

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 11 MAY 2022



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 11 May 2022
via teleconference
Commencing at 10:00 am**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 27 April 2022	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	DA2021/2149 - 2 Tourmaline Street NARRABEEN - Construction of dwelling house.....	5
3.2	DA2021/2170 - 106 Iluka Road PALM BEACH - Alterations and additions to a dwelling house.....	63
3.3	REV2021/0044 - 46 Ruskin Rowe AVALON BEACH - Review of Determination of Application DA2020/1004 for demolition works and construction of a dwelling house including a car port	113
3.4	DA2021/1400 - 88 Bower Street MANLY - Alterations and additions to a dwelling house	159
3.5	DA2021/2038 - 12B West Street BALGOWLAH - Demolition works and construction of a dwelling house including a garage and swimming pool	267

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 27 APRIL 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 27 April 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/2149 - 2 TOURMALINE STREET NARRABEEN - CONSTRUCTION OF DWELLING HOUSE
REPORTING MANAGER	Lashta Haidari
TRIM FILE REF	2022/265071
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/2149 for construction of dwelling house on land at Lot B DP 377414, 2 Tourmaline Street NARRABEEN, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2149
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot B DP 377414, 2 Tourmaline Street NARRABEEN NSW 2101
Proposed Development:	Construction of dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Tony Ian Nicol
Applicant:	Micris Design Pty Ltd
Application Lodged:	16/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/11/2021 to 10/12/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,058,807.00

EXECUTIVE SUMMARY

This development application seeks consent for a new dwelling five (5) bedroom house and associated earthworks.

There is an extensive history on the site included the approval of development application DA2018/1290 for alterations and additions to the original dwelling. A previous Modification Application MOD2020/0636 which was subsequently refused as the proposed development was not substantially the same as the development for which consent was granted (DA2018/1290). The assessment concluded that the proposal is classified as new development given that the original dwelling has been demolished.

The subject development application seeks consent for the construction of a dwelling house which is generally consistent with the design (height and footprint) of the original dwelling as altered under DA2018/1290.

The application is referred to the Development Determination Panel (DDP) as three (3) submissions have been received. Concerns raised in the objections predominantly relate to amenity impacts (overshadowing and privacy), use of the dwelling as a dual occupancy, un-authorised work, increase in the height, impacts to the Norfolk Pine tree and non-compliance with the relevant planning controls.

As noted above, the proposed height, bulk and scale are consistent with the dwelling, as altered, under DA2018/1290. Furthermore, the setback of the first floor of the dwelling to the southern and western boundary is compliant with condition 2 of DA2018/1290 which required a 2.5m and 3m side setback respectively.

The critical issues with the subject application relate to the impacts of earthworks on the Norfolk Pine tree. Amended plans have been submitted which respond to the concerns from Council's Landscape Officer and include amendments of retaining walls and retention of existing/minor alteration of ground levels to the east. No objections are now raised with regard to landscape issues subject to conditions.

The proposal introduces an elevated level 1 passageway which wraps around the western and southern edge of the dwelling and a trafficable roof above the garage / front porch. A condition requires the deletion of these elements in order to minimise visual bulk and ensure that there unreasonable impacts on neighbouring amenity in terms of overlooking. A condition also prohibits the use of the dwelling as a dual occupancy consistent with R2 Low Density Residential zone provisions and prohibits cooking facilities on the lower ground floor and first floor.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for a new five (5) bedroom three storey dwelling. The proposal includes the following works:

Lower Ground Floor Level (FFL 6.33)

- Open plan living room and kitchenette with adjoining east facing deck with external stair access
- Two bedrooms, both with associated ensuites
- Media room
- Laundry
- Internal lift and stair

Ground Level (FFL 9.53 and 9.72)

- Double garage with driveway access to the north
- Open plan living, dining and kitchen with adjoining east facing deck with external stair access and 1.7m high fixed obscure glass screen along the southern edge
- Two bedrooms, both with ensuites
- Powder room
- Entry door to the street frontage
- External stair to the street frontage
- Internal stairs and lifts

First Floor Level (FFL 12.91)

- Living room with kitchenette and adjoining east facing deck with spa and 1.7m high fixed obscure glass screen along the southern edge
- Masterbedroom with ensuite and walk in robe (WIR)
- Internal lift and stairs
- External stairs to street frontage and connecting to the front deck
- Elevated 745mm wide trafficable side passage with 600mm raised garden bed to edge to southern and western edge.
- Curved colourbond roof

External Works

- Earth works- The geotechnical report describes bulk excavations to a maximum depth of about 3.3m are required to achieve design surface levels with an additional approximately 1.0m deep excavation for the lift pit (total max depth 4.3m). Localised excavations to maximum 1.5m depth are expected to be required to achieve design surface levels. The lawn level to the east is maintained at RL 8.00 AHD
- Replace existing timber retaining wall with a new 1.3m high retaining wall setback 300mm from the northern boundary. Treated sleepers are proposed on the southern edge of the retaining wall to the garden side of the subject site. A 1m high timber fence is proposed along the northern boundary and a 1m high glass fence is proposed along the eastern boundary.

Materials

- Roof - colourbond (colour ironstone), External walls - render (colour evening haze) with copper cladding and CZ whitewood cladding, garage door - timber look cladding, entry feature post - timber, windows - powercoated - colour surf-mist.

The applicant in the SEE has detailed the following design changes between the original dwelling as approved to be modified under DA2018/1290 and the subject proposal:

- Move external stairs off front boundary to be in line with front fence/retaining wall (Tourmaline St).
- Reduce ridge height by 150mm so as complies with 8.5m LEP height requirement.
- Remove 2 windows in the ensuite on the ground floor on the western elevation.
- Move the garage facade 620mm from front boundary.
- Relocate internal stairs, and redesign kitchen, dining, living to ground floor, including minor change to finished RL from last DA approved plans.
- Redesign lower ground floor including windows to southern elevation and minor change to finished RL.
- Relocate spa from lower ground floor to first floor balcony.
- Reduce garage door opening to 6.0m to improve visual presentation.
- Extend lower ground floor footprint.
- Include lift to service each floor.
- Relocate external stairs to western deck to be accessed from northern side (street side).
- Incorporate raised garden bed to the lower roof on eastern side of the building.
- Redesign floor plan to the master bed and ensuite on the first floor

*Note: In addition to the changes listed by applicant in the SEE the Assessing Planner has also noted (a) that the extent of excavation has increased and the lower ground floor has changed from sub-floor storage to habitable accommodation and (b) reference has been made to a trafficable passage along the southern and western edge of level 1 connecting to a trafficable roof above the garage and entrance porch.

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 - Zone R2 Low Density Residential
 Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.5 Coastline hazards
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

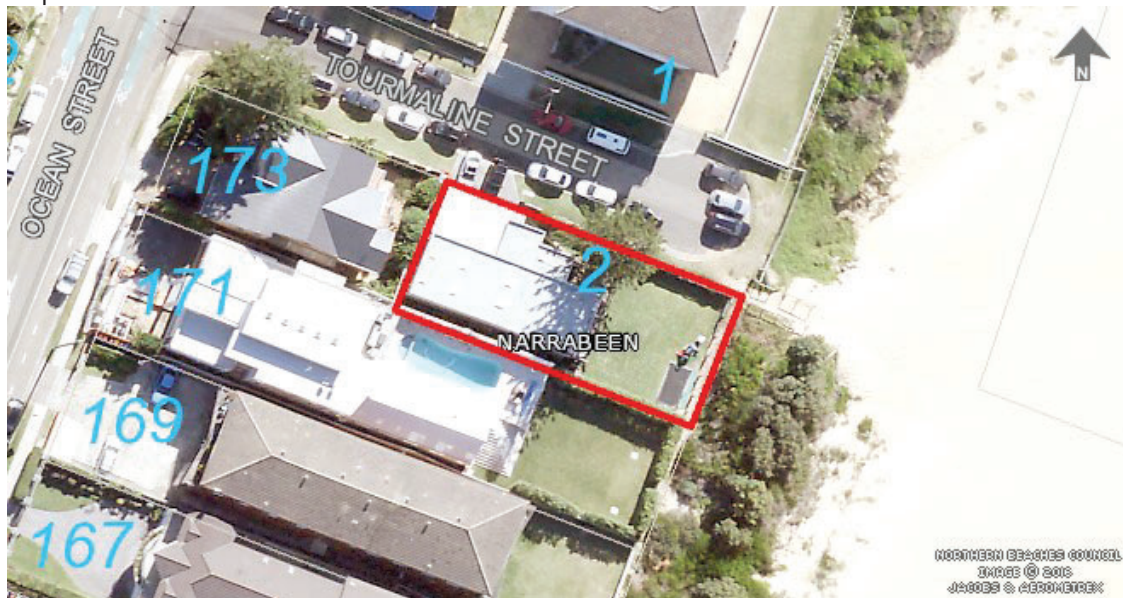
Property Description:	Lot B DP 377414 , 2 Tourmaline Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site is legally identified as Lot B in DP 377414, and is known as 2 Tourmaline Street Narrabeen. The site located within the R2 Low Density Residential zone.</p> <p>The subject property is located immediately south of Tourmaline Street, with Collaroy-Narrabeen Beach adjoining the site on the eastern boundary.</p>

The overall site area is 569.1m². The subject site has a northern street frontage to Tourmaline Street of 36.27 metres, a eastern boundary dimension of 15.71 metres, southern boundary dimension of 36.345 metres, and a western boundary dimension of 15.635 metres.

The surface of the site has a fall in the centre and there is a pit in the south-eastern corner which was previously excavated for a trampoline. The site is currently vacant with the former two level dwelling house having been largely demolished with only a small section of the external western wall (approximately 8.4m in length) being retained. The subject site is free from all environmental features, except a Norfolk pine tree located within the northern boundary of the subject site. The SEE notes that the site has been affected by excavation which was undertaken to ensure the stability of the development.

Surrounding sites consist of a range of dwelling types, including single dwelling house, dual occupancy and residential flat buildings. The site to the south and the west contains two storey dwelling houses, with the site to the north being a three storey residential flat building on the opposite side of the street.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history for this site:

- Building Application number 317/86 for Alterations and additions to a dwelling house was

approved by Council on the 10/02/1986.

- Application number **DA2018/0238** for Alterations and additions to a dwelling house was lodged on the 16/02/2018 and withdrawn from Council on the 14/05/2018 due to a number of areas of non-compliance. The areas of non-compliance included the building height, wall height, side boundary envelope, landscape open space, access to sunlight, privacy, building bulk and view sharing.
- Application number **DA2018/1290** was approved by the DDP on 23 January 2019. The consent included the following condition (no. 2) requiring:
 - The first floor is to maintain a minimum setback of 2.5 metres to the southern boundary
 - The first floor is to maintain a minimum setback of 3.0 metres to the western boundary.
 - The sill height of window W7 is to be a minimum height of 1.5m above the finished floor level.

Note: The southern and western wall of the subject application comply with the required setbacks required in condition 2, subject to the deletion of the first floor trafficable side passage (refer to detailed discussion below). In addition, the sill height to window W7 is 1.5m in compliance with the condition 2 of DA2018/1290.

- A Stop Works Order (**EPA2020/0297**) was issued on 20 October 2020 in response to unauthorised demolition works. The applicant in the SEE notes that: *During the subsequent construction process (in relation to DA2018/1290) it was identified by the engineer, that serious structural issues existed with the dwelling house and as such emergency works were undertaken under the supervision of the structural engineer and the coastal engineer to ensure the environment, surrounding properties and people were safe.*
- Application MOD2020/0636 for a modification of DA2018/1290 was refused on 22 June 2021. The Modification sought consent to obtain retrospective approval to replace existing elements of dwelling house that were removed via unauthorised demolition and excavation, as well as approval for the incorporation of new elements and design changes. The assessment report refers to the modification proposal not meeting the requirements of the Planning Principle for the development to be described as being for "additions and alterations", established by the Land and Environment Court in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*. Rather the proposal is more appropriately classified as a "new development".

The reason for refusal states: Pursuant to Section section 4.56(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development to which the Development Consent as modified by the Modification Application relates is not substantially the same development as the development for which the consent was originally granted.

The applicant explains that the subject application follows the recommendation of Council Officer in the assessment of MOD2020/0636 to submit a fresh development application (DA).

History of subject DA

- On 23 November 2021, the application was accepted and notified.
- On 25 February 2022, the applicant submitted an arboricultural impact assessment.
- On 29 March 2022, the applicant amended the proposal to address the concerns raised by Council's Landscape Officer. The amendments included:

- (a) The northern external wall of the dwelling has been amended to reduce the footprint of the dwelling and increase the setback to the to the Norfolk Pine tree.
- (b) The external stairs have been re-located south to be in the same position as the stairs approved in DA2018/1290.
- (c) The stairs servicing the front entrance have been repositioned 4m from the Norfolk Pine tree.
- (d) The retaining block work wall along the northern boundary has been deleted and the existing retaining wall will be retained with a 1m high timber fence proposed along the northern boundary.
- (e) The eastern lawn level has been increased to AHD to 8.00m.
- (f) The privacy screen to southern boundary of the elevated deck has been amended to a fixed privacy screen 1.7m in height.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to tree protection measures.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>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>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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.

Section 4.15 Matters for Consideration	Comments

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/11/2021 to 10/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Maria Grazia Paola	171 Ocean Street NARRABEEN NSW 2101
Mr George Marner Colvin Smith	173 Ocean Street NARRABEEN NSW 2101
Mr Anthony Paul Harper	12 Jetty Road PUTNEY NSW 2112

The following issues were raised in the submissions:

- **Amenity impacts (loss of sunlight / overshadowing / overlooking / privacy)**
- **Breach of controls, including height**
- **Dual Occupancy**
- **Impact on Norfolk Pine**
- **Un-authorised work**

The above issues are addressed as follows:

- **The submissions raised concerns that the proposal will result in unreasonable amenity impacts to neighbouring properties in terms of a loss of sunlight / overshadowing and overlooking / privacy.**

Comment:

Shadow diagrams have been submitted which confirm that the proposal complies with the solar access provisions of the WDCP.

A window (W6) to the first floor master bedroom and a window (W6) to the associated WIR are proposed within the southern elevation which have a 2.5m setback to the boundary. A condition requires that the windows be treated with a privacy treatment in order to ensure that there is no overlooking of the neighbouring property to the immediate south, specifically the pool area.

South facing window (W7) to the first floor living room is a high level window (1.5m above FFL) which meets the requirements of condition 2 of DA2018/1290. The proposal has been amended to include a fixed obscure glass screen on the southern edge of the first floor east

facing balcony. The existing retaining wall along the southern boundary screens the ground and lower level windows in the southern elevation.

There are no windows in the western elevation that will overlook the neighbouring property. In order to ensure that there are no unreasonable amenity impacts a condition requires the deletion of the first floor elevated passageway that is proposed to wrap around the western and southern edge of the dwelling. In addition, a condition restricts the use of the garage roof as a trafficable space.

Subject to the conditions detailed above the proposal will not result in unreasonable impacts on neighbouring amenity by virtue of overlooking / a loss of privacy.

- **The submissions raised concerns that proposal will result in a breach of the height limit due to backfilling resulting in an increase in the height and scale of the dwelling compared to the previous approval.**

Comment:

The building height has been calculated using Natural Ground Level (NGL) annotated on the architectural plan Rev A which is consistent with the levels references in the survey and disregards any backfilling. The ridge height of the proposed dwelling is reduced by 150mm from the design approved under DA2018/1290 so as to comply with the 8.5m height limit.

- **The submissions raised concerns that there is a breach of planning controls**

Comment:

It is acknowledged that there is a breach of the wall height, envelope, front setback and landscape open space (LOS) WDCP controls. As discussed throughout this report the proposal seeks consent for a dwelling that is generally similar in design to that which was approved under DA2018/1290 as such a precedent has been set. Notwithstanding this, the proposal has been assessed on merit as meeting the outcomes of the relevant WDCP built form controls. Refer to detailed discussion below.

- **The submissions raised concerns that property will be used as a dual occupancy.**

Comment:

This is a valid concern given the design of the dwelling which includes a kitchen a ground level and a kitchenette on the other two floors and separate external access to all levels. Dual occupancies are prohibited in the R2 zone. In order to address this concern and ensure compliance with the statutory controls a condition has been included in the recommendation which prohibits the use of the property as a dual occupancy. In addition, a condition has been imposed that restricts cooking facilities on the lower ground floor and first floor.

- **The submissions raised concerns that development will impact on the existing Norfolk Pine tree.**

Comment:

The application has been amended to address concerns from Council's Landscape Officer in respect of the proposed earthworks on the Norfolk Pine tree. The amended proposal provided sufficient reassurance that the Norfolk Pine tree will be retained subject to conditions.

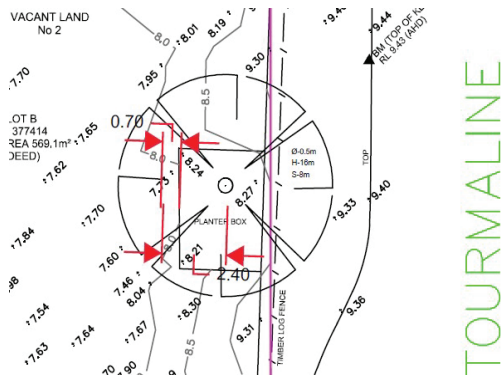
- **The submissions raised concerns about the un-authorised work.**

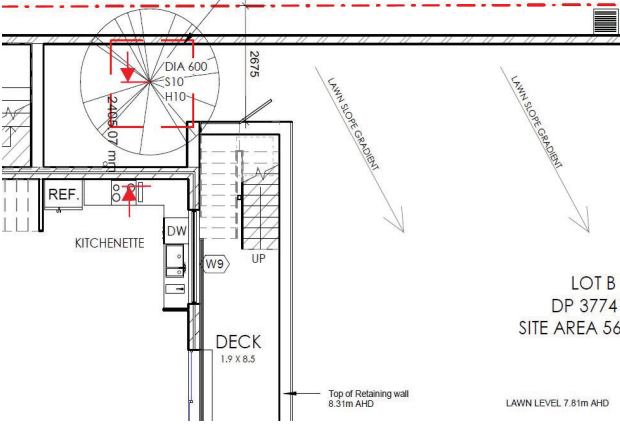
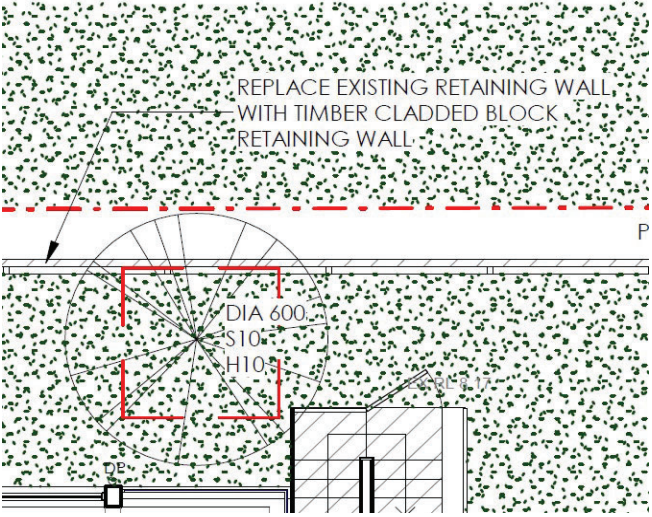
Comment:

Council's compliance unit have taken enforcement action in response to the un-authorised work including the issue of a Stop Works Order and a Penalty Notice.

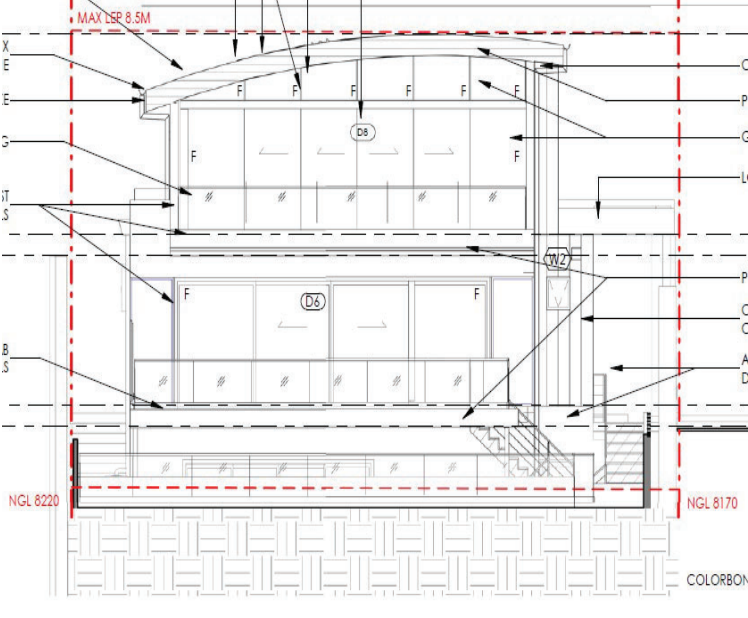
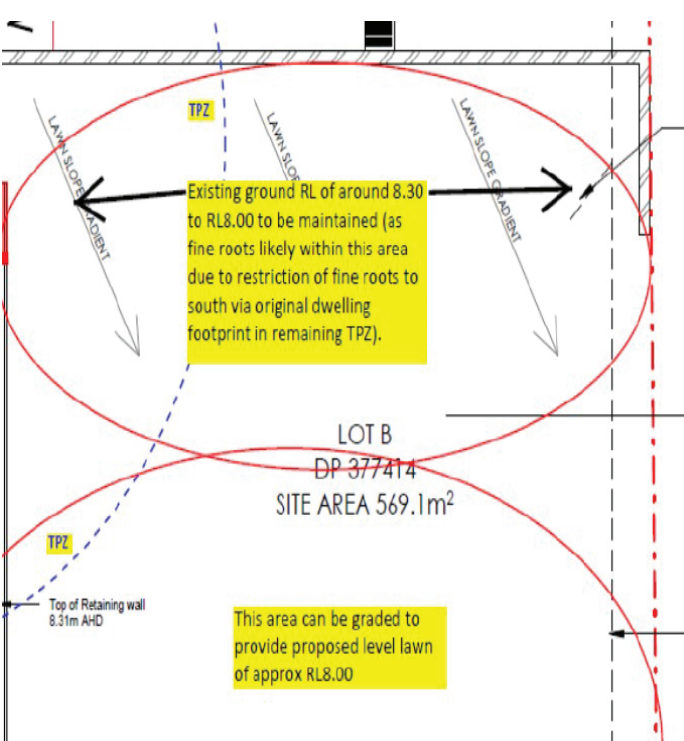
REFERRALS


Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>SUPPORTED</p> <p>An acid sulfate soil (ASS) assessment has been conducted and found no presence of ASS. This is further confirmed by geotechnical investigations that show underlying soils to be lacking the physical and chemical properties typically associated with the generation of ASS. We have no objections to the proposal in this regard.</p>
Landscape Officer	<p>SUPPORTED SUBJECT TO CONDITION</p> <p><u>Final Comment 27/04/2022</u> Amended plans prepared by Micris Design are noted.</p> <p>The plans address issues raised previously including relocation of portions of the building in accordance with the Arborist's Report, amendments of retaining walls and retention of existing/minor alteration of ground levels to the east.</p> <p>Specific tree protection conditions have been included including the appointment of a Professional Arborist to oversee works in accordance with the Arborist's report and amended plans.</p> <p>No objections are now raised with regard to landscape issues subject to conditions as recommended.</p> <p><u>Previous Comment 02/03/2022</u></p> <p>The Arborist's Report prepared by Urban Forestry Australia dated February 2022 is noted. The Report addresses potential impacts on 1 x <i>Araucaria heterophylla</i> located on the site and includes root mapping assessment.</p> <p>The Tree is described as being approximately 21-22m high, in Good condition with a Satisfactory Useful Life Expectancy of >40 years and of HIGH retention value.</p> <p>The Report notes that the likely tree root development has occurred in the road reserve on the northern side of the site and to the east of the dwelling in areas not previously built upon.</p> <p>It is apparent from the report that amendments to the proposed works are required to ensure retention of the tree. Specific recommendations are made in the Report that require amendments. No amended plans were noted with the additional information provided.</p> <p>The following relevant issues are raised in the Report that will require amendments to the plans as referenced in the report paragraph numbers:</p>

Internal Referral Body	Comments
	<p>A) Required offset from the tree</p> <p>3.2.7 It is noted the root mapping was conducted where the wall of the dwelling is proposed approximately 700mm south of the existing timber retaining wall south of the tree. It will be recommended this existing wall is retained, and the new wall is located at the point of root mapping trench to avoid further cutting back of roots towards the base of the existing timber wall.</p> <p>Based on the requirements of the Report, the new wall can be no closer than 700mm off existing planter. Based on the Survey Plan, this represents a distance of 2.4m off the tree (red arrows on the extract from the Survey plan below).</p>  <p>When this distance is overlain onto the design plans, it is evident that the wall of the Kitchenette is within the offset and will need to be further offset from the tree, as will proposed stairs (Note red arrows on plan extract below). These amendments are alluded to in the Report:</p> <p>3.2.8 Further to this, it will be a recommendation that portions of the deck stairwell and stairs access to the west of the tree are amended to provide sufficient soil area in the tree's root zone to avoid additional loss of roots. This would reduce the TPZ encroachments via construction to a similar level to the existing. This recommendation is particularly important in light of the pruning required of the tree to accommodate the building and roof, and steps to reduce the loss of anchorage (via root removal) on the pruned side of the tree.</p>

Internal Referral Body	Comments
	 <p>B) Impacts of northern retaining wall</p> <p>3.2.9 Construction of a new wall to replace the existing on the north side of the tree will require to adopt sensitive construction measures to avoid root loss and preventing soil moisture available from the street and road reserve from entering the tree's root zone. This wall could have a continuous strip footing or a depth that interferes with water movement within a minimum distance of 8.7m as demonstrated at Appendix F.</p> <p>It is evident from the plans that the wall referred to along the northern boundary is a retaining wall. Details of the wall are provided on the plans. Construction of the wall as indicated will completely sever all roots within the Tree Protection Zone and Structural Root Zone along tree's northern side. The proposed wall location and construction detail will not enable retention of the tree and is contrary to the Arborist's Report.</p> 

19

Internal Referral Body	Comments
	 <p>OTIFICATION - EAST ELEVATION</p> <p>The Arborist's Report indicates levels in the rear yard to be RL8.30 to RL8.00</p> 

Internal Referral Body	Comments
	<p><i>D) Tree pruning</i></p> <p>The Arborist's Report indicates that approximately 30% of the tree canopy will be required to be removed to accommodate the proposed dwelling. Whilst achievable, the Report notes potential for destabilization of the tree if extended root removal is undertaken.</p> <p>3.2.12 In respect to the pruning of the tree, I have estimated approximately 30% of the tree's canopy would be removed – See Figure 1.</p>  <p>Figure 1</p> <p>Approximately 30% crown removed for building and roof clearance (left of yellow line) of approximately 1m above roof line (i.e. approximate RL 17.65). The arrow indicates top of 8.65m height pole (about RL 69.00). This is a substantial amount and will alter natural form of tree. Tree will likely tolerate the loss due to its good health, but it may affect stability if substantial roots other than those exposed by root mapping are also cut to south. This pruning is not ideal, but I note DA2018/1290 approved the same setback which would have removed the same amount of canopy.</p> <p>It is apparent that greater off set of the building from the tree will reduce the required pruning and provide less impact on the visual and structural integrity of the tree</p> <p>Conclusion</p> <p>Based on the findings and recommendations of the Arborist's Report, design amendmen</p>

Internal Referral Body	Comments
	<p>required to enable retention of the tree and to maintain its environmental and aesthetic benefits within the locality.</p> <p><u>Original Comment</u> The application seeks approval for construction of a new dwelling.</p> <p>Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls: D1 Landscaped Open Space and Bushland Setting E1 Preservation of Trees or Bushland Vegetation E4 Wildlife Corridors</p> <p>The site is currently vacant. One Araucaria heterophylla (Norfolk Island Pine) is located on the site. The tree is indicated on the Survey Plan as being 16m height and 8m spread.</p> <p>The tree is a significant element in the landscape and its retention as indicated on the plan is supported.</p> <p>No Arborist's report was submitted with the application indicating the extent of impact and the ability of the development to retain the tree.</p> <p>It is apparent that excavation for the Lower Ground Floor and required piling for coastal erosion protection is located within the Tree Protection Zone and Structural Root Zone of the tree. The Survey Plan indicates existing levels of between RL7.50 and RL8.50 around the tree. The Lower Ground Floor is proposed to be at RL 6.33</p> <p>Such excavation is unlikely to enable retention of the tree and as such, the proposal is not supported with regard to landscape issues.</p>
NECC (Bushland and Biodiversity)	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls:</p> <ul style="list-style-type: none"> • Warringah DCP cl. E2 Prescribed Vegetation • Warringah DCP cl. E3 Threatened Species, Populations, Ecological Communities under State or Commonwealth Legislation or High Conservation Habitat • Warringah DCP cl. E4 Wildlife Corridors • Warringah DCP cl. E5 Native Vegetation • Warringah DCP cl. E6 Retaining Unique Environmental Features • Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area <p>The Development Application seeks consent for the construction of a new dwelling house.</p> <p>As the proposal does not require the removal of any native, prescribed trees or vegetation Council's Biodiversity referrals team raise no objections, subject to conditions.</p>
NECC (Coast and	<p>SUPPORTED SUBJECT TO CONDITIONS</p>

Internal Referral Body	Comments
Catchments)	<p>This response has been prepared based on review of the following documents relevant to site and application:</p> <p>Coastal Engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 15 February 2018, submitted with application DA2018/1290 Coastal Engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 1 November 2021, submitted with application DA2021/1612</p> <p>The matters relevant to the coastal assessment of this application are similar to DA2018, as impacts to the proposal from coastal process and location of the building in relation to minimum set backs for development outlined in the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fisherman's Beach are the same.</p> <p>The proposal has also been assessed against and is considered to be consistent with the following: WLEP 2011, Clause 6.5 WDCP 2011, Part E9 State Environmental Planning Policy (Coastal Management) 2018, Clauses 13, 14, 15 and 16</p> <p>Based on this assessment the proposal is supported subject to condition. Specifically the recommendations made in sections 3 and 4 of the Coastal Engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 1 November 2021 be incorporated into the development.</p>
NECC (Development Engineering)	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>The proposed development does not require OSD and connection of stormwater to the k acceptable. The existing driveway crossing is to remain which is acceptable.</p> <p>Development Engineers support the proposal, subject to conditions as recommended.</p>
NECC (Water Management)	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The proposed stormwater water quality system is satisfactory with a treatment chain incorporating reuse. The construction stage must be managed to mitigate any pollution risk. Sediment and erosion controls must be installed to any disturbance of soil on site and maintained until all work is complete and groundcover established.</p> <p>This application, subject to conditions, is supported.</p>
Parks, reserves, beaches, foreshore	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>The proposed works are adjacent to a Council reserve (Narrabeen Beach).</p> <p>Council's mapping system indicates vegetation adjacent to the property to contain Threatened and High Conservation Habitat.</p> <p>No works are indicated to be undertaken in the reserve, however works have the potential impact on the vegetation.</p>

Internal Referral Body	Comments
	Conditions have been included to protect Council's assets on the adjoining land. No objections subject to conditions.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1219976S_02 dated 8 November 2021).

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

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

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

Note the BASIX requires the installation of solar panels. As the roof is curved and in order to avoid any visual impact or view loss impacts a condition requires the panels to be installed on the roof above the garage / porch.

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 confirmed that a decision was not required.

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:

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of,*

*anticipated
coastal
processes
and
current
and
future
coastal
hazards.*

Comment:

The proposal will not cause an adverse impact on the relevant matters described above.

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 proposal will not cause an adverse impact on the relevant matters described above in subclause (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:

The proposal will avoid adverse impact on the relevant matters described above.

14 Development on land within the coastal use area

(1)

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

Comment:

The proposal will not cause an adverse impact on the relevant matters described above.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	*8.5m	NA	Yes

*Note: The building height has been calculated using the NGL annotated on the original set of architectural drawing Rev A.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.5 Coastline hazards	Yes

Detailed Assessment

Zone R2 Low Density Residential

It is noted that issues have been raised in the submissions regarding the use of the building as a dual occupancy. It is accepted that the layout of the floors provides an opportunity for dual occupancy. Dual occupancies are prohibited in the R2 zone and a condition is included in the recommendation restricting the use of the dwelling as a dual occupancy.

6.1 Acid sulfate soils

Clause 6.1 requires development consent for the work described in table of sub-clause (2).

The site is mapped as class 4 Acid Sulfate and the table in sub-clause (2) requires development consent for work more than 2 m below natural ground surface and works by which the water table is likely to be lowered more than 1 m below the natural ground level.

Comment

The proposal includes excavation to a depth of 3.3m for the dwelling and to a maximum depth of 4.3m for the lift pit. The excavation of the garden is to a depth of 1.3m. By comparison the the depth of excavation approved in DA2018/1290 was 3.7m.

The applicant has submitted an acid sulfate soil assessment report which concludes that *there is no sign of the presence of acid sulfate soil and the site soil does not have any acid sulfate generating potential. The proposed development is unlikely to have any acid sulfate concern and as a result no further action is required.* The application has been reviewed by Councils Health Unit who concur with the conclusion of the acid sulfate report.

In summary, the proposal is consistent with the requirements and objectives of Cause 6.1 subject to a condition requiring compliance with the acid sulfate soil assessment report.

6.2 Earthworks

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

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

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

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

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 site is not mapped as being a potential location of Aboriginal or other relics.

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

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

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

6.5 Coastline hazards

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

(a) will not significantly adversely affect coastal hazards, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not significantly adversely affect coastal hazards.

(b) will not result in significant detrimental increases in coastal risks to other development or properties, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in significant detrimental increases in coastal risks to other development or

properties.

(c) will not significantly alter coastal hazards to the detriment of the environment, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not significantly alter coastal hazards to the detriment of the environment.

(d) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

(e) avoids or minimises exposure to coastal hazards, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development avoids or minimises exposure to coastal hazards.

(f) makes provision for relocation, modification or removal of the development to adapt to coastal hazards and NSW sea level rise planning benchmarks.

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development makes provision for relocation, modification or removal of the development to adapt to coastal hazards and NSW sea level rise planning benchmarks.

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the foundations of the development have been designed to be constructed having regard to coastal risk.

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the foundations of the development have been designed to be constructed having regard to coastal risk.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	up to 8.2m (max) on the southern elevation (1m breach for a length of 9.2m)	13.8%	No
B3 Side Boundary Envelope	4m West	Within envelope	N/A	Yes
	4m South	*Encroachment of between 1.5m - 0.9m x 14.3m in length	Refer to detailed discussion	No
B5 Side Boundary Setbacks	0.9m West	Lower Ground - 2m	N/A	Yes
		Ground - 1m	N/A	Yes
		First Floor - 3m to the western wall,	N/A	Yes
		1.8m to the edge of the trafficable elevated passageway and 0.8m to the	11.2%	No

		edge of the raised planter bed		
	0.9m South	<u>Lower Ground Floor</u> - 1.5m to southern wall and nil to deck <u>Ground Floor</u> - 1.5m to southern wall and deck <u>First Floor</u> - 2.5m to southern wall, 1.5m to edge of trafficable deck and 1.3m to southern edge of front deck.	N/A N/A N/A	Yes Yes Yes
B7 Front (north) Boundary Setbacks	6.5m	<u>Lower Ground Floor</u> - 2.1m to the northern wall and 0.6m to the retaining wall / edge of external stairs and 4.1m to northern wall <u>Ground Floor</u> - 0.6m to garage, 2.1m to wall of entry, 0.65m to stairs and retaining wall and 4.1m to the northern wall <u>First Floor</u> - nil to the roof of the garage / front porch, 0.6m to stairs and 4.1m to the northern wall.	Refer to detailed discussion	No No No No
B9 Rear (eastern) Boundary Setbacks	6m	<u>Lower Ground Floor</u> - 10m to retaining wall of external stair, 13.2m to retaining wall adjacent to deck and 15.48m to eastern wall <u>Ground Floor</u> - 10m to retaining wall of external stair, 13.2m to retaining wall of deck and 15.48m to eastern wall <u>First Floor</u> - Balcony - 10m to retaining wall of external stair, 13.2m to retaining wall of deck and 17.6m to eastern wall	N/A N/A N/A	Yes Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	35.6% (203.1sqm)	4.4%	No

*Note: The subject site is treated as corner allotment located on Tourmaline Street and a waterway reserve, Collaroy/Narrabeen Beach. Whilst the foreshore building line setback is not applicable to the subject site, the assessment of the application for purpose of applying the applicable setback controls to the site is taken the boundary fronting the waterway reserve as rear boundary, and the side boundaries to be southern and western sides of the site and the front being to the north to Tourmaline Street.

*Note: The wall height and envelope calculations are taken from the NGL annotated on the original set of drawings Rev A.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E5 Native Vegetation	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal has a wall height of up to 8.2m along the southern elevation for a length of 9.2m which represents a 1m (13.8% breach) of the 7.2m wall height.

Merit consideration:

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

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

Comment:

The wall height is generally consistent with the wall height approved in DA2018/1290. The breaching elements affects the southern elevation, the wall height to all other elevations is compliant.

The side setback of the dwelling to the southern boundary generally complies with condition 2 of DA2018/1290 which requires a 2.5m setback to the first floor. The stepping in of the first floor helps ensure that there is minimal visual impact on the neighbouring dwelling subject to a condition requiring the deletion of elevated passageway and associated structures. It is noted that the ground and lower floor will not be visible from the neighbouring property to the south due to the height of the existing boundary wall.

The first floor is setback 3.7m from the street frontage (north) and has a compliant wall height. As such, there is no unreasonable visual impact of the dwelling from the street. The northern elevation will also be softened with the retention of the Norfolk Pine tree.

The first floor to the east is setback from the ground floor with a light weight balcony presented to the frontage. The setback of the dwelling exceeds the minimum 6m rear (eastern) setback and the proposed dwelling will not be visually dominate as viewed from the beach.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The dwelling sits below the tree canopy of the existing Norfolk pine tree located within the northern boundary which will be retained.

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

Comment:

The applicant has submitted view sharing analysis which illustrates that the siting and design of the dwelling will not result in any unreasonable view loss impacts from neighbouring properties. Critically, the first floor is setback from the northern boundary to retain the view corridor from the east facing windows in the dwelling to the immediate west at No. 173 Ocean Street. It is noted

that no view loss issues have been raised in the submissions. As discussed throughout this report the proposal is generally consistent with the built form approved under DA2018/1290 and includes increased side setbacks to the west and south and a slightly reduced ridge height.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

Subject to a condition to delete the elevated first floor passageway the non-compliance with the wall height to the southern elevation will not result in any unreasonable and detrimental impacts upon adjoining properties by virtue of visual impact, privacy, overshadowing or view loss.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

It is acknowledged that the original dwelling included an excavated lower floor area (sub-floor storage). The proposal includes earthworks which allows for the addition of habitable accommodation at the lower ground level in addition to changes to the ground level to address the requirements of the coastal engineer.

The proposal has been amended to reduce the extent of earthworks to address the concerns from Council's Landscape Officer in relation to potential impacts on the existing Norfolk Pine tree. Subject to conditions, the earthworks, as amended, are assessed as acceptable.

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

Comment:

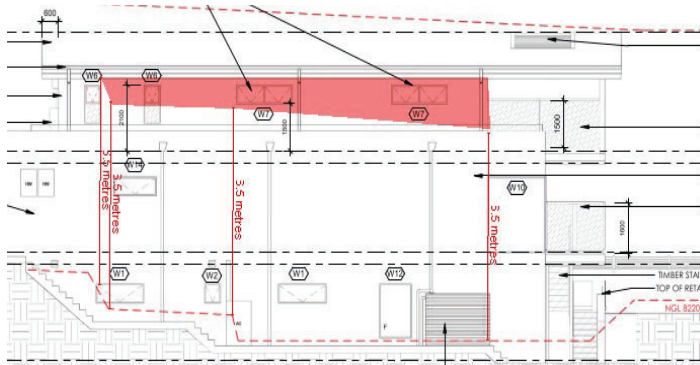
The roof design of dwellings within the locality is varied although it is noted that there is a predominance of properties with either hipped or pitched roofs. The proposal includes a curved arc shaped dark coloured colourbond roof. Although this is not a traditional roof form in the area it is consistent with the design of the roof approved under DA2018/1290, as such it is considered acceptable.

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

B3 Side Boundary Envelope

Clause B3 requires development to be contained within an envelope that measures 4m from the side boundary at an angle of 45 degrees.

The proposal will breach the building envelope on the southern elevation by between 1.5m - 0.9m x 14.3m in length, refer to image below.



Southern elevation showing the envelope breach (drawing altered by the author)

Merit consideration

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

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

Comment:

The height of the dwelling has been reduced from the previous approval to be compliant with the 8.5m height limit. The southern and western walls of the first floor are setback 3m and 2.5m respectively in accordance with condition 2 of consent DA2018/1290. The stepping in of the first floor will help reduce the visual impact of the development in terms of bulk and scale.

The proposal includes a first floor passageway, with a 700mm parapet, that wraps around the southern and western perimeter of the first floor which is inconsistent with condition 2. The elevated passageway adds to the visual bulk of the development particularly when viewed from neighbouring properties and has the potential to result in amenity impacts in terms of overlooking. Note, the addition of privacy screens to address overlooking would add further bulk to the dwelling. A condition is recommended requiring the first floor passageway and associated parapet to be deleted.

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

Comment:

The submitted shadow diagrams A-016 to A-018 drawn by Micris Design demonstrate compliance with solar access requirements of the Warringah DCP 2011.

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

Comment:

The proposal includes additional excavation within the vicinity of the area previously excavated. The northern and southern external walls step down the site in response to the topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

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

B5 Side Boundary Setbacks

Description of non-compliance

The planter bed to the edge of level 1 on the western elevation breaches the 0.9m side setback by 100mm or 11.2%.

Merit consideration

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

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

Comment:

The breaching element is at first floor and does not allow opportunities for deep soil planting.

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

Comment:

The 100mm breach of the side setback to the west as a result of the planter bed does not in isolation add to the visual dominance of the dwelling. However, the planter bed is associated with the trafficable elevated side passage which is not supported as it adds to the visual bulk of the dwelling and has the potential to unreasonably impact neighbouring amenity by virtue of overlooking. A condition requires the deletion of the elevated passage and all associated structures including the planter bed.

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

Comment:

Refer to comments above.

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

Comment:

Refer to comments above.

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

Comment:

The planter bed will not impact on view sharing.

Subject to a condition deleting the elevated side passage and associated structures the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

A 6.5m setback is required to the frontage (north).

The dwelling presents the following setbacks to the frontage:

- Lower Floor - 2.1m to the northern wall and 0.6m to the retaining wall
- Ground Floor - 0.6m to garage, 2.1m to wall of entry and 0.65m to stairs and retaining wall and 3.7m to the northern external wall
- First Floor - 3.7m to the northern wall, nil to the roof 0.6m to stairs

Merit consideration:

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

- *To create a sense of openness.*

Comment:

It is noted that the original dwelling and the development approved under DA2018/1290 had a comparable front setback. As such, it can be argued that a precedent has been set. The subject applications includes a 1m high timber fence proposed along the street frontage. Subject to a condition which requires the fence to be 50% transparent the proposal will have a limited impact on the sense of openness to the street frontage compared to the development approved.

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

Comment:

As discussed above, the original dwelling had a similar setback at ground level to the street frontage with the garage dominating the front setback. DA2018/1290 approved alterations to the original dwelling which included additional work within the front setback. While it is acknowledged that the original dwelling has since been demolished, in breach of DA2018/1290, the proposal is generally consistent with the footprint of the former dwelling and the dwelling as extended under DA2018/1290. Furthermore, the proposal generally maintains the traditional visual continuity and pattern of buildings on the southern side of Tourmaline Street and will result in a very minor change to the overall visual quality of the street view.

In addition, the first floor also maintains the 3.7m setback approved under the previous DA which is consistent with the stepped facade treatment of other dwellings in the locality. It is noted that the adjoining building to the west currently provides a smaller setback of approximately 2.6m to Tourmaline street.

Therefore, the variation in the first floor is consistent with maintaining the visual continuity and pattern of buildings in the street.

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

Comment:

As discussed above the context of the site is largely determined by the siting of the original dwelling house, as approved for alterations under DA2018/1290. The proposal is generally comparable with the front setback of the development approved under DA2018/1290 and will not negatively detract from the existing visual quality of the streetscape. The street elevation is articulated with a varied wall plane and pallet of materials to provide visual interest and reduce the bulk and scale of the dwelling. The retention of the Norfolk Pine tree will also soften built form in the streetscape. The eastern elevation to the beach is generally light weight and is setback in excess of the 6.5m to ensure that it will not impact on the visual quality of the public space.

- *To achieve reasonable view sharing.*

Comment:

The proposed 4.1m setback of the first floor to the northern boundary and 2.5m setback of the first floor to the southern boundary allows for the retention of view corridors to neighbouring properties.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 requires 40% of the site is required to be retained as landscape open space (LOS). The development proposes 35.6% (203.1sqm) of the site as landscaped open space, which is a variation of 4.4% of 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 enable planting to maintain and enhance the streetscape.*

Comment:

The site currently contains a large Norfolk Island pine tree which will be retained. The landscape setting when viewed from Collaroy/Narrabeen Beach will generally be retained and is considered to be in accordance with Part E7 Development on land adjoining public open space.

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

Comment:

The site is generally free of any substantial topographical features such as rock outcrops. The primary location of landscaped open space will remain as per the existing (i.e. in the eastern area of the site), and the existing Norfolk Island pine on site is to be retained.

Therefore, the landscape open space provision is considered satisfactory to conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

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

Comment:

The proposed areas of landscaping in the front and eastern area of the site will be retained. The large Norfolk Island pine tree will also be retained and assists to mitigate the height, bulk and scale of the proposed works, and thus ensure consistency with this merit consideration.

- *To enhance privacy between buildings.*

Comment:

The proposed low 1m high fence and low level landscaping will not obstruct the view lines and assist in mitigating potential privacy impacts. Thus, the proposal contains sufficient landscaped area to ensure that privacy is maintained for the property and the adjacent public land.

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

Comment:

The proposal includes generous areas of private open space at ground level and in the form of ground level and elevated decks to meet the recreational needs of the occupants.

Therefore, appropriate outdoor recreational opportunities that meet the needs of the occupants are provided by the development.

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

Comment:

The site contains adequate space for service functions, clothes drying and the like to service the domestic needs of the occupants.

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

Comment:

Drainage from the new works will be directed into the approved stormwater drainage system.

The remaining deep soil landscaped open space will be sufficient to cater for infiltration of stormwater.

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

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 \$20,588 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,058,807.

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

This proposal, for dwelling house and associated earthworks has been referred to the Development Determination Panel (DPP) due to three (3) submissions having been received.

The height, scale, bulk and footprint of the dwelling are generally consistent with that approved under DA2018/1290.

The concerns raised in the objections have been addressed and resolved by conditions which relate to privacy treatment to windows and decks and the elevated first floor passageway and trafficable garage roof, conditions to ensure the retention of the Norfolk Pine tree and a prohibition on the use of the property as a dual occupancy.

Overall, the development is of an acceptable design, consistent with the previous approval, that generally performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2149 for Construction of dwelling house on land at Lot B DP 377414, 2 Tourmaline Street, NARRABEEN, 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
A101 Rev B Site Analysis Plan	29.03.2022	MICRIS Design Pty
A102 Rev B Proposed Lower Ground Floor and Ground Floor Plan	28.03.2022	MICRIS Design Pty
A103 Rev B Proposed Lower Ground Floor and Ground Floor Plan	29.03.2022	MICRIS Design Pty
A104 Rev B Proposed Elevations	29.03.2022	MICRIS Design Pty
A101 Rev B Proposed Sections	29.03.2022	MICRIS Design Pty
A109 Rev A External Colours and Finishes	04.11.2021	MICRIS Design Pty

Engineering Plans		
Drawing No.	Dated	Prepared By
2016-1833 Rev C Sheet 1 Stormwater Drainage Plan	28.06.2021	Fusion Engineering Services
2016-1833 Rev C Sheet 2 Stormwater Drainage Plan	28.06.2021	Fusion Engineering Services
2016-1833 Rev C Sheet 3 Stormwater Drainage Plan	28.06.2021	Fusion Engineering Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report - Ref: 32419Rrpt rev1	05.11.2021	JK Geotechnics
Coastal Engineering Report	01.11.2021	Horton Coastal Engineers
Acid Sulfate Report Ref NE220	15.09.2021	Fusion Engineers
Basix Report Number 1219976S_02	08.11.2021	Barlow Energy Efficiency Services

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	19.07.2021	MICRIS Design Pty

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 structure 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:

"means a building containing only one dwelling".

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

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

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

3. 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 \$20,588.07 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,058,807.00.

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. **Pier Footing Design Near Trees to be Retained**

a) Pier footing structural layout plans for retaining walls adjacent to Tree 1 Araucaria heterophylla shall be developed in coordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture and a qualified Structural Engineer.

b) The Arborist shall review, comment, recommend design revision as required and approve the pier footing layout to ensure the locations of piers will be manageable in terms of tree protection measures.

c) The Arborist shall submit certification to the Certifying Authority that the locations of the pier footings are accepted via the agreed pier footing structural layout plans prior to the issue of a Construction Certificate.

Reason: Tree protection.

8. **Stormwater Disposal**

The applicant is to submit drainage plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Tourmaline Street.

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

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

9. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

10. **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.

11. **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.

12. **Shoring of Council Property**

Should the proposal require shoring to support land owned or managed by Council, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors or other construction measures are to be used within Council Land.

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

Reason: To ensure that owners consent is obtained for ancillary works and to ensure the protection of adjoining properties and land owned or managed by Council.

13. **Amendments to the approved plans**

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

- The elevated first floor passage and associated parapet wall and raised planter beds shall be deleted.
- Windows referenced (W6) to the first floor master bedroom and associated WIR shall include the installation of external fixed angled privacy screen or alternatively have a sill height a minimum height 1.5m above the finished floor level.

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. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

15. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

16. **Certification of Deep Foundation Piling**

Construction details and specifications in accordance with section 4 of the coastal engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 1 November 2021, submitted with application DA2021/1612, shall be prepared and signed by a suitably qualified coastal engineer demonstrating that the portion of the proposed development seaward of the minimum setback for conventional foundations is founded on deep piles. This certification is to be submitted to the Principle Certifying Authority prior to issue of the Construction Certificate.

Reason: To ensure deep foundation piling is prepared by appropriately qualified professional

17. **Coastal Inundation Risk Design**

Construction details in accordance with section 3 of the coastal engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 1 November 2021, submitted with application DA2021/1612, shall be prepared by a suitably qualified coastal engineer demonstrating that the proposal will have an acceptably low risk of being damaged due to wave runup and inundation over its design life. This certification is to be submitted to the Principle Certifying Authority prior to issue of the Construction Certificate.

Reason: To ensure the proposal will have an acceptably low risk of being damaged due to wave runup and inundation over its design life

18. **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. (DACPLC02)

19. **External Finishes to Roof**

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

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

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

20. **Surrender of Consent**

The applicant shall surrender to Council Development Consent No: DA2018/1290 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg).

21. **Solar Panels**

The solar panel required to meet the requirements of the BASIX certificate shall be installed over the garage roof. Details are to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure there is no impact on neighbouring amenity and to prevent visual clutter.

22. **Fence**

The 1m high timber fence proposed along the northern street frontage shall be 50% transparent. Details to be submitted the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To protect the quality of the streetscape.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. **Project Arborist**

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 report dated February 2022 prepared by Urban Forestry Australia 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.

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment including:

- i) All works adjacent to Tree 1 - *Araucaria heterophylla*

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.

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. Works on Land Owned or Managed By Council

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

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

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

26. 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.

27. **Protection of Vegetation Within Land Owned or Managed by Council**

Existing vegetation on the adjoining Council Reserve shall be protected at all times with no ground intrusion into reserve and no trunk, branch nor canopy disturbance.

Reason: Tree protection and management.

28. **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.

No. 171 Ocean Street, Narabeen

No. 173 Ocean Street, Narabeen

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

29. **Protection of Sites of Significance**

a) Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

b) Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW

Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

30. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
 - i) Tree 1 Araucaria heterophylla as identified in the Arboricultural Impact Assessment dated February 2022 prepared by Urban Forestry Australia
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by 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 be in accordance with the recommendation of the Project Arborist 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 dated February 2022 prepared by Urban Forestry Australia as listed in the following sections:

- i) section 5 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.

31. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

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

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

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

Reason: Protection of trees.

32. **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.

33. **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.

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

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

Reason: Public safety, landscape amenity and tree protection.

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

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

Reason: Public safety and environmental protection.

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

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

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

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

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

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

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

- 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.

38. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

39. **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.

40. **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.

41. **Waste Management During Development**

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

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

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

42. **Removal of sand**

The applicant/owner is to minimise the amount of sand removed from the property during construction. If sand is removed from the site during construction, it may be placed on the beach reserve in accordance with the direction of the Council's Environmental Officers.

Prior to any sand being placed on the beach reserve the following is to be provided:

- (a) Certification from an appropriately qualified person, that the sand is clear of any contaminants including but not limited to asbestos, building materials, soil contaminants etc.
- (b) Details of transportation from the donor site to the beach reserve.
- (c) Written Approval from Northern Beaches Council for the placement of the sand on the beach reserve.

Reason: Protection of coastal environment.

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

43. **Landscape Completion**

a) Landscaping is to be implemented in accordance with the approved Landscape Plan.

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.

44. **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.

45. **Stormwater Disposal**

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

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

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

46. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) are to be imported on to the site prior to or during construction works.

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

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

48. **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.

49. **Post-Construction Dilapidation Report**

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

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

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

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

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

50. 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.

51. Environmental Reports Certification

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) Geotechnical Report - Ref: 32419Rpt rev1, dated 05.11.2021, prepared by JK Geotechnics
- (b) Coastal Engineering Report, dated 01.11.2021, prepared by Horton Coastal Engineers
- (c) Acid Sulfate Report Ref NE220, dated 15.09.2021, prepared by Fusion Engineers
- (d) Basix Report Number 1219976S_02, dated 08.11.2021, prepared by Barlow Energy Efficiency Services

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

Reason: To ensure compliance with standards.

52. Post Construction Coastal certificate

Prior to issue of the Occupation Certificate, a suitably qualified coastal engineer is to provide written confirmation to the Principle Certifying Authority that the deep foundation piling has been constructed in accordance with section 4 of the coastal engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 1 November 2021, submitted with application DA2021/1612.

Reason: To ensure the development has been constructed to the engineers requirements.

53. 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.

54. Waste Management Confirmation

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

generally in accordance with the approved Waste Management Plan.

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

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

55. **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.

56. **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.

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

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

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

58. **Vegetated Sand Dune Preservation**

Vegetated dunes seaward of the subject development site must not be harmed and shall be protected from damage both during construction of the development and as a result of subsequent use during the life of the development.

Reason: To ensure preservation of the coastal environment

59. **Trafficable garage roof prohibited**

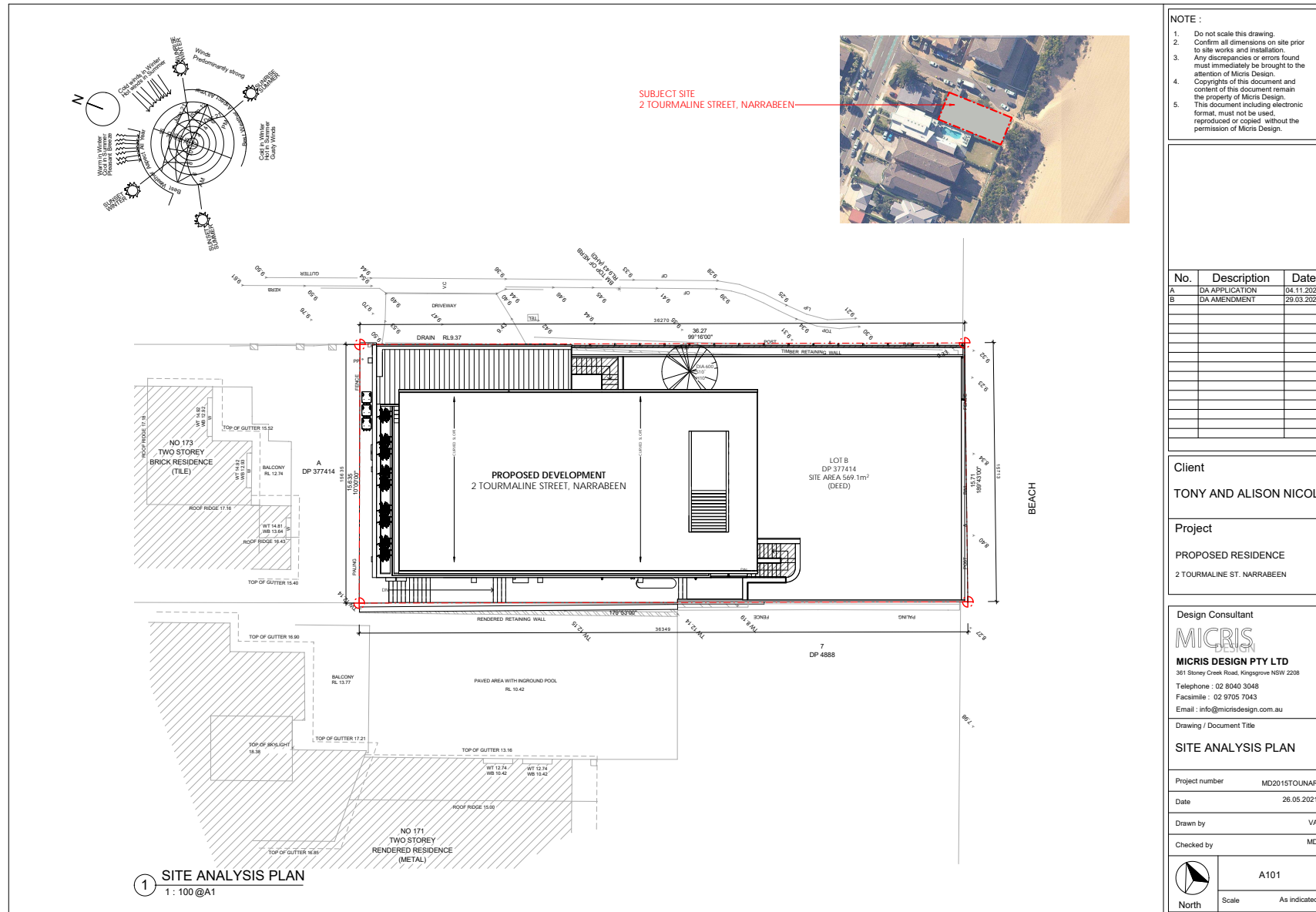
The trafficable use of the roof over the garage and entry porch is prohibited.

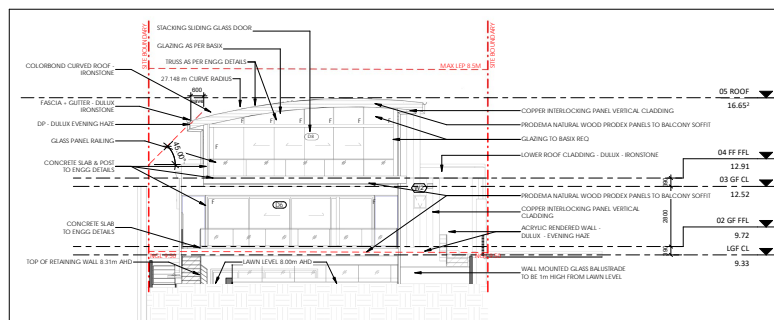
Reason: To protect neighbouring amenity.

60. **No cooking facilities on lower ground and first floor**

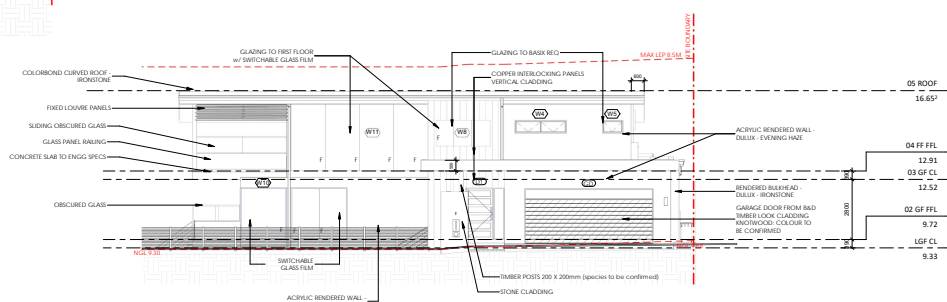
There shall be no cooking facilities on the lower ground floor and the first floor.

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

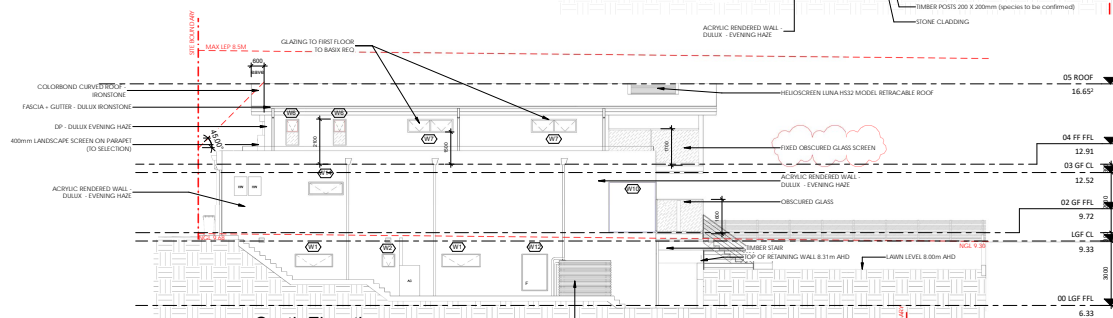




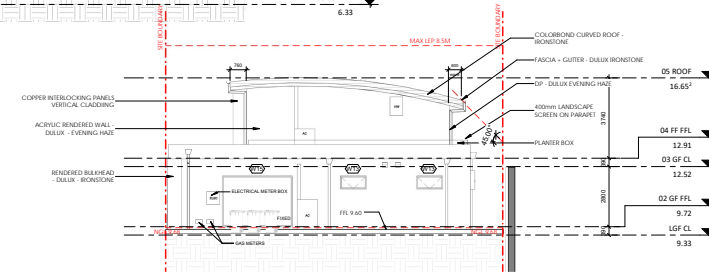
1 East Elevation
1 : 100 @A1



2 North Elevation
1 : 100 @A1



3 South Elevation
1 : 100 @A1



4 West Elevation
1 : 100 @A1

NOTE :

1. Do not scale this drawing.
2. Confirm all dimensions on site prior to site works and installation.
3. Any discrepancies or errors found must immediately be brought to the attention of Micris Design.
4. Copyrights of this document and content of this document remain the property of Micris Design.
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No.	Description	Date
A	DA APPLICATION	04.11.2021
B	DA AMENDMENT	29.03.2022

Client
TONY AND ALISON NICOL

Project
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Design Consultant
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Drawing / Document Title
ELEVATIONS

Project number MD2015TOUNAR
Date 26.05.2021
Drawn by VA
Checked by MD

North A104
Scale 1 : 100

ITEM 3.2**DA2021/2170 - 106 ILUKA ROAD PALM BEACH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE****REPORTING MANAGER**

Phil Lane

TRIM FILE REF

2022/262592

ATTACHMENTS

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

PURPOSE

To refer the attached application for determination by the discretion of the Acting Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/2170 for alterations and additions to a dwelling house on land at Lot 13 DP 12979, 106 Iluka Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2170
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 13 DP 12979, 106 Iluka Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Joanna McNiven
Applicant:	Ian Malouf Larissa Malouf
Application Lodged:	18/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/01/2022 to 18/02/2022
Advertised:	21/01/2022
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 6.47%
Recommendation:	Approval
Estimated Cost of Works:	\$ 970,035.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house that is yet to be constructed. The alterations involve the excavation of a basement level beneath the dwelling and associated fit-out and minor changes to the upper floors.

The application is classified as Nominated Integrated Development as approval is required under the Water Management Act 2000. This is due to the expected quantity of de-watering required during excavation and construction of the basement. The application was referred to WaterNSW who has provided General Terms of Approval.

The application is referred to the Development Determination Panel (DDP) under discretion of the Executive Manager Development Assessment due to the total cost of works of this application and two

existing development consents applying to the dwelling house development exceeding \$1 million and more than three unresolved objections received for this application. The total cost of works for the dwelling house development is expected to be \$1,626,196.00.

Concerns raised in the objections predominantly relate to the extent of the proposed basement excavation and its potential impacts on land stability and groundwater flows.

Critical assessment issues included consideration of a 6.47% building height non-compliance, the impact of the proposed development on groundwater and de-watering during construction. The proposed basement sits within the footprint of the approved dwelling and alterations to the upper floors are consistent with the approved built form.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including the construction of a new basement level for car parking, boat storage and general storage.

The proposed new works include the following elements:

Basement Level

- Proposed vertical car hoist, with the proposed car hoist to be located within the existing approved garage to allow for vehicles to be lowered to the proposed basement level for additional off street car parking
- Proposed boat hoist to provide for boats stored within the basement to be raised to the western yard level, for access over Snapperman Beach Reserve to Pittwater
- General storage areas
- Laundry and wine store
- Internal lift

Ground Floor Level

- New paved terrace with a concealed flip lid door to access boat storage within basement level
- Demolition of existing deck
- New steps in courtyard to the rear of the garage

First Floor Level

- General internal modifications, including removal of walls and providing glazing to exterior walls

Attic Level

- General internal modifications, including removal of walls and providing glazing to exterior walls
- New skylights

Roof

- Removal of existing skylights and provision of two new skylights

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 13 DP 12979 , 106 Iluka Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Iluka Road.</p> <p>The site is regular in shape with a frontage of 13.715m along Iluka Road and a depth of 50.655m. The site has a surveyed area of 617.6m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates three-storey residential dwelling with a detached garage and entry pergola structure at the front and a timber deck at the rear.</p> <p>The site has a slight fall towards the west and contains a large tree adjacent to the rear boundary, several palm trees at the front of the dwelling and garden areas throughout.</p>

	<p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings. The site adjoins a public reserve at the rear.</p>
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Map:



SITE HISTORY

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

Application **N0307/15** for Alterations and additions to existing dwelling was approved on 01/10/2015 by the former Pittwater Council. This consent has not been acted upon and has since lapsed.

Application **DA2018/0841** for Alterations and additions to a dwelling house was approved on 13/09/2018 by Council staff.

Application **DA2018/1680** for Demolition Works and construction of a detached garage and studio was approved on 17/04/2019 by Council staff.

Application **DA2019/0476** for Alterations and additions to a dwelling house was approved on 27/09/2019 by Council staff.

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/01/2022 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 4 submission/s from:

Name:	Address:
Mrs Susan Margaret Young	28 Hillcrest Avenue MONA VALE NSW 2103
Ms Kerrie Anne Jaber	108 Iluka Road PALM BEACH NSW 2108
Mrs Jennifer Margaret Greaves	35 Iluka Road PALM BEACH NSW 2108
The Palm Beach & Whale	Palm Beach/Whale Beach Areas AB Dummy For Daba Notification

Name:	Address:
Beach Association Inc	WARRIEWOOD NSW 2102

The following issues were raised in the submissions:

- Impact of basement excavation on adjacent properties
- Impact on groundwater
- Movement of boats across public reserve
- Landscaping
- Alterations and additions
- Building bulk and scale
- Cost of works

The above issues are addressed as follows:

- **Impact of basement excavation on adjacent properties**

The submissions raised concerns that the proposed basement excavation will impact upon the stability of structures on adjacent properties.

Comment:

The proposed development has been extensively reviewed by Council's Development Engineers to ensure impact of the basement excavation on the stability of adjacent properties is mitigated. Several conditions have been imposed requiring the shoring of the excavation area to ensure the stability of the land is maintained during excavation. Conditions are also included to require pre-construction and post-construction dilapidation reports be prepared for the northern and southern adjacent residential properties and the adjacent public reserve and street.

- **Impact on groundwater**

The submissions raised concerns that the proposed development will impact upon groundwater flows. It is requested that ongoing monitoring of the groundwater quality is conducted.

Comment:

The proposed development has been reviewed by Council's internal referral bodies and WaterNSW regarding the impact of the basement excavation on groundwater. As part of the referral to WaterNSW a detailed hydrological assessment of the proposal was conducted. No concerns regarding the impact of the proposed development on groundwater have been raised, subject to compliance with the conditions of consent. Ongoing monitoring of the groundwater quality has not been recommended by any referral body. As such, this requirement is not recommended to be imposed.

- **Movement of boats across public reserve**

The submissions raised concerns that movements of boats across the public reserve at the rear of the site will cause damage to the reserve.

Comment:

It is not expected that the proposed development will result in substantially increased movement of boats across the public reserve that will result in its degradation. Members of the public are permitted to utilise the public reserve to launch small boats and kayaks regardless of whether it is directly from private property.

- **Landscaping**

The submissions raised concerns that the proposed development does not provide adequate landscaping on the site.

Comment:

The proposed development increased the amount of landscaped area on the site from 32.7% approved under DA2019/0476 to 38.5%. While not compliant with the minimum landscape requirement, the proposed increase in landscaped area is considered to be acceptable and the proposal achieves the relevant outcomes of P21DCP.

- **Alterations and additions**

The submissions raised concerns that the extent of the proposed works should not be considered to be alterations and additions.

Comment:

The proposed development is consistent with the definition of alterations and additions. Majority of the built form of the past approved dwellings on the site is maintained in this proposal. As such, no change of development description is recommended.

- **Building bulk and scale**

The submissions raised concerns that the proposed development is excessive in its bulk and scale and incompatible with existing development in the locality.

Comment:

The height, bulk and scale of the dwelling is generally consistent with that of past approved dwellings on the site. As such, the bulk and scale of the proposal is not considered to be unreasonable.

- **Cost of works**

The submissions raised concerns that the submitted cost of works is unlikely to be accurate.

Comment:

The applicant has submitted a cost report summary prepared by a registered architect in accordance with Council's lodgement requirements. However, the application relates to alterations to a new dwelling approved under two past development consents, DA2018/1680 and DA2019/0476. When taking into consideration the cost of works for the past applications and this application, the total cost of works for the new dwelling and basement is expected to be \$1,626,196.00. As such, this application will be referred to the Development Determination

Panel for determination under discretion of the Executive Manager Development Assessment.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>The geotechnical report was reviewed for pH and potential acidity of subsurface soil. The report demonstrated that subsurface soil is alkaline, not acid, and contains only minor amounts of sulphur. An acid sulphate soil management plan is not required for the proposed works.</p>
Landscape Officer	<p>The application seeks consent for alterations and additions to an existing dwelling, including the construction of a new basement.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The Arborist's Report prepared by Jacksons Nature Works is noted.</p> <p>The report indicates that the proposed works can be undertaken with an acceptable level of impact on 1 x <i>Araucaria heterophylla</i> (Norfolk Island Pine) located at the rear of the property, subject to Arboricultural supervision.</p> <p>Existing approvals for other works and tree removals on the site are noted.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and additions to an existing dwelling, including the construction of a new basement level.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> • Coastal Environment Area <p>The application does not seek approval for the removal of any prescribed trees or vegetation. The submitted Arboricultural Impact Assessment Report states that a mature <i>Araucaria heterophylla</i> (Tree</p>

Internal Referral Body	Comments
	<p>1) can be retained subject to the recommendations of the project Arborist.</p> <p>Subject to conditions including the retention of Tree 1, no objection is raised by Council's Natural Environment Unit - Biodiversity.</p>
NECC (Coast and Catchments)	<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> <p>Coastal Management Act 2016</p> <p>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</p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps and so clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty Ltd dated November 2021 and Estuarine Risk Management Report by Horton Coastal Engineering Pty. Ltd. dated 4 November 2021, the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p> <p>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</p>

Internal Referral Body	Comments
	<p>development of the site.</p> <p>According to B3.7, basement (i.e. below ground level (existing)) garage: All access, ventilation and any other potential water entry points must be above the Estuarine Planning Level. A clearly signposted pedestrian access to a 'safe haven' above the Estuarine Planning Level, separate from the vehicular access ramps, shall be provided. The access ramp to the basement, where practical should not face the direction of wave action.</p> <p>Further, Innovative and alternative design in wave action and tidal inundation protection measures may be permitted on a merit basis subject to demonstration through and Estuarine Risk Management Report that the protection measures can be achieved.</p> <p>An EPL of 2.5m AHD has been recommended through an analysis provided in the Estuarine Risk Management Report by Horton Coastal Engineering Pty. Ltd. dated 4 November 2021. Further the report has recommended an innovative design to prevent normal wave inundation of the basement.</p> <p>The existing ground floor level is above the recommended EPL. However, the proposed tanked basement level is below the EPL but with all its external entries are above the EPL. The proposed development is, therefore, subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A 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 DA proposes terrace and basement extend into the Foreshore Area on the footprint of the existing deck which will be removed. The existing deck at the property (which is to be demolished) extends significantly further into the Foreshore Area than the proposed terrace.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty Ltd dated November 2021 and Estuarine Risk Management Report by Horton Coastal Engineering Pty. Ltd.</p>

Internal Referral Body	Comments
	dated 4 November 2021, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Development Engineering)	<p>The proposal does not require OSD and connection of stormwater to the existing system is acceptable. There is no alteration to the previously approved garage at ground level but a proposed basement for the garage including a hoist. The submitted Geotechnical report addresses the relevant DCP controls. The proposed basement is to be tanked to ensure no change to the ground water. Dewatering has been reviewed and approved by Council's Water Management Team.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater, or the quantity and quality of surface and ground water flows that it receives. The development must not significantly effect seagrass beds or other estuarine habitats.</p> <p>For dewatering, refer to the water management referral.</p> <p>The proposal is located within 40 metres of Pittwater estuary and includes a controlled activity under the Water Management Act 2000. For this reason, a controlled activity permit from the Natural Resources Access Regulator (NRAR) will be required.</p> <p>This application is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater including seagrass beds if conditions are adhered to.</p>
NECC (Water Management)	<p>This application has been assessed against relevant legislation and policy relating to water management, waterways, riparian areas, and groundwater.</p> <p>A permit from Council is required for any dewatering of groundwater.</p> <p>The Geotechnical Report and Dewatering Management report indicates that the excavation will approach the water table, and that groundwater could pose an issue during construction works. The applicant will need to request a dewatering permit from Council prior the dewatering of the construction stage.</p> <p>To undertake construction dewatering, the applicant must follow WaterNSW general terms of approval IDAS1143180, issued 21 April 2022 for the site.</p> <p>The WaterNSW water supply works and approved Construction Phase Monitoring programme must be supplied to Council to support the request for Council dewatering permit.</p>

Internal Referral Body	Comments
	<p>The development application is supported subject to conditions and WaterNSW general terms of approval.</p> <p>Contact catchment@northernbeaches.nsw.gov.au for more information about permits.</p> <p>No objection to the application, subject to conditions.</p>
Parks, reserves, beaches, foreshore	<p>The proposed works are on land adjoining a Council Reserve. No works are proposed on the reserve, however due to the extent of excavation proposed, there is potential for impacts on the reserve.</p> <p>Conditions protecting Council assets and reserve have been included to address potential impacts.</p> <p>No objections subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>
Nominated Integrated Development – WaterNSW - Water Management Act 2000 (s91 Permit for Temporary Construction Dewatering)	<p>The application was referred to WaterNSW due to the proposal requiring a Water Supply Work approval under the Water Management Act 2000.</p> <p>WaterNSW has reviewed the proposed development and have provided General Terms of Approval which have been included in the conditions of consent.</p>
Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse)	<p>Council referred the application to the Natural Resources Access Regulator (NRAR) for a controlled activity permit due to the proposed development including the carrying out of works within 40m of the mean high water mark of the Pittwater estuary. However, NRAR has advised that as the application relates to a dwelling house, the proposed development qualifies for an exemption and a controlled activity permit is not required in this case.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A435947, dated 15/10/2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

Refer to Coast & Catchments comments for CM SEPP consideration.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.05m	6.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	N/A
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.05m
Percentage variation to requirement:	6.47%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The proposal will maintain the approved parapet level of RL12.05 as previously considered under Notice of Determination of DA2019/0476 dated 27 September 2019 and which provides for a maximum building height of 9.05m which exceeds Council's maximum building height control by 550mm or 6.47%. The proposed works do not seek to increase the approved building height.

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

Notwithstanding the non-compliance with the building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties, which includes single dwellings and dual occupancy development.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

Council concurs with the applicant in that the proposed development will not cause any additional impact to adjacent properties by virtue of a non-compliant building height as a recent past consent

granted approval for the dwelling to exceed the building height to the same extent proposed in this application.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The proposed development will maintain consistency with the existing approval on the site and will not result in any additional unreasonable impact to adjacent properties or the public domain by virtue of its height and scale.

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

Comment:

The proposed development maintains the height of the existing approved development and is considered to be compatible with existing development in the locality.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not result in any additional overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

The development will not result in the unreasonable disruption of views within the locality.

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

Comment:

The development is located on a generally flat site. The building design is considered to appropriately respond to the site topography.

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

Comment:

The proposal is designed to match the design of the approved development and will not result in any unreasonable visual impacts on the natural environment, heritage conservation areas or heritage items.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The proposal is for minor alterations and additions to the existing approved development and will not impact on the areas special ecological, scientific or aesthetic values.

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

Comment:

As discussed above, the development will not have an adverse impact on the areas special ecological, scientific or aesthetic values.

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

Comment:

The application will result in a development that is adequately integrated into the landscape and the desired future character of the locality.

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

Comment:

The development will not impact on the riparian and foreshore vegetation or wildlife corridors.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

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 alteration of an existing building partly in the foreshore area, but will not result in the footprint of the building extending further into the foreshore area.

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 C4 Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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 retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	3m	1.9m	36.7%	No
Rear building line	Foreshore building line	Partially below FSBL	N/A	Acceptable, see discussion
Side building line	N - 2.5m	1.7m	32%	No
	S - 1m	1.05m	N/A	Yes
Building envelope	N - 3.5m	Outside envelope	27.4%	No
	S - 3.5m	Outside envelope	46%	No
Landscaped area	60% (370.5m ²)	38.5% (238m ²)	35.8% (132.5m ²)	No

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
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.5 Front building line

Description of non-compliance

The control requires structures to be setback a minimum of 3m from the front boundary along the western side of Iluka Road.

The proposed development has a front setback of 1.9m, representing a variation of 36.7%.

It is noted that the proposed development does not alter the front setback of development approved under past consents issued for the site.

Merit consideration

On the basis that the proposed development does not alter the existing approved front setback of past development applications on the site and the new works will not be visible from the street, it is considered that the outcomes of the control are satisfactorily achieved and is acceptable on merit.

D12.6 Side and rear building line

Description of non-compliance

The control requires development be setback at least 2.5m from at least one side boundary and 1.0m from the other side. In this case, the northern boundary is taken as the 2.5m boundary and the southern boundary is taken as the 1m boundary.

The proposed development is setback 1.7m from the northern side boundary and 1.05m from the southern side boundary, representing a variation of 32% to the north side setback requirement.

It is noted that the proposed development does not alter the side setbacks of buildings in recently

approved development applications on the site. The most recent approval on the site permitted a northern side setback of 1.7m.

Merit consideration

On the basis that the proposed development does not alter existing non-compliant side setbacks approved in past development applications on the site, it is considered that the outcomes of the control are satisfactorily achieved and is acceptable on merit.

D12.8 Building envelope

Description of non-compliance

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

The proposed development exceeds the building envelope along the northern elevation by up to 2m, representing a variation of 27.4%.

The proposed development exceeds the building envelope along the southern elevation by up to 2.9m, representing a variation of 46%.

Merit consideration

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

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

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development and generally in keeping with the desired future character of the locality.

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

Comment:

The proposed development will maintain the past approved ridge height of the dwelling and below the canopy of surrounding significant trees.

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

Comment:

The development is considered to adequately respond to the spatial characteristics of the existing natural and built environments. The overall scale of the additions are generally in keeping with the existing approved built form on the site and adjacent sites.

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

Comment:

The scale of the development is considered to be in keeping with the approved dwelling and the scale of adjacent buildings.

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

Comment:

The proposed development does not result in any unreasonable impacts upon views currently enjoyed from adjoining properties.

- *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 will not result in any unreasonable impacts upon the amenity of adjoining properties.

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

Comment:

Additional landscaping and vegetation are proposed to be incorporated into the design of the dwelling additions. The proposed landscaping will assist in limiting visual impact caused by the development.

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

D12.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The control requires a minimum of 60% (370.5m²) of the site area to be landscaped.

The proposed development includes 38.5% (238m²) landscaped area, representing a variation of 35.8% (132.5m²).

Provided the outcomes of this control are achieved, impervious areas less than 1 metre in width and impervious landscape treatments providing these areas are for outdoor recreational purposes only up to 6% of site area can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 44.5% of site area.

It is noted that the proposed development increased the amount of landscaped area compared to other recently approved development applications on the site. The most recent approval on the site permitted a non-compliant landscaped area of 32.7%.

Merit consideration

On the basis that the proposed development results in an increase in the existing approved landscaped area on the site, it is considered that the outcomes of the control are satisfactorily achieved and is acceptable on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$9,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$970,035.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

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

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/2170 for Alterations and additions to a dwelling house on land at Lot 13 DP 12979, 106 Iluka Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.1.001 Rev C	15/10/2021	Mathieson
DA.1.002 Rev B	08/10/2021	Mathieson
DA.1.101 Rev B	08/10/2021	Mathieson
DA.1.102 Rev B	08/10/2021	Mathieson
DA.1.103 Rev B	08/10/2021	Mathieson

DA.1.104 Rev B	08/10/2021	Mathieson
DA.1.105 Rev B	08/10/2021	Mathieson
DA.2.101 Rev C	08/10/2021	Mathieson
DA.2.102 Rev C	15/10/2021	Mathieson
DA.2.103 Rev B	08/10/2021	Mathieson

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A435947	15/10/2021	Certified Energy
Arboricultural Impact Assessment Report	06/10/2021	Jacksons Nature Works
Construction Methodology Report (Ref: 4735)	11/10/2021	M&G Consulting Engineers
Dewatering Management Plan (Ref: 33076PD2rpt)	12/10/2021	JK Geotechnics
Estuarine Risk Management Report	04/11/2021	Hortorn Coastal Engineering

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	01/11/2021	Peter Wilding

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	13/12/2021
WaterNSW	WaterNSW Referral Response - General Terms of Approval (Ref: IDAS1143180)	21/04/2022

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

Reason: To ensure the work is carried out in accordance with the determination and the

statutory requirements of other departments, authorities or bodies.

3. Approved Land Use

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

The studio above the garage must not be used beyond the definition of a *detached studio*, as defined by s1.5 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

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

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

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,700.35 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 \$970,035.00.

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

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

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

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

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

7. Security Bond

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

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

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

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

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

8. Construction, Excavation and Associated Works (Security Bond)

A bond of \$20,000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

Reason: Protection of Council's infrastructure.

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

9. Tree Protection Plan

- a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate demonstrating tree protection measures to protect the following trees:
 - i) 1 x *Araucaria heterophylla* located at the rear of the property
- b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture incorporating the following:
 - i) layout of the development, including existing and proposed underground services,
 - ii) location of all trees identified for retention, including extent of canopy,
 - iii) access routes throughout the site for construction activity,
 - iv) location of tree protection fencing / barriers,
 - v) root protection in the form of mulching or boards proposed within the tree protection zone,
 - vi) trunk and branch protection within the tree protection zone,
 - vii) location of stockpile areas and materials storage,

- viii) inspection hold points,
 - ix) other general tree protection measures.
- c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason: Tree protection.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JKGeotechnics dated 12 October 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Preparation of a Tree Removal Protocol**

All tree protection measures as recommended within the submitted Arboricultural Impact Assessment Report (Jacksons Nature Works 2021) are to be adhered to.

Details demonstrating compliance must be prepared by the Project Arborist and submitted to the Principal Certifying Authority prior to any commencement.

Reason: To protect biodiversity values.

12. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

13. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

14. **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.

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. **Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from Water NSW. The bore license must be obtained prior to commencement of dewatering works. All requirements of Water NSW are to be complied with and a copy of the approval must be submitted to the Certifying Authority.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

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, 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.

18. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

19. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

20. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.5 m AHD has been recommended and adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- o All structural elements below 2.5 m 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 2.5 m AHD or waterproofed to this level; and
- o The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.5 m AHD.
- o All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.5 m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.5 m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

21. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd, dated 4 November 2021, and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

22. **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 60 years 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 4 November 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

23. **Low Level Coastal Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

24. **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.

25. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

26. **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 approved Tree Protection Plan 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.

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

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

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

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

28. **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.

29. **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:

- o 104 Iluka Road
- o 108 Iluka Road

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

30. **Protection of Sites of Significance**

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

31. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the approved Tree Protection Plan 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 with minimum AQF Level 5 in arboriculture,
 - 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.

32. **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.

33. **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.

34. **Dewatering Management**

Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. The WaterNSW water supply works and approved Construction Phase Monitoring programme must be supplied to Council to support the request for Council dewatering permit.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW, Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

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

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

Reason: Public safety, landscape amenity and tree protection.

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

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

Reason: Public safety and environmental protection.

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

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

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

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

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

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. **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.

40. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with

RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

41. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

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

42. **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.

43. **Stormwater Disposal**

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

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

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

44. **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.

45. **Post-Construction Dilapidation Report**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure. The post dilapidation report is to be submitted to Council for acceptance. The acceptance is to be submitted to the Principal Certifying Authority.

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

Reason: To ensure security against possible damage to Council property.

46. **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.

47. **Post-Construction Dilapidation Report**

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

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

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

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

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

48. **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.

49. **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.

50. **Removal of Sediment and Erosion Controls**

Before demobilising from the site and once vegetation cover has been re-established across 70 percent of the site, the applicant is to remove all temporary sediment and erosion controls.

Any area of the site that requires ongoing stabilisation must have jute mesh or matting incorporated into the revegetated area. Mulch may be used on slopes subject to sheet flow with a gradient of no more than 1 metre in height for every 3 horizontal metres. Mulch must be laid to a depth of 50-100mm. If using mulch within two metres of the top of bank of a waterway, coir logs or similar must be placed at the downslope edge of the mulched area to prevent migration of the mulch to the waterway.

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

Reason: Protection of the receiving environment

51. **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

52. **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.

53. **Plant Equipment Motor Noise**

Plant equipment motors 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.

54. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
- d) Any vegetation or other material removed from the area of operations shall be disposed of

lawfully. Burning of the material is not permitted.

e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.

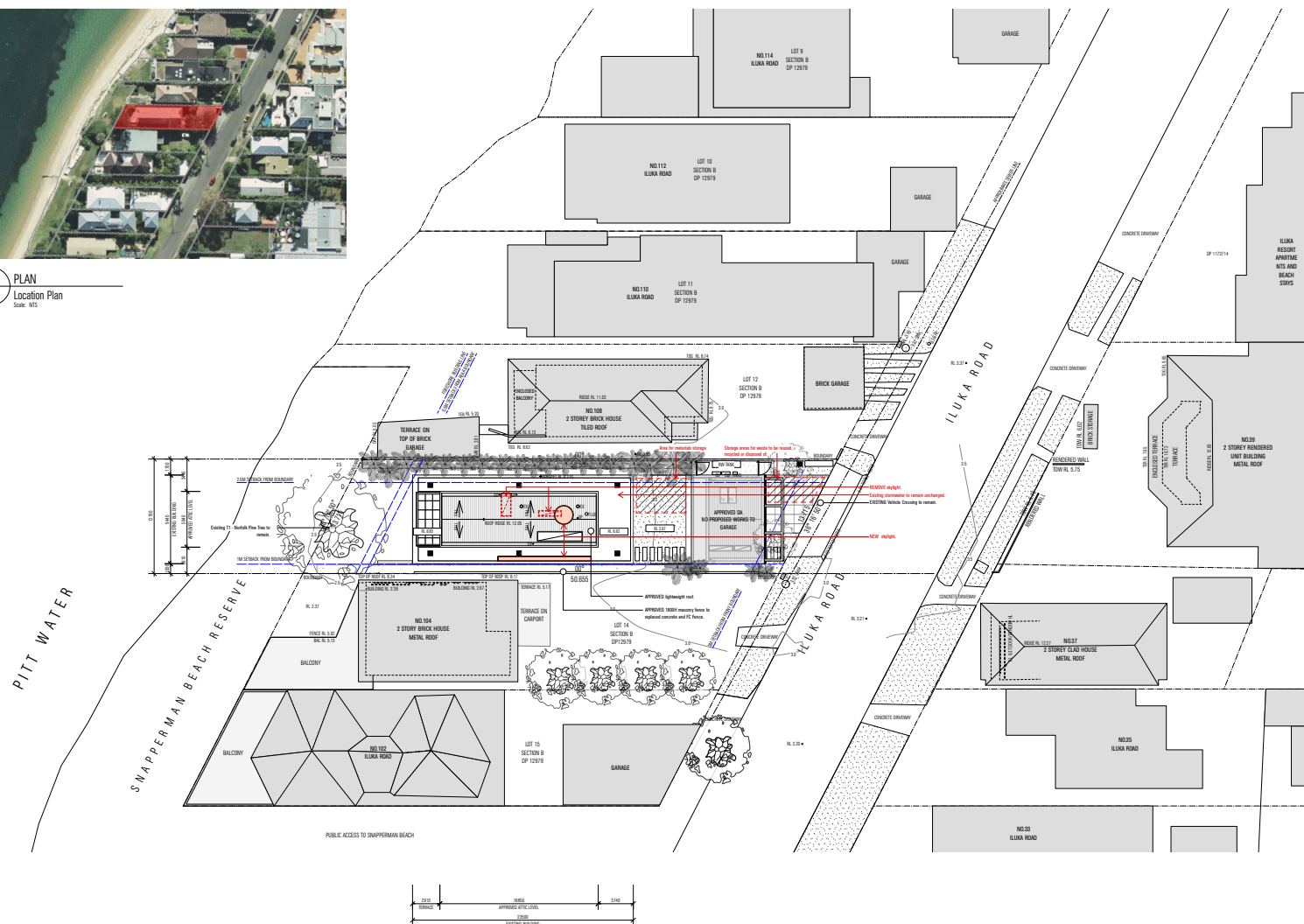
55. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd, dated 4 November 2021, and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment



02 PLAN
Location Plan
Scale: NTS



01 PLAN
Site Plan / Roof Plan
Scale: 1:200

MATHIESON ARCHITECTS
12/11 ON PETER ST SUITE 101/102 ILUKA RD ILUKA NSW
T: 08 1 555 1100 MATHIESONARCHITECTS.COM

LEGEND

- Proposed modification
- Existing to be demolished
- Existing structure
- Ground surface / height representation

MAJOR COMMENTS CONCERNING NO. 40007

FEATURES AND SYSTEMS	
ROOFING	Minimum 40% of roof or parapet light fixtures on rising with horizontal parapet or 120° angle
FEATURES	None or altered (downward) from a three side no greater than 30, per minute or 2.5 star water rating
	None or altered (downward) from a three side no greater than 12, per minute or 2.5 star water rating
	None or altered (downward) from a three side no greater than 12, per minute or 2.5 star water rating

CONSTRUCTION	
WALLS & FLOORS	Walls and floors must be constructed in accordance with specifications listed in the table to the associated BASIX Report

GLAZING REQUIREMENTS	
WINDOWS & DOORS	Glazing to be selected in accordance with specifications listed in the table to the associated BASIX Report

NOTES

REV	DATE	REVISIONS	BY	CHEK
A	15/02/21	PRELIMINARY CONSULTATION	AM	AM
B	01/02/21	OP issue	AM	AM
C	10/02/21	OP issue	AM	AM

PROJECT ILUKA ROAD RESIDENCE

ADDRESS 106 ILUKA ROAD, PALM BEACH 2108

LOT 1A, SECTION 8, DP 129719

DOCUMENT DEVELOPMENT APPLICATION

DRAWING

SITE / LOCATION

DATE 15/02/21 **SCALE** 1:200

DRAWN PROJECT NO. 21015

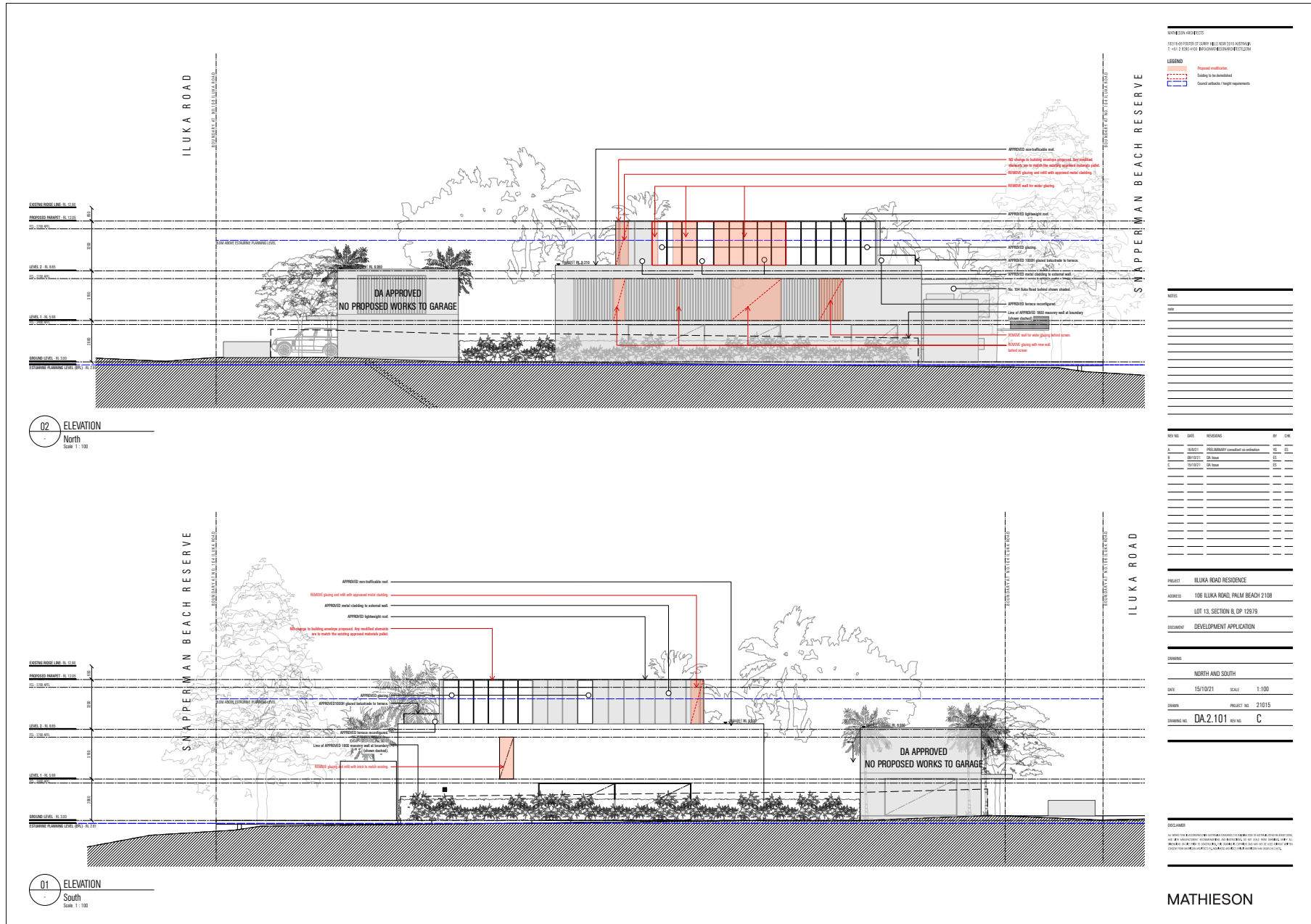
DRAWING NO. DA.1.001 **REV NO.** C



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MATHIESON



[illegible][illegible]

PROJECT	ILUKA ROAD RESIDENCE
ADDRESS	106 ILUKA ROAD, PALM BEACH 2108
	LOT 13, SECTION 8, DP 12979
DOCUMENT	DEVELOPMENT APPLICATION

DRAWING		
EAST / WEST / STREETSCAPE (ILUKA ROAD)		
DATE	15/10/21	SCALE 1:100
DRAWN	PROJECT NO.	21015
DRAWING NO.	DA.2.102	REV NO. C

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MATHIESON

ITEM 3.3

REV2021/0044 - 46 RUSKIN ROWE AVALON BEACH - REVIEW OF DETERMINATION OF APPLICATION DA2020/1004 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A CAR PORT

REPORTING MANAGER

Phil Lane

TRIM FILE REF

2022/265212

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2021/0044 for Review of Determination of Application DA2020/1004 for demolition works and construction of a dwelling house including a car port on land at Lot 23 DP 22361, 46 Ruskin Rowe AVALON BEACH, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0044
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 23 DP 22361, 46 Ruskin Rowe AVALON BEACH NSW 2107
Proposed Development:	Review of Determination of Application DA2020/1004 for Demolition works and construction of a dwelling house including a car port
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Karen Elizabeth Begg
Applicant:	Rapid Plans Pty Ltd
Application Lodged:	09/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	17/12/2021 to 22/01/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,315,100.00

EXECUTIVE SUMMARY

The report is submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Review of Determination REV2021/0044 for demolition works and construction of a dwelling house including a garage, studio and carport.

This application is a review of Development Application DA2020/1004, which was approved by Council under delegated authority on 25 May 2021. Condition 12 of this consent required the previously proposed two storey double garage and secondary dwelling structure to be deleted from the consent due to concerns raised by Council's Heritage Advisors regarding the impacts of a two storey built form ancillary to the principal dwelling house.

Under this review of determination application the applicant has requested that Condition 12 be removed and the ancillary structure be supported, in addition to amendments to other conditions imposed under Development Consent DA2020/1004. The subject application involves a double garage with attached studio in lieu of the previously proposed two storey garage/secondary dwelling structure. Throughout the assessment process amended plans were submitted to amend the two storey garage/studio structure to a single storey structure to address the issues raised by Council's Heritage Advisors. The amended plans have been assessed and are considered to be satisfactory.

The application was exhibited for 14 days and did not receive any submissions.

The proposed development complies with all applicable numeric principal development standards and built form controls and demonstrates consistency with the Pittwater 21 DCP Desired Future Character Statement. Additionally, the works are sufficiently separated from adjacent dwellings to ensure that a reasonable level of amenity is maintained between properties.

Accordingly, it is recommended that the DPP approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

Proposed Development under Development Application DA2020/1004

The application sought approval for the demolition of an existing dwelling house, carport and shed and the construction of a single storey dwelling house with an attic above, a detached garage with secondary dwelling above and detached carport. Condition 12 of this consent required the two storey garage/secondary dwelling structure to be excluded from the consent due to issues raised by Council's Heritage Advisors.

Proposed Development under this Review of Determination

The applicant seeks a review Development Application DA2020/0923. The applicant has requested that the following conditions imposed under DA2020/0923 be reviewed:

- Amend Condition 1a) of the consent: This review relates to the inclusion of a detached garage with a studio above, in addition to minor amendments to the approval principal dwelling house. The detached garage/studio structure has been lodged in lieu of the previously proposed detached garage with secondary dwelling above, with was required to be deleted by Condition 12 of Development Application DA2022/0923.
- Amend Condition 4: This review relates to amending the standard construction hours in accordance with the Environmental Planning and Assessment (Covid 19 Development – Construction Work Days) Order 2020.
- Delete Condition 11: This condition requires a schedule of external materials and colours are to be provided to Council's Heritage Officer's satisfaction prior to the issuing of the construction certificate.
- Delete Condition 12: This condition requires the deletion of a detached secondary

dwelling/garage. The applicant has proposed a single storey studio/garage structure in lieu of the previously proposed two storey secondary dwelling/garage.

- Delete Condition 17: This condition requires a sediment and erosion control plan to be prepared by the applicant. The applicant has prepared a sediment and erosion control plan for this review (refer to plan DA1015, dated 27 April 2022, prepared by Action Plans).
- Delete Condition 20: This condition relates to external colours/materials for mixed use buildings. The applicant requests that this either be deleted or amended to relate to class 1 and 10 buildings.
- Delete Condition 28: This condition requires the applicant to construct a vehicle crossover. The applicant contends that this is not required as Ruskin Rowe has no footpath.

The works proposed under this application involve the demolition of an existing dwelling house, carport and shed and the construction of a single storey dwelling house with a mezzanine level above within the roof space, a detached garage/studio structure and detached carport. The existing in-ground swimming pool will be retained within the rear yard.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 5.21 Flood planning

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D1.5 Building colours and materials

SITE DESCRIPTION

Property Description:	Lot 23 DP 22361 , 46 Ruskin Rowe AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Ruskin Rowe, Avalon Beach.</p> <p>The site is irregular in shape with a frontage of 11.2m along Ruskin Rowe and a maximum depth of 127m. The site has a surveyed area of 4382.04sqm and accommodates a single storey dwelling house, double carport and swimming pool. Vehicular and pedestrian access is provided via a gravel driveway from Ruskin Rowe.</p> <p>The site is located within the C4 Environmental Living Area pursuant to Pittwater LEP 2014 and forms part of the Ruskin Rowe Heritage Conservation Area (HCA). Part of the site is mapped as flood affected it is also mapped as bush fire prone with a reserve adjoining the site to the immediate west. The site is heavily vegetated with native gums and cabbage tree palms and is a Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor. There is a slight rise in levels from east to west.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses) within heavily vegetated settings on larger residential allotments. The scale of development within the Ruskin Rowe HCA is 1-2 storeys.</p>

Map:



SITE HISTORY

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

- **Development Application N0484/01** for alterations and additions to an existing dwelling was approved by Council on 18 September 2001.
- **Development Application DA2020/1004** for demolition works and construction of a dwelling house including a car port approved by Council on 25 May 2021. It is noted that the proposed secondary dwelling/garage structure was deleted via Condition 12 of this consent.

APPLICATION HISTORY

The Development Assessment Planner examined the site and the surrounds on 14 February 2022.

Following the preliminary assessment of the application, Council wrote to the applicant expressing concern of the proposed two storey double garage with studio above. Council's Heritage Advisor stipulated that the two storey ancillary structure was contrary to the desired future character of the Ruskin Rowe HCA.

Subsequently, the applicant submitted amended plans which reduced the proposed garage/studio structure to a single storey built form. Council's Heritage Advisor has assessed the amended plans and raised no concerns, subject to conditions.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 25 May 2021 and the notice of determination was issued on 26 May 2021. The review was lodged on 6 December 2021 and is to be considered by the Northern Beaches Development Determination Panel on 11 May 2022, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

Assessment of Conditions imposed under DA2020/1004 that are the subject of this Review

Condition 1. Approved Plans and Supporting Documentation

The applicant has requested that this condition be amended to include the proposed garage/studio structure within the approved stamped plans. Condition 12 of the development consent required the previously proposed two storey garage/secondary dwelling to be deleted due to inconsistencies with the desired future character of the Ruskin Rowe HCA.

In lieu of the previously proposed two storey garage/secondary dwelling the applicant proposed a garage with an attached studio. The original plans proposed under this review entailed a two storey structure with the garage on the ground floor and the studio located on the first floor. Throughout the assessment process Council requested that the proposed two storey garage/studio be amended to a single storey structure due to concerns raised by Council's Heritage Advisor. The applicant subsequently submitted amended plans which proposed a single storey garage/studio structure. The amended plans have addressed the concerns raised by Council's Heritage Advisor.

Accordingly, Condition 1 will be amended to include the plans depicting the single storey garage/studio structure within the approved stamped plans.

Condition 4. General Requirements

The applicant requested that Condition 4 imposed under the development consent be amended to alter the standard construction hours to reflect the hours permitted under the Covid 19 Development – Construction Work Days Order 2020.

In response, it is noted that Environmental Planning and Assessment (Covid 19 Development – Construction Work Days) Order 2020 was a temporary order and no longer applies. As such, the request to amend the construction hours in condition 4 is not accepted.

Condition 11. Schedule of External Colours and Materials

This condition required a schedule of external materials and colours to be provided to Council's Heritage Officers for approval prior to the issuing of the construction certificate. The applicant requested that this condition be deleted.

In response, Council's Heritage Advisor has reviewed this request and stipulated that this condition shall remain. Council's Heritage Advisor's comments are as follows:

"It is noted that the applicant has requested deletion of Condition 11 of Consent DA2020/1004 which required submission of details of external materials and colours for approval by Council's Heritage Officer prior to CC. This condition is essential and should not be deleted. This condition applies to all structures on the site, including the revised garage/secondary dwelling structure".

Condition 12. Amendments to the approved plans

This condition stipulated as follows: *"The secondary dwelling with double garage below are not approved and do not form any part of this consent. The secondary dwelling is to be deleted from the approved plans"*. This condition was imposed due concerns raised by Council's Heritage Advisor of the impacts resulting from a two storey built form that was ancillary to the principal dwelling. The applicant requested that this condition be deleted.

In response, the amended plans that are subject to this final assessment contain a single storey garage/studio structure. Council's Heritage Advisor has reviewed the amended plans and raised no concerns, subject to a condition requiring a schedule of colours and materials to be submitted and approved prior to the issue of the Construction Certificate. Therefore, a condition requiring the deletion of this structure will not be imposed under this review.

Condition 17. Erosion and Sediment Control Plan

This condition requires a detailed erosion and sediment control plan to be prepared for the development. The applicant has prepared a sediment and erosion control plan for this review (refer to plan DA1015, dated 27 April 2022, prepared by Action Plans). Accordingly, the applicant has requested that this condition be deleted.

In response, the Development Assessment Planner is satisfied that the sediment and erosion control plan prepared by the applicant meets the requirements of Condition 17 imposed under the development consent. Therefore, Condition 17 will be removed from this 8.2 review determination.

Condition 20. External Colours and Materials (Industrial, Commercial, Mixed & Apartment Buildings)

This condition stipulated numerous requirements for the glazing and roofing materials. The applicant requested that this condition be deleted as it is not applied to class 1 residential dwellings and class 10 ancillary structures.

In response, it is agreed that this condition is not appropriate for the proposed residential development. In lieu of this condition, the following condition will be imposed:

"External Colours and Materials

a) The external finish to the external walls of the dwelling house must consist of dark and earthy tones, consistent with the colour pallet specified within Part D1.5 of Pittwater 21 Development Control Plan. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

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

28. Vehicle Crossings

This condition required the applicant to construct a 3m wide vehicle crossing. The applicant contends that this is not required as Ruskin Rowe has no footpath. Accordingly, the applicant requested that this condition be deleted.

In response, Council's Development Engineers have reviewed the subject review application and do not support this request to delete the requirement for a vehicle crossing. The following comments were provided by Council's Development Engineers:

"The proposed review of determination includes a report requesting the deletion of a number of conditions of the original consent. The only condition provided by Development Engineering related to the construction of a driveway crossing in Ruskin Rowe. The proposal includes the provision of a new parking facility and the existing crossing is unconstructed. In accordance with Clause C6 a new crossing is required for this development and the deletion of this condition is not supported".

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.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/12/2021 to 22/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Landscape Referral have undertaken an application review of DA2020/1004 and the assessment, comments and conditions remain unchanged.</p> <p>The development application is for the construction of a new dwelling, and a detached secondary dwelling.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 Environmental Living zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.11 Secondary Dwellings and Rural Worker's Dwellings • D1 Avalon Beach Locality <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees.</p> <p>The existing site supports existing native Gums and Cabbage Tree Palms of high retention value, and exotic trees, garden planting and lawn. No existing native trees nor palms are proposed for removal. No Landscape Plan is provided as no additional landscape treatment is proposed. The retention of the existing native trees and palms satisfies the landscape objectives under the C4 zone.</p> <p>A Arboricultural Impact Assessment is provided with the application recommending tree protection measures for existing trees and palms in proximity to development works.</p> <p>Landscape Referral raise no objections, subject to the protection of existing trees / palms and vegetation as included in Condition 29 of DA2020/1004.</p>
NECC (Bushland and Biodiversity)	<p>The application for review has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.4 (Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor) - SEPP (Coastal Management) - Littoral Rainforest Proximity Area <p>Upon consideration of the amended plans submitted with the review application, the conclusions of the original biodiversity referral remain unchanged.</p>
NECC (Development Engineering)	<p>The proposed review of determination includes a report requesting the deletion of a number of conditions of the original consent. The only condition provided by Development Engineering related to the</p>

Internal Referral Body	Comments
	<p>construction of a driveway crossing in Ruskin Rowe. The proposal includes the provision of a new parking facility and the existing crossing is unconstructed. In accordance with Clause C6 a new crossing is required for this development and the deletion of this condition is not supported.</p> <p>The changes to the proposal do not alter the original assessment of the application.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The project is subject to a control activity approval from DPIE Natural Resources Access Regulator (NRAR). Refer https://www.dpie.nsw.gov.au/__data/assets/pdf_file/0005/386186/New-or-amended-approval-controlled-activity-supporting-guide.pdf</p> <p>Note that the receiving creek is sensitive to sediment loading, the sediment management is critical during construction and until the disturbed vegetations is reestablished.</p> <p>No objection to the application, subject to conditions.</p> <p><u>Planner Comment:</u></p> <p>The applicant has prepared a sediment and erosion control plan for this review (refer to plan DA1015, dated 27 April 2022, prepared by Action Plans). Accordingly, the recommended condition requiring a sediment and erosion control plan to be prepared prior to the issue of the Construction Certificate has not been included.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>This review has not required any change to the previous flood comments and conditions.</p> <p>The proposed development comprises demolition of the existing dwelling, shed and car port, and construction of a new primary dwelling, secondary dwelling and car port.</p> <p>Flood levels vary across the site due to the slope.</p> <p>The proposed primary dwelling is in a similar location to the existing dwelling, and is outside of the Medium Flood Risk Precinct.</p> <p>The proposed secondary dwelling is north east of the house, but west of the driveway. It is located outside of the 1% AEP extent, so it does not impede the conveyance of the flow or reduce the available flood storage in the 1% AEP event, and the floor level of the garage (underneath the secondary dwelling) is above the 1% AEP flood level.</p> <p>The proposed car port is to replace the existing car port, in the same location. The location is affected by the 1% AEP extent, but this is permitted subject to conditions.</p> <p>The proposed development generally complies with the flood</p>

Internal Referral Body	Comments																		
	requirements of Council's DCP and LEP.																		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS																		
	Discussion of reason for referral																		
	REV2021/0044– 46 Ruskin Rowe Avalon:																		
	<p>This proposal for a new dwelling on the site of an existing dwelling has been referred for Heritage comment as the subject property is situated within the sensitive Ruskin Rowe subdivision recognised as a Heritage Conservation Area in the Pittwater LEP 2014. The context in which the dwelling is located constitutes an historic and sensitive, developed environment in which buildings are “dispersed” within a considered, densely vegetated landscaped setting.</p>																		
	Details of heritage items affected																		
	<p>The nature of the HCA is such that development involving individual sites and houses within it, on its component lots, could adversely affect the heritage significance of the subdivision and its collective setting. The way in which individual dwellings affect the shared landscape of the HCA is critical to maintenance of its values and importance. This perspective has been applied in considering the response of the proposal.</p>																		
	Other relevant heritage listings																		
	<table><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>No</td><td></td></tr></table>	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	No	
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RAIA Register of 20th Century Buildings of Significance	No																		
Other	No																		
Consideration of Application																			
Heritage Comments :																			
<p><i>Is a Conservation Management Plan (CMP) Required? No.</i></p> <p><i>Has a CMP been provided? No.</i></p> <p><i>Is a Heritage Impact Statement required? Yes.</i></p> <p><i>Has a Heritage Impact Statement been provided? The HIS provided is non-conforming and it has not greatly assisted heritage comment from Council.</i></p>																			

Internal Referral Body	Comments
	<p>As I have written before :</p> <p><i>"The significance of Ruskin Rowe relates to its origins and planning as a Garden Suburb, conceived to be a generous and romantic bushland development of "artistic" homes set upon large blocks allowing them to be widely spaced apart and to explore the innovative domestic architecture of the time, in concert with the Australian bush. The housing that has developed over the years of the subdivision's consolidation, as a highly valued, evolving and expensive suburban setting, is of a broad architectural church. Very few of the earlier houses remain and indeed they have been variously altered and improved. There is an increasing number of new dwellings being proposed, as replacements for existing houses.</i></p> <p><i>The thrust of conservation efforts in the locality has evolved to become a matter of ensuring that the subdivision is not diminished by the more dense subdivision of its block pattern, and that the setting fostered by the block pattern and bushland retention is not diminished by vegetation loss and housing of a character which does not support the significance and indeed, the intent, behind its establishment. Some good outcomes have been achieved, and some poor results also. The sheer size of many new dwellings is a problem, making difficult their integration in the manner Harry Ruskin Rowe intended."</i></p> <p><i>Responding to the earlier plans for the proposed development I wrote :</i></p> <ul style="list-style-type: none"> - <i>"The proposal is accompanied by a Heritage Impact Statement prepared by the building designers to support the application, and is therefore not impartial and unbiased. It is also not a Heritage Impact Statement in that it does not assess the impact by using the available recommendations for the preparation of such assessments, especially those by NSW Heritage. Its opinions are those of the building authors and unsurprisingly it finds the impacts are acceptable.</i> - <i>No assessment is offered of the existing house upon the site, its design, origins, or the manner- if any- in which it relates to Ruskin Rowe, and of the impact that its removal will have on the precinct. Council is therefore left un-informed as to the nature and values of the existing house and structures that are to be removed. It may well not be a significant house, but we do not know if it is or is not.</i> - <i>However, perhaps the most significant positive step in the</i>

Internal Referral Body	Comments
	<p><i>proposal's design has been its retention of the current house site on the block, maintaining the setback of the house from the street - which sits with one of the precinct's most notable characteristics, deep setbacks. The relatively low prominence of the existing dwelling from the street and the approach to it is common to many of the houses, but not always to such effect. The new house promises similar benefits of setback as with the current house - if not of the proposed garage/secondary dwelling.</i></p> <p><i>- The scale of the house as a one-and-a-half storey residence, with its upper level contained within the roof, is to be welcomed. Its roof composed primarily of hipped forms means that it will be recessive, provided the roof is also of a recessive colour. If Colorbond is to be used, Custom Orb profiled corrugated sheeting should be preferred, with the colours "Jasper" (a Welsh slate brown colour) or "Woodland Grey" - a greenish grey colour being suitable.</i></p> <p><i>- The low form of the house makes the more apparent two storey scale of the garage/secondary dwelling more regrettable in that with its forward placement on the site it will be more noticeable. A reduction in height (by lowering the garage height) and the reconsideration of the vertical brick corner column elements, which emphasise the height, would be welcome. Similarly to the house, the use of a recessive colour scheme (continuing that of the house) would be welcome. White paint means that buildings or their elements stand out. That being said, a single storey garage building would be better.</i></p> <p><i>- The roof of the carport is shown as an open ended gabled structure, which if amended to a hipped form, would be of a less apparent height. While the gables arguably relate to the gables of the house, the use of the quieter hipped form for the carport would also reduce its visual complexity and achieve a stronger relationship with the house.</i></p> <p><i>- Lastly, the extensive driveway will require an all-weather traffic-able surface and this should be chosen for its low visual impact. Stabilized gravel or stone pitching would be suitable finishes, together with some trafficable block paving systems."</i></p> <p>Amendments to the plans have addressed some of the above matters, leaving the principal concern the combined garage/secondary residence. The form and character of this proposed building are inconsistent with that of the house and in the context of the HCA, will appear out-of-character and suburban. The placement of the structure, closer to the street than the main dwelling and to the property's side boundary are unhelpful to its appropriate integration with the HCA, as are its scale, detailing, and materials.</p>

Internal Referral Body	Comments
	<p>While there may be planning aspects of the consent that can be acceptably modified, the acceptance of the garage/secondary residence cannot be supported in heritage terms. It will represent a precedent that has been opposed and avoided on other sites in the HCA. The building can and should be amended to being of a single storey, and its materials, colours and finishes should be adjusted to better support its integration in the HCA. The Review is therefore not supported.</p> <p>Additional Comments - Amended Plans (Rapid Plans - dated 27/04/2022)</p> <p>In response to heritage concerns, amended plans were submitted on 27/04/2022. These plans now depict a single storey building for the garage/secondary dwelling, rather than a two storey structure. As a result, the amended plans now address the heritage issues previously flagged, subject to the use of appropriate finishes (materials and colours). These details have not been provided on these amended plans, however details need to be provided to Council's Heritage Officer for approval prior to issue of a Construction Certificate.</p> <p>It is noted that the applicant has requested deletion of Condition 11 of Consent DA2020/1004 which required submission of details of external materials and colours for approval by Council's Heritage Officer prior to CC. This condition is essential and should not be deleted. This condition applies to all structures on the site, including the revised garage/secondary dwelling structure. As the amended plans no longer show a two storey structure for the garage/secondary dwelling, the previous Condition 12 of Consent DA2020/1004 is no longer required and can be deleted.</p> <p>Therefore, based on the amended plans dated 27/04/2022, no objections are raised on heritage grounds, subject to the retention of Condition 11 of Consent DA2020/1004 requiring details of external materials and colours to be submitted to Council's Heritage Officer for approval prior to the issue of a Construction Certificate.</p> <p>Further Comments</p> <p>COMPLETED BY: Robert Moore, Heritage Advisor DATE: 13th April 2022. REVISED: 28 April 2022 (completed by Robert Moore, Heritage Advisor/Janine Formica, Heritage Planner)</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The application was referred to Ausgrid, who responded stating that a

External Referral Body	Comments
	formal assessment was not required.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The NSW RFS have reviewed the application and raised no objections, subject to conditions. The recommended conditions will be included as part of this 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 (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see BASIX Certificate No. 1073220S_03, dated 2 December 2021).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	62

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

SEPP (Coastal Management) 2018

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

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

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

Note—

The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

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

Comment:

The proposal will not impact on any existing native vegetation and involves minimal earthwork. The proposed development is unlikely to significantly impact on the biophysical, hydrological or ecological integrity of the adjacent littoral rainforest or the Council Reserve in general.

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

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

Comment:

Given the scale of the works and separation from the foreshore area and littoral rainforest, Council is satisfied that the proposal will not increase the risk of coastal hazards on the site or other land.

Chapter 4 Remediation of land

4.1 Object of this Chapter

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

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

(a) by specifying when consent is required, and when it is not required, for a remediation work, and

(b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and

(c) by requiring that a remediation work meet certain standards and notification requirements.

Comment:

Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under as the land is considered to be suitable for the residential land use.

Conclusion

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

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	Principal Dwelling: 6.24m Garage/Studio: 4.55m	-	Yes

Compliance Assessment

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

Detailed Assessment

5.10 Heritage conservation

The subject site is identified within the Ruskin Rowe Heritage Conservation Area and therefore, this clause is applicable. Council's Heritage Advisor has reviewed the proposed development and raised no objections, subject to a condition requiring a schedule of colours and materials to be submitted to Council's Heritage Advisors for approval prior to the issue of the Construction Certificate. In this regard, it is considered that the proposed development satisfies the requirements within Clause 5.10 of Pittwater LEP 2014.

5.21 Flood planning

The subject site is flood prone. Council's Floodplain Engineers have reviewed the proposal and raised no objections, subject to conditions. In this regard, the proposal is considered to satisfy the requirements of Clause 5.21 of Pittwater LEP 2014.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

The site is significantly separate from Class 1, 2, 3 or 4 land and the proposal involves minimal excavation works. In this regard, Council is satisfied that the proposal is not likely to disturb, expose or drain acid sulfate soils and cause environmental damage. Therefore, the proposal satisfies the requirements within Clause 7.1 of Pittwater LEP 2014.

7.2 Earthworks

The objective of Clause 7.2 - '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 involves minimal earthworks to accommodate for the development. In this regard, the proposal will not unreasonably limit the likely future use or redevelopment of the land.

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

The proposal is not likely to have an adverse impact upon Aboriginal cultural significance.

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

Comment:

Council's Riparian Officers have reviewed the proposal and are satisfied that the development will not have an adverse impact upon nearby streams. Suitable conditions are imposed to mitigate any potential impacts to nearby waterways.

(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:

Council's Heritage Advisor has reviewed the proposal and is satisfied that the proposed earthworks will not result in an adverse impacts to the Ruskin Rowe HCA.

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements within Clause 7.2 of Pittwater LEP 2014.

7.6 Biodiversity protection

The site is identified on the Pittwater LEP 2014 Biodiversity Map. Council's Biodiversity Officers have reviewed the application and raise no objections to the development, subject to conditions. Therefore, Council is satisfied that the proposal achieves the requirements stipulated within Clause 7.6 of Pittwater LEP 2014.

7.10 Essential services

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

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

Comment:

The aforementioned essential services are incorporated into the proposed development. Therefore, the application satisfies the requirements within Clause 7.10 of Pittwater LEP 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	59.4m	-	Yes
Rear building line	6.5m	18.3m	-	Yes
Side building line	2.5m (south)	8.5m (carport)	-	Yes
	1m (north)	1.26m (garage/studio)	-	Yes
Building envelope	3.5m then projected at 45 degrees (south)	Within Envelope	-	Yes
	3.5m then projected at 45 degrees (north)	Within Envelope	-	Yes
Landscaped area	60% (2629.2sqm)	72.67% (3184.59sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

Clause A4.1 of the Pittwater 21 DCP provides guidance of the form and scale of development anticipated for the Avalon Beach locality. The Desired Character Statement reads as follows:

"The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community".

"Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building".

"Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses".

"Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards".

"Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced".

"A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe".

"Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities".

Comment:

The proposed development is consistent with the Avalon Beach Desired Future Character Statement for the following reasons:

- The proposed development does not exceed two storeys in height at any one point.
- The proposed development limits cut and fill and is well integrated into the natural landform and landscape.
- The principal dwelling is well modulated and incorporates shade elements.
- The development sits well below the established tree canopy.
- The proposal has been designed to respond to the environmental constraints of the site (i.e. bushfire and flooding).
- The works have been appropriately scaled and setback from the front boundary to maintain the desired future character of the Ruskin Rowe HCA.
- The site is directly accessible from the Ruskin Rowe road reserve and benefits from essential services (i.e. stormwater drainage, water supply, electricity, off-street parking and sewer management).

C1.14 Separately Accessible Structures

The control stipulates as follows:

A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:

- i) it is ancillary to a dwelling;*

ii) it is not designed for separate habitation and does not contain any cooking facilities.

Comment:

The proposed development includes a studio with a bathroom and wetbar attached to the double garage. No cooking facilities are proposed within the studio and a condition has been included with this consent to prevent cooking facilities from being installed within the studio. Therefore, the proposal satisfies the requirements of this control.

D1.5 Building colours and materials

A colour schedule has not been provided with this application. Accordingly, a suitable condition has been included with this consent requiring the external colours and finishes to consist of dark and earthy tones to ensure that the proposal harmonises with the natural environment. Prior to the issue of the Construction Certificate the applicant must submit the specified colour schedule to Council's Heritage Advisors for approval.

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 \$13,151 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,315,100.

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

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

- Amendment to Condition 1 of the development consent to include the proposed garage/studio structure within the stamped plans.
- Amendment to Condition 4 to change the standard construction hours in accordance with the Environmental Planning and Assessment (Covid 19 Development – Construction Work Days) Order 2020.
- Delete Condition 11 requiring an external colours and materials schedule to be prepared and approved by Council's Heritage Advisors prior to the issue of the Construction Certificate.
- Delete Condition 12 requiring the deletion of the ancillary garage/studio (previously proposed secondary dwelling) structure.
- Delete Condition 17 requiring a sediment and erosion control plan to be prepared and submitted to the Certifying Authority prior to the issue of the Construction Certificate.
- Delete Condition 20 relating to colours and materials for commercial buildings.
- Delete Condition 28 requiring a vehicle crossing to be constructed.

These issues subject to this review have been addressed within the report under the section relating to Section 8.2 of the EP&A Act 1979. In summary, the assessment has considered the applicant's request and has amended the following conditions.

- Condition 1 has been amended to include the proposed studio/garage within the stamped plans.
- Condition 11 re-worded to require the specified colours and materials to be within the medium to dark range and approved by Council's Heritage Advisors prior to the issue of the Construction Certificate. This condition is now identified as Condition 18.
- Condition 12 is deleted as the amended single storey studio/garage is consistent with the desired future character of the Ruskin Rowe HCA.
- Condition 17 is deleted as the applicant has now prepared a sediment and erosion control plan.
- Condition 20 is deleted as it is an error.
- Condition 28 is now identified as Condition 25.

When considered on its merits, the proposed development is found to be consistent with the aims and objectives of relevant state and local planning controls and therefore, is worthy of support. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2021/0044 for Review of Determination of Application DA2020/1004 for Demolition works and construction of a dwelling house including a car port on land at Lot 23 DP 22361, 46 Ruskin Rowe, AVALON BEACH, subject to the

conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA1007	28 April 2022	Rapid Plans
DA1008	28 April 2022	Rapid Plans
DA1010	28 April 2022	Rapid Plans
DA1011	28 April 2022	Rapid Plans
DA1012	28 April 2022	Rapid Plans
DA1015	28 April 2022	Rapid Plans
DA2001	28 April 2022	Rapid Plans
DA2002	28 April 2022	Rapid Plans
DA2003	28 April 2022	Rapid Plans
DA2004	28 April 2022	Rapid Plans
DA2005	28 April 2022	Rapid Plans
DA3000	28 April 2022	Rapid Plans
DA3001	28 April 2022	Rapid Plans
DA3002	28 April 2022	Rapid Plans
DA3003	28 April 2022	Rapid Plans
DA4000	28 April 2022	Rapid Plans
DA4001	28 April 2022	Rapid Plans
DA4002	28 April 2022	Rapid Plans
DA4003	28 April 2022	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Heritage Impact Statement	20 February 2021	BI Architects
BASIX Certificate No. 1073220S_03	2 December 2021	Rapid Plans
Bushfire Risk Assessment	21 April 2020	Bushfire Planning Services
Biodiversity Management Plan Issue No. 1.00	14 February 2020	Rapid Plans

Arboricultural Impact Assessment	12 October 2020	Temporal Tree Management Pty Ltd
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	6 August 2020	Rapid Plans

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	RFS Referral Response Ref. DA20211215005518-Original-1	23 February 2022

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house and detached studio. These land uses are defined as follows:

dwelling house means a building containing only one dwelling.

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

(a) is established in conjunction with a dwelling house, and

(b) is on the same lot of land as the dwelling house, and

(c) is separate from the dwelling house, and

(d) is not used as a separate dwelling house, and

(e) does not contain any cooking facilities.

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

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

4. **Prescribed Conditions**

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

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$13,151.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,315,100.00.

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

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

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

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

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

7. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

The applicant is to lodge a bond of \$8,600 as security against any damage to Council's stormwater drainage infrastructure as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the Council pipeline traversing the site. The connection is to be in accordance with the Section 68 approval.

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.

10. **Flooding**

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

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage (including in the vicinity of the carport) which results in a net loss of storage below the 1% AEP flood level (or within the 1% AEP extent).

Building Components and Structural Soundness – B1

The new carport shall be designed and constructed as a flood compatible building up to a level 0.6m above natural ground level, in accordance with "Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee" (2006).

Building Components and Structural Soundness – B2

The new carport must be designed to ensure structural integrity up to a level 0.6m above natural ground level, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

Any electrical equipment or power points in the carport must be waterproofed and/or located at least 0.6m above natural ground level.

Car parking – D2

The lowest floor level of the carport shall be constructed no lower than the natural ground level, unless it can be shown that it is free draining with a grade greater than 1%.

Car parking – D3

The carport is to be designed to allow flood waters to pass through and is to have a minimum of 50% of the perimeter open from the natural ground level up to a level 0.3m above natural ground level.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located in the carport within 0.6m of natural ground level unless adequately protected from floodwaters in accordance with industry standards.

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

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

11. **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.

12. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Water Management for Development Policy.

Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

13. **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.

14. **Stormwater Drainage Application**

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

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

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

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

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

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

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

Reason: Protection of Council's infrastructure.

16. **Compliance with Standards**

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

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

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

17. **Sydney Water "Tap In"**

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

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

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>

- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

18. **Schedule of External Colours and Materials**

A schedule of external materials and colours are to be provided to Council's Heritage Officer's satisfaction prior to the issuing of the Construction Certificate.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: To preserve the heritage character and significance of the Ruskin Rowe Heritage Conservation Area.

19. **External Colours and Materials**

a) The external finish to the external walls of the dwelling house must consist of dark and earthy tones, consistent with the colour pallet specified within Part D1.5 of Pittwater 21 Development Control Plan. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation

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

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

- i) section 5. Summary and Recommendations,
- ii) section 6. Tree Protection Plan,
- iii) figure 6. Required tree protection measures,
- iv) figure 7. Tree protection flagging.

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.

21. Road Reserve

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

Reason: Public safety.

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

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

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

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

23. **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.

24. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 68 approval are supervised by an appropriately qualified and practicing Civil Engineer.

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

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

25. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to 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

26. **Stormwater Disposal**

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

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

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

27. **New Vegetation Planting**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Plant Guide available on Council's website.

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

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

28. **Certification of the Structural Stability of the Building (B2)**

A suitably qualified structural engineer is to certify the structural stability of the new carport considering lateral flood flow, buoyancy, suction effects, wave action and debris load impact up to a level 0.6m above natural ground level.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

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

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

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans.

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

Reason: Protection of Council's infrastructure.

30. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines

for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineeringspecifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

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

31. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

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

Reason: To protect native wildlife

32. **Flood Management**

Storage of Goods (G1)

Hazardous or potentially polluting materials shall not be stored in the carport within 0.6m of natural ground level unless adequately protected from floodwaters in accordance with industry standard.

Flood Effects Caused by Development (A2)

There shall be no filling of the land below the 1% AEP flood level, or obstruction of flow paths through the property. This includes the blocking of areas required by DA consent to be left open.

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

33. **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.

34. **Environmental weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

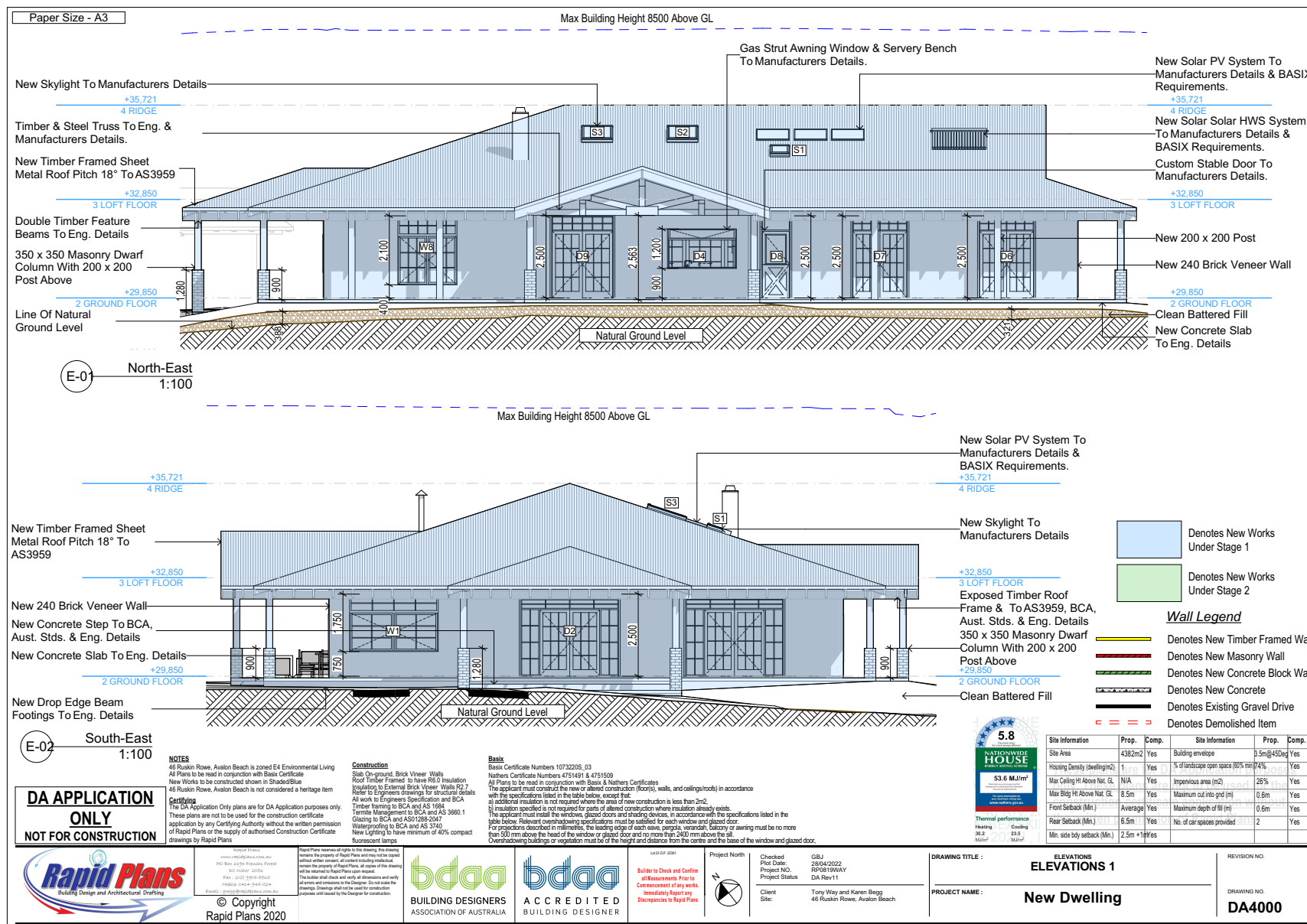
Reason: To protect weed encroachment into nearby natural areas.

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

The approved studio is not permitted to be used, or adapted to be used, for separate occupancy. The studio must not include the installation of cooking facilities.

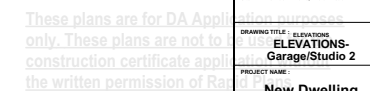
Reason: This consent does not permit the studio to be used as a secondary dwelling.











ITEM 3.4	DA2021/1400 - 88 BOWER STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2022/267318
ATTACHMENTS	1 ↓Assessment Report 2 ↓Site Plan and Elevations 3 ↓Clause 4.6 - Height of Building 4 ↓Clause 4.6 - Floor Space Ratio

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2021/1400 for alterations and additions to a dwelling house on land at Lot 1 DP 1279468, 88 Bower Street MANLY, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1400
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 1279468, 88 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C4 Environmental Living Manly LEP2013 - Land zoned RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney
Applicant:	Cherie Helen Humel
Application Lodged:	17/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/08/2021 to 08/09/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 13.7% 4.4 Floor space ratio: 20%
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,441,802.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal seeks a variation to the height of buildings and floor space ratio development standard of more than 10%.

Public exhibition of the development resulted in no (0) objections to the proposal, with 2 submissions lodged in support of the application.

The application is referred to the DDP with a recommendation for approval, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

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

Specifically, the proposed works incorporate the following:

- Lower ground floor extension and alterations to allow for new stair access and lift;
- Ground floor alterations including;
 - i Master bedroom including walk-in robe, ensuite and balcony
 - i Bedroom 2, 3 and 4
 - i Rumpus room
 - i Laundry
 - i Access stairs
- First floor extension including new living room, formal dining and balcony;
- Second floor addition accommodating double garage, study and terrace;
- Front fence alterations;
- Spa Pool;
- Associated landscaping;
- Demolition works; and
- Excavation.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

Manly Development Control Plan - 4.1.10 Fencing

Manly Development Control Plan - 4.4.2 Alterations and Additions

SITE DESCRIPTION

Property Description:	Lot 1 DP 1279468 , 88 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotments located on the northern side of Bower Street.</p> <p>The site is irregular in shape with a frontage of 23m along Bower Street and a depth of 46m. The site has a surveyed area of 736.1m².</p> <p>The site is located within the C4 Environmental Living zone and and RE1 Public Recreation zone accommodates a dwelling house.</p> <p>The site has a significant fall from the south-western corner on Bower Street (RL8.37) towards the north-eastern corner, being the Marine Parade frontage (RL3.23).</p> <p>The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development to the north and south, with a dwelling house adjoining to the south and 3 storey flat building to the north. Marine Parade and Shelly Beach adjoin the property to the east.</p>

Map:



SITE HISTORY

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

DA216/2007 - Alterations and Additions to a residential dwelling house to create (2) two dwellings was approved on 14/03/2008.

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) –	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration	Comments
Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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 extent of demolition.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration	Comments
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 25/08/2021 to 08/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Grant Ian Cameron	4 / 66 Bower Street MANLY NSW 2095
Mr Stephan Goerner Ms Christiane Goerner	87 Bower Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Support of Development Application**

The above issues are addressed as follows:

- **Support of Development Application**

Comment:

A number of submissions were received in support of the development application. The letters of support have been noted.

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments
Landscape Officer	<p>The development application is for major alterations and additions to an existing dwelling house which includes the partial demolition of parts of the existing building, site works and new spa pool.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan E4 Environmental Living zone, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p>The objectives of the Zone E4 Environmental Living include: ensure that residential development does not have an adverse effect on in areas with special ecological, scientific or aesthetic values; protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore; ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation; and ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.</p> <p>The existing site contains a managed landscaped garden with the majority of planting species being exempt Palm species, understorey garden planting, pavements and lawn. One locally native Port Jackson Fig species is located along the southern boundary of Bower Street, and is located at the base of the existing boundary wall, with root expansion structurally impacting upon the wall and the adjoining footpath. Removal of this tree is proposed and reported to be without a design alternative for retention, and approval to remove this tree is subject to a like for like replacement within the Bower Street front setback lawn in proximity to the existing location, at a safe distance from structures.</p> <p>A Landscape Plan and a Arboricultural Impact Assessment is provided with the application and these documents are the basis of the Landscape Referral assessment.</p> <p>The Landscape Plan provides for a coastal suited planting theme including small native tree planting, and various shrub, accent and groundcover planting into deep soil, balcony on slab planters, retaining walls, stairs, paved areas and lawn. A replacement Port Jackson Fig (<i>Ficus rubiginosa</i>) shall be installed within the front setback of the Bower Street frontage proposed lawn area. As this site is within the terrestrial biodiversity zone, the landscape design shall comply with control 3.3.1, and is subject to any further advice by Council's Bushland & Biodiversity Referral on landscape design including the ratio and selection of planted species required to be locally endemic.</p> <p>The Arboricultural Impact Assessment proposes the removal of sixteen trees within the site and all are exempt species by height or by</p>

Internal Referral Body	Comments
	<p>type, including: numerous Bangalow Palms, Cocus Palms, Bird of Paradise, Orange Jessamine and Camellia. Two small locally native Cabbage Tree Palms identified as T13 and T14 are retained and recommended for relocation and conditions shall be imposed.</p> <p>The Port Jackson Fig identified as T1 is recommended for removal based on structural advice regarding the long term impact that this tree will cause to existing and proposed structures along the Bower Street boundary and within the road reserve. With reference to the engineer's report, remediation of the block wall along the southern boundary of the site shall require the removal of T1. Remediation of the wall is likely to require extensive root removal and selective branch removal. This is likely to have a significant impact upon the health, condition and physiological function of the tree resulting in a reduction of its useful life expectancy.</p> <p>Landscape Referral support the application subject to conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - NSW Biodiversity Conservation Act 2016 (BC Act) - Manly LEP Clause 6.5 (Terrestrial Biodiversity) - Manly DCP Clause 5.3.2.1 (Threatened Species and Critical Habitat Lands) - Manly DCP Clause Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat); <p>The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, assessment of potential impacts is required to be undertaken in accordance with Section 7.3 of the NSW Biodiversity Conservation Act (i.e. the threatened species "test of significance"). This assessment has been undertaken and has concluded that the proposal is unlikely to result in significant impact to the endangered bandicoot population.</p> <p>Given that evidence of bandicoot occupation was identified within the site, a wildlife relocation protocol is required to be prepared by a suitably qualified ecologist prior to the Construction Certificate.</p> <p>The submitted Landscape Plan does not comply with MDCP cl 3.3.1.iv) and comprises mostly exotic species with limited habitat value. The Landscape Plan is to be amended (in accordance with consent conditions recommended by the Biodiversity and Landscape Referral Bodies) prior to Construction Certificate.</p> <p>It is considered that the proposal generally complies with the controls, subject to the abovementioned conditions.</p>
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018

Internal Referral Body	Comments		
	<p>(sections 13, 14 & 15); and</p> <ul style="list-style-type: none">• Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The application is supported subject to conditions:</p> <ul style="list-style-type: none">• Installation and maintenance of erosion and sediment controls (prior to commencement)• Geotechnical issues (during works)• Stormwater management (prior to construction certificate)		
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.		
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is for alterations and additions to an existing dwelling. Subject to conditions, the development is compliant with Council's flood prone land development controls.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>The proposal has been referred to Heritage as the subject property is within proximity of a heritage item, listed in Schedule 5 of Manly Local Environmental Plan 2013:</p> <p>Item 190 - Street trees (Acaucaria heterophylla) - Bower Street (from Cliff Street to College Street)</p>		
	Details of heritage items affected		
	<p>Details of this conservation area as contained within the Northern Beaches heritage inventory are:</p> <p>Item 190 - Street trees (Acaucaria heterophylla) <u>Statement of Significance:</u> Listed for its aesthetic importance to the streetscape. Continuity with the earlier street tree plants of Manly 'Village' area. <u>Physical Description:</u> Norfolk Island pines (Araucaria Heterophylla). Appear to have been planted in the early 1900's.</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	

Internal Referral Body	Comments		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to the existing dwelling, including the partial demolition of the existing dwelling with primary external walls, chimney structure, sandstone walls, ground floor bulkhead, ground and first floor level slabs retained. The existing roof and the elevated driveway is proposed to be replaced.</p> <p>The property partly adjoins a heritage item, however, the heritage listed Norfolk Island Pines are located further away, to the west of the subject site and here is no heritage street trees outside the property. As such, there is no impact to the heritage listed street trees or their significance.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		
	Further Comments		
	<p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 18 August 2021</p>		

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1219182S dated 30 July 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

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 application has been reviewed by Councils Natural Environment Referral Coastal Officer. The application has been found to meet the requirements of the relevant Environmental Planning Instruments and policies and is not expected to have any adverse impacts on the above.

- (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 application has been reviewed by Councils Natural Environment Referral Coastal Officer. The application has been found to meet the requirements of the relevant Environmental Planning Instruments and policies and is not expected to have any adverse impacts.

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 application has been reviewed by Councils Natural Environment Referral Coastal Officer. The application has been found to meet the requirements of the relevant Environmental Planning Instruments and policies and is not expected to have any adverse impacts.

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 application has been reviewed by Councils Natural Environment Referral Coastal Officer. The application has been found to meet the requirements of the relevant Environmental Planning Instruments and policies and is not expected to cause increased risk of coastal hazards on that land or other 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?	Yes
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After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.67m	13.7%	No
Floor Space Ratio	FSR:0.45:1 (331.2sqm)	FSR: 0.54:1 (393.7sqm)	20%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.67m
Percentage variation to requirement:	13.7%

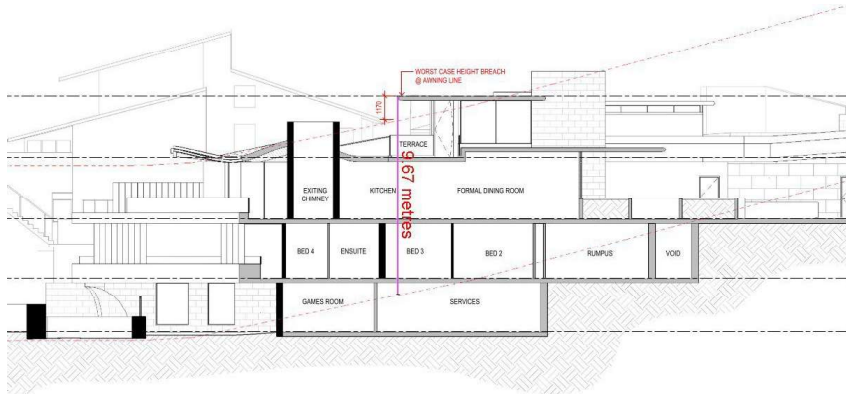


Image 1 - Height non-compliance

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by

subclause (3), and

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

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

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

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

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

Comment:

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

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

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

Comment:

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

- *"It should be noted that the permitted gross floor area is distributed on the upper levels as the existing lower ground floor although contributing to, and creating the noncompliance, is all flood liable and practically unusable due to regular inundation. With future sea level rise, the use of this area will ultimately be sterilized which is prejudicial to the proponent's reasonable expectations and "entitlements" of gross floor area. The area cannot be modified to provide the requisite habitable accommodation due to the need to raise the floor level which is prohibited by the minimal ceiling heights and hence the floor space is distributed on upper levels creating the tension with the height standard.*
- *Demolition and erection of a new building will set a higher baseline as Council allows for the height standard to be set by the flood planning level.*
- *The irregular shape of the land combined with the significant slope of the land from Bower Street to Marine Parade create a site that is difficult for design and layout of adequate floor levels taking into account the existing layout and amenity of adjoining properties and constraints of the existing building;*
- *The proposed height exceedances do not apply to all of the building; the large majority of the building complies with and is well below the development standard;*
- *The areas of non-compliance comprise three architectural blade features and two roof areas over open-air terraces, rather than areas of additional indoor living areas or habitable rooms all of which have positive effects in terms of amenity and design integrity;*
- *The non-compliant areas of the development are located on the eastern side of the building, where there is no overshadowing impacts as a result of the variations;*
- *The proposed alterations and additions have been designed to utilize the existing structure of the building, extend the undercroft area, consolidate the upper living areas, vehicle access to the site and storage. Clause 4.4.2 of the Manly DCP promotes the retention and adaptation of existing buildings rather than their demolition.*
- *In this situation the encroaching elements are important contributors to a positive design form which actually assists in creating a quality aesthetic and assists in minimising visual impacts when viewed from street and public realm areas.*
- *The height of the building is an important design consideration to remedy the existing anomalous situation whereby the existing building appears dwarfed by the scale of surrounding development.*
- *Removal of the non-compliant elements will have no material external benefit but conversely particularly in regard to the roof element, would be a deleterious impact on the amenity of the occupants in terms of weatherproofing and solar control".*

Council's Assessment of the Clause 4.6 Request

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed works to the ageing building is an orderly response to the development of the site;
- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwellings within Bower Street.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

c) to minimise disruption to the following:

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

Comment:

The proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment:

The proposed building height non-compliance will not compromise the adjoining aquatic land use.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The proposed development is located entirely within the subject site and is consistent with low density residential development within the immediate vicinity. The development will have a negligible impact on the nearby foreshore.

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

Comment:

The works will have a negligible impact on the scenic foreshore protection area in which the site is located and will not compromise any special ecological, scientific or aesthetic values.

- *To protect tree canopies and ensure that new development does not dominate the natural*

scenic qualities of the foreshore.

Comment:

The proposed works would have no impact on tree canopies. The subject site is not in close vicinity of any important trees. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore. The proposed built form, as amended will fit comfortably within its surrounds.

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

Comment:

The proposed works are located near the foreshore however by design and as conditioned will have no impact on natural features. The generous setback proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the the harbour.

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

Comment:

The proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

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

Comment:

The development does not significantly alter the existing landscape component for the site and will have no impact on stormwater management.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of

the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (331.2sqm)
Proposed:	0.54:1 (393.7sqm)
Percentage variation to requirement:	20%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

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

The applicants written request argues, in part:

- *"The site-specific environmental planning grounds that support the proposed variation to the floor space ratio development standard in this circumstance relate to the retention of part of the existing dwelling on site, the previous approval - up to 0.58:1 - for a dual occupancy on the site (which remains a valid approval) and the extension of the lower ground floor area wholly within the footprint of the existing dwelling.*
- *The Court has previously determined that a 0.58:1 FSR is suitable for the site, and the applicant has the right to proceed with that development. Notwithstanding, the applicant has elected to pursue a single dwelling house more in line with the objectives of the E4 zone and planning controls.*
- *Utilising the lower ground floor area for additional floor area does not contribute to additional bulk or scale. The remaining additional floor area proposed is to the eastern elevation of the dwelling and provides for additional articulation. It is noted that the FSR representative of the GFA above flood affected lower ground floor equates to 0.47:1, which is only a very minor variation in the circumstances.*
- *The utilisation of opportunities within the existing footprint that would otherwise be subfloor voids is considered to be orderly and economic development and resourceful use of the opportunities created by the site conditions without any adverse impacts.*
- *It should be noted that the permitted gross floor area is distributed on the upper levels as the existing lower ground floor although technically defined as GFA and contributing to, and creating the noncompliance, is all flood liable and practically unusable due to regular inundation. With future sea level rise, the use of this area will ultimately be sterilized but still technically counted as GFA which is prejudicial to the proponent's reasonable expectations and "entitlements" of gross floor area. The area cannot be modified to provide the requisite habitable accommodation due to the need to raise the floor level which is prohibited by the minimal ceiling heights.*
- *Further as Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking or unreasonable loss of views to adjoining properties".*

Council's Assessment of the Clause 4.6 Request

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such building is an orderly response to the development of the site;
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.
- The development promotes a suitable residential use appropriate for the zone.
- The development promotes the proper construction and maintenance of buildings, in so far as

the bulk and scale of the proposed development is consistent with the streetscape, notwithstanding the non-compliance with the standard.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed dwelling remains largely consistent with the existing building. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The proposal is consistent with the numeric control under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

The development is for residential use.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The proposed development is located entirely within the subject site and is consistent with low density residential development within the immediate vicinity. The development will have a negligible impact on the nearby foreshore.

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

Comment:

The works will have a negligible impact on the scenic foreshore protection area in which the site is located and will not compromise any special ecological, scientific or aesthetic values.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed works would have no impact on tree canopies. The subject site is not in close vicinity of any important trees. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore. The proposed built form, as amended will fit comfortably within its surrounds.

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

Comment:

The proposed works are located near the foreshore however by design and as conditioned will have no impact on natural features. The generous setback proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the the harbour.

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

Comment:

The proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

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

Comment:

The development does not significantly alter the existing landscape component for the site and will have no impact on stormwater management.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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

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

the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 736.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	West: 8m (based on gradient 1:4)	9.67m	20.88%	No
	East: 8m (based on gradient 1:4)	7m	-	Yes
4.1.2.2 Number of Storeys	2	4	100%	No
4.1.2.3 Roof Height	Height: 2.5m	0.6m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.8m - 9.8m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	3.22m (based on western wall height)	Ground floor - 0.9m - 2.5m First floor - 1.7m Entry level - 2.3m	31%	No
	2.33m (based on eastern wall height)	Ground floor - 0.2m - 0.9m - 2m First floor - 0.9m - 1.1m Entry level - 0m - 1.4m	100%	No
	Windows: 3m	2.3m (first floor east elevation) 2.5m - 3.3m (First floor west elevation)	23.3%	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	10.5m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (404.8sqm) of site area	49% (360sqm)	-	No
	Open space above ground <25% of total open space	12.9% (56.2sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	40% (144sqm)	-	Yes
	2 native trees	2 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.8m	9.6%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.7m	-	Yes
	1m curtilage/1.5m water	1.7m, 1.9m		Yes

	side/rear setback			
4.1.10 Fencing	1m, 1.5m with 30% transparency	2m	50%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

Clause 4.1.10 of the MDCP 2013 limits the height of solid fences/walls to 1m above natural ground level. Furthermore, the control states that fences can be increased to 1.5m, provided the area above 1m is at least 30% transparent.

This modified development involves increasing the approved boundary fencing height from 1.8m in height to 2m, which does not satisfy the numeric requirement.

Merit consideration:

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

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

As noted above the application seeks consent for 2m high front fence. The height of the fence, coupled with the fact that the transparent elements are minimal and is not of reasonable scale. Notwithstanding, Council acknowledged that Bower Street is dominated by walls and parking structures along the front boundary. The front yard serves as part of the living areas for the occupants of the dwelling house on the subject site and there is a reasonable expectation that visual privacy will be maintained within this area. To ensure a more balanced outcome for the streetscape that is considerate of the need to conserve privacy, a suitable condition has been included with this consent requiring the fence to be lowered to a maximum height of 1.8m above natural ground level. Subject to compliance with this condition, the visual impact upon the streetscape will be acceptable.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

Subject to condition of consent included above, the proposal will compliment other development within the streetscape

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposed landscaping within the front setback is suitable in this circumstance.

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

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

Clause 4.1.2 of Manly DCP permits a maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- East and western elevation: 1:4 gradient, which permits a maximum wall height of 8m wall height.

The maximum wall height of the proposed dwelling house is as follows:

- Eastern wall: 7m, compliant with the numeric control.
- Western wall: 9.67m, which represents a 20.88% variation from the numeric requirement.

Clause 4.1.2 of the MDCP 2013 also limits building to 2 storeys in height. The proposal is 4 storeys in height, which does not satisfy this requirement.

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

4.1.3 Floor Space Ratio (FSR)

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

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 3.22m from the western property boundary and 2.33m from the eastern boundary.

Clause 4.1.4.4 of the Manly DCP requires windows be setback 3m from side property boundaries.

The development proposes the following:

Western side setback- 30.9m - 2.5m ground floor, 0.9m - 1.7m first floor and 2.3m entry floor (up to 30% variation to the numeric control)

Eastern side setback- 1.5m ground floor, 1.5m - 2.7m first floor (up to 100% variation to the numeric control).

Windows- 2.3m - 3.5m (up to 23.3% variation to the numeric control).

Merit consideration:

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

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

Comment:

The proposed side setbacks are consistent with the existing development within the immediate vicinity, and introduces an improved landscape treatment to the front setback area. As such, the proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side and front setbacks.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will not lead to any loss of significant view. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwelling house will not result in any unreasonable impacts upon adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape

Architect the proposal complies with this clause.

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

Comment:

The subject site is not located in a bush fire zone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the Manly DCP requires 55% or 404.8sqm of site area be total open space. The development proposes 49% or 360sqm of total open space, non-compliant with the numeric control.

Merit consideration:

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

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

Comment:

The proposed development does not require the removal of any significant vegetation and demonstrates compliance with the landscaped area requirement. The development therefore adequately retains the landscape features of the site.

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

Comment:

The proposed works are consistent with the numerical control relating to Landscaped Open Space.

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

Comment:

The proposed dwelling maintains sufficient levels of amenity to adjoining properties

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

Comment:

Stormwater runoff is minimised by the proposed landscaped open space. The landscaped open space reduces the impermeable surface, which increases the potential for water infiltration on the site and minimises stormwater runoff.

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

Comment:

The proposed private open space is compliant with the numerical requirements under the Manly DCP. The proposed works do not unreasonably impact upon public open space. The proposed works will not lead to an increased spread of weeds.

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

Comment:

The proposal will not have any unreasonable impacts on wildlife habitats or existing wildlife corridors.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

Clause 4.1.6.1 of the Manly DCP prescribes that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed garage has a width of 6.8m, non-compliant with the numeric control. This results in a 9.6% variation to the numeric control.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development will allow for two (2) spaces for the dwelling house, consistent with the numeric control.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

Adequate on-site parking is provided, consistent with the numeric control.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking arrangement is considered reasonable given its consistency with other neighbouring parking arrangement along Stuart Street. The proposal will not have a unreasonable impact on the streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed excavation is deemed reasonable, subject to compliance with the recommendations imposed by in the Geotechnical report (prepared by JK Geotechnics, dated June 2021).

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The property will use a single driveway and cross over to reduce the disruption to the existing footpaths

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposed development will utilise the existing concrete driveway.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The subject site is not located within a established town centre noted within the Manly DCP.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The dwelling house responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the dwelling house. The recommendations included as part of this report have been included as part of the final conditions of consent.

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to conditions.

4.4.2 Alterations and Additions

In a merit consideration of the proposal, consideration of the development has been given against the Land and Environment Court Planning Principle in relation to determining if a development application should be described as being for additions and alterations rather than a new development detailed under Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187- as follows:	
Qualitative issues	
How is the appearance of the existing building to be changed when viewed from public places?	The application proposes to extend the existing ground floor and first floor of the dwelling and introduce a new garage to the front of the dwelling house. The works are setback significantly from the front boundary, and will not be readily visible from the street.
To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?	There is no major impact upon existing landscaped open space.
To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?	The subject site is not a heritage item.
What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?	A new garage will be proposed to the front of the property.
What is the extent, if any, of any proposed change to the use of the building?	The building retains a residential use.
To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?	There will be no major change to the streetscape of Gurney Crescent. The dwelling house is not readily visible from the street..
To what extent, if any, are the existing access arrangements for the building proposed to be altered	Access to the proposed garage which is ancillary to the dwelling house remains as existing.
To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?	With the obvious exception of the new outlooks available from the upper level, the outlook from within the dwelling will remain unchanged.
Is the proposed demolition so extensive to cause that which remains to lose the characteristics of	The majority of the demolition

the form of the existing structure?	proposed does not have any material affect on the characteristics of the existing structure. The proposed extension will maintain the existing roof form
Quantitative issues	
To what extent is the site coverage proposed to be changed?	The works are largely within the existing building footprint, with the exception of the new garage and internal access.
To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?	The height of buildings numeric non-compliance will be increased by the proposed works.
To what extent is the building envelope proposed to be changed?	The building envelope will be significantly altered.
To what extent are boundary setbacks proposed to be changed?	The envelope is to be increased as a result of the additional level and as a consequence of the increase to ceiling heights and the change to the roof form.
To what extent will the present numerical degree of landscaping on the site be changed?	The numeric change to landscaping is minimal.
To what extent will the existing floor space ratio be altered?	The gross floor area will be increased, however the proposal is compliant with the numeric control.
To what extent will there be changes in the roof form?	The roof form of the dwelling house will not be changed.
To what extent will there be alterations to car parking/garaging on the site and/or within the building?	The existing parking arrangement will be replaced by a proposed 4 car garage.
To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?	The application proposes excavation to allow for new garage and internal lift access.
What relationship does the proportion of the retained building bear to the proposed new development?	While substantial works are proposed, the existing structure and overall shape of the existing building is mostly retained.

Having regard to the extent of the works proposed, consideration was given to the planning principle *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*. An assessment against the matters set out in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187* determined that the application is correctly characterized as alterations and additions.

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 inconsistent 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 \$44,418 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,441,802.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

CONCLUSION

The key planning issues considered within the assessment is the proposed variation to the Height of Building and Floor Space Ratio development standard.

Notwithstanding the proposed floor space and building height variation, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain. Minor DCP control variations have been addressed within the report and found to be acceptable on merit.

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 Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1400 for Alterations and additions to a dwelling house on land at Lot 1 DP 1279468, 88 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-011/ Issue B	11 February 2022	Squillace
DA-030/ Issue A	25 June 2021	Squillace
DA-031/ Issue A	25 June 2021	Squillace
DA-032/ Issue A	25 June 2021	Squillace
DA-033/ Issue A	25 June 2021	Squillace
DA-099/ Issue B	11 February 2022	Squillace
DA-100/ Issue B	11 February 2022	Squillace
DA-101/ Issue B	11 February 2022	Squillace
DA-102/ Issue B	11 February 2022	Squillace
DA-103/ Issue B	11 February 2022	Squillace
DA-201/ Issue B	11 February 2022	Squillace
DA-202/ Issue B	11 February 2022	Squillace
DA-301/ Issue B	11 February 2022	Squillace

DA-302/ Issue B	11 February 2022	Squillace
DA-521/ Issue B	11 February 2022	Squillace
DA-101/ Issue B	11 February 2022	Squillace

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1219182S	30 July 2021	EPS
Arboricultural Impact Assessment	28 June 2021	Owen Tebutt
Terrestrial Biodiversity Report	28 June 2021	SIA Ecological & Environmental Planning
Flood Study	June 2021	C.K Engineering Services
Geotechnical investigation and slope stability risk assessment	30 June 2021	J.k 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
Dwg No. 101/ Issue B	31 May 2021	Site Image Landscape Architects
Dwg No. 003/ Issue B	31 May 2021	Site Image Landscape Architects
Dwg No. 004/ Issue B	31 May 2021	Site Image Landscape Architects
Dwg No. 005/ Issue B	31 May 2021	Site Image Landscape Architects
Dwg No. 006/ Issue B	31 May 2021	Site Image Landscape Architects
Dwg No. 007/ Issue B	31 May 2021	Site Image Landscape Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	N/A	Squillace

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

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

2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS**4. Policy Controls****Northern Beaches 7.12 Contributions Plan 2021**

A monetary contribution of \$44,418.02 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 \$4,441,802.00.

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

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

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

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

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

5. Security Bond

A bond (determined from cost of works) of \$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****6. On Slab Landscape Works**

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

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

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn and groundcovers
- ii) 600mm for shrubs

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

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

7. 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 the proposed Cabbage Tree Palms identified as T13 and T14 in the Arboricultural Impact Assessment, including:

- i) preparation and location 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,
- vi) inspection schedule for the works.

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

8. Stormwater Disposal

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

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

9. Flooding

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

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the relevant 1% AEP flood level of (4.0m AHD for the lower ground floor).

Building Components and Structural Soundness – B1

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

Building Components and Structural Soundness – B2

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

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level (4.5m AHD for the lower ground floor). All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1

New floor levels within the development shall be set at or above the relevant Flood Planning Level of (4.5mAHD for the lower ground floor level).

Floor Levels – C6

All areas of the lower ground floor must be flood proofed below the relevant Flood Planning Level of 4.5mAHD. This means that all flooring and fixed materials below the flood planning level must be made of materials that are not susceptible to water damage.

Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the relevant 1% AEP flood level. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the relevant Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

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

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

10. **Preparation of a Bandicoot Relocation and Habitat Removal Protocol**

The Project Ecologist is to prepare a Bandicoot Relocation and Habitat Removal Protocol prior to issue of any Construction Certificate. The protocol must be included as a section of the

Construction Environmental Management Plan (CEMP) and must include:

- i a pre-commencement inspection of all likely bandicoot habitat, with a focus on areas of habitat to be removed or disturbed
- i protocols for the safe relocation of any Long-nosed Bandicoots found within habitat to be removed. Any bandicoots identified within areas to be cleared or demolished must be safely captured and appropriately relocated by the Project Ecologist or a licensed wildlife carer.
- i a map identifying the specific area to which any captured bandicoots will be located.
- i a description of the relocation habitat and justification as to why it is suitable for bandicoots.
- i procedures for stop work in the event that a bandicoot is identified within areas proposed for clearing, demolition or construction, or if a bandicoot is harmed during works.

The protocol is to be submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect individuals of the endangered bandicoot population.

11. **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 6m intervals.

Plans are to be amended accordingly and certified by the Project Ecologist as complying with this condition. Written certification of compliance is to be prepared by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain wildlife corridors and access to habitat.

12. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following requirements:

- i At least 60% of the species on the plant schedule are to be native species
- i At least 30% of the species on the plant schedule are to be consistent with the requirements of Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat).
- i Any additional requirements as per the conditions of consent.

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

Reason: To achieve compliance with applicable natural environment controls and maintain bandicoot habitat.

13. **Amendments to the approved plans**

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

- i The boundary fencing fronting Bower Street is to step down with the slope of the land and must be reduced to a maximum height of 1.8 metres above natural ground level on the street side of the fence.

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 of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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. **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.

17. **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.

18. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact receiving waters.

19. **External Finishes to Roof**

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

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

20. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **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 1 - *Ficus rubiginosa*, subject to like for like replacement within the site.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

22. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

23. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

24. **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

25. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.

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.

26. **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.

27. **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.

28. **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.

29. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An

Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to 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.

30. **Geotechnical Issues**

All conditions outlined in 'Geotechnical Investigation and Slope Stability Risk Assessment' prepared by JK Geotechnics dated 30 June 2021 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, seepage, retention and footings are undertaken in an appropriate manner and structurally sound.

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

31. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

- i) one (1) *Ficus rubiginosa* (Port Jackson Fig) shall be planted within the Bower Street front setback lawn in proximity to the existing location of the approved *Ficus* to be removed, planted at a 200 litre container size, and located at least 5 metres from buildings and 2 metres from structures,
- ii) the nominated *Rhapiolepis indica* species shall be deleted and replaced with a non-invasive shrub species of similar size and form,
- iii) in accordance with any biodiversity requirements under the Bushland & Biodiversity Referral.

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

Reason: Environmental amenity.

32. **Stormwater Disposal**

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

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

33. **Protection of Habitat Features**

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

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

issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

34. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the Landscape Plans, as amended by 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 achieve compliance with relevant natural environment controls and maintain bandicoot habitat.

35. **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.

36. **Bandicoot Relocation and Habitat Removal Protocol**

All demolition and construction work is to be undertaken in accordance with the Bandicoot Relocation and Habitat Removal Protocol, prepared by the Project Ecologist in accordance with these conditions of consent. Compliance with this condition is to be certified by the Project Ecologist in writing and a copy provided to the Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect individuals of the endangered Long-nosed Bandicoot population.

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

37. **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.

38. **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.

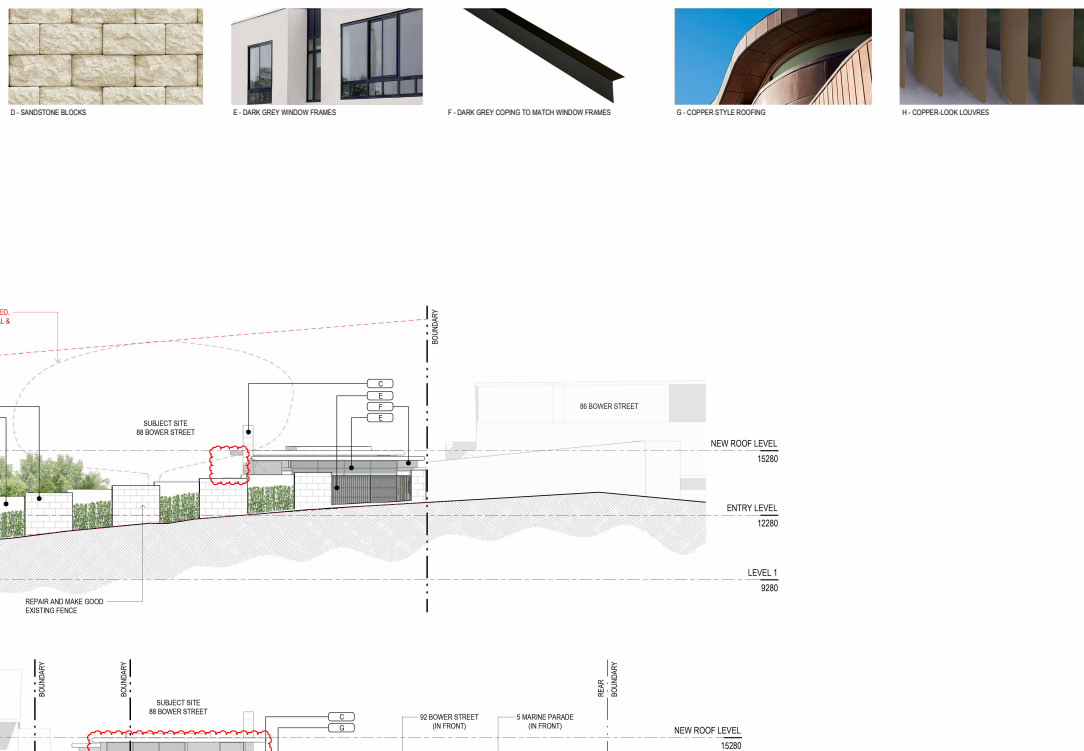
Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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









Clause 4.6 Variation

Standard: Clause 4.3 - Height of Buildings

EPI: Manly LEP 2013

Proposal: Proposed Alterations and Additions

Property: 88 Bower Street, Manly

Prepared by: Joseph Vescio

Date: 23 June, 2021



1 Introduction

1.1 Background

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) and generally comprises:

- Major alterations and additions to existing dwelling comprising partial demolition of the dwelling and alterations and additions to the existing dwelling;
- Construction of spa pool, landscaping and drainage.

The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the MLEP 2013, having a maximum building height of 9.69m (corner of upper level roof over terrace) utilising the second method of assessment (outlined in this Submission).

Notwithstanding the contravention of the development standard, the proposal is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including a lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the HOB development standard.

1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by *Squillace Architects*, dated 18 June 2021.

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

2 The Relevant LEP Provisions

2.1 Manly Local Environmental Plan 2013

2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned E4 Environmental Living and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposed land use is defined as a dwelling house which is permissible with development consent in the E4 Zone pursuant to the MLEP 2013. It is noted that part of the site (Lot 1) is zoned RE1 Public Recreation. There are no structures (including the pool and landscaping) within the RE1 zoned area. The provisions of this zone have no bearing on the clause 4.6 variation.

2.1.2 Clause 4.3 – Height of Buildings (HOB)

Clause 4.3 of the MLEP 2013 sets out the HOB development standard as follows:

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

The Height of Buildings Map designates a maximum 8.5m height limit for the Site (see Figure 1).

2 The Relevant LEP Provisions

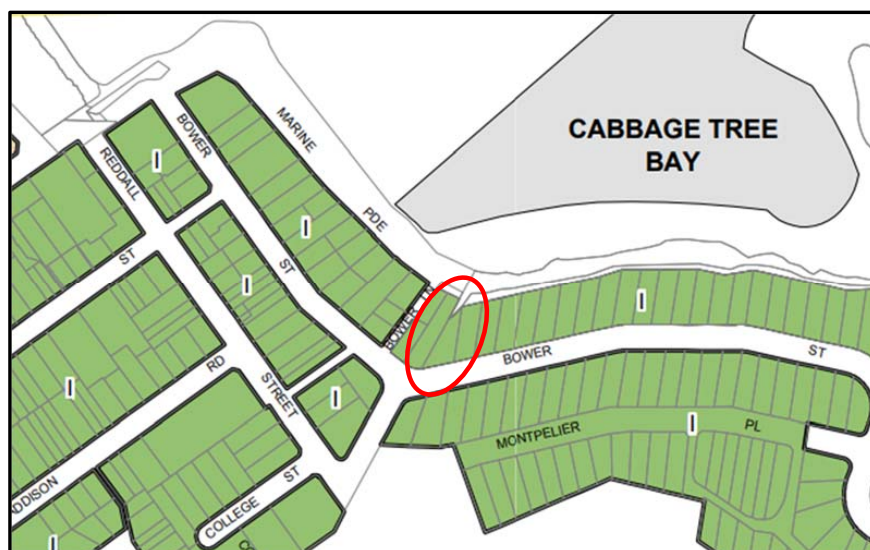


Figure 1: Extract of MLEP 2013 Map (HOB_006, "I" = 8.5m)

The MLEP 2013 Dictionary contains the following definitions:

Height of Buildings Map means the Manly Local Environmental Plan 2013 Height of Buildings Map.

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.

2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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.

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a

2 The Relevant LEP Provisions

development standard “*achieve better outcomes for and from development*”.

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

- (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.*

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (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 HOB development standard pursuant to cl4.3 of the MLEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.2.1.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (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*

2 The Relevant LEP Provisions

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.

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

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

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

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

3 The Nature of the Variation

The proposal seeks a variation to maximum permissible height limit. In this case there are two possible methods to calculate and define the height of the building given the circumstances of the site, the proposal and the merit assessment of the proposed building height. In this regard, it is noted that the site contains a substantial dwelling of which much of the underlying fabric is to be retained and which has been excavated and accommodated by the modification of the steeply sloping site.

The first building height method is based on the on the RL's of the existing floor areas (as built); the second method is extrapolated across the site based on the natural ground level at the boundaries of the site (refer *Bettar v Sydney City Council*). Council confirmed, in the Pre-lodgment Minutes of 21st January 2021, that the height of the development could adopt the natural ground levels of the site at the boundaries in order to calculate the building height line across the site. For completeness an assessment against both methods is provided.

i) Height from ground level (existing)

In response to the definition of building height in the Manly LEP 2013, the height of the building would be measured from the ground level (existing) to the highest point of the building or from the RL of the building to the highest point of the building. In this case the building would be taken from the RL of the lower ground level floor level (ie RL 3.80m AHD).

Figure 2 shows the area of building height compliance shaded orange and the area of non-compliance as white. Figure 3 shows the cross section of the building showing the retained floors and walls in black and new floors and walls in grey. Figure 4 shows the height of the building from various locations, when measured from RL 3.8m AHD.

The maximum height occurs at the front of the stairwell structure, measuring **11.81m** above the lower ground floor level of RL3.8m AHD. The front of the upper terrace roof is 11.48m above the existing lower ground slab (RL3.8m AHD) immediately below the edge of the terrace roof. The front of the living room measures 8.85m above the existing lower ground floor slab, noting that the red dotted outline of the existing dwelling shows a similar height at this point of the building and setback from the Marine Parade frontage.

A blade wall above the upper-level library is an architectural feature only and is not directly above the existing or proposed lower ground floor slab.

3 The Nature of the Variation

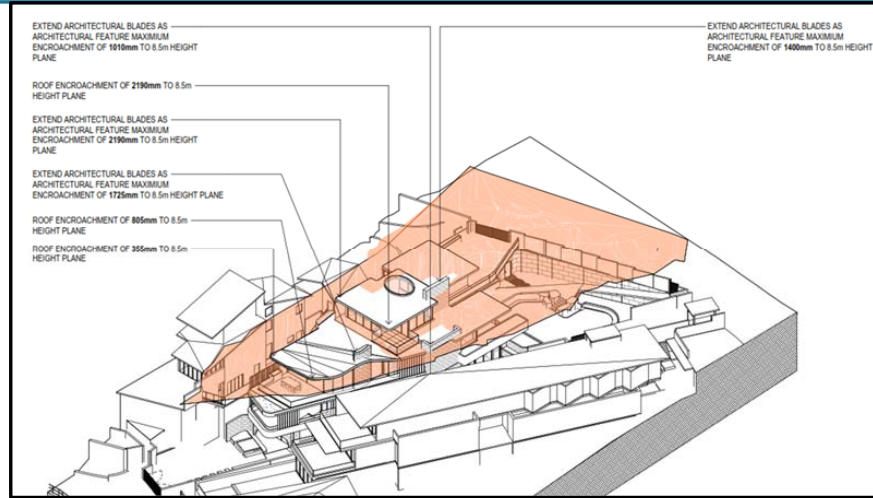


Figure 2: Building Height Plane diagram using existing ground level (RL3.8m AHD – floor level of lower ground floor level)

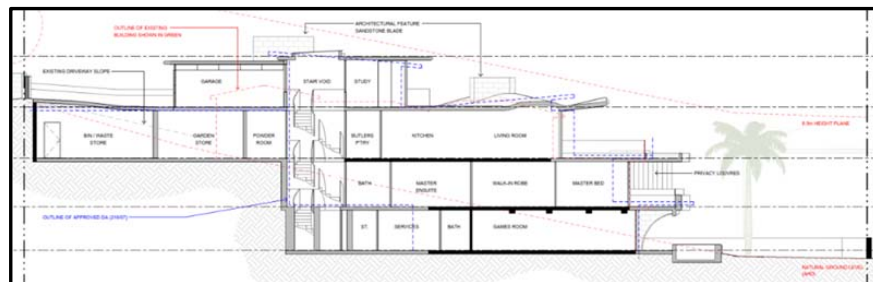


Figure 3: Section plan of the development showing the existing floors and walls in black and new floors and walls in grey

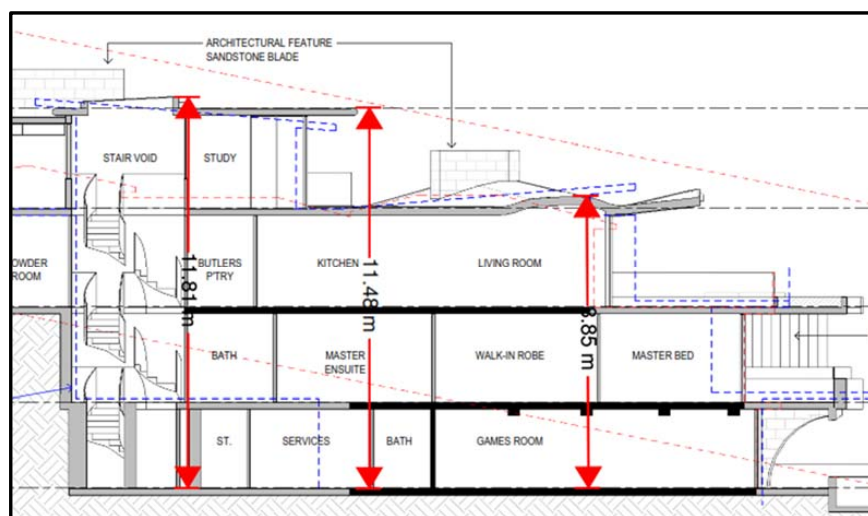


Figure 4: Extract Section plan (Dwg DA-301/P4) of the development with measurements to existing ground levels (ie RL 3.8m AHD of lower ground floor)

3 The Nature of the Variation

The above shows that the proposal exceeds the 8.5m building height development standard relative to the modified existing ground level. The maximum variation equates to **3.31m or 38.9%**.

ii) Height from natural ground levels

The second method adopted for the merit assessment of the height of building relies on averaging/assuming the natural fall of the site in comparison to adjoining sites and ignoring the man-made improvement to the adjoining site or the site itself. This is consistent with the method adopted by the Land & Environment Court in *Bettar v City of Sydney Council* In this case, Council confirmed, within the Pre-lodgment Minutes of 21st January 2021, that the height of the development could adopt the natural ground levels of the site at the boundaries.

Figure 5 below shows the building height plan diagram using this measurement method.

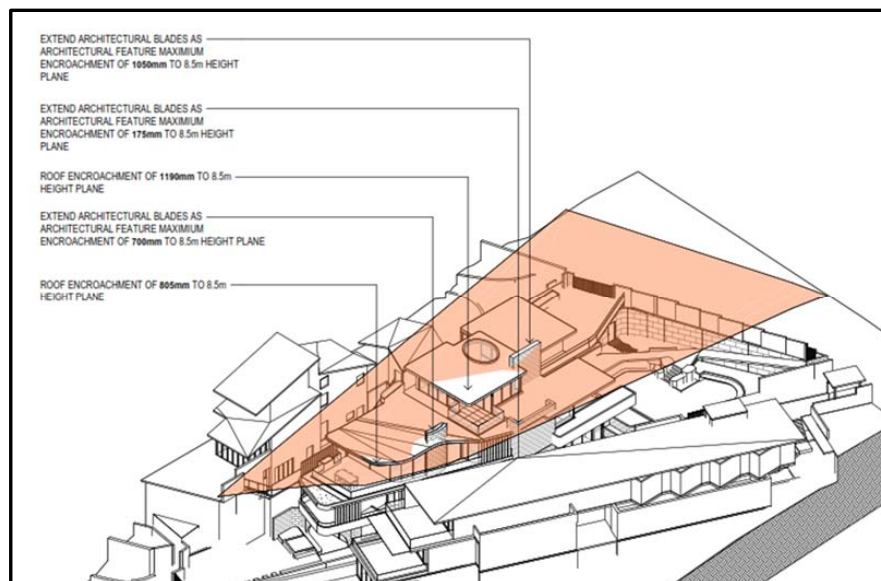


Figure 5: Extract of height plane diagram – showing one corner of the upper-level terrace exceeding the 8.5m height control (the blade wall are architectural features only)

3 The Nature of the Variation

Using the natural ground levels across the site the maximum building height occurs at the front corner of the upper-level terrace – a maximum height of 9.69m, the roof near the chimney and roof over the front terrace with height of 9.31m. The maximum variation is **1190mm**, or a **14% variation** to the 8.5m height control.

In accordance with Council's written advice, the specific circumstance of this case and in our opinion, this is the most appropriate and reasonable method to be adopted. The alternate method would result in a potential absurdity if the levels were raised and floor levels elevated and set as the base ground level line.

The variation sought is up to a maximum height of 9.69m and a variation of **1190mm**, adopting the second assessment method – natural ground level across the site.

4 Case Law

4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

4.2 *Winten Developments Pty Ltd v North Sydney Council [2001]*

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001]* NSWLEC 46 (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1st ‘test’ continues to be relevant and is a precondition for the application of cl4.6 – see Section 5.1.

The 2nd ‘test’ is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3rd ‘test’ was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that “environmental planning grounds” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4th ‘test’ is required to be demonstrated under cl4.6(3)(a) - see Section 5.1.

The 5th ‘test’ is analogous to cl4.6(4)(a) – see Section 5.3.

4 Case Law

4.3 *Wehbe v Pittwater Council [2007]*

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* (“Wehbe”) where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

4.4 *Four2Five Pty Ltd v Ashfield Council [2015]*

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (“Four2Five”) Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

The environmental planning grounds that support the proposed variation development standard in this circumstance are detailed in the main body of this Statement and summarised in Section 5.2.2 of this variation request.

4 Case Law

4.5 *Randwick City Council v Micaul Holdings Pty Ltd [2016]*

In *Randwick City Council v Micaul Holdings Pty Ltd [2016]* NSWLEC 7 ('Micaul') Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

4.6 *Moskovich v Waverley Council [2016]*

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016]* NSWLEC 1015 ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in Wehbe (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring

4 Case Law

justification in 'ways' such as those expressed in *Wehbe*.

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

4.7 *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard.

Further, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "*achieve better outcomes for and from development*".

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

4.8 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

4 Case Law

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 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. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

5 Assessment of the Variation

5.1 Step 1 - Is the planning control a development standard?

This question is the 1st 'test' in Winten. The HOB control in cl4.3 of the MLEP 2013 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point.

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2nd 'test' in Winten and the 1st and 2nd 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4th 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

The underlying objectives or purpose of the standard

Clause 4.3(1) of the MLEP 2013 states the objectives of the HOB development standard as follows:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*

5 Assessment of the Variation

- (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

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

The proposal is considered to achieve this objective as the proposal provides for a visually interesting roof form that reflects the topographic landscape and in particular the coastal setting. The overall height of the building is consistent with the adjoining building to the north and whilst subservient to the prevailing scale and height of other buildings in the vicinity is still capable of being deemed consistent.

The two main areas of non-compliance are roofs above open air terraces that assist in providing articulation, and weather protection. The other areas of non-compliance are architectural blade walls that provide architectural interest and relief.

A height plane analysis has been included in the architectural plans (extract below) which identifies those areas exceeding the 8.5m height limit. The areas of non-compliance are minor and the resultant dwelling is a more articulated and modulated built form that is reflective of the existing and desired future streetscape and views from the public realm along Marine Parade and from Bower Street. It is considered that the proposal is compatible in terms of height with the adjoining and surrounding development it is considered that the proposal achieves this objective.

Objective (b) *is to control the bulk and scale of buildings.*

The proposed alterations and additions have been appropriately designed to incorporate articulation and modulation with the non-complying elements located where potential impacts are minimized and which not contribute to an identifiable excess or unreasonable bulk or scale within the context of the building, the site and surrounds. These elements will not be prominent when viewed from the adjoining properties or the public domain given the topography of the site and their particular siting within the built form. The proposed additions incorporate balconies, terraces and varied setbacks, with skillful use of the material and colour composition and palette. All these assists in minimizing bulk and scale. The resultant

5 Assessment of the Variation

bulk and scale of the development is less than other residences along Bower Street and is therefore considered to be compatible with the existing surrounding development.

Objective (c) *to minimise disruption to the following:*

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

In relation to views currently enjoyed from the surrounding properties the proposal have been designed to ensure appropriate view sharing. This has been achieved by the following:

- The areas of the height non-compliance with the proposal are not located where primary views from nearby residences occur.
- The non-complying elements of the building are a result of the steep topography of the site and the architectural design features to enhance the external appearance of the residence which have a positive impact on the view from nearby residences. Given the significant slope from Bower Street towards Marine Parade it is not expected that the proposed areas of exceedance will obstruct any significant views from Bower Street.
- Views to Cabbage Tree Bay are generally well maintained.
- The location of the site, topography and considered design ensures that the proposal will not obstruct any views from or to Cabbage Tree Bay or the Marine Parade foreshore or public domain .

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

Shadow diagrams have been prepared and submitted with this application. The proposed alterations and additions do not result in any undue additional overshadowing of the habitable rooms or private open spaces of adjacent dwellings and the proposal is designed to maximise solar access whilst maintaining sunlight to the public open space particularly along Marine Parade.

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

The proposed alterations and additions are generally contained within the existing footprint of the existing residence and whilst some vegetation is to be removed, it is well compensated

5 Assessment of the Variation

by additional landscaping such that the overall landscaping of the site is improved from a qualitative perspective.

No alteration to the existing topography has any external impact particularly in terms of visual impact when viewed from surrounding land uses.

A Terrestrial Biodiversity Report and '5-part Test' for the Long-nosed Bandicoot is submitted with the DA package.

This objective is achieved as the proposed building works do not unduly intrude on the vegetated area of the site and the new plantings will not conflict with surrounding landuses.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the FSR development standard under the MLEP 2013 and the objectives of the E4 Environmental Living Zone under the MLEP 2013.

5.2.2 **Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard**

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are "*sufficient environmental planning grounds*" such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

The site-specific environmental planning grounds that support the proposed variation to the height of building development standard in this circumstance include:

- It should be noted that the permitted gross floor area is distributed on the upper levels as the existing lower ground floor although contributing to, and creating the noncompliance, is all flood liable and practically unusable due to regular inundation. With future sea level rise, the use of this area will ultimately be sterilized which is prejudicial to the proponent's reasonable expectations and "entitlements" of gross floor area. The area cannot be modified to provide the requisite habitable accommodation due to the need to raise the floor level which is prohibited by the minimal ceiling heights and hence the floor space is distributed on upper levels creating the tension with the height standard.

5 Assessment of the Variation

- Demolition and erection of a new building will set a higher baseline as Council allows for the height standard to be set by the flood planning level.
- The irregular shape of the land combined with the significant slope of the land from Bower Street to Marine Parade create a site that is difficult for design and layout of adequate floor levels taking into account the existing layout and amenity of adjoining properties and constraints of the existing building;
- The proposed height exceedances do not apply to all of the building; the large majority of the building complies with and is well below the development standard;
- The areas of non-compliance comprise three architectural blade features and two roof areas over open-air terraces, rather than areas of additional indoor living areas or habitable rooms all of which have positive effects in terms of amenity and design integrity;
- The non-compliant areas of the development are located on the eastern side of the building, where there is no overshadowing impacts as a result of the variations;
- The proposed alterations and additions have been designed to utilize the existing structure of the building, extend the undercroft area, consolidate the upper living areas, vehicle access to the site and storage. Clause 4.4.2 of the Manly DCP promotes the retention and adaptation of existing buildings rather than their demolition.
- In this situation the encroaching elements are important contributors to a positive design form which actually assists in creating a quality aesthetic and assists in minimising visual impacts when viewed from street and public realm areas.
- The height of the building is an important design consideration to remedy the existing anomalous situation whereby the existing building appears dwarfed by the scale of surrounding development.
- Removal of the non-compliant elements will have no material external benefit but conversely particularly in regard to the roof element, would be a deleterious impact on the amenity of the occupants in terms of weatherproofing and solar control.

In addition, Preston CJ clarified in *Micaul and Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking or unreasonable loss of views to adjoining properties.

5 Assessment of the Variation

5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the height of buildings development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the E4 Environmental Living Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The Proposal is consistent with the objectives of the E4 Zone for the following reasons:

First objective is to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

The proposal is for alterations and additions to a single dwelling which is low impact and maintains the low-density residential environmental and the objective is achieved.

Second objective is to ensure that residential development does not have an adverse effect on those values.

The proposal, including the height variations, will not have adverse impacts on the landscape values of the coastal location of the site when viewed from Bower Street, Marine Parade or Cabbage Tree Bay. The proposal remains subordinate to the view of residential development along the coastline due to its large setback to Marine Parade and the protrusion of other more prominent residences along Marine Parade. This is demonstrated in the aerial photo of part of the Marine Parade coastline in Figures 6 & 7 below. This objective is achieved.

5 Assessment of the Variation

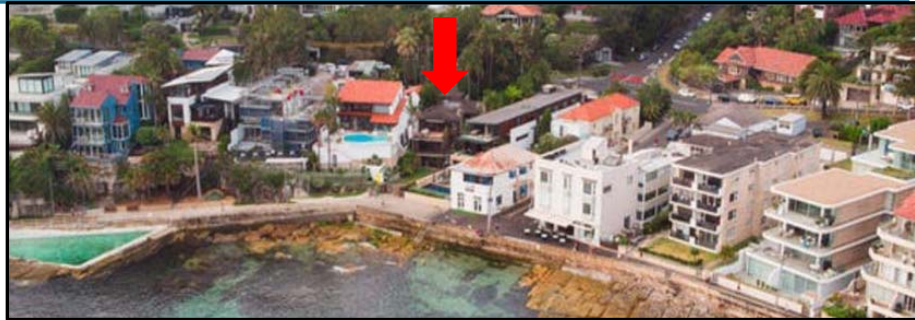


Figure 6: View of residential development along Marine Parade



Figure 7: Views of existing and proposed residence from Marine Parade

Third objective is to protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.

The proposal will not impact on tree canopies along the coastline or impact on the scenic qualities of the Marine Parade and Cabbage Tree Bay areas. The existing brown exterior is outdated and will benefit from the proposed modernisation of the external appearance, balconies and materials proposed. The residence will add to the attractiveness of the foreshore by improving the dated façade when viewed from the public domain. This objective is achieved.

Fourth objective is to ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.

The application includes a Terrestrial Biodiversity Report, stormwater management plan, Geotech report and arborist report which confirm that the proposal does not have a negative impact on geological features, bushland or vegetation.

This objective is achieved.

5 Assessment of the Variation

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

The application is accompanied by landscape plans that provide for the retention of any existing natural outcrops of the site, including those towards Marine Parade. The new plantings within the Marine Parade setback are to soften the backdrop of the large blank wall of the adjoining residence and swimming pool structure without imposing on views to Cabbage Tree Bay from the subject site. This objective is achieved.

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

The details of the proposal, as presented in the architectural plan set, demonstrate that the proposed height, bulk and scale of the building is consistent with the surrounding development. Figure 3 above shows that the existing dwelling is recessive and subordinate in bulk and scale to other development along the Marine Parade foreshore. The height of the proposal marginally exceeds the allowable height limit for minor parts of the roof and balcony structures but this does not add to the overall bulk of the building. The height plane diagram (see Figure 2) demonstrates that the majority of the building footprint is fully height compliant. The variation is predominantly due to the slope of the site. This objective is achieved.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the HOB development standard under the MLEP 2013 and the objectives of the E4 Environmental Living Zone under the MLEP 2013.

5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As MLEP 2013 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the HOB development standard under the LEP.

5 Assessment of the Variation

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

Furthermore, in Initial Action, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

Accordingly, the proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the Court.

6 Conclusion

The proposed development contravenes the Height of Building development standard under cl4.3 of Manly LEP 2013.

The height of building control under cl4.3 of the MLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the MLEP 2013 and is consistent with the relevant objectives of the E4 Environmental Living Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed dwelling will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity of the locality will be minimised to a reasonable level;

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including a lack of adverse environmental amenity impacts.

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard doesn't raise any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

6 Conclusion

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

Prepared by: **Joseph Vescio**
JVUrban Pty Ltd



Clause 4.6 Variation

Standard: Clause 4.4 – Floor Space Ratio

EPI: Manly LEP 2013

Proposal: Proposed Alterations and Additions

Property: 88 Bower Street, Manly

Prepared by: Joseph Vescio

Date: 23 June, 2021



1 Introduction

1.1 Background

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) and generally comprises:

- Major alterations and additions to existing dwelling comprising partial demolition of the dwelling and alterations and additions to existing dwelling;
- Construction of spa pool and landscaping

The Proposal exceeds the 0.45:1 maximum Floor Space Ratio (FSR) development standard under cl4.4 of the MLEP 2013 exhibiting a maximum FSR of approximately 0.57:1.

Notwithstanding the contravention of the development standard, the proposal is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including a lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the FSR development standard.

1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by *Squillace Architects*, dated 4th June 2021.

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

2 The Relevant LEP Provisions

2.1 Manly Local Environmental Plan 2013

2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the Site is zoned E4 Environmental Living and the Land Use Table in Part 2 of the LEP. It is noted that part of the site (Lot 1) is zoned RE1 Public Recreation. There are no structures (including the pool and landscaping) within the RE1 zoned area. The provisions of this zone have no bearing on the clause 4.6 variation.

The proposed land use is defined as a dwelling house which is permissible with development consent in the E4 Zone pursuant to the MLEP 2013.

2.1.2 Clause 4.4 – Floor Space Ratio (FSR)

Clause 4.4 of the MLEP 2013 sets out the FSR development standard as follows:

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The Floor Space Ratio Map designates a maximum FSR of 0.45:1 for the Site (see Figure 1).

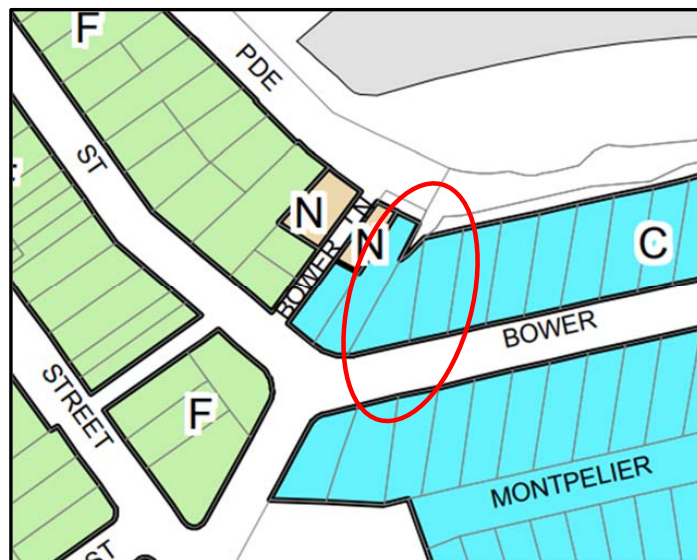


Figure 1: Extract of MLEP 2013 Map (FSR_006, "C" = 0.45:1)

2 The Relevant LEP Provisions

The MLEP 2013 Dictionary contains the following definitions:

Floor Space Ratio Map means the Manly Local Environmental Plan 2013 Floor Space Ratio Map.

Gross floor area means:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a H of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
 - (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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.

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

2 The Relevant LEP Provisions

Clause 4.6(2) provides that:

- (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.*

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

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

The proposed development does not comply with the FSR development standard pursuant to cl4.4 of the MLEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.2.1.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (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.*

2 The Relevant LEP Provisions

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

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

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

3 The Nature of the Variation

Site area: 736.1m². Allowable GFA is 331.25m².

The existing dwelling house has a FSR of 0.52:1 (GFA 382.77m²) (Refer to dwg no. DA-510/A).

The proposed dwelling house has a gross floor area of 423.2m², equating to a maximum floor space ratio of **0.57:1**. This is an increase on the existing GFA of 40.43m² and a non-compliance of **91.95m²** above the LEP standard.

Note: A FSR of 0.58:1 (approx. GFA 426.7m²) has previously been approved for this site. The proposal is therefore very similar GFA and FSR as previously approved, noting that that approval has commencement acknowledged by Council and remains valid for the site.

Figure 2 below outlines the GFA of each floor level and overall proposed FSR:

GFA SUMMARY TABLE (PROPOSED)	
SITE AREA	736.1 m ²
FSR	0.45:1
ALLOWABLE GFA	331.2 m ²
GROSS FLOOR AREA	
LOWER GROUND	80 m ²
GROUND LEVEL	174.3 m ²
LEVEL 1	141.7 m ²
ENTRY LEVEL	27.2 m ²
TOTAL	423.2 m ²
PROPOSED FSR (INCLUDING FLOOD PRONE AREA)	0.57:1
PROPOSED FSR (EXCLUDING FLOOD PRONE AREA)	0.46:1
EXISTING FSR	0.52:1
PREVIOUS APPROVED PROPOSED FSR	0.58:1
APPROVED DA NUMBER : 216/2007	
COMMENCED ON 14.07.14	
REF: DS MC/14.82959	

Figure 2: Proposed FSR calculations (Dwg No.: 510/A)

3 The Nature of the Variation



Figure 3:
Lower
Ground
Floor
Level

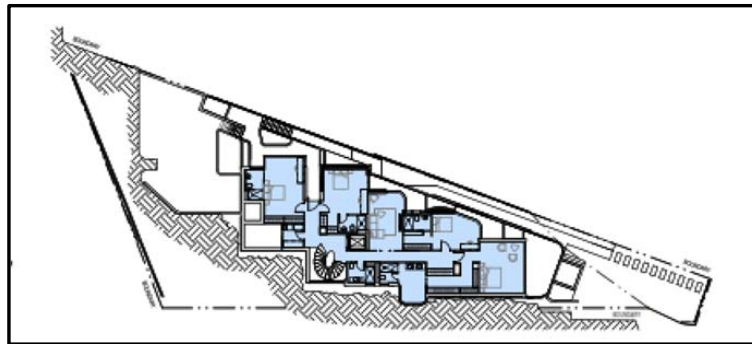


Figure 4:
Ground
Floor
Level

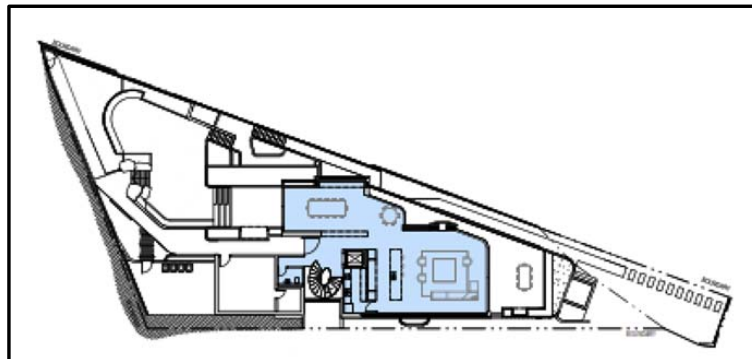


Figure 5:
Level 1

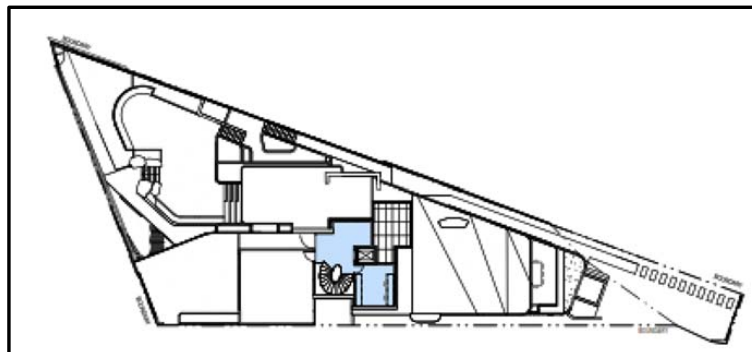


Figure 6:
Level 2

4 Case Law

4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

4.2 *Winten Developments Pty Ltd v North Sydney Council [2001]*

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001]* NSWLEC 46 (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1st ‘test’ continues to be relevant and is a precondition for the application of cl4.6 – refer to Section 5.1.

The 2nd ‘test’ is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3rd ‘test’ was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that “environmental planning grounds” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4th ‘test’ is required to be demonstrated under cl4.6(3)(a) - see Section 5.1.

The 5th ‘test’ is analogous to cl4.6(4)(a) – see Section 5.3.

4 Case Law

4.3 *Wehbe v Pittwater Council [2007]*

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* (“Wehbe”) where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

4.4 *Four2Five Pty Ltd v Ashfield Council [2015]*

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (“Four2Five”) Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are “sufficient environmental planning grounds” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

4 Case Law

The environmental planning grounds that support the proposed variation development standard in this circumstance are detailed in the main body of this Statement and summarised in Section 5.2.2 of this variation request.

4.5 *Randwick City Council v Micaul Holdings Pty Ltd [2016]*

In *Randwick City Council v Micaul Holdings Pty Ltd [2016]* NSWLEC 7 ('Micaul') Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

4.6 *Moskovich v Waverley Council [2016]*

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016]* NSWLEC 1015 ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in Wehbe (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

4 Case Law

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is “consistent” with objectives of the development standard and objectives for the zone rather than “achieving” the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in ‘ways’ such as those expressed in *Wehbe*.

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

4.7 Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (‘Initial Action’), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard.

Further, Preston CJ ruled that cl4.6 does not directly or indirectly establish a “test” that a development which contravenes a development standard results in a “*better environmental planning outcome*” relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

4 Case Law

4.8 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 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. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

5 Assessment of the Variation

5.1 Step 1 - Is the planning control a development standard?

This question is the 1st 'test' in Winten. The FSR control in cl4.4 of the MLEP 2013 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point."

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the floor space ratio development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2nd 'test' in Winten and the 1st and 2nd 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4th 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

The underlying objectives or purpose of the standard

Clause 4.4(1) of the MLEP 2013 states the objectives of the FSR development standard as follows:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired Streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

5 Assessment of the Variation

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

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

Council has previously approved a dwelling on the site with a FSR of 0.58:1. Council has previously acknowledged activation of the consent and therefore the previous approval remains valid. The outline of the footprint and building envelope is shown in the DA plan set and is not substantially different to the current proposal. The existing dwelling has a FSR of 0.52:1 and its scale is consistent with properties south of Bower Lane.

In terms of consistency with the existing streetscape, Figure 7 below, an extract of Drawing No. 510/P1 of the DA plan, shows the number and location of properties in the immediate vicinity of the site where an FSR over the 0.45:1 LEP control, has been approved.

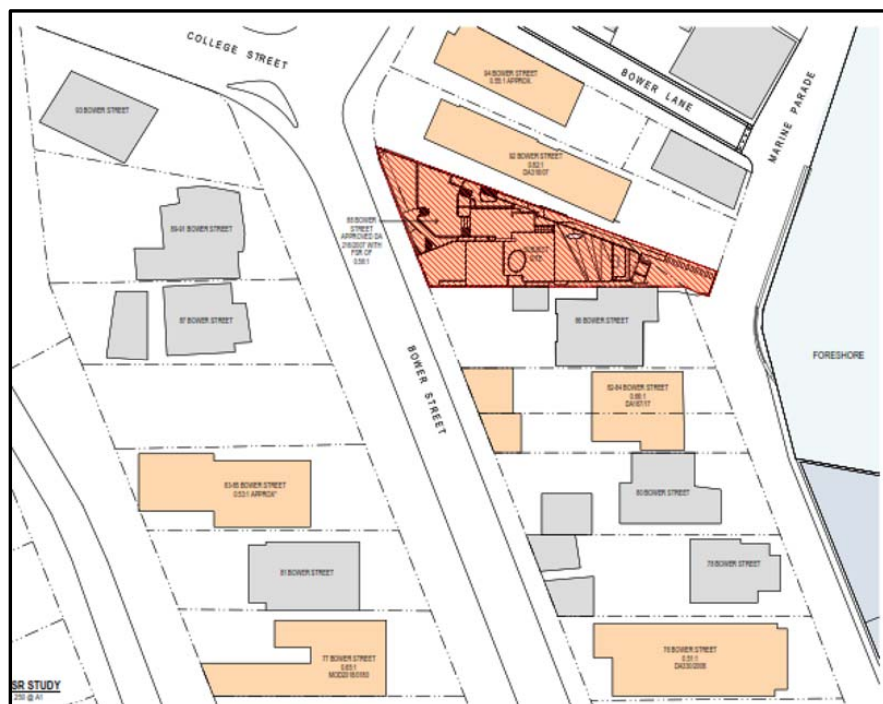


Figure 7: Orange shaded properties have FSR over 0.45:1

5 Assessment of the Variation

The bulk and scale of the development is compatible with similar proposals in the immediate vicinity, the development presents as a single storey detached dwelling to Bower Street, is set well back from Marine Parade and is subordinate to the scale and proportions of buildings surrounding the site.

The additional GFA and resultant FSR is increased from 0.52:1 to 0.57:1 for the site. This is a relatively small increase that is generally added within the footprint of the existing dwelling. As much of the floor space is subterranean or not visible from the public domain or neighbouring properties, and having regard to the high architectural quality of the proposal, the ultimate built form is representative of the desired streetscape character.

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

The additional floor area is predominantly contained within the existing footprint of the dwelling, and primarily within the lower ground floor extension. The resultant dwelling provides for a more modulated and articulated built form and allows for improved landscape opportunities. The proposal does not obscure any existing important landscape or townscape features.

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

The proposal presents as a single storey dwelling to Bower Street, with large front building setback, solid front fencing similar to existing with an open transparent gate, and extensive front landscaping. This maintains an appropriate relationship to the larger, more dominant residential development to the west along Bower Street. The proposal does not seek to construct garaging or similar imposing structures within the front setback to Bower Street.

The visual presentation to Marine Parade is modernised, similar to a number of redeveloped residential sites along the Marine Parade and foreshore area. The proposal does not seek to intrude into the Marine Parade streetscape, rather retaining its current setback and subordinate scale when compared with other residential development in the vicinity.

From a landscape perspective the proposal replaces the existing domestic landscaping with new appropriate domestic plantings. When viewed from Bower Street this sits behind the new front boundary fencing and from Marine Parade the existing garden is embellished without imposing onto views to the ocean or impacting on adjoining residences.

5 Assessment of the Variation

The visual relationship having regard to the existing built form and landscape context is appropriate.

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

The proposed additions have been designed to take into account the location of adjoining external wall openings and coastal views of neighbouring properties. The privacy and amenity of adjoining residents has been addressed and is satisfactory or can be simply mitigated with screening devices.

As demonstrated in the shadow diagrams, the proposal does not result in any undue overshadowing to adjoining residential properties.

No unreasonable adverse impacts are considered to be attributable to the variations, and the impacts have been minimised by the strong articulation of the building both in plan and elevation and staggered setbacks.

From a public domain consideration, use of open style hares allows permeability and distant views over the site and an improved interface and from Marine Parade the modernisation of the existing modest and outdated building with a building of high quality architectural merit will enhance the experience of users of Marine Parade and the surrounding public domain.

Objective (e) relates to the viability of business zones and does not apply to this development.

5.2.2 **Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard**

There is an onus on the Applicant to demonstrate that there are “sufficient environmental planning grounds” such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply to a similar development on any other land.

5 Assessment of the Variation

The site-specific environmental planning grounds that support the proposed variation to the floor space ratio development standard in this circumstance relate to the retention of part of the existing dwelling on site, the previous approval - up to 0.58:1 - for a dual occupancy on the site (which remains a valid approval) and the extension of the lower ground floor area wholly within the footprint of the existing dwelling.

The Court has previously determined that a 0.58:1 FSR is suitable for the site, and the applicant has the right to proceed with that development. Notwithstanding, the applicant has elected to pursue a single dwelling house more in line with the objectives of the E4 zone and planning controls.

Utilising the lower ground floor area for additional floor area does not contribute to additional bulk or scale. The remaining additional floor area proposed is to the eastern elevation of the dwelling and provides for additional articulation. It is noted that the FSR representative of the GFA above flood affected lower ground floor equates to 0.47:1, which is only a very minor variation in the circumstances.

The utilisation of opportunities within the existing footprint that would otherwise be sub-floor voids is considered to be orderly and economic development and resourceful use of the opportunities created by the site conditions without any adverse impacts.

It should be noted that the permitted gross floor area is distributed on the upper levels as the existing lower ground floor although technically defined as GFA and contributing to, and creating the noncompliance, is all flood liable and practically unusable due to regular inundation. With future sea level rise, the use of this area will ultimately be sterilized but still technically counted as GFA which is prejudicial to the proponent's reasonable expectations and "entitlements" of gross floor area. The area cannot be modified to provide the requisite habitable accommodation due to the need to raise the floor level which is prohibited by the minimal ceiling heights.

Further as Preston CJ clarified in *Micaul and Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking or unreasonable loss of views to adjoining properties.

5 Assessment of the Variation

5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the floor space ratio development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the E4 Environmental Living Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The Proposal is consistent with the objectives of the E4 Zone for the following reasons:

First objective *is to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

The proposal is the retention of a detached dwelling as opposed to the approved dual occupancy which is better defined as medium density having regard to Council's density controls. The resultant dwelling retains the low-density residential environmental and this of low impact.

5 Assessment of the Variation

Second objective is to ensure that residential development does not have an adverse effect on those values.

The proposal will not have adverse impacts on the landscape values of the coastal location of the site when viewed from Bower Street, Marine Parade or Cabbage Tree Bay. The proposal remains subordinate to the view of residential development along the coastline due to its large setback to Marine Parade and the protrusion of other more prominent residences along Marine Parade. This is demonstrated in the aerial photo of part of the Marine Parade coastline in Figures 8 & 9 below. This objective is achieved.



Figure 8: View of residential development along Marine Parade



Figure 9: Views of existing and proposed residence from Marine Parade

Third objective is to protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.

The proposal will not impact on tree canopies along the coastline or impact on the scenic qualities of the Marine Parade and Cabbage Tree Bay areas. The existing brown exterior is outdated and will benefit from the proposed modernisation of the external appearance, balconies and materials proposed. The residence will add to the attractiveness of the foreshore by improving the dated façade when viewed from the public domain such that the architectural form and expression and does not dominate but rather provides for a building of high architectural quality with positive impacts on the natural scenic amenity of the foreshore. This objective is achieved.

5 Assessment of the Variation

Fourth objective is to ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.

As previously stated above, the proposal has a positive rather than negative impact on the nearby foreshore and all environmental impacts that could potentially arise have been suitably addressed and mitigated by stormwater management, protection of any unique geological features (none of which are evident on site) and loss of vegetation duly compensated by new landscape treatment of the site.

This objective is achieved.

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

The application is accompanied by landscape plans that provide for the retention of the existing natural outcrops of the site, including those towards Marine Parade. The new plantings within the Marine Parade setback are to soften the backdrop of the large blank wall of the adjoining residence and swimming pool structure without imposing on views to Cabbage Tree Bay from the subject site. This objective is achieved.

Sixth objective is to ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

The details of the proposal, as presented in the architectural plan set, demonstrate that the proposed height, bulk and scale of the building is consistent with the surrounding development. Figure 3 above shows that the existing dwelling is recessive and subordinate in bulk and scale to other development along the Marine Parade foreshore and Figure 2 above shows the number and location of other residential development in the immediate vicinity of the site that have been approved over the 0.45:1 FSR. The height of the proposal marginally exceeds the allowable height limit for minor parts of the roof and balcony structures but this does not add to the overall bulk of the building. The height plane diagram submitted with the DA plan set demonstrates that the majority of the building footprint is fully height compliant. The variation is due to the slope of the site. This objective is achieved.

5 Assessment of the Variation

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the FSR development standard under the MLEP 2013 and the objectives of the E4 Environmental Living Zone under the MLEP 2013.

5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As MLEP 2013 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the FSR development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the FSR development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

Furthermore, in Initial Action, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

5 Assessment of the Variation

Accordingly, the proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of state or regional significance as it is peculiar to the design of the proposed development for this particular site;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the Court.

6 Conclusion

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.4 of the MLEP 2013 and is consistent with the relevant objectives of the E4 Environmental Living Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed dwelling will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity of the locality will be minimised to a reasonable level.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the FSR development standard including a lack of adverse environmental amenity impacts.

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard doesn't raise any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

Prepared by: **Joseph Vescio**
JVUrban Pty Ltd

ITEM 3.5**DA2021/2038 - 12B WEST STREET BALGOWLAH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING A GARAGE AND SWIMMING POOL****REPORTING MANAGER**

Rodney Piggott

TRIM FILE REF

2022/262558

ATTACHMENTS

- 1 [↓](#)Assessment Report
- 2 [↓](#)Site Plans and Elevations
- 3 [↓](#)Report - Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2021/2038 for demolition works and construction of a dwelling house including a garage and swimming pool on land at Lot B2 DP 337111, 12B West Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2038
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot B2 DP 337111, 12 B West Street BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including a garage and swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kim Shelby Alexander
Applicant:	Stewart Ross Algie
Application Lodged:	29/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	10/11/2021 to 24/11/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 20.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,420,000.00

EXECUTIVE SUMMARY

The application seeks consent for demolition works and the construction of a new dwelling house.

As the proposal includes a variation to the height of buildings development standard exceeding 10%, the application is referred to the Development Determination Panel.

One submission was received in response to the notification of the application, generally relating to the excavation impacts of the proposal, use of the shared driveway access to the site and the retention of native vegetation. As detailed in the report, none of the concerns raised in submission warrant the refusal of the application subject to the recommended conditions of consent.

The development proposes a building height of 10.245m, resulting in a variation of 20.5% (1.745m) to the 8.5m control. The Applicant's Clause 4.6 written request has adequately demonstrated that the proposal achieves the objectives of the height of buildings development standard, and that there are sufficient environmental planning ground to justify the extent of the proposed variation sought.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and construction of a new dwelling as follows:

Lower ground floor

- Rumpus
- Guest bed with ensuite
- Bath
- Rear terrace

Ground floor

- Master bedroom with ensuite, robe and balcony
- Bedrooms 2, 3 & 4
- Bath
- WC & laundry

First floor

- Kitchen, living & dining
- Pantry & wine store
- Study
- WC
- Rear deck

Second floor

- Family
- Terrace
- Double garage & bin store above existing suspended hard stand
- Stair access to ground floor

External (rear)

- Swimming pool, deck & access stair
- Tree removal

- New planting including native trees, shrubs, screen planting, climbers and ground covers
- Landscape works including paving, steppers and planter boxes
- New boundary fencing

Amendments to application

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

- Amendment to garage height and bin store
- Reduction and reconfiguration of second floor level including deletion of master bedroom and inclusion of a green roof
- Reduced overall building height by 370mm
- Reconfigured internal stair
- First floor side setbacks increased by 400mm, reconfigured internal layout and increased deck depth
- Reconfigured ground floor layout and addition of bedroom at the south-eastern corner with a green roof above
- Reconfigured lower ground floor layout and increased terrace depth
- Swimming pool and deck moved east with reduced rear setback

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot B2 DP 337111 , 12 B West Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of allotment located on the eastern side of West Street.</p> <p>The site is regular in shape and is accessed via a right of carriageway across 12 West Street. The site has a width of 15.24m, a depth of 44.805m and a surveyed area of 682.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing detached dwelling.</p> <p>The site slopes approximately 16m from front (west) to rear (east).</p> <p>The site contains seven significant trees/palms and a variety of smaller vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of residential development including detached dwellings, dual occupancies and residential flat buildings.</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><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 10/11/2021 to 24/11/2021 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:
Mr Geoffrey Edward Pridgeon	21 Austin Avenue NORTH CURL CURL NSW 2099

The issues raised in the submission are addressed as follows:

- Dilapidation reports**

The submission requested that dilapidation reports be prepared in relation to 12 West Street and the shared driveway.

Comment:

Conditions are recommended requiring the preparation of pre and post-construction dilapidation reports in relation to all adjoining properties and the shared driveway of 12 West Street.

- Solar Panel Installation**

The submission requested that any solar panels be located not exceed the building height control.

Comment:

No solar panels are proposed as part of the proposal and as such this matter is outside the scope of this assessment. It is noted that solar panels may be installed as exempt development subject to compliance with the relevant requirements.

- **Site Access**

The submission requested that any use of the shared driveway for demolition and construction access be outlined in the Construction Certificate documentation.

Comment:

Conditions are recommended requiring the provision of a Construction Traffic Management Plan (CTMP) for approval. The CTMP must also be provided to other users of the shared driveway at least 7 days prior to the commencement of works, should the driveway be used for access to the site.

- **Native vegetation**

The submission requested that native vegetation be retained following completion of the development.

Comment:

The proposal includes the removal of four significant trees and three exempt species from the site. Council's Landscape Officer raised no objection to the proposed tree removal, subject to the provision of compensatory planting in accordance with the recommended conditions of consent.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported with conditions.</p> <p>The development application is for the demolition of the existing site structures and the construction of a new dwelling with detached garage accommodation, a swimming pool, and landscape works.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable <p><i>Updated comments:</i></p> <p>An additional Arboricultural Impact Assessment by an alternative arborist (Blues Brothers) has been submitted as an updated report in consideration of the development application proposal for the pool, decking and stairs within the rear of the property, including the impact to the large Blackbutt identified as tree 1 in the report with an alternative design layout for the pool, and the arboricultural assessment of impact presented is also detrimental to the preservation of tree 1, as this was under the original arborist report (Hugh the Arborist) in consideration of the original pool layout. As such the following recommendations are provided:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • remove tree 1 - Blackbutt (#) due to the high percentage of encroachment from the proposed works, trunk and canopy bias with roots under tension, and that any root severance is likely to place additional stresses on the remaining root system increasing risk of complete failure, (#) identified as T10 Sydney Blue Gum in the Hugh the Arborist report, • remove tree 2 - Norfolk Island Pine due to stunted specimen, and intense canopy competition, • protect the various exempt species in good health and vigour located within the rear yard of the property to preserve the existing landscape buffer to the adjoining Brimbecomb Park Reserve, including the following non weed palm species: Alexander Palms (<i>Archontophoenix alexandrae</i>), Bangalow (<i>Archontophoenix cunninghamiana</i>), and Mexican Fan Palms (<i>Washingtonia robusta</i>), and all other understorey non weed vegetation in this area, • protect all trees and vegetation within adjoining properties. <p>All other arboricultural recommendations for removal and otherwise protection measures as listed in the original arborist report (Hugh the Arborist) shall be applied.</p> <p>The updated Landscape Plan provides proposals to retain existing trees in accordance with the Arborist Report and provide additional landscape planting, and is acceptable subject to imposed conditions for additional locally native tree planting within the rear of the property.</p> <p><i>Previous comments:</i> A Arboricultural Impact Assessment is submitted recommending the removal of seven existing trees impacted by the development footprint or in poor condition, and of these four are exempt palm species that do not require Council consent. The property contains many exempt species, and includes three native trees/palms rated of high retention value in the Arboricultural Impact Assessment with high amenity value and long safe useful life expectancy. These are identified as T5 and T6 - Cabbage Tree Palms, and T10 - Sydney Blue Gum. It is considered that T10 - Sydney Blue Gum is able to be retained with relocation of the swimming pool and surrounding decks and stairs at a distance from the tree determined by an Arborist based on an acceptable level of encroachment into the tree protection zone. The retention of both T5 and T6 - Cabbage Tree Palms is not achievable as it is considered there is not a design alternative.</p> <p>A Landscape Plan is submitted and no concerns are raised regarding the proposed landscape outcome, subject to a suitable outcome for the retention of T10 - Sydney Blue Gum.</p> <p>The site adjoins Brimbecomb Park downslope from the development site. The proposal retains existing trees and palms located at the rear of the property adjoining Brimbecomb Park and as such maintains a landscaped buffer transition between private and public land. It is noted however that the existing trees and palms are exempt species that may be removed without Council consent. To maintain the</p>

Internal Referral Body	Comments
	landscaped buffer between private and public land, conditions can be imposed on an ongoing basis that should the exempt species be removed, replacement tree and screen shrub planting will be required. Landscape Referral are unable to support the removal of a prominent native tree that exhibits such a high retention value and it is suggested a redesign and/or realignment of the swimming pool and surrounds is investigated, and in co-ordination with an Arborist.
NECC (Development Engineering)	Supported with conditions. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable with no conditions recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1238513S_02 dated 4 April 2022).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.245m	20.5%	No
Floor Space Ratio	0.45:1 307.265m ²	0.45:1 307m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.245m
Percentage variation to requirement:	20.5%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

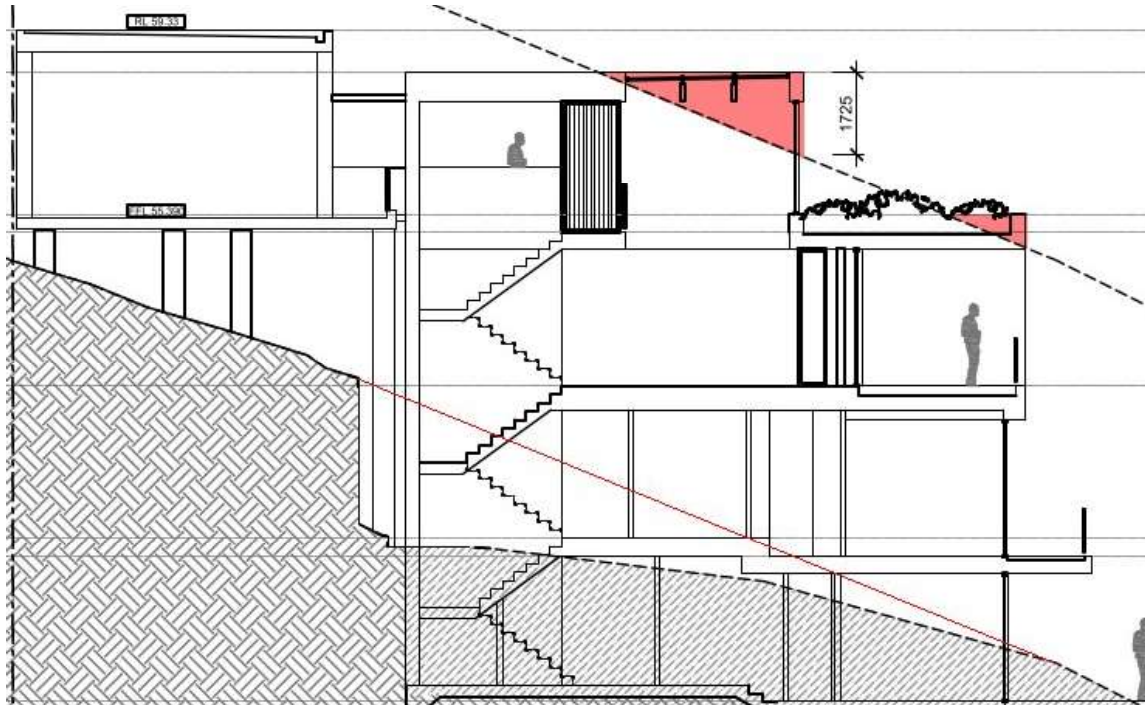
- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social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

The applicants written request argues, in part:

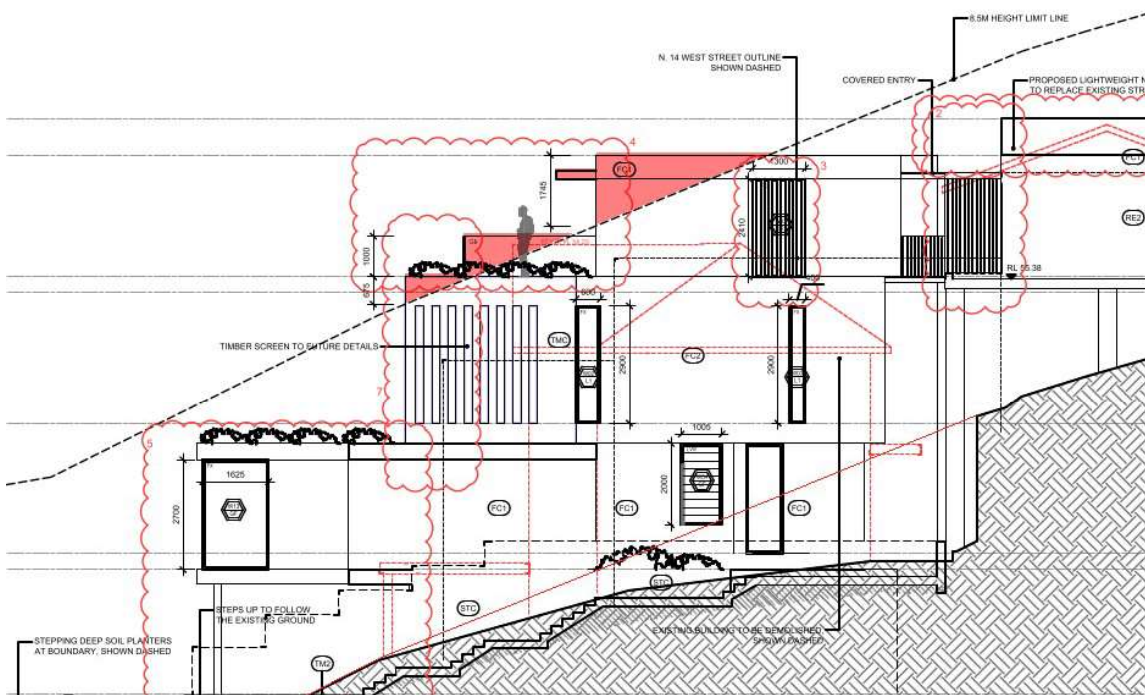
- *"Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which limits the ability to distribute a compliant quantum of floor space across the site in a contextually appropriate manner whilst complying with the height of buildings standard.*
- *In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the topography of the land by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes. Such outcome is achieved whilst realising the reasonable development potential of the land.*
- *The building height breaching element contains a number of skylights which facilitate light penetration to the first floor level living areas significantly enhancing the amenity of this floor plate and representing good design."*

Comment:

The proposal seeks to site the dwelling in generally the same location as the existing, where the natural topography has previously been altered. The proposed siting is appropriate in the context and the steep topography contributes to the resulting building height breach. The proposal maintains compliance with the floor space ratio control and the siting of the dwelling ensures adequate separation from the adjoining building at 10 West Street to minimise amenity impacts. The proposed building height breaches are shown shaded on the plans below.



Plan 1. Section AA building height breaches.



Plan 2. North elevation building height breaches.

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 and amenity, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

Comment:

The proposed building height and roof form are compatible with the topography of the site and the prevailing building height of the locality, noting the consistent height of the proposal with the adjoining building at 14A West Street. The development will not be readily visible within the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposal is not excessive and bulk or scale despite the proposed variation. The non-compliance is generally limited to the leading edge of the first floor deck roof, the second floor balcony and part of the adjacent family/void. The extent of the breach at the first floor level is minor and the proposed second floor includes fully compliant setbacks to provide articulation and separation.

c) to minimise disruption to the following:

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

(ii) views from nearby residential development to public spaces (including the harbour and

*foreshores),
(iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposal will not result in any unreasonable impact to views to, from or between residential properties and public spaces.

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

Comment:

The proposal will maintain adequate solar access to adjoining public properties and the adjacent public reserve.

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

Comment:

N/A

Zone objectives

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

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

Comment:

The proposal maintains the low density residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

N/A

Conclusion:

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

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

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

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

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The submitted geotechnical investigation indicates that the proposed excavation will not impact the water table.

6.2 Earthworks

The proposed excavation works are generally limited to the proposed building footprint and are not anticipated to adversely impact adjoining properties or the natural environment. Conditions are imposed requiring the preparation of dilapidation reports in relation to the adjoining properties.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 682.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 8m (gradient 1:4 +)	GF: 5.7m	N/A	Yes
		FF Kitchen: 7.8m	N/A	Yes
		FF Deck: 9.2m	15%	No
		2F: 10.2m	27.5%	No
		Garage: 7.2m	N/A	Yes
	South: 8m (gradient 1:4 +)	GF Beds 2 & 3: 7.5m	N/A	Yes
		GF Bed 4: 3.3m	N/A	Yes
		FF: 9m	12.5%	No

		2F Family: 10m	25%	No
		2F Terrace: 9.9m	23.75%	No
4.1.2.2 Number of Storeys	2	4	100%	No
4.1.2.3 Roof Height	Height: 2.5m	0.55m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	GF: 1.9m	1.9m	N/A	Yes
	FF Kitchen: 2.6m	1.4m	46.2%	No
	FF Deck: 3.07	3.5m	N/A	Yes
	2F: 3.4m	3.5m	N/A	Yes
	Garage: 2.4m	0m	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	GF Beds 2 & 3: 2.5m	2.5m	N/A	Yes
	GF Bed 4: 1.1m	1.5m	N/A	Yes
	FF: 3m	1.5m	50%	No
	2F Family: 3.3m	3.4m	N/A	Yes
	2F Terrace: 3.3m	3.6m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	12.1m	N/A	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	12.1m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 375.54m ²	68.6% 468.5m ²	N/A	Yes
	Open space above ground 25% of total open space	11%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 131.44m ²	52.5% 197.1m ²	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.1m	110%	No
	2.1m curtilage side/rear setback (based on 2.1m height)	1.5m	28.6%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Compliance with control

At 9am and 10am there is additional overshadowing of the northern and eastern elevations of 10 West Street and the adjacent swimming pool and rear yard. From 11am and throughout the afternoon the additional impact is limited to the heavily vegetated rear yard of No. 10. The proposal will maintain a compliant level of sunlight access to the living areas and private open spaces of No. 10 throughout the day in accordance with the control.

Note: No amended shadow diagrams were provided with the amended plans. However, based on the siting of the ground floor Bed 2 extension it is apparent that the amendments will not result in a non-compliance with the control. The amendments to the second floor will somewhat reduce the level of overshadowing shown on the submitted shadow diagrams.

3.4.2 Privacy and Security

Compliance with control

The proposed glazing and private open space areas are appropriately designed to avoid adverse privacy impacts between the subject site and adjoining properties, as assessed against the controls below.

3.4.2.1 Window Design and Orientation

- Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- When building close to boundaries, windows must be off-set from those in the adjacent building to*

restrict direct viewing and to mitigate impacts on privacy.

Comment:

The primary glazing is orientated to the rear of the site, with limited narrow side boundary-facing windows. Window W03 at the second floor level includes an external privacy screen.

3.4.2.2 Balconies and Terraces

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

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

Comment:

The proposed pool deck and lower ground floor terrace are suitable designed and located for privacy, with supplementary screen planting incorporated. The proposed ground floor bedroom balcony includes a blade wall at the northern elevation and the first floor deck includes privacy screens at both the northern and southern elevations. The proposed second floor terrace is unscreened, but is set back 8m from the northern side boundary, 3.6m from the southern side boundary and is offset from the dwelling and principal private open space areas of the adjoining property to the south.

3.4.3 Maintenance of Views

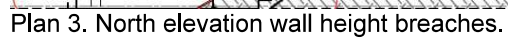
Given the lack of submissions in relation to view loss and the change in levels between the subject site and properties upslope to the west, it is not anticipated that the proposal will result in any unreasonable view impacts.

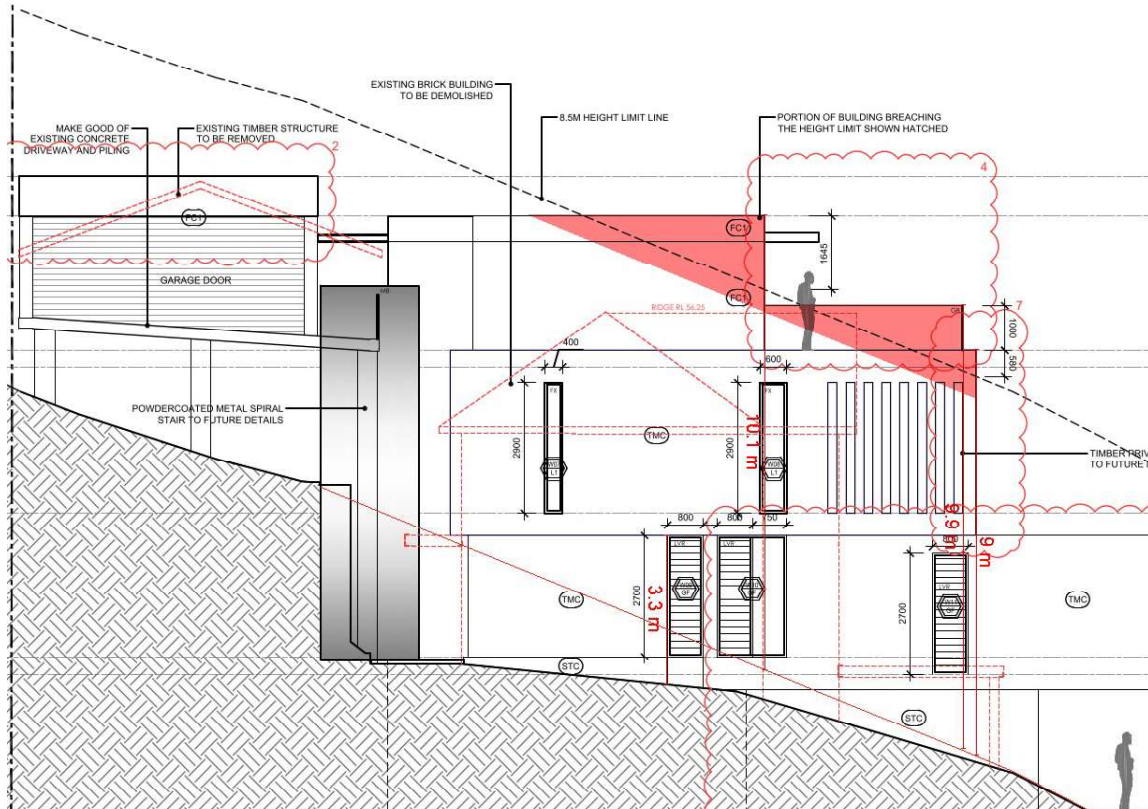
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

The development includes various wall height non-compliances at the proposed first and second floor levels, up to a maximum of 2.3m beyond the 8m control.

The extent of the breaches are shaded below on the north and south elevation plans.





Plan 4. South elevation wall height breaches.

Merit consideration

There are no underlying objectives under this control against which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal is considered to maintain a compatible height and bulk to surrounding developments, and achieves the objectives of the height of buildings development standard.

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

Description of non-compliance

The proposal includes the following side setback non-compliances:

- First floor kitchen (north) - 2.6m required, 1.4m proposed
- Garage (north) - 2.4m required, 0m proposed
- First floor (south) - 3m required, 1.5m proposed

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 subject site has no street frontage and the proposed will not be visible within the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

Based on the minimal amenity impacts to adjoining properties, it is considered appropriate to apply flexibility in the siting of the building in this case. It is noted that the proposed garage replaces an existing garage in generally the same location.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal provides a compliant landscaped area and the setback breaches do not impact any existing landscaping. The proposed garage is located over an existing hardstand area and the first floor breaches occur above ground level.

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 and Geotechnical Areas G2 and G4 and a Geotechnical Investigation has been prepared in relation to the development, confirming that the development is suitable for the site. The recommendations of this report are incorporated in to the conditions of consent.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposed 2.1m high swimming pool exceeds the maximum 1m height above ground level. The proposed 1.5m southern side setback is also less than the 2.1m maximum height.

Merit consideration

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

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

Comment:

The proposed swimming pool is appropriately located to minimise visual and aural privacy impacts between the subject site and adjoining properties. The pool deck area is set back an equivalent distance to its height above ground, and is screened by the proposed fencing/walling at the northern and southern elevations. Conditions are imposed regarding the noise generation by the pool equipment.

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

Comment:

The swimming pool is sited within the rear yard and will not impact the streetscape or character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The proposed pool design integrates new landscaping in the form of at-grade planting and climbing vegetation to the raised pool shell.

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

Comment:

N/A

4.1.10 Fencing

The proposal does not include any front fence. The proposed 1.8m high boundary fence complies with the SEPP Exempt and Complying requirements and is appropriate in the context of the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$24,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,420,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

- 1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:
 - a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) There are sufficient environmental planning grounds to justify the contravention.
- 2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The application seeks consent for demolition works and the construction of a new dwelling.

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

Notwithstanding the proposed building height variation of 20.5%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

One submission was received in relation to the development, and is addressed in the report with suitable conditions imposed were 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 Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/2038 for Demolition works and construction of a dwelling house including a garage and swimming pool on land at Lot B2 DP 337111, 12 B West Street, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A0.02 Site Plan	Rev. 1, August 2021	Platform Architects
A1.01 Lower Ground Floor Plan	Rev. 2, March 2022	Platform Architects
A1.02 Ground Floor Plan	Rev. 2, March 2022	Platform Architects
A1.03 First Floor Plan	Rev. 2, March 2022	Platform Architects
A1.04 Second Floor Plan	Rev. 2, March 2022	Platform Architects
A1.05 Roof Plan	Rev. 2, March 2022	Platform Architects
A2.01 South Elevation	Rev. 2, March 2022	Platform Architects
A2.02 East Elevation	Rev. 2, March 2022	Platform Architects
A2.03 North Elevation	Rev. 2, March 2022	Platform Architects
A2.04 West Elevation	Rev. 2, March 2022	Platform Architects
A3.01 Section	Rev. 2, March 2022	Platform Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1238513S_02	4 April 2022	Eco Certificates Pty Ltd
Geotechnical Investigation	7 October 2021	White Geotechnical Group
Arboricultural Impact Assessment	7 July 2021	Hugh the Arborist
Arboricultural Impact Assessment Report	24 January 2022	Blues Brothers Arboriculture

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
1 Landscape Plan	Rev. D, 4 April 2022	Paul Scrivener Landscape
2 Planting Plan	Rev. D, 4 April 2022	Paul Scrivener Landscape

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 \$24,200.00 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 \$2,420,000.00.

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

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

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

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

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

5. Security Bond

A bond (determined from cost of works) of \$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****6. 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.

7. 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.

8. 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 ISTRUCT Consulting Engineers, drawing number 210601-D01, dated 10/8/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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.

9. Structural Adequacy and Excavation Work

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

10. **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.

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are 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. (DACPLC03)

12. **Construction Traffic Management Plan**

The Applicant is to submit an Construction Traffic Management Plan ('CTMP') to Council for approval prior to issue of the Construction Certificate. The CTMP shall be prepared by an appropriately qualified person and is to detail:

- o Access to the site and parking of trades and service people,
- o Size, weight, dimensions and frequency of truck movements along the driveway,
- o Management of driveway, noting the shared use of the driveway,
- o Storage of goods and materials.

Once approved, copies of the CTMP are to be furnished to all property owners who benefit from the driveway for their records. This is to occur at least 7 days prior to the commencement of any works on site.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Tree Removal Within the Property**

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

- i) tree 1 - Blackbutt (as identified in Blues Brothers report) and this is identified as T10 in the Hugh the Arborist report, and subject to tree replacement,
- ii) tree 2 - Norfolk Island Pine (as identified in Blues Brothers report) and this is identified as T11

in the Hugh the Arborist report,
iii) tree 5 and 6 - Cabbage Tree Palm as identified in the Hugh the Arborist report, and subject to like for like replacement,
iv) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Note: The following Exempt Species as listed in the Hugh the Arborist report, impacted by development, do not require Council consent for removal: trees 4, 7, and 8 - Alexander Palms

Reason: To enable authorised development works.

14. **Pre-Construction Dilapidation Report**

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

Properties:

- o 10 West Street, Balgowlah
- o 12 West Street, Balgowlah (including shared driveway)
- o 14A West Street, Balgowlah

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

15. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

16. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected as illustrated in the Landscape Plan prepared by Paul Scrivener Landscape Architects and the Arboricultural Impact Assessment reports prepared by Blues Brothers and by Hugh the Arborist, including:

- i) all trees and vegetation within the site not approved for removal,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment reports prepared by Blues Brothers and by Hugh the Arborist, as listed in the following sections:

- i) section 9 Recommendations (Hugh the Arborist)
- ii) section 10 Tree Protection Requirements (Hugh the Arborist)
- iii) section 11 Hold Points (Hugh the Arborist)
- iv) section 5 Recommendations (Blues Brothers)

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint

to the recommendations of the Arboricultural Impact Assessment.

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

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

Reason: Tree and vegetation protection.

17. **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.

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

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

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

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

19. **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.

20. **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.

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

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

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

22. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual 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.

23. **Waste Management During Development**

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

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

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

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

24. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) the nominated *Acmena smithii* native tree shall be pre-ordered to be delivered at a minimum 75 litre container size with a minimum 30-35mm caliper width,
- ii) a total of two (2) *Livistona australis* (Cabbage Tree Palm) shall be planted within the rear embankment at a pre-ordered minimum 100 litre container size,
- iii) all tree planting shall be a minimum planting size of 75 litres or larger as nominated in the plant schedule, and shall meet the requirements of Natspec - Specifying Trees, planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iv) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants

per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,

v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

vi) landscape works are to be wholly contained within the property boundaries.

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.

25. **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 and vegetation 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.

26. **Post-Construction Dilapidation Report**

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

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

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

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

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

27. **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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

29. Certification Elevated Parking Facility Work

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

Reason: Compliance with this consent.

30. 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

31. Landscape Maintenance

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

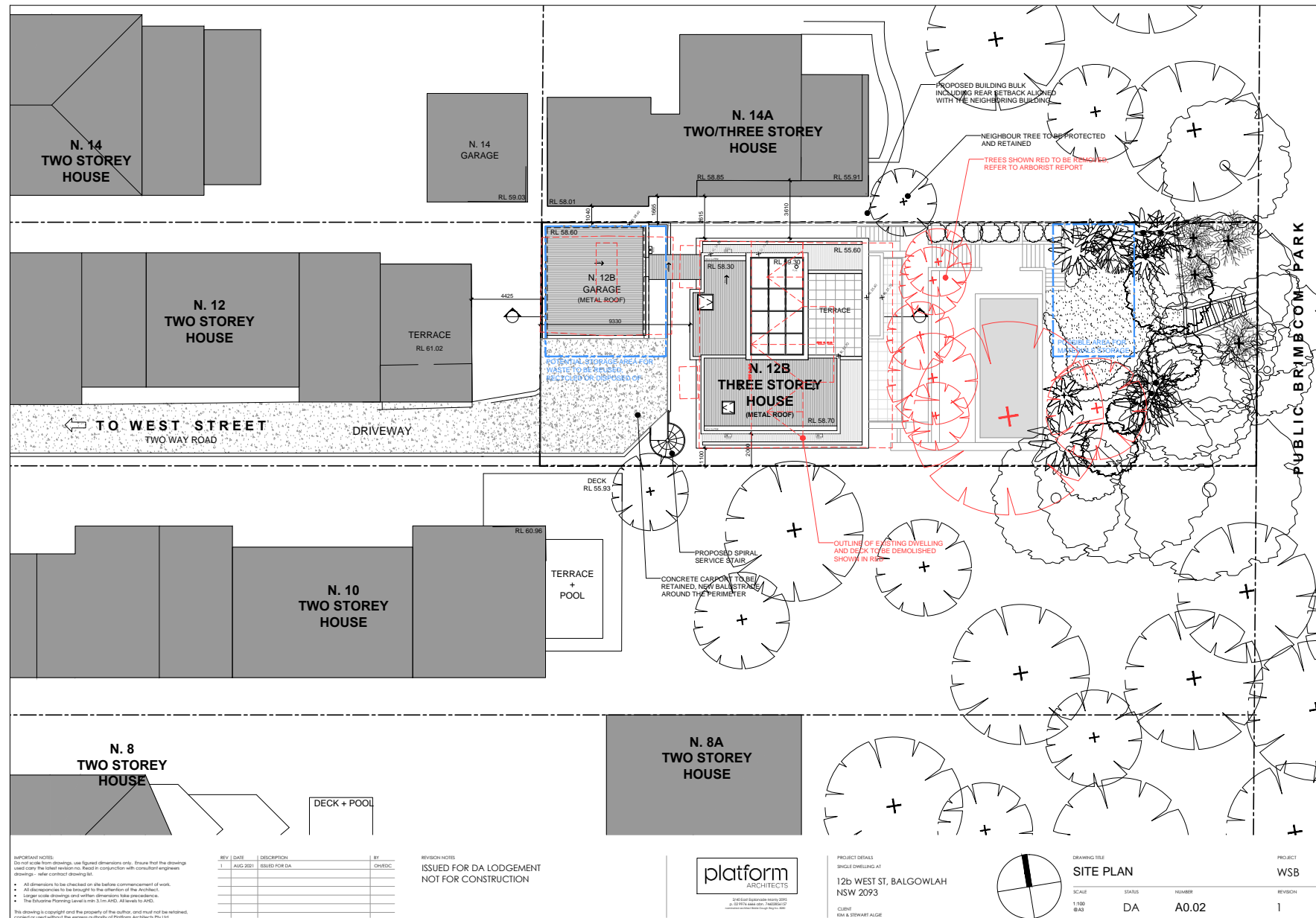
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent. All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

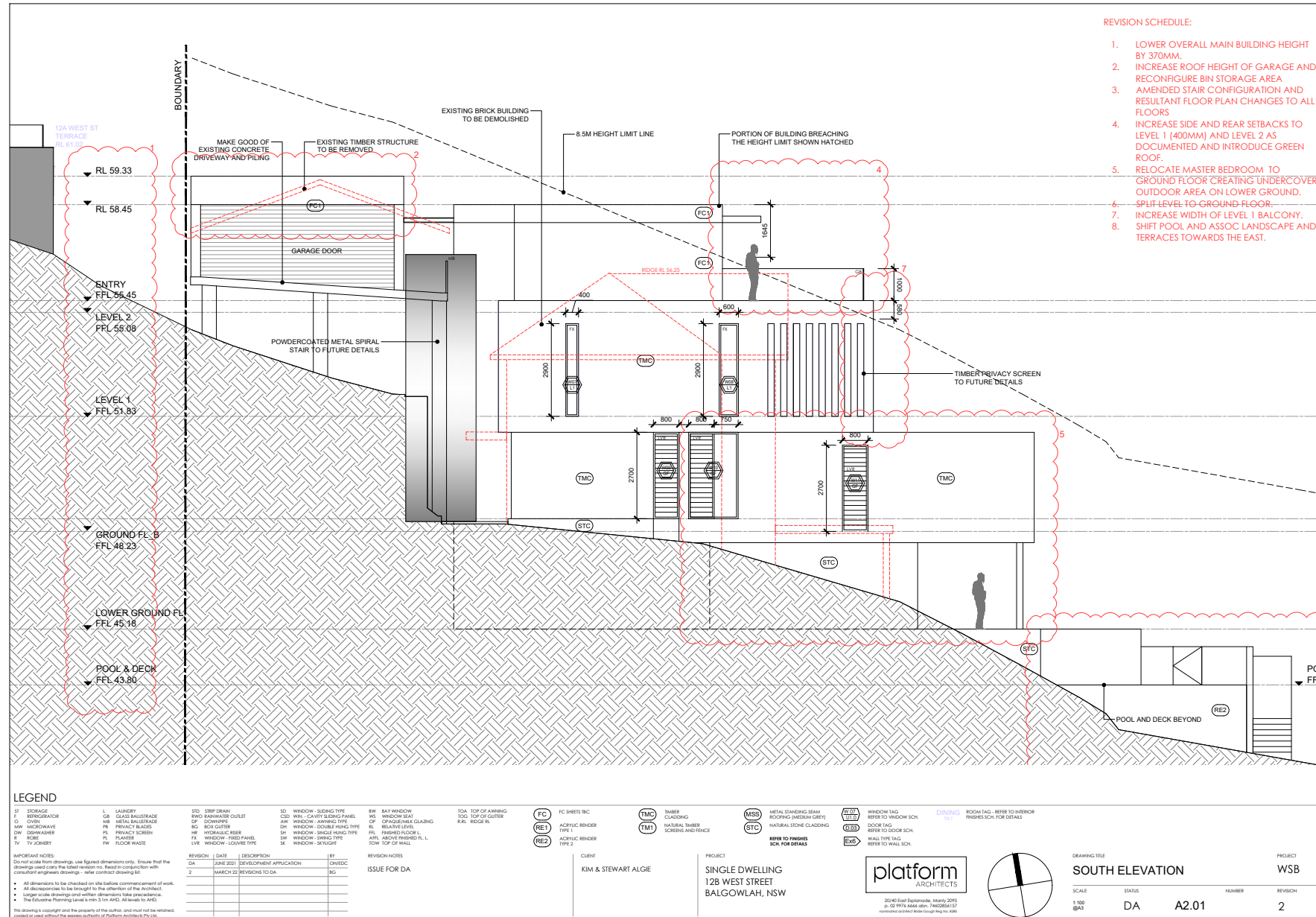
Reason: To maintain local environmental amenity.

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

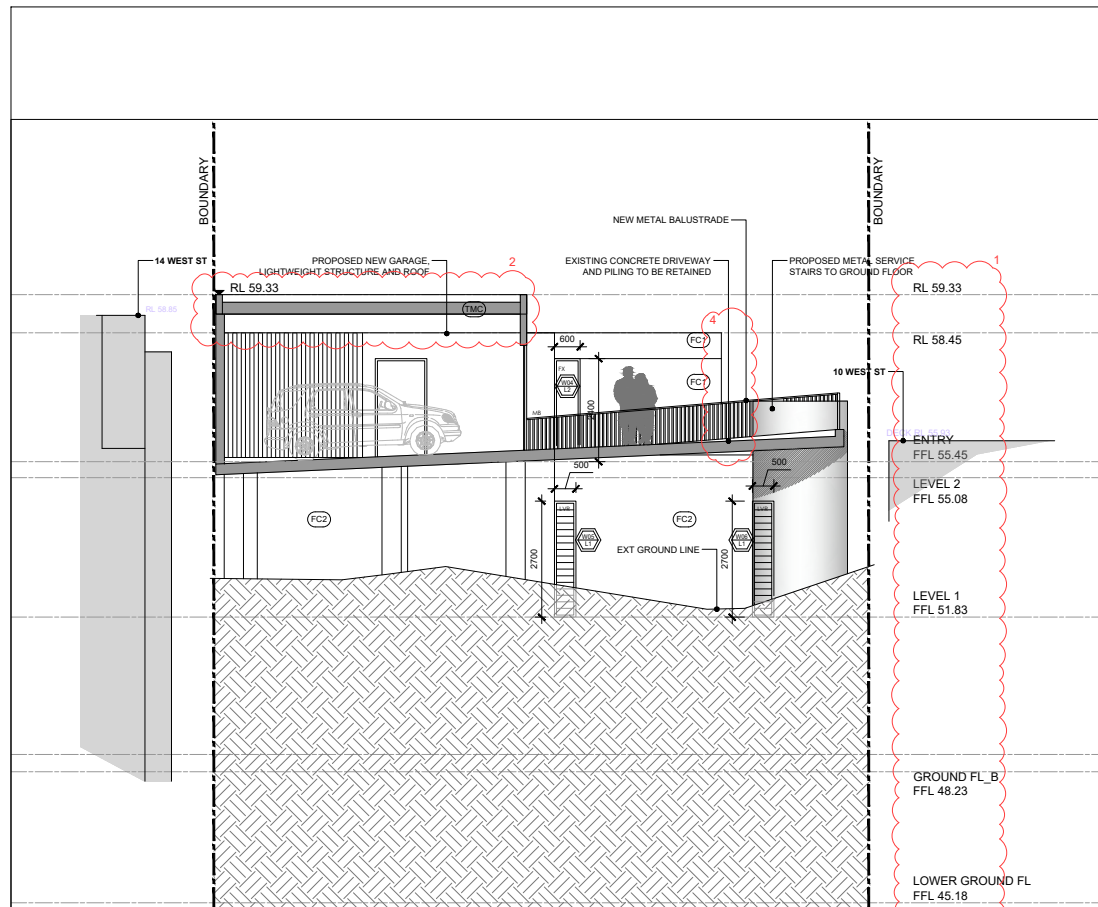
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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









REVISION SCHEDULE:

1. LOWER OVERALL MAIN BUILDING HEIGHT BY 370MM.
2. INCREASE ROOF HEIGHT OF GARAGE AND RECONFIGURE BIN STORAGE AREA
3. AMENDED STAIR CONFIGURATION AND RESULTANT FLOOR PLAN CHANGES TO ALL FLOORS
4. INCREASE SIDE AND REAR SETBACKS TO LEVEL 1 (400MM) AND LEVEL 2 AS DOCUMENTED AND INTRODUCE GREEN ROOF.
5. RELOCATE MASTER BEDROOM TO GROUND FLOOR CREATING UNDERCOVER OUTDOOR AREA ON LOWER GROUND.
6. SPLIT LEVEL TO GROUND FLOOR.
7. INCREASE WIDTH OF LEVEL 1 BALCONY.
8. SHIFT POOL AND ASSOC LANDSCAPE AND TERRACES TOWARDS THE EAST.

LEGEND

ST STORAGE
F REFRIGERATOR
O OVEN
MW MICROWAVE
DW DISHWASHER
R ROSE
TV TV JOURNEY

L LAUNDRY
CB CLASS BALUSTRADE
MB METAL BALUSTRADE
PB PRIVACY BLADES
PS PRIVACY SCREEN
R ROSE
TV TV JOURNEY

STD STRIP DRAIN
RWD RAINWATER OUTLET
MB METAL BALUSTRADE
PB PRIVACY BLADES
PS PRIVACY SCREEN
R ROSE
TV TV JOURNEY

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CSD WINDOW - SLIDING TYPE
DW WINDOW - DOWNPULL TYPE
SW WINDOW - SINGLE HUNG TYPE
SH WINDOW - SINGLE HUNG TYPE
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REVISION	DATE	DESCRIPTION	BY
1	JUNE 2021	DEVELOPMENT APPLICATION	CHW/EC
2	MARCH 22	REVISIONS TO DA	BS

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Attachment 1 Updated clause 4.6 variation request – Height of buildings12th April 2022**Proposed Dwelling House, Garage and Swimming Pool
12B West Street, Balgowlah
Updated Clause 4.6 variation request –Height of buildings (clause 4.3 MLEP
2013)****1.0 Introduction**

This updated clause 4.6 variation request has been prepared having regard to amended Architectural plans A1.01(2) to A1.04(2), A2.01(2) to A2.04(2), A3.01(2) and A0.03(2) prepared by Platform Architects.

This variation request 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 Manly Local Environmental Plan 2013 (MLEP)**2.1 Clause 4.3 - Height of buildings**

Pursuant to clause 4.3 in the LEP the max building height shall not exceed 8.5 metres. The objectives of the control are as follows:

- a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future Streetscape character in the locality,*
- b) *to control the bulk and scale of buildings,*
- c) *to minimise disruption to the following:*
 - i. *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - ii. *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - iii. *views between public spaces (including the harbour and foreshores),*
- d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

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

Building height is defined as follows:

building height (or ***height of building***) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

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

The leading case authority which considers the definition of “ground level (existing)” is *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 which was followed in the recent decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

In *Stamford Property Services*, the Court followed the reasoning adopted in *Bettar* and confirmed that “ground level (existing)” must relate to the levels of the site, and not to the artificially modified levels of the site as reflected by the building presently located on the land. In this regard the Court preferred the Council’s method to determining the “ground floor (existing)” from which building height should be measured. Council’s approach required that the proposed height be measured from the natural ground levels of the site where known, such as undisturbed levels at the boundary, and from adjacent undisturbed levels such as the level of the footpath at the front boundary of the site. These levels could then be extrapolated across the site reflecting the pre-development sloping topography of the land, consistent with the approach adopted in *Bettar*.

In these proceedings the Court was satisfied that even though there was limited survey information available for the site, there was enough information to determine the “ground level (existing)” for the site based on unmodified surveyed levels in the public domain (footpaths) which could be extrapolated across the site. In summary, the Court has confirmed that the definition of “ground level (existing)” from which building height should be measured:

- is not to be based on the artificially modified levels of the site such as the floor levels of an existing building. This includes the entrance steps of an existing building.
- is not to include the basement floor or the soil beneath the basement following construction of the building.
- is to be based on the existing undisturbed surveyed surface of the ground.

For sites where access to the ground surface is restricted by an existing building, natural ground levels should be determined with regard to known boundary levels based on actual and surveyed levels on adjoining properties including within the public domain (footpaths).

Based on an interpolation of ground level (existing) through the previously excavated area of the site using an extrapolation of survey levels at the boundaries of the property it has been determined that the development partially breaches the 8.5 metre height of building standard at Level 2 to a maximum of 1.745 metres (20.5%) at its eastern edge with the eastern edge of the Level 2 eastern balcony also breaching the heights standard by 675mm (7.9%). The balance of the development sits comfortably below the prescribed height standard. The extent of non-compliance is diagrammatically depicted at Figures 2 and 3 below and over page.

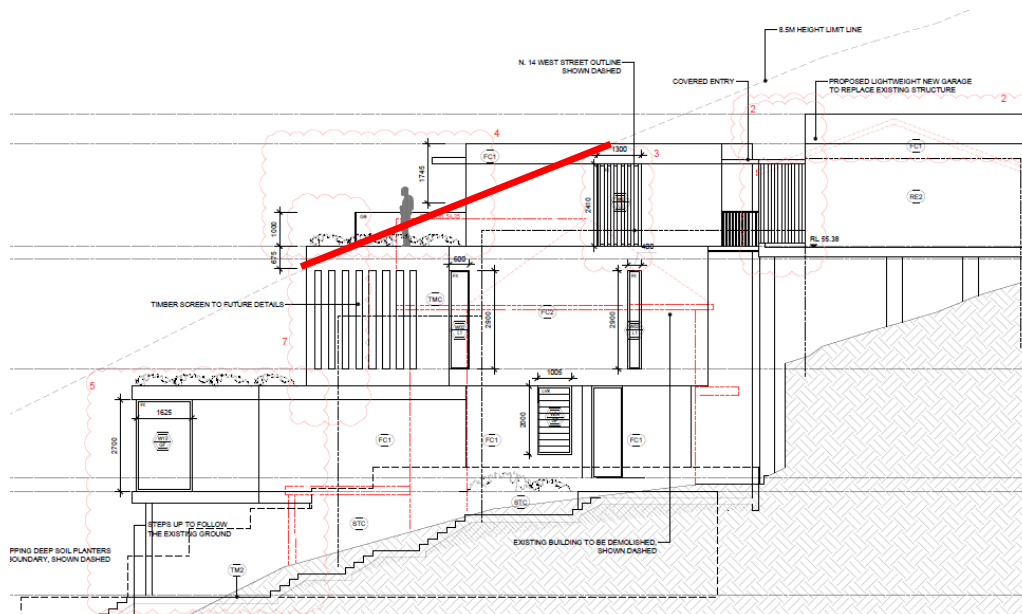
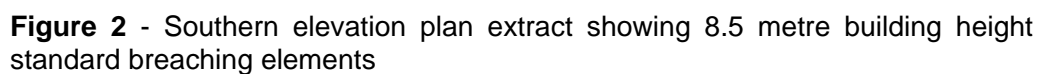


Figure 1 - North elevation plan extract showing 8.5 metre building height standard breaching elements



Clause 4.6(1) of MLEP provides:

- 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).

317

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

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the height of buildings provision at 4.3 of MLEP which specifies a maximum building height 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 MLEP provides:

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

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

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

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

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

The definition of “development standard” at section 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3 MLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 MLEP is a development standard.

4.2A 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 height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The height and roof form proposed are consistent with that established by the adjoining dwelling houses and the prevailing height of residential development generally within the site’s visual catchment where located on steeply sloping site. In this regard, I rely on the montage at Figure 3 over page which depicts the proposed development as viewed from No. 12 West Street in the context of the existing established building height and roof form at No. 14a West Street the property immediately to the north of the subject site.

In relation to consistency with the desired future streetscape character I note that being a battleaxe allotment the non-compliant building elements will not be readily discernible streetscape context.



Figure 3 - The originally proposed development, prior to the reduction in building height detailed on the amended plans, as viewed from No. 12 West Street in the context of the existing established building height and roof form at No. 14a West Street the property immediately to the north of the subject site.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the non-compliant building height elements offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

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

Response: For the reasons outlined in relation to objective (a) above, I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the compliant floor space (FSR) appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

(c) *to minimise disruption to the following:*

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

Response: Having inspected the site and its surrounds I am of the opinion that the building form and height, in particular that associated with the building height breaching elements, has been appropriately distributed across the site to minimise disruption of views to nearby residential development from surrounding public spaces.

The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

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

Response: Having inspected the site and its immediate surrounds it was identified that the proposal had the potential to impact on views across the subject property in an easterly direction from the immediately adjoining property to the west No. 12 West Street. In this regard, I refer to the view analysis diagram at Figure 4 over page which demonstrates that the building height breaching elements, prior to the reduction in building height detailed on the amended plans, will not impact on views currently available from the adjoining property to the west towards Manly, Middle Harbour and St Patrick's Cathedral.

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, I am satisfied that the building height breaching elements will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, we note that the development is fully compliant with the FSR standard which is used to establish an appropriate bulk and scale relative to site area. View impacts have been minimised and a view sharing outcome achieved.

The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

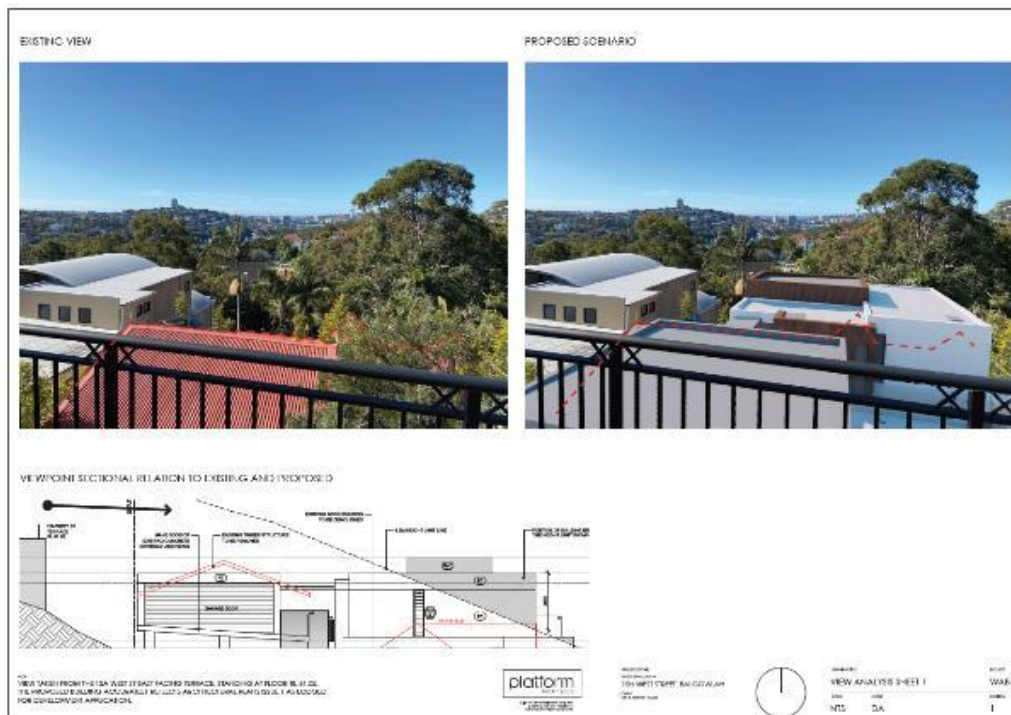


Figure 4 - View analysis diagram depicting the views maintained across the subject site from the adjoining property No. 12 West Street

- (iii) *views between public spaces (including the harbour and foreshores),*

Response: The building form and height has been appropriately distributed across the site such that the elements breaching the building height element will have no impact on views between public spaces.

The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

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

Response: The shadow diagrams at Attachment 1 demonstrate that the development, in particular the non-compliant building height elements, will not cast any shadow on to the existing north-east facing living room window or adjacent east facing open space areas including the swimming pool at the lower level of No. 10 West Street between 9am and 3pm on 21 June with shadowing to the balance of the rear yard of this southern adjoining property not reduced by more than 1/3rd during this period in strict accordance with the control.

In relation to potential shadowing impacts on public spaces, I am satisfied that the non-compliant building height elements will not give rise to unreasonable overshadowing impacts to the adjacent reserve at the rear of the site.

The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

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

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to MLEP 2013 with dwellings permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: Notwithstanding the building height breaching elements, the proposal maintains the established single dwelling residential use on the site consistent with this objective.

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

Response: N/A

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R1 General Residential 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 is unreasonable and unnecessary.

4.2B 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 environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which limits the ability to distribute a compliant quantum of floor space across the site in a contextually appropriate manner whilst complying with the height of buildings standard.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the topography of the land by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes. Such outcome is achieved whilst realising the reasonable development potential of the land.

The building height breaching element contains a number of skylights which facilitate light penetration to the first floor level living areas significantly enhancing the amenity of this floor plate and representing good design.

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 development represents good design (1.3(g)).

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.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential zone

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.

4.4 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 height of buildings 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 building height development standard is unreasonable or unnecessary in the circumstances of the case, and

- (e) that given the developments ability to comply with the zone and height of buildings 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 height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Annexure 1 Shadow analysis