the existing façade and is subservient to the existing built form. Appropriate colours and materials are selected to complement the coastal setting.
- The building height is acceptable and does not have any detrimental impacts to the surrounding area including solar access or view loss.
- The proposed variation will not be readily visible from the public domain and have a minimal impact from street view.
- The height noncompliance does not alter the GFA of the existing building; it makes the existing internal apartments and external private open space more liveable and functional.
- The variation enables the use of the private balcony in warmer months and potential to reduce the internal temperature of the adjacent unit.
- The variation to the development standard is supportable on environmental planning grounds including the limited environmental impact resulting from the breach to the standard, and benefits to the proposal resulting from the breach.
- Maintaining strict compliance to the building height is not considered to be in the public interest.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the Building Height should be applied.

Yours sincerely,





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ITEM 5.3

**MOD2022/0153 - 1191 BARRENJOEY ROAD, PALM BEACH -
MODIFICATION OF DEVELOPMENT CONSENT DA2021/0669
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF A NEW RESTAURANT, CARPARKING AND ASSOCIATED
USES.**

AUTHORISING MANAGER Daniel Milliken
TRIM FILE REF 2022/249018
ATTACHMENTS 1 Assessment Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is the Council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0669 granted for demolition works and construction of a new restaurant, carparking and associated uses on land at Lot 7005 DP 1117451, 1193 Barrenjoey Road, PALM BEACH, Lot 7002 DP 1117592, 1193 Barrenjoey Road, PALM BEACH, Lot 298 DP 721522, 1191 Barrenjoey Road, PALM BEACH subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0153
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 7005 DP 1117451, 1193 Barrenjoey Road PALM BEACH NSW 2108 Lot 7002 DP 1117592, 1193 Barrenjoey Road PALM BEACH NSW 2108 Lot 298 DP 721522, 1191 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2021/0669 granted for Demolition works and construction of a new restaurant, carparking and associated uses
Zoning:	C2 Environmental Conservation
Development Permissible:	Yes, under Schedule 1 Additional Permitted Uses PLEP 2014, Clause 19
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	NSW Government - Department of Industry - Lands Island Getaway Pty Ltd Nitola Pty Ltd NBT Pty Ltd
Applicant:	London Lakes Partnership
Application Lodged:	05/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The Section 4.55(1A) application seeks to amend two (2) development consent conditions (Conditions No. 28 and No.38) of DA2021/0669 which approved 'Demolition works and construction of a new

restaurant, carparking and associated uses' which is known as the 'Boathouse Palm Beach'. The associated uses approved with the redevelopment of the boathouse included a boat hire business and a seaplane charter business (permitted with consent under Schedule 1 Additional Permitted Uses of the Pittwater LEP 2014 and approved under DA2021/0669).

The amendment to the two conditions relate to the timing of the submission of an Environmental Management Plan and the timing of the implementation of the recommendation of the dangerous goods assessment into the Management Plan for the site. Both conditions are currently required to be completed prior to the issue of a construction certificate. The applicant has requested that the two conditions be moved prior to the issue of an Occupation Certificate *"due to the fact that the requested Plans of Management for both the operational aspects of the proposal and the management of dangerous goods are unable to be completed at this stage due to individual components, yet to be selected, will determine the content of these plans of management"*.

Council's Environmental Health Officer originally recommended the Condition 28 and supports moving the conditions prior to the issue of an Occupation Certificate. Council's EHO also supports amendment to Condition 38.

Council is of the opinion that a part of condition 38 is to be maintained prior to the issue of a Construction Certificate, this being the structural recommendations of the dangerous goods assessment with regards to the storage area for boat fuel and LPG. The requirement to update the Plan of Management with the recommendations of the handling of dangerous goods is supported to be moved to prior to the issue of an Occupation Certificate. A new condition has been added to reflect this.

There are no other changes proposed to the development and the development with remain unchanged apart from the amendments to the two above conditions.

The application was not required to be notified due to the minor nature of the changes and the changes are not considered to result in any additional environmental impacts.

The application is referred to the Northern Beaches Local Planning Panel for determination as the subject site is within Crown land (Governor Phillip Park) with a portion of the crown land managed by the Northern Beaches Council. The application is accompanied by a letter of owner's consent from Crown Lands consenting to the Lodgement of the modification application.

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) application seeks to modify two (2) development consent conditions within DA2021/0669 which are in relation to the Environmental Management Plan and Dangerous Goods Storage. Both conditions are requirements that are to be fulfilled 'prior to the issue of a construction certificate'.

The first condition being:

28. Environmental Management Plan

An Environmental Management Plan (EMP) shall be prepared for the approved development. The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council and shall address:

Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties

The impacts must at minimum consider the following areas:

- *Hazardous Substances.*
- *Water.*
- *Air.*
- *Noise.*
- *Vibration.*
- *Waste & Litter.*
- *Land.*
- *Community.*
- *Environmental Protection objectives and control strategies.*
- *Environmental conditions using measurable indicators and standards.*
- *Emergency Response Plan.*
- *Environmental monitoring and reporting plan.*

Reason: To ensure the appropriate operation and management of the approved use.

The applicant seeks to move the above condition from 'prior to the issue of a construction certificate' to 'prior to the issue of an occupation certificate'. The applicant has put forward the reasons for this timing change and stated:

"The reasons for the support of the proposed Division 4.55 Modification are due to the fact that the requested Plans of Management for both the operational aspects of the proposal and the management of dangerous goods are unable to be completed at this stage due to individual components, yet to be selected, will determine the content of these plans of management.

It is therefore reasonable to require these Plans of Management to be completed to Council's satisfaction prior to the issue of the final Occupation Certificate"

The applicant has also advised that the contents of the Environmental Management Plan is dependent on the future tenants of the sea plane charter business and boat hire business, which are unknown at this stage. The applicant has provided a draft copy of the EMP with this modification application.

The condition was originally recommended by Council's Environmental Health Officer. This 4.55 application has been referred to Council's Environmental Health Officer and they have raised no objections to moving the condition to 'prior to the issue of an Occupation Certificate', see their referral response later in this report.

Council therefore supports moving condition 28 to prior to the occupation certificate.

The second condition which seeks amendment is:

38. Dangerous Goods Storage

Details shall be provided with the Occupation Certificate demonstrating that the recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' have been incorporated into the Plan of Management and Environmental Management Plan. The Plan of Management for the site and Environmental Management Plan is to be updated to include the recommendations of the above referenced report with regards to the handling and storage of dangerous goods.

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure the safe handling and storage of dangerous goods.

The applicant seeks to move the entire condition prior to the issue of an Occupation Certificate, for the same reasons stated above regarding the future components or occupants of the development not being known at this stage with regards to the management of dangerous goods to be implemented in the plan of management.

Council's Environmental Health Team supports moving this condition to prior to an Occupation Certificate.

However, Council's Planner is of the opinion that this condition has two aspects, the first being construction requirements for the storage of the dangerous goods (LPG and Boat Fuel store) in accordance with the dangerous goods assessment and the second component being the management of dangerous goods.

The Dangerous Goods Assessment makes recommendations as to the structural requirements of the dangerous goods storage area, these areas identified on the following approved plan:

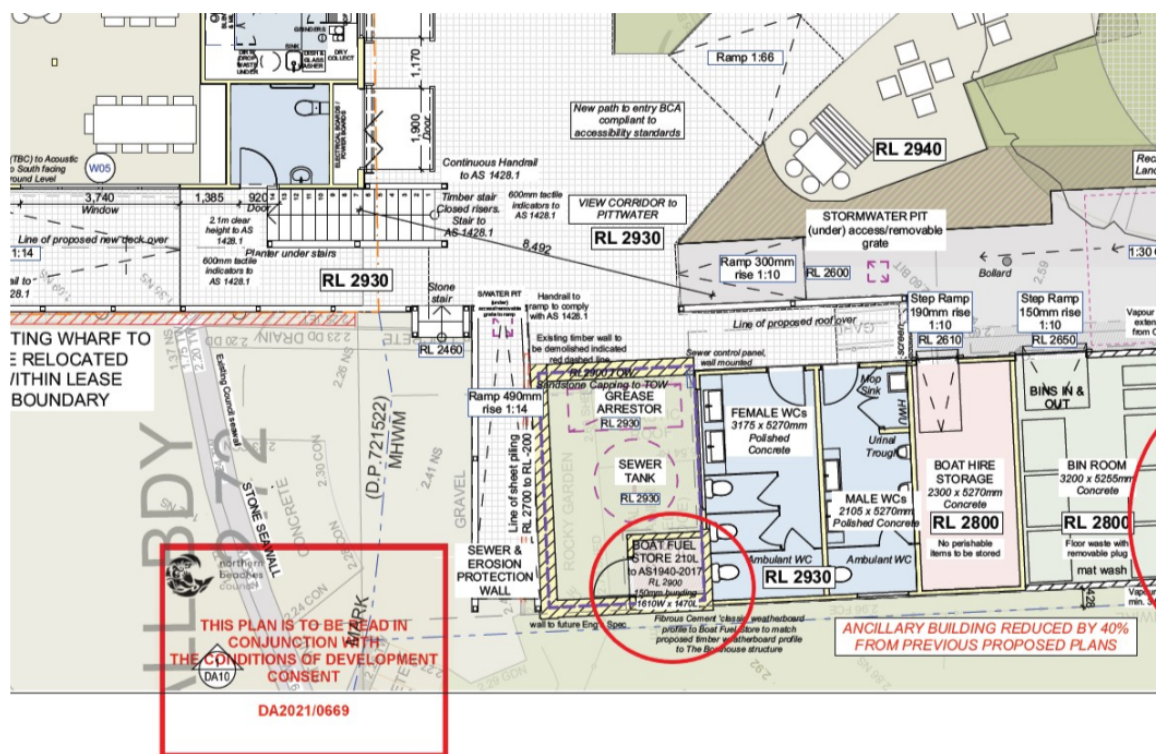


Figure 1 - Extract of approved floor plan of storage area.

Therefore, it is recommended that the condition is amended to remove the requirement to update the plan of management to deal with the storage of dangerous goods 'prior to an occupation certificate' and maintain the requirement for the recommendations of the dangerous goods assessment to be implemented into the construction certificate with regards to the structural recommendations of the storage areas.

The applicant has been advised of the recommended changes to the conditions and has raised no objections.

The condition is therefore recommended to be amended as follows:

38. Dangerous Goods Storage

*Details shall be provided with the construction certificate demonstrating that the **structural** recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' with regard to the storage of Boat Fuel and LPG have been incorporated into the construction certificate plans and documentation.*

~~The Plan of Management for the site is to be updated to include the recommendations of the above referenced report with regards to the handling of dangerous goods.~~

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure the safe handling and storage of dangerous goods.

Add new condition as follows:

Dangerous Goods Storage and Management

Details shall be provided with the Occupation Certificate demonstrating that the recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' with regard to the storage of Boat Fuel and LPG have been incorporated into the Plan of Management and Environmental Management Plan. The Plan of Management for the site and Environmental Management Plan is to be updated to include the recommendations of the above referenced report with regards to the handling of dangerous goods.

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of an occupation certificate.

Reason: To ensure the safe handling and storage of dangerous goods.

Council is satisfied that the amendment to the two above conditions will allow for the applicant to finalise the Environmental Management Plan and Plan of Management at the appropriate times once the future details of the tenants and operational requirements of the boat hire and sea plane charter business is finalised. It is noted that the fuel storage relates only to 210L of boat fuel and that no aircraft fuel is proposed to be stored on the site.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation

SITE DESCRIPTION

Property Description:	<p>Lot 7005 DP 1117451 , 1193 Barrenjoey Road PALM BEACH NSW 2108</p> <p>Lot 7002 DP 1117592 , 1193 Barrenjoey Road PALM BEACH NSW 2108</p> <p>Lot 298 DP 721522 , 1191 Barrenjoey Road PALM BEACH NSW 2108</p>
Detailed Site Description:	<p>The site containing the existing Boathouse Café structure is located adjacent to Governor Phillip Park, at Nos. 1191 to 1193 Barrenjoey Road, Palm Beach on Station Beach and fronts Pittwater on the isthmus that links the Barrenjoey Headland and Palm Beach.</p> <p>The site of the proposed works extends over the following three (3) allotments and is subject to a split zoning:</p> <p>Lot 298, in DP721522,(containing the existing Boathouse Café) is on the seaward side of Mean High Water Mark (MHWM) and is zoned E2 Environmental Conservation. Crown Land is managed by the Department of Industry – Crown Lands.</p> <p>Lot 7005, in DP1117451 (comprising the licenced area) extends from the MHWM easterly for approximately 25 metres, generally in line with Barrenjoey Beach and the foreshore and is zoned RE1 Public Recreation. Crown Land is part managed by the Department of Industry – Crown Lands and part managed by Council Lot 7002, in DP1117592 is the most eastern portion of the site and generally covers street frontage of the site, the street and the adjacent access road car park, and is zoned RE1 Public Recreation. Crown Land is managed by Northern Beaches Council.</p> <p>The existing two-storey building and deck structure on the site, accommodates three businesses including the predominant use on site (being the Boathouse café), a boat hire business and the offices of a seaplane charter operator,</p>

Sydney by Seaplane. Seating associated with the use of the café continues onto the outdoor rear deck and into the front Licenced Area. A two bedroom caretakers unit occupies the first floor.

A wharf extends from the Boathouse building into Pittwater and is publicly accessible from Governor Phillip Park with mooring facilities for multiple boats and sea planes.

Vehicular access to the site is via the Governor Phillip Park loop road extending from Barrenjoey Road.

The site is predominantly flat with a slight fall from the east to the west. There is a landscaped area to the east of the Boatshed including 3 x Norfolk Pines.

Description of Surrounding Development

Directly to the west of the site is Pittwater, to the east of the site is the Barrenjoey Road accessway, providing vehicular access to Barrenjoey Head, and to Governor Phillip Park.

To the north of the site is Station Beach which leads to Barrenjoey Head. To the south of the site Station Beach continues leading to Observation Point. Governor Phillip Park is characterised by natural areas, pathways, parking areas, cafes, recreational uses and community facilities.

Map:



SITE HISTORY

The land has been used for boat hire, sea plane charter and café use for an extended period of time. A

search of Council's records has revealed the following relevant history:

- On 25 November 2008, the ground floor of the building was partly used as a café called 'Carmel's by the Sea'. The café had indoor seating for 16 people and outdoor seating for 60 people.
- On 15 January 2009, Council's Food Premises Inspection Notes indicate that the premises was renamed 'The Boathouse Palm Beach'.
- On 11 February 2015, a Pre-Lodgement meeting was held with Council staff with regard to the redevelopment of the site to provide for an enlarged café with an open plan function space upstairs and a kiosk within the Licenced Area.
- On 27 April 2015, Council's Compliance Department investigated alleged unauthorised pop-up stalls and other structures within the Licenced Area.
- On 7 March 2018, Development Application N0302/17 for alterations and additions to 'The Boathouse' including change of use of first floor to a restaurant office, demolition of ancillary buildings, new external services building, seawall protection measures and an altered carpark with associated landscaping was refused by Council.
- On 15 December 2021, Development Application (the subject of this modification application) DA2021/0669 was approved by the Northern Beaches Local Planning Panel. The development was approved for the demolition and reconstruction of the existing premises known as The Boathouse Palm Beach (the Boathouse) as well as external works on adjoining public land. Specifically, the proposal consisting of:
 - Demolition of the existing structures on Lot 298 (excluding the existing wharf).
 - Replacement of existing piles with taller supporting piles.
 - Construction of a two-storey building, with a raised floor level, for continued use of a café, boat hire and seaplane office. The café and boat hire business will be accommodated on the ground floor, with the seaplane booking office and café staff amenities located on the first floor.
 - Four (4) x building identification signage as follows:
 - Construction of a new ancillary building, replacing the existing outbuildings south-east of the Boathouse building, for use as bathroom amenities (open to the public), store room and waste storage room.
 - Raise the upper level of the seaward decking.
 - Landscaping and associated works within the adjacent leased land within Governor Phillip Park.
 - Addition of further landscaping south of loading bay and north of parking bays, including dune stabilisation works.
 - Enlargement of parking bays to the north of the building to achieve compliance with the relevant Australian standards.
 - Install a pedestrian path running north from eastern side of Boat House to the Barrenjoey Beach.
 - The proposed hours of operation for in-house dining, takeaway meals and refreshments are 7.00am to 4.00pm, 7 days a week.
 - The proposed hours of operation for functions are 4.00pm to 10.00pm on Fridays and Saturdays during summer periods.

- The proposed maximum number of patrons is 152.

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 DA2021/0669, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> - The modification application seeks only for the two conditions with regards to the timing of an environmental management plan. The proposal does not involve any other changes to the development. <p>The changes to the timing of the environmental management plan are considered to not raise any new environmental issues and the finalisation of the EMP will still be carried out prior to the occupation certificate, when the final tenants of the building and business operation is more certain, with the EMP being finalised at this time.</p>
(b) 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	<p>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 DA2021/0669 for the following reasons:</p>

Section 4.55(1A) - Other Modifications	Comments
as originally granted was modified (if at all), and	No physical changes are proposed to the development and the form of the development is unchanged.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	In accordance with Council's Community Participation Plan (CPP), the application was not required to be notified due to the minor nature of the changes and it being a Section 4.55(1A) application. The CPP provides that: 'Circumstances where a DA exhibition is not required: modification of consent to correct a minor error, misdescription, miscalculation (e.g. section 4.55(1) applications); or where, in the opinion of Council, such changes would not unreasonably cause an environmental impact, or which result in a lesser or reduction of, environmental impacts (e.g section 4.55(1A) applications) '

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 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	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 original development application was considered under the Draft SEPP and found

Section 4.15 'Matters for Consideration'	Comments
	to be satisfactory.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p>Clause 61 of the EP&A Regulation 2021 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>Clauses 62 and/or 64 of the EP&A Regulation 2021 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>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p>

Section 4.15 'Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	In accordance with Council's Community Participation Plan (CPP), the application was not required to be notified due to the minor nature of the changes and it being a Section 4.55 (1A) application. The CPP provides that: 'Circumstances where a DA exhibition is not required: modification of consent to correct a minor error, misdescription, miscalculation (e.g. section 4.55(1) applications); or where, in the opinion of Council, such changes would not unreasonably cause an environmental impact, or which result in a lesser or reduction of, environmental impacts (e.g section 4.55(1A) applications)'
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 was not notified.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	General Comments Applicant has requested to finalise an Environmental Management Plan and Dangerous Goods Storage Plan of Management prior to "OC" as opposed to prior to "CC". In the applicants own words, condition 28 and 38 of DA 2021/0669 "are unable to be satisfied at this stage as the Management Plans rely upon the operation of equipment to be installed during future construction". Environmental Health wholly understands that this is a matter of logistical reasonability and practicability, and support the proposal to shift those conditions to be under a 'prior to occupation certificate' category.

Internal Referral Body	Comments
	See conditions below.

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 recreational and restaurant purposes for a significant period of time with no prior land uses. Adjacent to the Boatshed (adjacent to the southern boundary) are several ancillary buildings. A small central building is used to store petroleum products. A Stage 2 Detailed Site Investigation, prepared by EBG Environmental Geoscience accompanied the original development application and was prepared in support of the proposal. The report concludes that the site is suitable for the proposed development, subject to the recommendations of the report which is referenced within the original consent.

In granting the original consent, Council was satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommended conditions continue to apply to the development.

SEPP (Coastal Management) 2018

The site is classified as land within the coastal environment area and land within the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed*

- development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The original application was considered against the matters listed (a)-(g) and was supported by a number of expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The amendment to the consent involving changing to the timing of two conditions is not considered to give rise to any new environmental or coastal issues.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The original application was considered against the above matters was supported by a number of expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP and found to be designed to minimise and avoid impacts. The amendment to the consent involving changing to the timing of two conditions is not considered to give rise to any new environmental or coastal issues.

14 Development on land within the coastal use area

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

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

Comment:

The original application was considered against the matters listed (a)-(c) and was supported by a number of expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The amendment to the consent involving changing to the timing of two conditions is not considered to give rise to any new environmental or coastal issues.

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

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

Comment:

The modification to the consent is not considered to give rise to any new coastal hazards.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone RE1: Yes Zone C2 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone RE1: Yes Zone C2 : No

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
4.3 Height of Buildings	4m + HAT* = RL 5.17m	RL 10.296 (or 5.126 above requirement)	Unchanged No changes to built form	No However, unchanged from original proposal

* Highest Astronomical Tide (HAT) = 1.17m ADH

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	N/A
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes
19 Use of certain land at 1191 Barrenjoey Road, Palm Beach	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone RE1 Public Recreation

RE1 Public Recreation

The original proposal granted consent for the construction of a separate building (for storage and amenities) on the RE1 zoned land. These uses are 'ancillary' facilities for the café and are therefore permissible with consent. Restaurants and cafes are permissible with consent in the RE1 zone.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Conclusion

The amendment to the two conditions to move the requirement for an updated Environmental Management Plan and recommendations of the Dangerous Goods Storage Assessment into the plan of management prior to the Issue of an Occupation Certificate is supported by Council and is considered reasonable given the final details of the future tenants of the boat hire and sea plane charter business are yet to be determined.

The application remains substantially the same as originally approved under DA2021/0669 and therefore the modification to the two conditions are supported and the application recommended for approval to the NBLPP.

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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0153 for Modification of Development Consent DA2021/0669 granted for Demolition works and construction of a new restaurant, carparking and associated uses on land at Lot 7005 DP 1117451, 1193 Barrenjoey Road, PALM BEACH, Lot 7002 DP 1117592, 1193 Barrenjoey Road, PALM BEACH, Lot 298 DP 721522, 1191 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

A. Modify Condition 28 to read as follows and move 'Prior to the Issue of an Occupation Certificate':**28. Environmental Management Plan**

An Environmental Management Plan (EMP) shall be prepared for the approved development. The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council prior to the issue of any occupation certificate and shall address:

Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties

The impacts must at minimum consider the following areas:

- Hazardous Substances.
- Water
- Air.
- Noise.
- Vibration.
- Waste & Litter.
- Land.
- Community.
- Environmental Protection objectives and control strategies.
- Environmental conditions using measurable indicators and standards.
- Emergency Response Plan.
- Environmental monitoring and reporting plan.

Reason: To ensure the appropriate operation and management of the approved use.

B. Amend Condition 38 'Dangerous Goods Assessment' prior to the issue of a construction certificate to read as follows:**38. Dangerous Goods Storage**

Details shall be provided with the construction certificate demonstrating that the structural recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' with regard to the storage of Boat Fuel and LPG have been incorporated into the construction certificate plans and documentation.

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure the safe handling and storage of dangerous goods.

C. Add Condition 'Dangerous Goods Storage and Management' prior to the issue of an Occupation Certificate to read as follows:

Details shall be provided with the Occupation Certificate demonstrating that the recommendations of the report titled 'Assessment Report – DG Advice, Ref 20225, Revision 1, dated 4/08/2020' have been incorporated into the Plan of Management and Environmental Management Plan. The Plan of Management for the site and Environmental Management Plan is to be updated to include the recommendations of the above referenced report with regards to the handling and storage of dangerous goods.

Details demonstrating compliance are to be provided to the Principle Certifying Authority prior to the issue of an occupation certificate.

Reason: To ensure the safe handling and storage of dangerous goods.