

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 25 MAY 2022



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 25 May 2022
via teleconference
Commencing at 10:00am**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 20 May 2022	
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3.1	DA2021/1636 - 7 Crown Road QUEENSCLIFF - Alterations and additions to a dwelling house	5
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 11 MAY 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 11 May 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/1636 - 7 CROWN ROAD QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2022/298193
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2021/1636 for alterations and additions to a dwelling house on land at Lot 2 DP 514296, 7 Crown Road QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1636
Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 2 DP 514296, 7 Crown Road QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned RE1 Public Recreation
Development Permissible:	Yes - Zone R2 Low Density Residential Yes - Zone RE1 Public Recreation
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew James Formica
Applicant:	Dorn Design
Application Lodged:	15/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/09/2021 to 07/10/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 15.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,790,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to receiving four objections and having a cost of works greater than \$1 million.

Concerns raised in the objections predominantly relate to issues with DA plans and documentation, view sharing and non-compliances with various controls. A key concern for some objectors is whether the 'natural ground level' has been accurately calculated, as this impacts on the level of compliance against many controls.

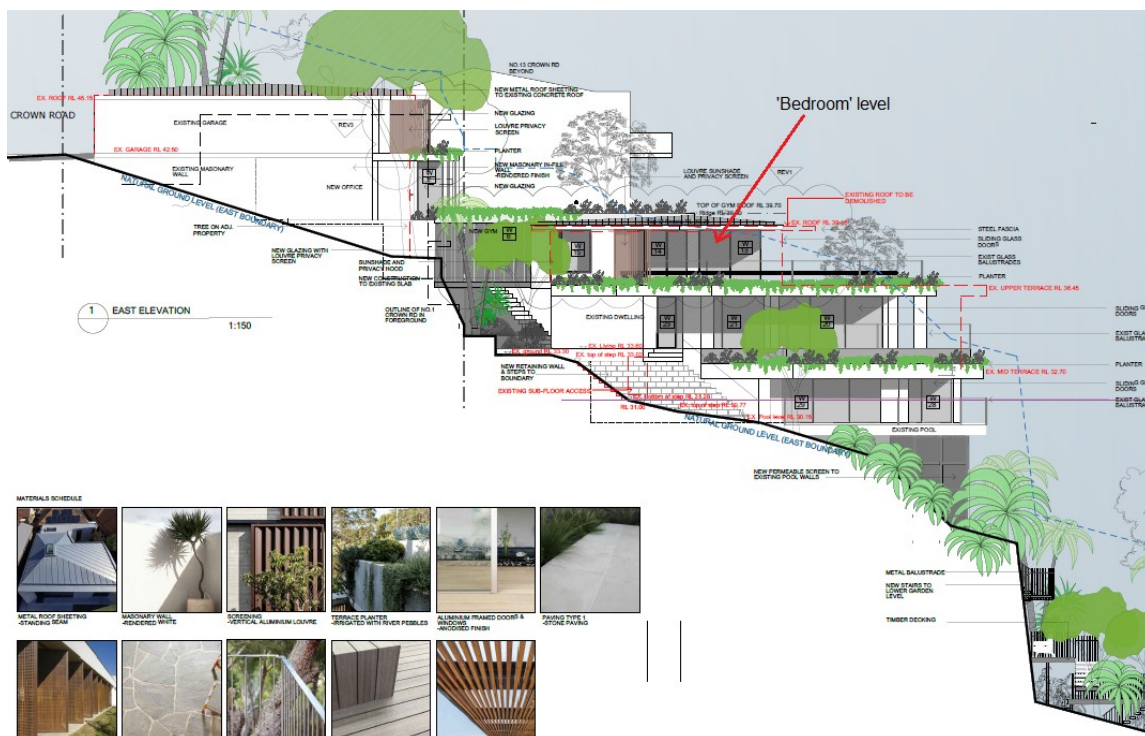
The works and the site are very complex. The steeply sloping topography and the existing dwelling make it very difficult, if not impossible, to work out the exact natural ground level across the entire site. A detailed survey has been provided and the applicant has extrapolated, in line with Land and Environment Court case law (*Bettar v Council of the City of Sydney* and *Stamford Property Services Pty Ltd v City of Sydney & Anor*), as accurately as possible, the natural ground level. The objections claim this is inaccurate.

Whether the 'natural ground level' and subsequent height, wall height and side boundary envelope planes, extrapolated from it, are exact, is impossible to know at all points across the site, for certain.

While the exact 'natural ground level' may not be known, the exact height and size of the existing dwelling is known and is helpful in understanding any additional impacts from the proposal.

The development includes the demolition of parts of the existing dwelling, which will improve existing non-compliances in some cases, and the construction of some new elements, which will add additional bulk, in some cases.

The critical element of the design that has caused the most concern from the objectors and has the most impacts on views, is the demolition and rebuild of the 'bedroom' level of the dwelling.



The rebuilt 'bedroom' level is, overall, smaller than the existing level and will result in an increase in views obtained by the surrounding properties. This is discussed in more detail under Part D7 Views, below in this report.

As the new works are almost entirely within the existing building envelope and footprint, and the upper 'bedroom' level is smaller in scale than the existing 'bedroom' level, it can be concluded that the proposal does not result in any unreasonable impacts to surrounding properties.

Conditions are recommended to reduce the extent of decking at the rear of the site to minimise non-compliances with the rear setback and landscaped open space controls.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises alterations and additions to the existing dwelling including the rebuilding of the 'bedroom' level, additional subfloor areas and new decking.

The site is extremely steep in parts, contains a complex existing building and a variety of topographical features. It is very difficult, if not impossible, to determine the *exact* 'natural ground level'. As a result, further clarification of ground levels plus numerous amendments to the design have been made during the assessment process.

The final proposal includes some additions to the existing envelope but also some reductions. Overall, the proposed development will retain external dimensions that are similar to the current building.

In detail, and for each level, the proposed works consist of the following:

Garage Level:

- Minor addition to the rear of the garage to include a lift and bin storage area.
- Replacement of the concrete stairs.

Office Level:

- New office with W/C and kitchenette.
- New internal staircase.

Bedroom Level:

- New gym which connects to the main house.
- Remove and replace this level (with a reduction in overall size) to create two bedrooms with ensuites and one walk-in-robe.
- New garden space to be included on the terrace.
- New glazing and sliding doors.

Living Level

- Spa to be demolished.
- Partially infill two sections of this level.
- Remove two sections of existing building, one around the proposed BBQ and the other on the eastern corner.

Pool Level

- New pool steps.
- Partially infill terrace with new sliding doors.
- Additions to create a walk-in-robe for bedroom three, new bathroom and new staircase with change room space to lower level.

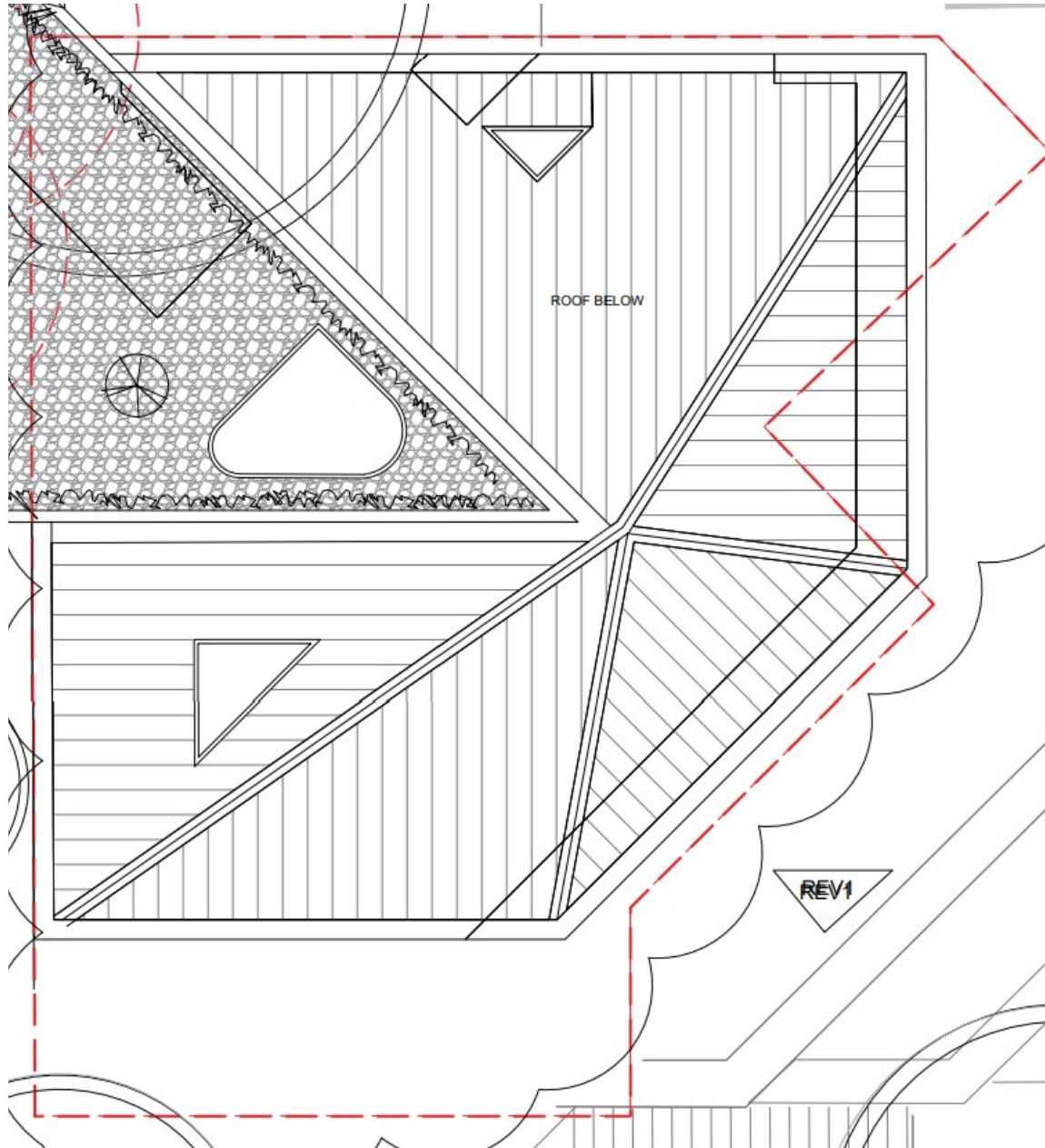
Wine Cellar Level

- New wine cellar and storage space.
- Access to private open space deck area.

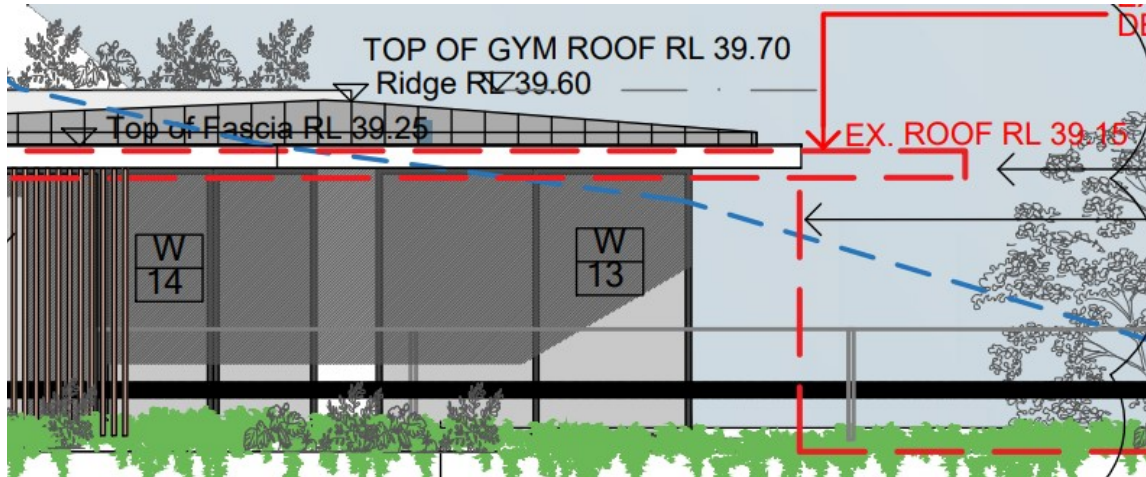
Bedroom level detail

The 'bedroom' level is critical to the assessment of views, height and side boundary envelope. It is a major point of contention with the objectors.

In the image below, the red dotted line is the outline of the existing 'bedroom' level overlayed onto the proposed level. It is clear that in some areas, bulk is being removed, and in others added.



The other key piece of information about this level is the maximum RL of the outer (righthand side in the images above and below) edge of the roof. The existing outer edge of the roof is at RL 39.15 and the proposed outer edge is RL 39.25, a 10mm difference. This is most relevant to the assessment of view sharing under Part D7 Views, below in this report.



ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah 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 - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 2 DP 514296 , 7 Crown Road QUEENSCLIFF NSW 2096
Detailed Site Description:	The subject site consists of Lot 2 DP 514296 at 7 Crown Road, Queenscliff. The property has a split zoning with the rear of the site zoned RE1 Public Recreation. This split zoning impacts the rear setback and landscaped open space controls under the Warringah DCP 2011.  The subject site is an irregular shaped allotment, similar to a battle-axe arrangement, with a frontage to Crown Road. The frontage of the site measures 10.26m, north-western side boundary of 67.4m, north-eastern side boundary of 53.345m and a rear boundary of 15.67m. The site measures 946m² in area. The site is located on the southern cliffs of Freshwater Beach and has a steep topography. The rear of the site includes rock outcrops and dense vegetation. The existing development on the site contains a two and three storey dwelling with detached garage at street level and an elevated swimming pool. The dwelling is orientated towards the east to maximise the expansive water views. It is noted that a portion of the existing garage is located over the front boundary on public land. No changes are proposed to this part of the structure. It is also noted that part of the dwelling on No. 9 Crown Road sits over the boundary and on the subject site. Surrounding development consists of residential dwellings that step down the cliff towards the beach to the north west

and south east. To the south west, along Pavilion Road, there is a mix of residential flat buildings and single dwellings.

Map:



SITE HISTORY

PLM2021/0114

A prelodgement meeting was held to discuss a larger version of the current proposal. Relevant comments included:

On the rear setback in relation to the proposed decking: *"these structures will need to be minimised to provide a greater setback from the public open space and retain existing native vegetation on site."*

On landscaped area, the PLM notes state that *"The areas of hard surfacing are significant and the extent of the non-compliance proposed is significant. Note that planter box or elevated areas of landscaping above the natural ground level cannot be counted as landscaped open space. Hence, the proposal will not achieve the objectives of the control"*

Overall: *"The proposed works in their current form cannot be supported, for reasons of:*

- *Adverse visual impact, when viewed from adjoining properties, the adjoining public domains of Freshwater Beach and the Crown Road street frontage;*
- *Potential impact on the natural environment and unique natural landforms on the site;*
- *Potential impact to adjoining heritage items; and*
- *The potential view loss to adjoining properties, stemming from the significant non-compliances with the relevant development standards and controls.*

Specific recommendations on any re-design of the proposal should involve the following basic parameters:

- *No further extensions / additions to the already non-compliant garage;*
- *Limiting the visibility of the upper level of the dwelling by ensuring the new floor space does not*

- *come any closer to the southern rear boundary of the site; and*
- *Ensure that any re-development of the area of private open space to the southern boundary remains in as much a natural state as possible and not be occupied by multiple structures that are readily visible from the public domain."*

Current proposal

The final amended design has resolved many of the above issues by reducing the scale of the works, particularly to the 'bedroom' level. Conditions of consent have been recommended to resolve the rear setback and landscaping comments.

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 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/09/2021 to 07/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mrs Rachel Elizabeth Defina	33 Pavilion Street QUEENSCLIFF NSW 2096

Name:	Address:
Mr Andrew James Defina	33 Pavilion Street QUEENSCLIFF NSW 2096
Dr Anthony David Burns	1 Crown Road QUEENSCLIFF NSW 2096
Mr Brian Stuart Paull	13 Crown Road QUEENSCLIFF NSW 2096

The following issues were raised in the submissions:

- Issues with DA plans and documentation
- View sharing
- Non-compliances with various controls
- Cost of works

The above issues are addressed as follows:

- **Issues with DA plans and documentation**

The submissions raised concerns that the plans and documentation submitted for the DA contain numerous errors. Specifically, the north roof edge, the louvres on the east of the top level, the east wall doorway, the new rooms at pool level and the RL for the top roof. Concerns were also raised that the clause 4.6 request also contains errors.

Comment:

The plans show the correct position of the north roof edge, on both the bedroom level and office level plans. The louvres are shown on the east of the top level. The east wall doorway is shown correctly on the eastern elevation. The new rooms at pool level are shown accurately on the floor plans and a dotted line on the elevation. This dotted line accurately shows the extent of the new rooms. The RL of the top of the roof over the master bedroom is 39.60. The top of the gym roof is 39.70. These are both detailed on the plans.

The clause 4.6 has been amended to correct errors and is now sufficient to enable an assessment of the height variation.

- **View sharing**

The submissions raised concerns that the proposal will result in an unreasonable sharing of views.

Comment:

This matter is discussed in detail under D7 Views, below in this report. In summary, the development will result in an overall improvement to views from the surrounding properties and is therefore an acceptable outcome.

- **Non-compliances with various controls**

The submissions raised concerns that the proposal includes numerical non-compliances with the height of buildings development standard, landscaped area, front setback and side boundary envelope.

The submission also raises concerns that the development does not comply with controls C8 - Demolition & Construction, D8 Privacy, D9 Building Bulk, E4 Wildlife Corridor and E10 Landslip Risk.

Comment:

It is agreed that the proposal contains numerous non-compliances. These are outlined in the built form control tables and discussed in detail under relevant sections, below in this report.

Overall, the differences between the existing dwelling and the proposed altered dwelling are minimal and in some cases, existing non-compliances are being reduced. This is likely to reduce some amenity impacts on neighbouring properties and even result in a gain to the views obtained from surrounding dwellings.

C8 Construction and Demolition has been resolved by conditions requiring dilapidation reports for surrounding properties and the need for a construction management plan to be prepared.

An assessment against D8 Privacy can be found below in this report. The alterations to the dwelling does not result in the D9 Building Bulk being sufficient as a reason for refusal.

Council's Bushland and Biodiversity Officers have raised no objection on wildlife corridor grounds and a Geotechnical Report has been submitted to satisfy E10 Landslip Risk.

- **Cost of works**

The submissions raised concerns that the cost of works was underestimated.

Comment:

A review of the cost of works has found that the original estimate was too low. A more accurate quote was requested and submitted. The proposal is based on this updated quote.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Updated comments: The Landscape Plan provides an enhanced landscape setting and is acceptable subject to the following: • the proposed landscape works within the property boundaries only are acceptable, • no new works are permitted within the public road reserve including the upgraded gardens, except for street tree planting, • any new or upgraded encroachment may be considered by the relevant Council department under a Minor Encroachment Application, however it is noted that the public road reserve is for the use of public movement and restraints such as paths and planting impacts upon the use of the public road reserve, and the application may not be supported. The Arboricultural Impact Assessment comments that public road reserve existing trees are Exempt Species is incorrect. The Exempt Species list applies only to private residential land, and not public

Internal Referral Body	Comments
	land. The arboricultural assessment however of the competition stress of these species is accepted as a reason for removal, subject to replacement with a native street tree as proposed. The following trees are approved for removal: • T20 and T21, subject to native tree replacement within the property, • T1, T2, and T3 within the road reserve, subject to native tree replacement within the road reserve, • T12 within the neighbouring property No. 1 Crown Rd, as written consent is provided to remove the dead tree, whilst all other trees and vegetation within adjoining properties shall be retained and protected that are in proximity to the works, • Exempt Species within the development property, • All other existing trees within the property are to be retained and protected. Subject to conditions of consent Landscape Referral raise no objections. Original comments: This application is for the alterations and additions of an existing residential dwelling. Alterations include the minor demolition of site structures to facilitate additions which are inclusive of a garage extension, additional bin storage, lift, office as well as gym below. Other additions include a dwelling extension to the master bedroom, dining and kitchen area, storage area, wine cellar, as well as decking and new landscape works. 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 The Statement of Environmental Effects provided with the application notes that a number of trees are required to be removed as a result of proposed works. This statement is largely supported by the Architectural Plans as it is evident several trees are required to be removed. For this reason, an Arboricultural Impact Assessment has been provided. The Arboricultural has identified a total of twenty-five trees, three of which are located in the road reserve at the front of the site, one within the adjoining property to the north, five within the adjoining property to the south, with the remaining sixteen trees located within the site boundaries. The Arboricultural Impact Assessment has recommended the removal of seventeen trees, with an additional one tree to be further considered subject to permission. Of these eighteen trees, seven trees, Trees No. 1, 2, 3, 12, 16, 20 and 21, have been identified as prescribed species either due to species, height, or being located within adjoining properties, with the remaining eleven trees

Internal Referral Body	Comments
	considered exempt. Generally, no concern is raised with the removal of these exempt species as they may be removed without Council's approval. Tree No. 1, 2 and 3 are a group of trees located within the road reserve, adjacent to the western boundary at the front of the site. All three of these trees have been identified as being in fair to good vigour and condition with a moderate to low landscape significance. Tree No. 1, 2 and 3 appear to be competing against each other for a small portion of soil area, likely resulting in a gradual decline in health over the long-term. It is noted that all three of these trees have been identified as exempt species, however, are only considered prescribed as they are located outside the site boundaries. The application seeks to remove these and replace with one locally native canopy tree, alongside low-lying grasses, and shrubs. From a landscape perspective this outcome is supported as the proposed works seek to replace the existing trees with a more suitable species, and, as there is only one new tree proposed it will have a greater chance of survival over the long-term. This proposed replacement vegetation seeks to mitigate and soften the bulk and scale of the built form which is also a desired outcome that is supported. Tree No. 12 has been identified as a dead tree; however, it is located on a shared boundary line and is partially located within the adjoining property to the south. Tree No. 16 is also located within the property to the south and has been recommended for removal by the Arboricultural Impact Assessment. Tree No. 16 has been identified as likely having a root plate failure, with a significant lean towards the existing dwelling where contact is being made. As both trees are located within the adjoining property, albeit relatively minor in the case of Tree No. 12, owner's consent from the neighbouring property owners must be attained prior to the removal of these two trees being supported. Trees No. 20 and 21 are both located towards the rear of the site and are proposed for removal as they are within the footprint of proposed works. Trees No. 20 and 21 are both locally native canopy trees identified as being in good health, vigour, and condition, with a medium retention value and medium useful life expectancy. It is noted that the Landscape Plan provided indicates an additional three native trees of the same species are to be planted within the rear yard to compensate the removal of these two trees. For this reason, the removal of Trees No. 20 and 21 is supported. It is noted that several trees proposed to be retained, including Tree No. 10, 11, 17, 22, 23, 24 and 25 have varying levels of Tree Protection Zone (TPZ) encroachment because of proposed works. Most of these trees have negligible impacts as a result of proposed works, however Tree No. 10 has been identified as having a TPZ encroachment of 10-15%. Although this total encroachment is deemed major in accordance with AS4970-2009, the impacts of proposed works are anticipated to be much less due to the presence

Internal Referral Body	Comments
	of existing structures and retaining walls along the northern boundary. For this reason, the Arborist has noted it is viable for retention subject to tree protection measures and sensitive construction practices, inclusive of no excavation within Tree No. 10's Structural Root Zone (SRZ), tree protection fencing, supervision by an appointed Project Arborist, as well as future tree root investigations if needed. For this reason, the Arborists recommendations are supported. The retention of Tree No. 10, as well as other existing trees proposed for retention is vital to satisfy control E1, as key objectives of this control include "to effectively manage the risks that come with an established urban forest through professional management of trees", "to protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". A Landscape Plan has also been provided with the application and proposed works include the in-ground planting of trees, shrubs, grasses and groundcovers, as well as the on-slab planting of shrubs, grasses and groundcovers. Generally, no major concerns are raised regarding the proposed works as they seek to alleviate and soften the bulk and scale of the built form, whilst also utilising a largely native planting palette. The completion of these landscape works is necessary to satisfy control D1, as key objectives of this control include "to enable planting to maintain and enhance the streetscape", "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", as well as "to enhance privacy between buildings". The landscape component of the proposal is therefore not currently supported due to the impacts of proposed works on trees located in adjoining properties. Although Trees No. 12 and 16 are of low retention value and poor health, they are located within neighbouring properties and require written consent from the neighbouring property owner prior to be approved for removal. Should written consent be received, no further concerns are raised, and the proposal would likely be supported subject to conditions, however until this consent is received the landscape component cannot be supported. Should owners consent not be received, design amendments shall be required to ensure these trees are retained and protected.
NECC (Bushland and Biodiversity)	Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls: • Biodiversity Conservation Act 2016 • Warringah DCP cl. E2 Prescribed Vegetation • Warringah DCP cl. E4 Wildlife Corridors • Warringah DCP cl. E5 Native Vegetation

Internal Referral Body	Comments
	- Warringah DCP cl. E6 Retaining Unique Environmental Features - Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area The Development Application seeks consent for alterations and additions to the existing dwelling. An Arborist Report has been submitted with the application and recommends the removal of two (2) prescribed trees in the rear of the site, Trees 20 and 21 both identified as <i>Banksia integrifolia</i>. Numerous trees classified as exempt based on height, species or location have also been recommended for removal. The removal of Trees 20 and 21 has been mitigated through replacement planting of three (3) <i>Banksia integrifolia</i> within landscaping in the rear of the house, as identified within the Landscape Plan. It is noted that a range of suitable natives have been included in the Landscape Plan. Subject to these conditions, Council's Biodiversity referrals team are satisfied that the proposed development complies with the above listed biodiversity related legislation and controls.
NECC (Coast and Catchments)	This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Coastal Management) 2018 (sections 13, 14 & 15); and - Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. The application is supported subject to conditions: - Installation and maintenance of erosion and sediment controls (prior to commencement) - Stormwater management (prior to construction certificate)
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
Parks, reserves, beaches, foreshore	The proposal is for alterations and additions to an existing dwelling. Council's Parks Referral staff have assessed the proposal against the following Warringah DCP Controls: - C5 Erosion and Sedimentation - C8 Demolition and Construction - E7 Development on Land Adjoining Public Open Space The property adjoins the Freshwater View Reserve to the east and Freshwater Beach to the north located downslope of the site. All works adjoining reserves and foreshores on the downslope must ensure that surface sediment runoff and/or erosion is controlled,

Internal Referral Body	Comments
	managed and contained within the site boundaries and prevented from entering the reserve and beach foreshore.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the site contains C13 - Coastal Cliffs Conservation Area, adjoins Freshwater View Reserve and is in the vicinity of heritage items, listed in the Warringah LEP 2011. Item I126 - Freshwater View Reserve - 21–29 Pavilion Street, Queenscliff. Item I118 – House - 17A Crown Road Item I124 - Front sandstone boundary wall and rear sandstone retaining wall - 31 Pavilion Street Item I125 - Rear sandstone retaining wall and sandstone access stairway - 33 Pavilion Street
	Details of heritage items affected
	Details of the items as contained within the Northern Beaches Inventory is as follows: C13 - Coastal Cliffs Conservation Area <u>Statement of significance:</u> The Queenscliff-Freshwater headland cliffs have existence value as a major coastline promontory, protecting adjacent beaches and estuarine lagoon and providing dramatic landforms and viewing points. The Freshwater View Reserve on its northern face is a former landscaped garden with heritage significance. The headland's associated rock platform is host to an ocean swimming bath on the Queenscliff side, and these combined with the cliffs' high aesthetic qualities have a high level of community esteem. <u>Physical description:</u> The Queenscliff-Freshwater Cliffs are high, steep, and much sheared, with substantial talus deposits on the rock platform at their base. They are higher and steeper on their northern side, where they abut deep water, and lower and more benched on the Queenscliff side. This southern face of the headland has borne the brunt of the most severe storms, which usually come from the south-east. The ridgetop contains very little of the original heath cover, as the greater part of the ridge/crest has been built upon. At the base of the southern face of the headland is the outlet to the Manly Lagoon, separating it from North Steyne beach. A tunnel was constructed through the headland in 1908 making easy access between its northern and southern faces. A section of the northern (Freshwater) face of the headland was developed in the period 1910-1920 by Arthur Costin as an elaborate terraced garden and

Internal Referral Body	Comments
	following acquisition by Council, has recently been re-landscaped to form Freshwater View Reserve. Most of the land on the top of the headland has been subdivided into lots of varying sizes, and many homes and apartment blocks have been built close to the cliff edge. This is well illustrated by the aerial photographs at the end of this inventory. Item I126 - Freshwater View Reserve <u>Statement of significance:</u> The Freshwater View Reserve has local significance as a cultural landscape developed from the outset of the settlement of the land around Freshwater beach from 1905 following land subdivisions behind it and the provision of a tunnel in 1908 providing direct access to it from Manly and Queenscliff beaches to the south. It represents an early creative endeavour to establish terraced gardens on the rugged headland slopes by a successful businessman and engineer Mr Arthur Costin, who was also a founding and executive member of the first Freshwater Surf Life Saving Club. The establishment of a weekender hut on the rugged slope was a skilful feat; and its purpose was representative of many who set up camps at the beach for week-end recreation. Item – I118 – House <u>Statement of significance:</u> A locally rare survivor of a number of small cottages which were built on the cliff face between Freshwater and Queenscliff. Historically represents the nature of early development in the area. <u>Physical description:</u> Single storey weatherboard dwelling located on cliffside. Corrugated metal gabled roof with skillion roofed verandah structures which have been enclosed. The building has been altered by the enclosure of the verandah. Sandstone block foundations appear in good condition and are an important feature of the building. Termite damage to some weatherboards is evident. Item I124 - Front sandstone boundary wall and rear sandstone retaining wall Item I125 - Rear sandstone retaining wall and sandstone access stairway <u>Statement of significance:</u> The front and rear sandstone boundary wall of the Freshwater view reserve extends from the front of 31 Pavilion street, Queenscliff, and includes its rear sandstone access stairway. It is significant because it was built by Arthur Costin as part of his former estate, connecting the house and his cliff top hut. It represents an early creative effort to overcome obstacles of the slip and slope of the land, as well as technical achievements in his use of locally quarried sandstone. <u>Physical description:</u> Adjacent to the western end (on approximately the same alignment) is a high sandstone stack wall that extends across the

Internal Referral Body	Comments		
	north facing backyard of no.33 Pavilion Street. The wall is well constructed with no evidence of bowing or structural failure. It appears to have been built under the direction of Arthur Costin as a garden terrace retaining wall.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal is for alterations and additions to an existing dwelling located on the cliff edge of the Queenscliff-Freshwater headland, partly on the C13 – Coastal Cliffs Conservation Area. The heritage listed Freshwater View Reserve, a heavily vegetated park, is also located to the south-west boundary of the subject site.		
	The proposed lower level timber deck area is located near the conservation area and the heritage listed stone walls extending out from Freshwater View Reserve. The separation provided between the existing stone retaining wall and the proposed deck is satisfactory. From a heritage point of view, considerations should be given to preserve and protect the existing landscaping including the vegetation and the cliff edge before and during the construction works. New permeable screens have been proposed to existing pool wall. It is considered that this screen could be more recessive and not extend beyond the existing rock face.		
	Therefore, no objections are raised on heritage grounds and no conditions required.		
	<u>Consider against the provisions of CL5.10 of WLEP 2011.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes		
	Further Comments		

Internal Referral Body	Comments
	COMPLETED BY: Oya Guner, Heritage Advisor DATE: 07 October 2021

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	The AHO provided the following comments: <i>An Aboriginal Heritage Due Diligence Assessment was prepared in September 2021 by Artefact Heritage.</i> <i>The Aboriginal Heritage Office agrees with the conclusions and recommendations outlined in the report:</i> <i>It was found that:</i> <i>• The southern section of the study area has been significantly disturbed by construction and landscaping.</i> <i>• The northern section of the study area contained significant sandstone outcrops and overhangs although they were degraded with sheer faces and not conducive to habitation.</i> <i>• The area closest to Freshwater Beach, was partially obscured by vegetation and ground surface visibility was poor. The following recommendations are therefore made:</i> <i>• The study area has low archaeological potential and significance.</i> <i>• If suspected Aboriginal objects are located during construction, works should cease, and an Aboriginal heritage consultant contacted to assess the finds and make necessary recommendations if further investigation or permits are required.</i> <i>• If human remains, or suspected human remains, are found in the course of the activity, all work in the vicinity should cease, the site should be secured and the NSW Police and the Office of Environment and Heritage should be notified.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i>

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. A429076 dated 30 August 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Coastal Management) 2018

The site is classified as land within the coastal environment area and 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 works involve alterations and additions to an existing dwelling. The majority of the works are taking place within the existing building envelope. The building will remain a single detached dwelling.

In this regard, the proposal is unlikely to cause an adverse impact on the matters listed 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 proposal, being alterations and additions to the existing dwelling, has been designed and sited to avoid an adverse impact on the matters in subclause (1).

14 Development on land within the coastal use area

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to*

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

Comment:

The works involve alterations and additions to an existing dwelling. The majority of the works are taking place within the existing building envelope. The building will remain a single detached dwelling.

In this regard, the proposed development is unlikely to cause an adverse impact on foreshore access; overshadowing, wind funnelling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast; and Aboriginal and built environment heritage.

The consent authority can be satisfied that the development is designed and sited to avoid an adverse impact on the matters above.

This assessment has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

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

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

Comment:

The proposal is for alterations and additions to the existing dwelling, the majority of works taking place within the existing building envelope, and the building will remain a single detached dwelling. The works on the site will take place away from and above the areas most at risk of coastal hazards.

In this regard, the consent authority can be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on to the site or any other land.

As such, it is considered that the application complies 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	9.8m	15.3%	No

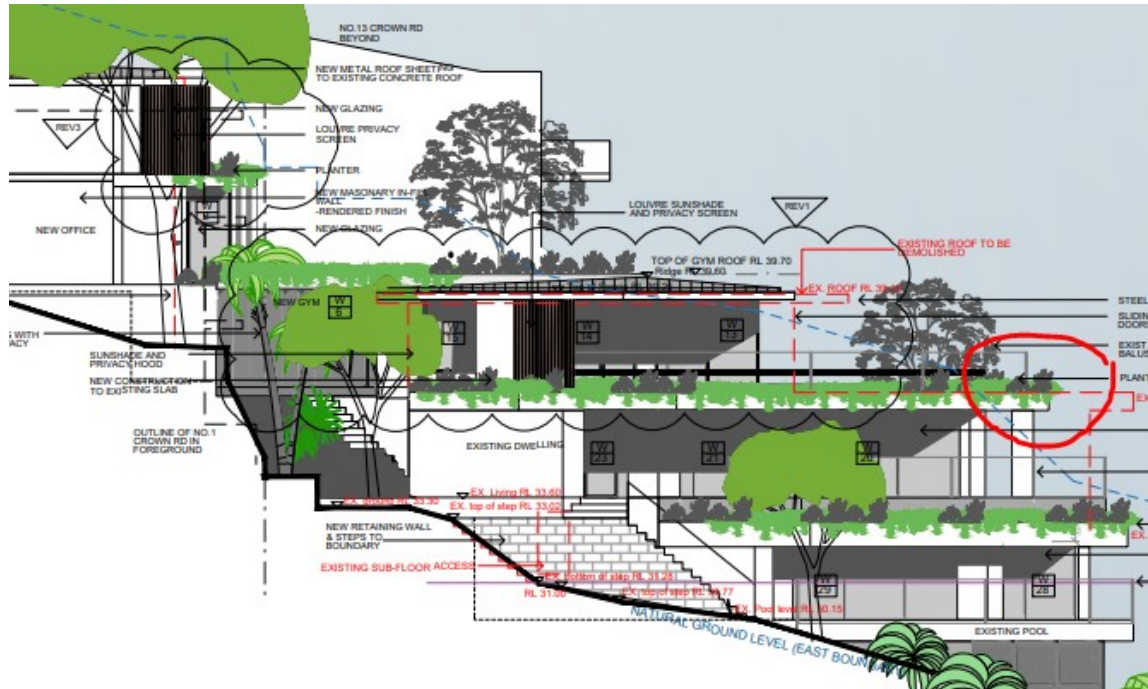
Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

The portion of the dwelling that breaches the height limit is not on the garage (top) level or the upper most level of the dwelling proper. The highest point above natural ground level is at the outer edge of the 'living' level, circled red, below.



It is noted that the alterations to this level reduce the maximum height of the building by demolishing the triangular outer edge of the existing balcony, shown above and circled red in the demolition plan, below.



Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15.3%

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

(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 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

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

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

"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. The design has made concerted effort to ensure new elements at level 01 are respectful of the 8.5m height limit with the main offending elements relating to the 'level 01' which reflects a technical non-compliance due to the overall height being reduced however new works are proposed above the 8.5m. In this regard, the proposal does reduce the overall max height by refining the terrace and squaring off the north western corner. This reduction will facilitate improved view corridors across the site while providing cleaner lines to the dwelling to reduce visual impact. There are no amenity impacts associated with the technical non-compliance at this level.

I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints 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 including a view sharing scenario. Such outcome is achieved whilst realising the reasonable development potential of the land.

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)).*

- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h))."*

The Assessing Officer agrees with the assessment provided by the Applicant. It is agreed that the topography of the land limits the ability to distribute floor space across the site and retain compliance with the height of buildings development standard. It is agreed that the non-compliant elements are limited to Level 01, with the overall height being reduced due to partial deletion of a balcony. It is agreed that the portion of the development that is not compliant with the height of buildings development standard does not result in any unreasonable amenity impacts. The proposed development is assessed as consistent with the objectives of the development standard and zone (see below).

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, thereby satisfying Clauses 1.3 (c) and (g) of the EPA Act.

Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b). Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

Comment:

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

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the WLEP 2011 are addressed as follows:

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

Comment:

The development will remain largely within the existing building envelope and footprint. This will ensure that the dwelling continues to be compatible with the height and scale of surrounding and nearby development.

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

Comment:

View sharing and privacy are discussed in more detail below in this report. Given the works are largely within the existing building envelope and footprint, the proposal will minimise visual impact, disruption of views, loss of privacy and loss of solar access to surrounding properties and from the public domain.

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

Comment:

The proposal includes new decking at the rear of the site. This decking does not comply with the rear setback control and reduces the amount of landscaped open space on the site. As such, it is recommended that the lower section of decking is deleted. This will ensure that the impact of the development on the scenic quality of Warringah's coastal and bush environments will be minimised.

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

Comment:

The proposal will be highly visible from public spaces, particularly Freshwater Beach. Given the works are largely within the existing envelope and involve upgrading/modernising the existing dwelling, the visual impact will be acceptable.

Zone Objectives

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

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

Comment:

The proposal retains the existing low density residential use of the site.

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

Comment:

Not applicable. The proposal retains the existing low density residential use of the site.

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

Comment:

The proposed development generally retains the existing building footprint, with the exception of the new decking in the rear yard. The proposal retains the existing landscaped setting of the site, without any unreasonable impact to the natural environment.

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:

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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).

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.35m	15.97%	No
B3 Side Boundary Envelope	South East - 5m	One encroachment of between nil - 1.8m in height for a length of 8.0m.	0% - 36%	No
	North West - 5m	Four encroachments, each between nil and 0.82m, 2.82m, 0.78m and 0.4m for lengths of 2.22m, 5.85m, 0.28m and 0.24m respectively	0% - 56.4%	No
B5 Side Boundary Setbacks	South East - 0.9m	Existing - Minimum of 0.1m New works - Nil setback to stairs and minimum of 0.905m to dwelling	N/A 0-100%	No change No
	North West - 0.9m	Existing - Minimum of nil New works - Minimum of 0.685m to stairs and 0.79m to dwelling	N/A 12.2-23.9%	No change No
B7 Front Boundary Setbacks	6.5m	Existing garage - Minimum of nil New works: 1.7m (replacement external stairs) 2.5m (office below garage) 5.3m (rear of garage)	N/A 73.8% 61.5% 18.5%	No change No
B9 Rear Boundary Setbacks	6m	Approximately 2.1m (to zone boundary) 22.1m (to property boundary)	65% N/A	No Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	26.8% (176.3sqm up to zone boundary) 51.4% (486.3sqm if the entire site is included)	33% N/A	No Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal includes a maximum wall height of 8.35m to the bedroom level, where a maximum of 7.2m is allowable under this control.

Merit consideration:

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

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

Comment:

The proposed maximum wall height occurs due to the reconfiguration of a storey that benefits from an existing non-compliant wall height. The new wall height is approximately 80mm higher than the existing wall height. Given the negligible increase in wall height, and that the reconfigured storey does not result in a significant increase in floor area at that level, the proposal will generally maintain the existing visual impact of the dwelling. The increase in wall height will not be perceptible when viewed from adjoining properties or public places.

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

Comment:

The site does not contain canopy trees at the level where the wall height non-compliance occurs. The existing canopy trees on site are located in the rear yard, which are set below the dwelling, due to the topography of the site. The proposed development is supported by a landscape plan that demonstrates the site will be adequately vegetated so as to soften the built form.

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

Comment:

View sharing is discussed in detail under Part D7 Views below in this report. In summary, the proposal will result in a reasonable sharing of views.

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

Comment:

As above, the increase in wall height is marginally greater than the existing wall height at the bedroom level. This increase will not be perceptible from adjoining or nearby properties. The proposed reconfiguration of the bedroom level has been designed so as to minimise the impact on those properties.

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

Comment:

The proposed alterations and additions make use of existing storeys, and the wall height non-

compliance does not result from any additional earthworks or excavation of the natural landform.

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

Comment:

The proposed development employs very low roof pitch in its design, so as to maintain adequate view sharing for adjoining properties, while allowing for reconfiguration of the existing storeys.

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.

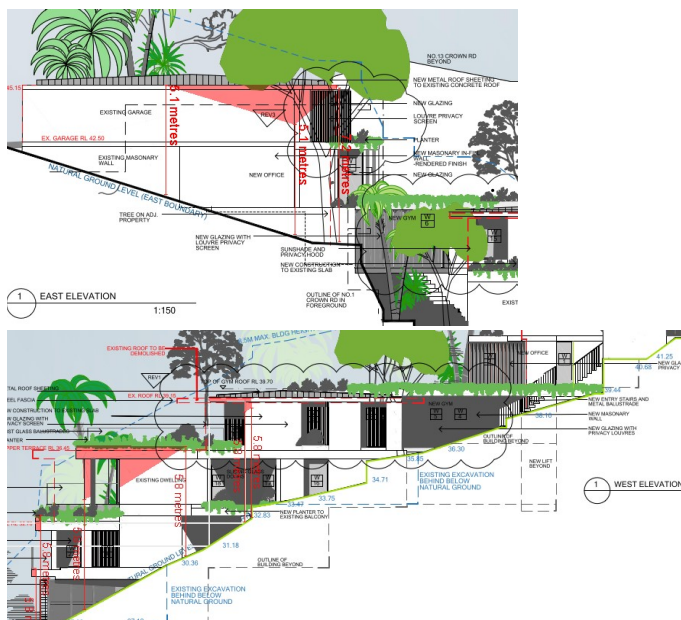
B3 Side Boundary Envelope

Description of non-compliance

The proposal includes the following side boundary envelope breaches:

South East - One encroachment of between nil - 1.8m in height for a length of 8.0m.

North West - Four encroachments, each between nil and 0.82m, 2.82m, 0.78m and 0.4m for lengths of 2.22m, 5.85m, 0.28m and 0.24m respectively.



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 envelope breaches are mostly to existing elements of the building. The 'bedroom' level is being rebuilt and is technically a new non-compliance, however, it is a smaller structure than the existing level it is replacing.

Overall, given the majority of the works are taking place within the existing building envelope, and the fact that the site has a very steep topography (making full compliance difficult), the development will not become visually dominant by virtue of its height and bulk.

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

Comment:

The breaches of the envelope will not impact on light or solar access, particularly as they are largely to existing elements of the building.

Privacy will not directly be affected by the envelope breaches. Multiple privacy screens and louvres are being proposed to improve the privacy for occupants and neighbours.

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

Comment:

The breaches are largely to existing elements of the building. Overall, the impact is being slightly reduced due to the removal of several existing elements on both elevations. As such, the development has responded appropriately to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in 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 proposed development includes reconstructed stairs within 0.685m from the north-western side boundary, new works to the dwelling within 0.79-0.8m of the same boundary, and new stairs with nil setback to the south-eastern boundary, where a minimum of 0.9m is required.

Merit consideration

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

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

Comment:

As modified by conditions of consent requiring replacement of decking with landscaping, the proposal retains ample space for deep soil planting and significant vegetation. The proposal retains and modifies existing pockets of landscaped area in order to provide visual separation between the built elements of the subject site and that of adjoining sites. The proposal also retains the significant area of land zoned RE1 Public Recreation, which is entirely vegetated.

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

Comment:

The proposed development follows existing setbacks to the dwelling, and (as modified by conditions of consent) incorporates adequate landscaping around the property to suitably soften the built form and ensure the development is not more visually dominant than existing. The proposed reconstructed and new stairs are generally low-level, so as not to result in unreasonable bulk of their own accord.

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

Comment:

As above, the proposed development minimises bulk and scale in that it follows existing and side setbacks and is supported by a landscape plan detailing adequate vegetation to soften the proposed built form.

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

Comment:

The proposed development is designed such that a reasonable level of privacy, amenity and solar access is maintained for the subject site and surrounding sites, as detailed throughout this report.

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

Comment:

View sharing is discussed in detail under Part D7 Views below in this report. In summary, the proposal will result in a reasonable sharing of views.

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.

B7 Front Boundary Setbacks

Description of non-compliance

The proposal includes alterations to the existing structures within the front setback area (minimum 6m), including reconstruction of stairs 1.7m from the front boundary, infill of the existing subfloor under the

garage, for the purpose of an office, within 2.5m from the front boundary, and extension of the garage level, within 5.3m of the front boundary.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposal retains the existing sense of openness in the front setback area, given the proposed alterations are either reconstructions of existing structures, or are set behind or below existing structures. In this way, the new works are generally not visible from the street level. Given the incorporation of existing structures, the proposal also does not result in unreasonable additional bulk as perceived from neighbouring properties.

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

Comment:

As the new works are set behind or below existing structures, or are reconstructed works, the proposal maintains the existing visual continuity and pattern of buildings and landscape elements along Crown Road.

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

Comment:

The proposed alterations and additions within the front setback area are reconstructions of existing structures, or are set behind or below existing structures. Despite the non-compliance with the minimum 6m requirement, the proposal maintains the existing visual quality of the streetscape along Crown Road.

- *To achieve reasonable view sharing.*

Comment:

View sharing is discussed in detail under Part D7 Views below in this report. In summary, the proposal will result in a reasonable sharing of views.

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.

B9 Rear Boundary Setbacks

Description of non-compliance

The lower decks at the rear of the site are set back approximately 2.1m to the zone boundary and 22.1m to the property boundary.

The RE1 zoned land on property cannot be included in calculating the rear setback.

The control requires a minimum of 6.0m.

Merit consideration:

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

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

Comment:

The proposal is non-compliant with the landscaped open space requirement in addition to the rear setback non-compliance. The site provides 26.8% and requires 40%.

If the decks, or a portion of the decks were to be removed, more opportunities for deep soil landscape areas would be achieved.

In this regard, it is recommended that the lower section of the two decks be deleted and replaced with landscaped open space. This would add approximately 30.5sqm of landscaping (bringing the total to 31.4%) to the site while still allowing usable outdoor decking (in addition to the extensive balconies on the dwelling itself) for the residents.

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

Comment:

The deletion of a portion of deck would greatly reduce the rear setback non-compliance (from 2.1m to 5.7m against a 6.0m requirement). It would also increase the sense of openness in the rear yard.

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

Comment:

The decks do not result in unreasonable amenity outcomes and the site will sufficiently preserve the amenity of adjacent land.

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

Comment:

The development along this stretch of Crown Road has a mix of setbacks and a varied subdivision pattern. This results in no consistent pattern of buildings, rear gardens and landscape elements to maintain. The deletion of the rear portion of the deck will improve the

rear setback and landscaped open space non-compliances.

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

Comment:

In this case, the rear of the site does not greatly contribute to privacy outcomes as only public land adjoins the rear boundary and the siting of the surrounding dwellings does not mean that they sit in a consistent line. Overall, the proposal will maintain privacy between dwellings.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal seeks consent for 26.8% (176.3sqm) landscaped open space (LOS) up to zone boundary, or 51.4% (486.3sqm) if the entire site is included. Only the land up to the zone boundary can be included in the LOS calculation.

The control requires a minimum of 40%.

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:

There will be no discernable changes to the streetscape appearance of the development as there is currently no LOS at the front of the site.

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

Comment:

The proposal is non-compliant with the landscaped open space requirement in addition to the rear setback non-compliance. The site provides 26.8% and requires 40%. The site currently provides 34.6%.

The change from the existing situation on site is the addition of two decks at the rear of the dwelling.

If the decks, or a portion of the decks were to be removed, more opportunities to conserve and enhance indigenous vegetation, and habitat for wildlife would be achieved.

In this regard, it is recommended that the lower section of the two decks be deleted and replaced with landscaped open space. This would add approximately 30.5sqm of landscaping (bringing the total to 31.4%) to the site while still allowing usable outdoor decking (in addition to the extensive balconies on the dwelling itself) for the residents.

- *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:

As discussed above, it is recommended that the lower deck section be deleted and replaced with LOS. While this will still result in a non-compliance with the control and be less than what currently exists on site, it is a reasonable outcome.

- *To enhance privacy between buildings.*

Comment:

The location of the LOS on the site does little to enhance privacy between buildings. This has been achieved through other design solutions.

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

Comment:

The steep topography of the site means that very little of the LOS is usable. Allowing some decking, while reducing the overall amount will give adequate outdoor recreational opportunities and maximise the LOS on the site.

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

Comment:

The site will contain sufficient space for service functions.

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

Comment:

The site slopes to the beach and so stormwater infiltration isn't as critical for this property. As such, the non-compliance, subject to the portion of decking being removed and replaced with LOS, is acceptable.

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

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Views will be affected from Nos. 1 and 13 Crown Road and No. 33 Pavillion Street.

No. 1 Crown Road

Currently enjoys views of the suburb of Freshwater, Freshwater Beach, the land/water interface, wave zone, Freshwater Headland and the ocean, in a near 180 degree arc.

The views to be affected consist of a section of the beach, land/water interface and wave zone.

The image below outlines an estimate of the proposed rebuilt level in red with the views to be lost in orange and the views likely to be gained in green. It is difficult to know, for certain, the views that will be gained on the right hand side of the image as there are building elements below this level.



No. 13 Crown Road

Currently enjoys views of the suburb of Freshwater, Freshwater Beach, the land/water interface, wave zone, Freshwater Headland and the ocean, in a near 180 degree arc.

The views to be affected consist of a section of the wave zone and the ocean.

The image below outlines an estimate of the proposal in red with the views to be lost in orange and the views likely to be gained in green.



No. 33 Pavillion Street

Currently enjoys views of the suburb of Freshwater, Freshwater Beach, the land/water interface, wave zone, Freshwater Headland and the ocean, in a near 180 degree arc.

The views to be affected consist of a section of the beach.

The image below outlines an estimate of the proposal in red with the views to be lost in orange and the views likely to be gained in green.



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

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

Comment to Principle 2:

No. 1 Crown Road

The views are obtained from the main living areas and attached balconies on the upper level. The views are from sitting and standing positions and are over the rear boundary.

There are views from other levels of the dwelling (bedroom level and lower bedroom level), however, they are not as extensive and are currently blocked by the existing dwelling.

No. 13 Crown Road

The views are obtained from the main living areas including the kitchen on the upper level. The views are from sitting and standing positions and are over the side boundary.

No. 33 Pavillion Street

The views are obtained from all levels of the dwelling. The views are from sitting and standing positions and are over the side and rear boundaries.

3. Extent of impact

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

Comment to Principle 3:

No. 1 Crown Road

As is evident from the plans and the images above, No. 1 Crown Road is likely to have an overall gain in views. This is because of the changes to the 'bedroom' level that, overall, make it smaller. While a fully compliant upper level would result in an increase in views, particularly along the south eastern (right hand side in the photos above) edge, the existence of current dwelling on site must be taken into account. This current dwelling already blocks these views.

In this regard, the view impact is considered to be minor.

No. 13 Crown Road

As is evident from the plans and the images above, No. 13 Crown Road is likely to have an overall gain in views. This is because of the changes to the 'bedroom' level that, overall, make it smaller. While a fully compliant dwelling would result in a slight increase in views the current dwelling does already block these views.

In this regard, the view impact is considered to be minor.

No. 33 Pavillion Street

As is evident from the plans and the images above, No. 33 Pavillion Street is likely to have an overall gain in views. This is because of the changes to the 'bedroom' level that, overall, make it smaller. While a fully compliant upper level would result in an increase in views, particularly along the south eastern edge, the existence of current dwelling on site must be taken into account. This current dwelling already blocks these views.

In this regard, the view impact is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The critical controls relating to view loss in this particular case is the height, the side boundary envelope and the side setback. The critical element of the dwelling is the 'bedroom' level, as it is this level that currently blocks the affected views and will, once rebuilt, continue to block most of

the views that would otherwise be obtained if it didn't exist. The south eastern edge of the 'bedroom' level is particularly important.

The 'bedroom' level is fully compliant with the 8.5m height limit and is compliant with the side boundary envelope and side setbacks controls, on the south eastern edge, which is being pulled 2.3m further away from the south eastern boundary than the existing level.

The minor side boundary envelope and side setback non-compliances on the north western edge are entirely existing and have a negligible impact on views.

The proposed development will result in an overall gain in views from No. 1 Crown Road and No. 33 Pavillion Street. As a result, the development will allow for a reasonable sharing of views.

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

Comment:

The alterations and additions to the dwelling are an innovative design solution and will improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

The works will not impact on any native canopy trees.

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.

D8 Privacy

Merit consideration

An objection from 33 Pavilion Street raised concern about privacy impacts arising from the eastern window to Bedroom 2 from Level 01. An objection from 1 Crown Road raised concern about privacy impacts arising from the eastern window to the garage, the eastern window to the office, and the terrace at Level 01.

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed development incorporates a number of design techniques to ensure adequate privacy to adjoining and surrounding sites. With respect to the specific areas of concern identified above, the following commentary is provided. The eastern window to Bedroom 2 of Level 01 is orientated towards the view and away from adjoining properties, and is treated with privacy louvres. The terrace to Level 01 is also generally orientated towards the view and away from adjoining properties, and is set a minimum of 1.5m from the eastern side boundary. The

eastern window to the garage is orientated away from the side boundary, and is adjacent to a storage and bin room, so is not used for habitation or recreation. The eastern window to the office is orientated away from the side boundary, and partially obscured with a blade wall. The proposed development is designed and sited in order to provide a high level of visual and acoustic privacy to the subject site and surrounding sites.

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

Comment:

The proposed development is innovative in that it provides updated and reconfigured living space for the occupants of the subject site, without resulting in unreasonable impacts to privacy for surrounding sites.

- *To provide personal and property security for occupants and visitors.*

Comment:

Given the above, the proposed development is designed in such a way that provides personal and property security for the occupants and visitors of the subject site and surrounding sites.

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 \$17,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,790,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;

- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

This proposal, for alterations and additions to the dwelling, has been referred to the Development Determination Panel (NBLPP) due to a cost of works over \$1 million and four objections being received.

The concerns raised in the objections have been addressed within this report and partly resolved through amendments to the plans made during the assessment process.

The critical assessment issues included establishing the 'natural ground level' and how that impacted on the relevant planning controls, particularly height and side boundary envelope.

Overall, the development will result in some improved view sharing, reduce the size of some elements of the existing building (while increasing some others) and is a high quality design that performs well against the relevant controls. The proposal will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to conditions.

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 the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the WLEP 2011 as the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1636 for Alterations and additions to a dwelling house on land at Lot 2 DP 514296, 7 Crown Road, QUEENSCLIFF, 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
10037_DA 1.10 Issue D	15 April 2022	Dorn Design
10037_DA 1.20 Issue A	23 August 2021	Dorn Design
10037_DA 1.21 Issue A	23 August 2021	Dorn Design
10037_DA 2.00 Issue D	23 August 2021	Dorn Design
10037_DA 2.01 Issue D	23 August 2021	Dorn Design
10037_DA 2.02 Issue D	23 August 2021	Dorn Design
10037_DA 2.03 Issue D	23 August 2021	Dorn Design
10037_DA 2.001 Issue D	23 August 2021	Dorn Design
10037_DA 2.002 Issue D	23 August 2021	Dorn Design
10037_DA 2.003 Issue D	23 August 2021	Dorn Design
10037_DA 5.00 Issue D	23 August 2021	Dorn Design
10037_DA 5.01 Issue D	23 August 2021	Dorn Design
10037_DA 5.02 Issue D	23 August 2021	Dorn Design
10037_DA 5.03 Issue D	23 August 2021	Dorn Design
10037_DA 6.00 Issue D	23 August 2021	Dorn Design
Landscape Plan DA02 Revision B	20 August 2021	The Garden Social
Landscape Plan DA03 Revision B	20 August 2021	The Garden Social
Landscape Plan DA04 Revision B	20 August 2021	The Garden Social

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	24 August	Ascent Geotechnical

	2021	Consulting
Arboricultural Impact Assessment Report	31 August 2021	Rain Tree Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	3 September 2021	Brad Dorn

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 \$17,900.00 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 \$1,790,000.00.

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. **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
- 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. **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 Crown Road and the proposed level spreader in the rear of the property.

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.

8. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

9. **Amendments to the approved plans**

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

- The lower section (totalling approximately 30.5sqm) of the rear decking is to be deleted and replaced with deep soil landscaped open space.

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.

10. **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.

11. **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.

12. **Sydney Water "Tap In"**

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

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

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

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

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

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 Assessment):

- T20 and T21 - both Coastal Banksia, subject to native tree replacement within the property,
- T12 within the neighbouring property No. 1 Crown Rd, as written consent is provided to remove the dead tree from the property owner.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal, and these include the following identified trees within the property: T4, T5, T6, T7, T8, T9, T13, T14, T15, T18, and T19.

Reason: To enable authorised building works.

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

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

- T1 and T3 Norfolk Island Hibiscus, and T2 - Cocus Palm, within the road reserve, subject to native tree replacement within the road reserve,

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

Reason: Public liability.

15. **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: 1 Crown Road and 9 Crown 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 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

16. 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, except for T12 approved for removal,
 - 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.

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.

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. **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, bushland and foreshore vegetation, natural landscape features such as cliffs, ledges, outcrops, and open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

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

19. **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.

20. **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.

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.

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

22. **Street Tree Planting**

Street tree planting shall be installed in accordance with the following:

- i) one (1) *Banksia integrifolia* pre-ordered at a 100 litre container size, and shall meet the requirements of Natspec - Specifying Trees,
- ii) minimum 2 metres in height with a 40mm minimum caliper.

All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be located at least 2.0 metres from any structures including driveways, kerbs, and paths, and shall generally be centralised within the road verge.

Reason: To maintain environmental amenity.

23. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans, inclusive of the following conditions:

- i) new landscape works are confined to the property boundaries,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings and other trees, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) 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,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of 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.

24. **Condition of Retained Vegetation**

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

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

Reason: Tree and vegetation protection.

25. **Stormwater Disposal**

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

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

26. **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.

27. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (The Garden Social, August 2021) and these conditions of consent.

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

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

28. **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.

29. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) within the site are to be removed.

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 weeds.

30. **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.

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.

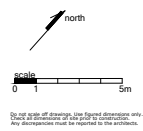
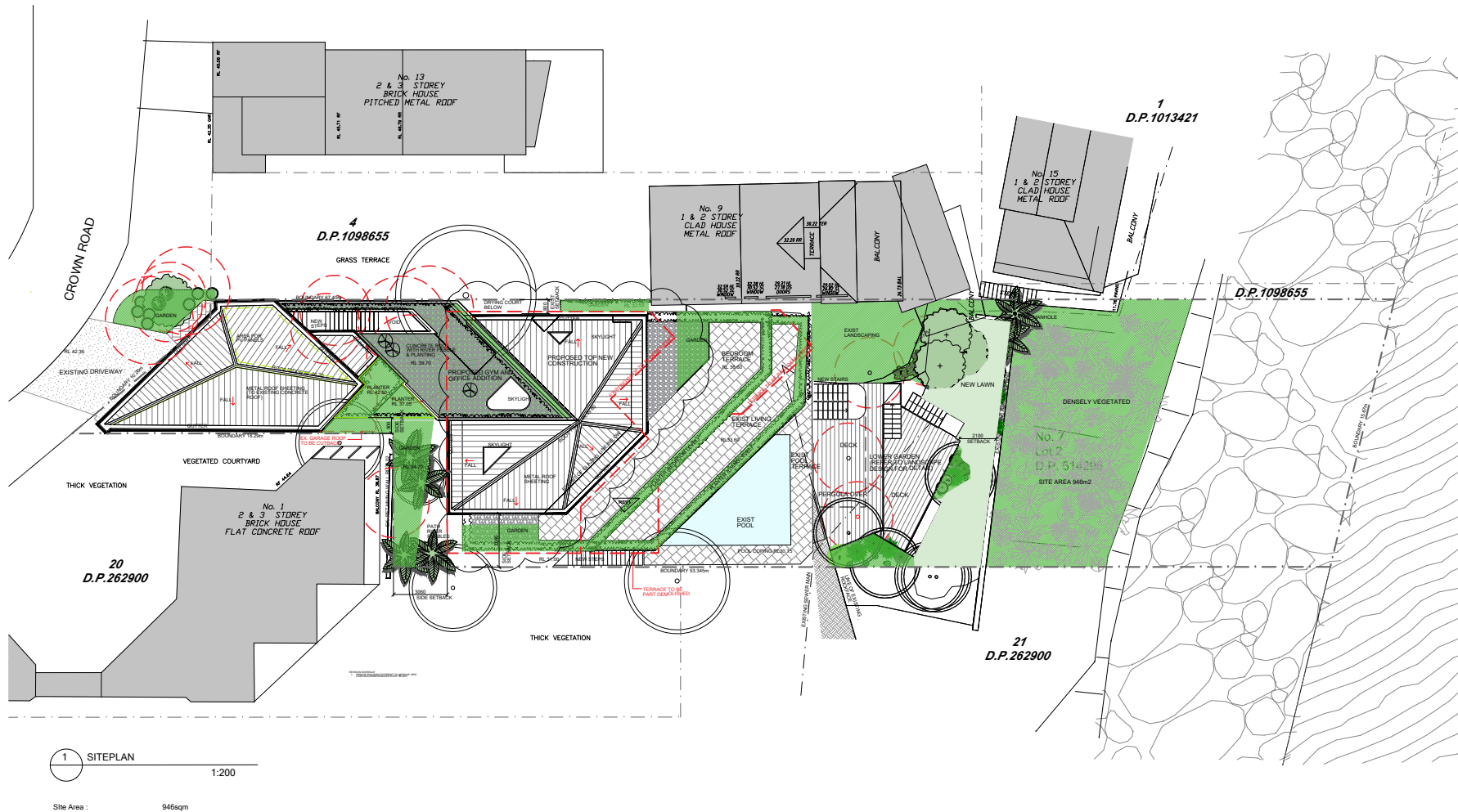
Reason: To maintain local environmental amenity.

32. **Replacement of Canopy Trees**

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

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

Reason: To replace locally native trees.



- LEGEND**
- EXISTING WALLS TO BE RETAINED
 - NEW WALLS TO BE CONSTRUCTED
 - WALLS OR STRUCTURE TO BE DEMOLISHED
 - NEW BUILT AREA
GROSS FLOOR AREA (GFA)
 - EXISTING TREE TO BE RETAINED
 - EXISTING TREE TO BE REMOVED
 - PROPOSED TREE

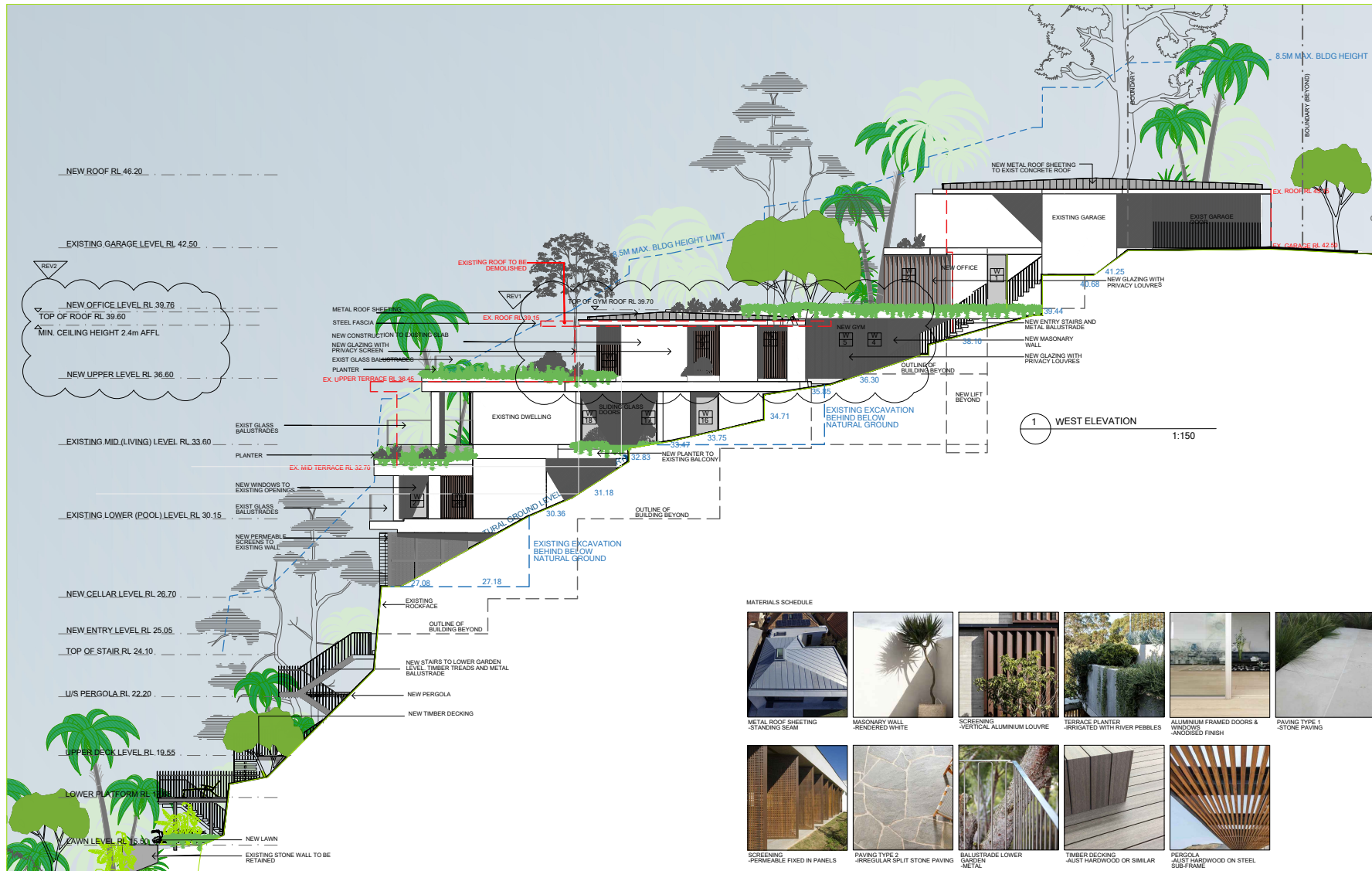
REVISION SCHEDULE
1- REVISE BUILDING FOOTPRINT TO IMPROVE VIEW LOSS INCLUDING REDUCED ROOF HEIGHT

DATE	NOTES	ISSUE
28.04.21	Pre-DA Issue	A
23.08.21	DA ISSUE	B
25.02.22	DA ISSUE - REVISED UPPER LEVEL TO REDUCE BUILDING HEIGHT	C
15.04.22	DA ISSUE - REVISED UPPER LEVEL	D

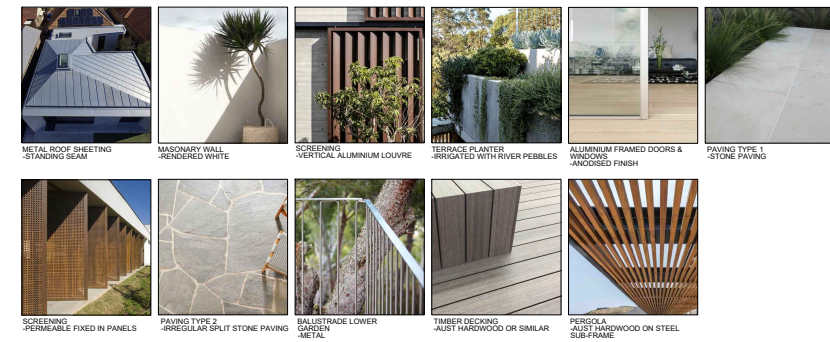
Project	Formica House	Project No.	10037
Address	7 Crown Rd Queenscliff NSW 2095	Drawing Title	SITEPLAN
Client	A. Formica	Scale	1:200@A3
		Issue	BD
		Drawing No.	10037_DA 1.10

DORN
Sydney Newcastle Wollongong
M 0422 986372
E hrad@dornesign.com.au
dornesign.com.au





MATERIALS SCHEDULE

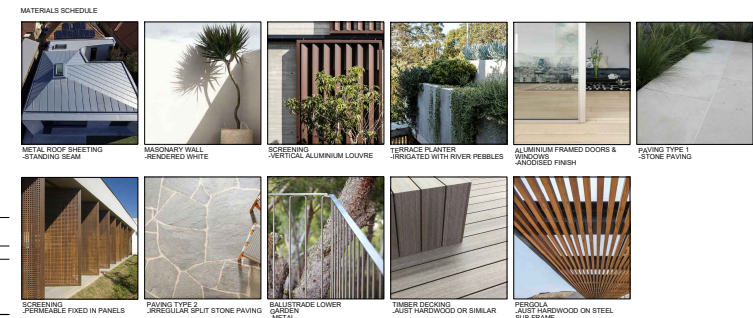
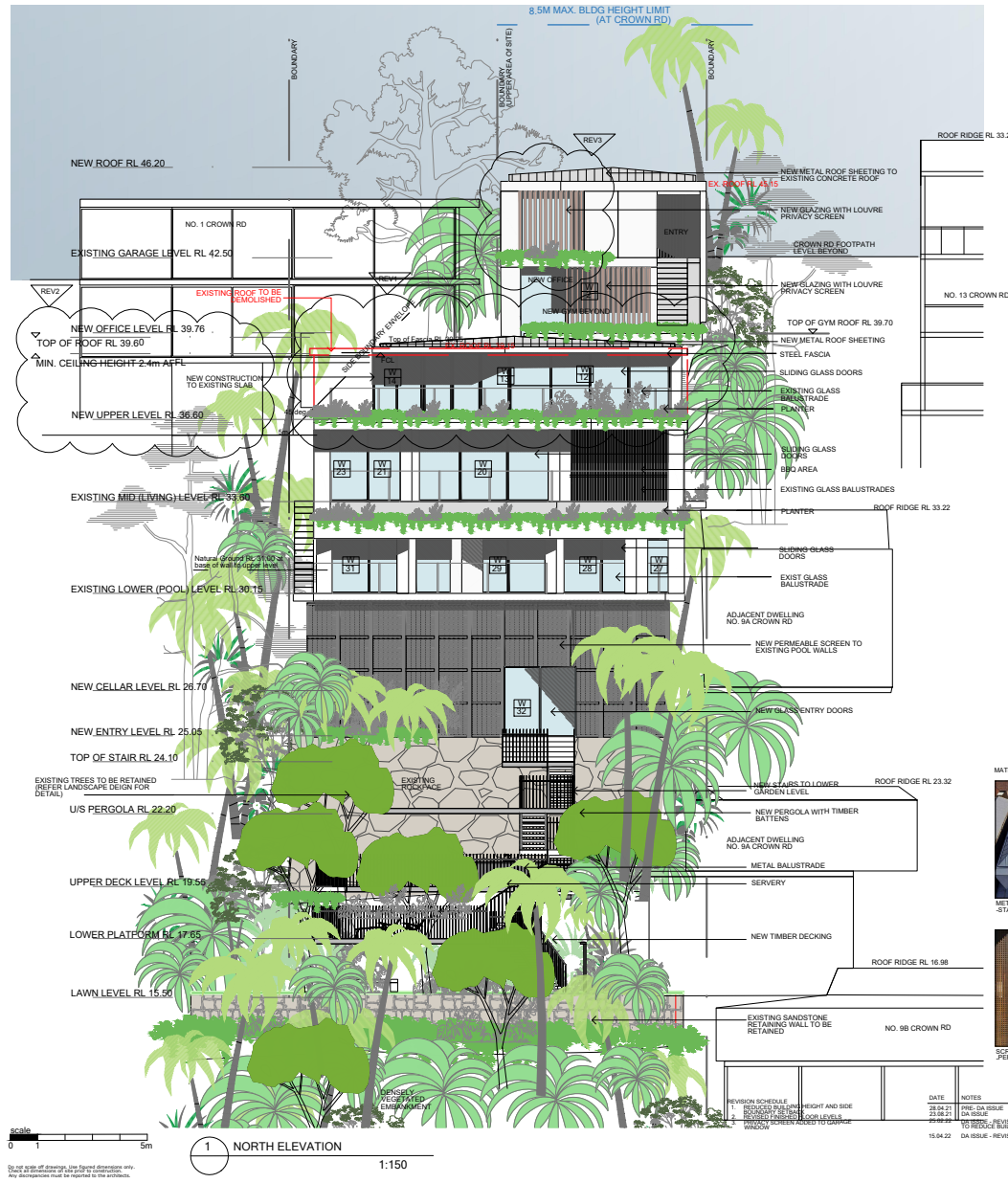


REVISION SCHEDULE

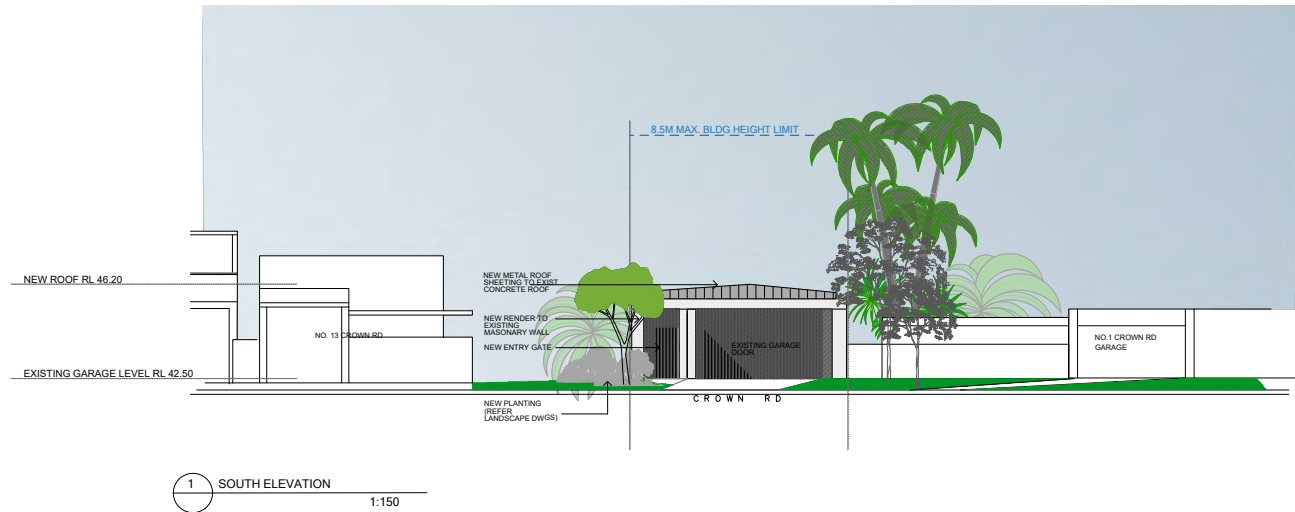
1. REVISIONS TO BUILDING HEIGHT AND SIDE
2. REVISED FINISHED FLOOR LEVELS

DATE	NOTES	ISSUE	Project	Project No.	Drawing Title
28.04.21	PWE - DA ISSUE	A	Formica House	10037	WEST ELEVATION
23.08.21	DA ISSUE	B			
25.02.22	DA ISSUE - REVISED UPPER LEVEL	C			
15.04.22	DA ISSUE - REVISED UPPER LEVEL	D			

DORN
Sydney Newcastle Wollongong
M 0422 986372
E hrad@dornesign.com.au
dornesign.com.au



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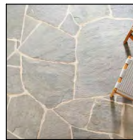
MATERIALS SCHEDULE



METAL ROOF SHEETING
-STANDING SEAM



MASONRY WALL
-RENDERED WHITE



PAVING TYPE 2
-RENDERED WHITE



Do not scale off drawings, use figure dimensions only.
Any dimensions on all drawings are to be used.
Any discrepancies must be reported to the architect.

DATE	NOTES	ISSUE	Project	Project No.	Drawing Title
28.04.21	PRE-DA ISSUE	A	Formica House	10037	SOUTH ELEVATION
23.05.21	DA ISSUE	B			
			Address		Drawn By
			7 Crown Rd		BD
			Queenscliff NSW 2095		
			Client		Issue
			A. Formica		
				Drawing No.	
				10037_DA 5.03	

DORN
Sydney Newcastle Wollongong
M 0422 986372
E brad@dorndesign.com.au
dorndesign.com.au



Suite 1, 9 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

3 May 2022

The General Manager
Northern Beaches Council

**RE: CLAUSE 4.6 REQUEST TO VARY THE HEIGHT OF BUILDINGS
DEVELOPMENT STANDARD**

7 CROWN ROAD, QUEENSCLIFF

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Warringah Local Environmental Plan 2013 (“WLEP”)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2013 (WLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

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).

The proposal has been further refined to ensure that level 00, as identified in the architectural set, does comply with the 8.5m to the best we can extrapolate from the surveyed levels. Notwithstanding, this clause 4.6 is provided out of an abundance of caution with regard to this level as there may be minor sections that do not strictly conform however is still considered to meet the objectives of the zoning and height standard and that there is sufficient environmental planning grounds to support a variation if a minor breach was identified.

The level identified as the ‘level 01’ in the architectural set represents a reduction in height due to the existing terrace being squared off to the north-western corner. While it represents decrease in height from existing there are still new elements above the 8.5m that trigger the need for a clause 4.6. The new planter boxes to the terrace will sit above the 8.5m and will reach an approximate height of 9.8m at it highest point along when taken from the east elevation. This represents a 15.3% variation to the height standard.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

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

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

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

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

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

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

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

Clause 4.6(2) of WLEP 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 WLEP 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 WLEP 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 WLEP 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 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 WLEP 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 WLEP 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 WLEP 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 WLEP

4.0 Request for variation

4.1 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 ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Response: The height and built 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.

The works will not significantly alter the existing scale of development on the site and will refine the existing floorplates. The dwelling will still present as a multi storey that is reflective of the topography of the area. Development along this escarpment is characterised by multi storey dwellings which step down the steep topography. Increase in landscaping on and surrounding the development will provide further softening and screening while integrating with the escarpment.

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 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.

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

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views to nearby residential development from surrounding public spaces. View analysis has been undertaken which demonstrates that existing water and land interface views enjoyed by neighbouring properties will be largely unaffected.

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 and that the proposed additions will not give rise to any unacceptable

public or private view affectation with the ocean and horizon views maintained from all properties located to the south along Crown Road. View impacts have been minimised and a view sharing outcome achieved.

The works have also been designed to not give rise to any significant adverse amenity impacts with regard to privacy and overshadowing.

The proposal is consistent with this objective.

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

Response: The dwelling will not significantly alter the built form as it sits within the context of the coastal escarpment. The new addition creating a connection between the garage and the dwelling will be obscured behind the main dwelling and not give rise to any unreasonable visual impact concerns. The existing geometry of the floor plates have been redesigned to present a more coherent built form presentation and will improve the scenic quality of the coastal setting. The enhancement of landscaping on the site will soften and screen the dwelling when viewed from the public domain.

The proposal is consistent with this objective.

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

Response: As mentioned above, the works represent an improvement to the existing built form to present a more coherent floor plate geometry and cleaner lines which will reduce its visual impact. The upper level has raised its roof height and sits back towards the slope as to not be readily discernible from Freshwater Beach. The existing concrete walls beneath the pool will include new permeable screen to soften its current visual impact.

The proposal is consistent with this objective.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to WLEP 2011 with dwelling houses 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: The works relate to alterations and additions to an existing dwelling.

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

Response: N/A

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

Response: The works do not impact on the heritage value of the cliffs. A landscape plan has been providing detailing the enhancement of landscaping on the site and to the façade of the dwelling to ensure that it will sit within the natural environment.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R2 Low Density 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 unreasonable and unnecessary.

4.2 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.

The design has made concerted effort to ensure new elements at level 01 are respectful of the 8.5m height limit with the main offending elements relating to the ‘level 01’ which reflects a technical non-compliance due to the overall height being reduced however new works are proposed above the 8.5m. In this regard, the proposal does reduce the overall max height by refining the terrace

and squaring off the north western corner. This reduction will facilitate improved view corridors across the site while providing cleaner lines to the dwelling to reduce visual impact. There are no amenity impacts associated with the technical non-compliance at this level.

I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints 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 including a view sharing scenario. Such outcome is achieved whilst realising the reasonable development potential of the land.

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)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A 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

William Fleming

BS, MPLAN

Planner

ITEM 3.2	DA2022/0166 - 33A QUEENS AVENUE AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Phil Lane
TRIM FILE REF	2022/296713
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/0166 for alterations and additions to a dwelling house on land at Lot 21 DP 1220648, 33A Queens Avenue AVALON BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0166
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 21 DP 1220648, 33 A Queens Avenue AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes - Zone C4 Environmental Living - Zone C4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Effie Wilde Alan Henry Wilde
Applicant:	Alan Henry Wilde
Application Lodged:	14/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/02/2022 to 10/03/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 21.17%
Recommendation:	Approval
Estimated Cost of Works:	\$ 47,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing dwelling house, for the purpose of a pergola over an existing rear deck. The application is referred to the Development Determination Panel due to the proposed variation to the height of buildings development standard of 21.17%. No submissions were received in relation to this proposal.

The critical assessment issue relates to the proposed variation to the height of buildings development standard, which is supported on merit. The proposed development satisfies the objectives of both the development standard and the zone in which the development is proposed (C4 Environmental Living), and provides improved amenity to the existing deck, without unreasonable impacts to the subject site or

surrounding land.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for construction of a louvred pergola roof over an existing deck.

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 - 7.1 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 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - D1.9 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 21 DP 1220648 , 33 A Queens Avenue AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one battleaxe allotment located on the south-western side of Queens Avenue, Avalon. The site is irregular in shape with a battleaxe handle of 3.81m along Queens Avenue and a depth of 111.315m. The site has a surveyed area of 1,118m².

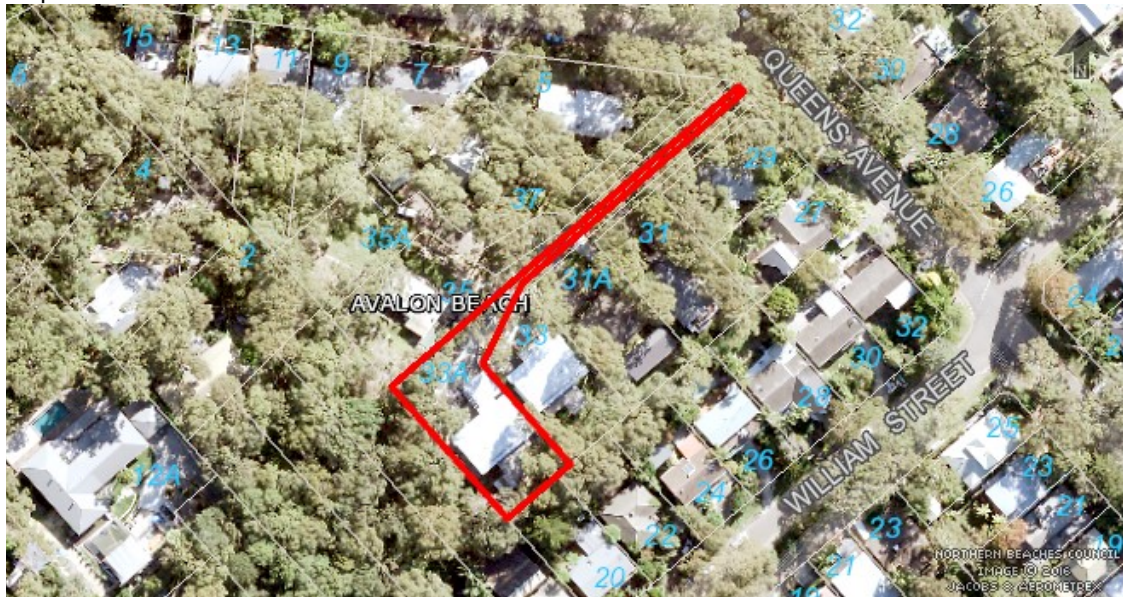
The site is located within the C4 Environmental Living zone and accommodates a two-storey detached dwelling house, detached double garage, and shed.

The main portion of the site slopes down approximately 14m from north-west to south-east and contains landscaped vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by generally two-storey detached dwelling houses.

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:

- N0090/15 for Subdivision of land into two lots & the erection & construction of two new, two storey dwelling houses, with associated garages, driveways & landscaping was approved by Council on 21 October 2015.
- DA2018/1304 for Works to existing driveway and retaining walls was approved by Council on 27 November 2018.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the written request to vary the height of buildings development standard. An updated request was submitted on 30 March 2022. <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. <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. <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. <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

Section 4.15 Matters for Consideration	Comments
	of consent. 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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions have been received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bush Fire Report was submitted with the application that included a certificate (prepared by Planning for Bushfire Protection, dated 24 December 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/02/2022 to 10/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The development proposal is for the construction of louvered roofing over an existing balcony. Relevant biodiversity planning controls include Pittwater LEP cl. 7.6 Biodiversity, and P21 DCP B4.7 Pittwater Spotted Gum Forest. Portions of the site are also mapped on the NSW Government Biodiversity Values map due to the presence of the endangered ecological community Pittwater Spotted Gum Forest, and therefore the NSW Biodiversity Offset Scheme is potentially relevant. However, as the development will not require the removal of any native vegetation the Biodiversity Offset Scheme will not be triggered, and a Biodiversity Development Assessment Report is not required. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. To ensure the protection of the endangered ecological community a condition of consent has been included in relation to the protection of native trees and vegetation during construction.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the

electricity infrastructure exists).

- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal did not require referral to Ausgrid.

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?	
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.3m	21.17%	No

Pittwater Local Environmental Plan 2014

Is the development permissible?	
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	10.3m	21.17%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes

Clause	Compliance with Requirements
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

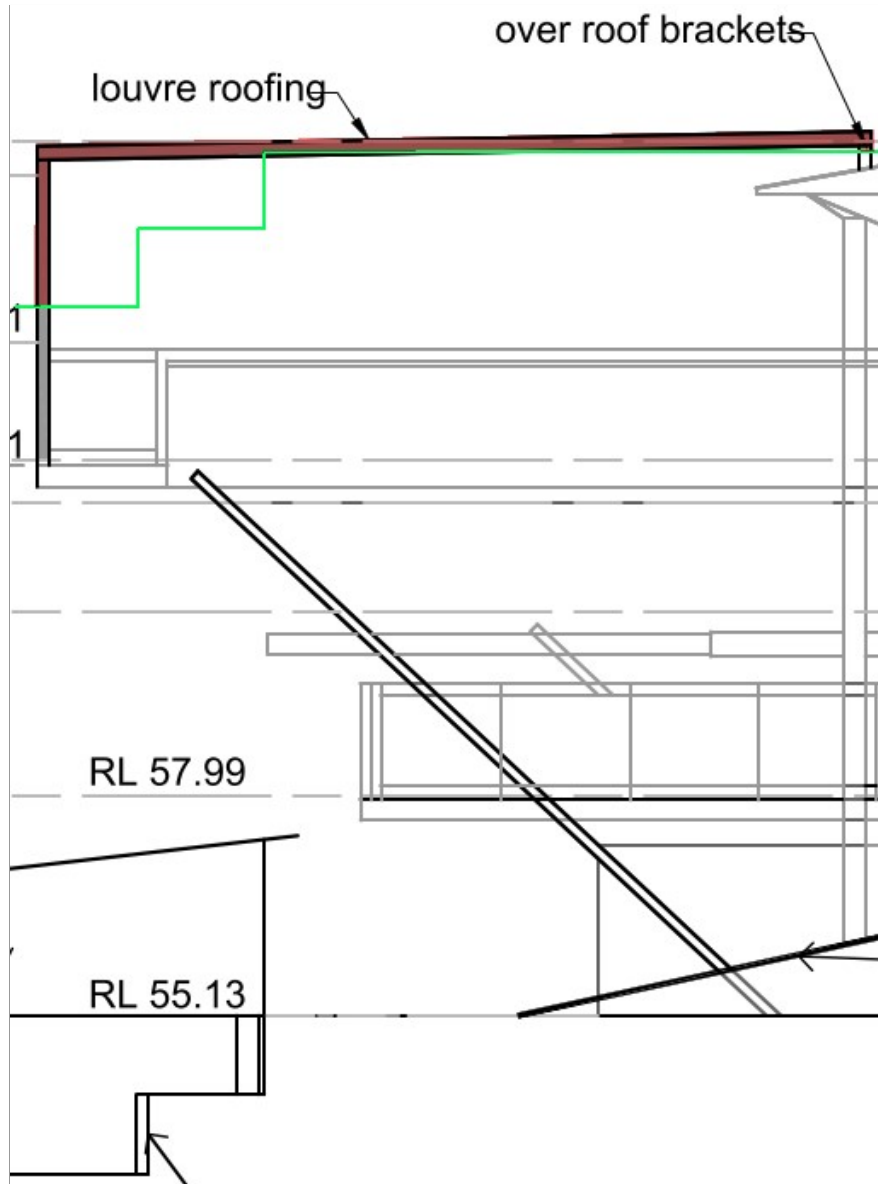
Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.3m
Percentage variation to requirement:	21.17%

The extent of the variation to the height of buildings development standard is shown below, with the green line indicating the 8.5m maximum height, and the red highlighting the portion breaching the standard:



Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Buildings, 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 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

"The Height of Buildings Standard applicable to the subject site is 8.5 pursuant to Clause 4.3(a) under LEP 2014 however, due to the site sloping in excess of 16.7 degrees within the building footprint, a maximum building height control of 10 metres above existing ground level applies.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (a) of the Height of Buildings Standard for the following reason:

The Desired Character of the Avalon Beach locality is expressed within the provisions of the Pittwater Development Control Plan 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.

The proposal endorses the outcome sought by seeking to provide an informal relaxed environment, does not increase the density and maintains a two storey configuration of the existing dwelling.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (b) of the Height of Buildings Standard for the following reason:

The proposal, when constructed will be entirely compatible with the height and scale of surrounding and nearby development.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (c) of the Height of Buildings Standard for the following reason:

The accompanying shadow diagrams confirm that the proposal will minimise any overshadowing of neighbouring properties.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (d) of the Height of Buildings Standard for the following reason: Due to the configuration and location of the proposed works I am of the opinion that the proposal will maintain the reasonable sharing of views.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (e) of the Height of Buildings Standard for the following reason: As the proposal does not seek to carry out any excavation, remove any vegetation or import any fill to the subject site I believe that the proposal does respond sensitively to the natural topography.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (f) of the Height of Buildings Standard for the following reason: The subject proposal will not be visible from any areas of public viewing, will not impact upon the natural environment and is not located within a conservation area or in close proximity to an item of environmental heritage.

...

I wish to particularly note the following points: -

- *The proposed development is permissible within the C4 Environmental Living Zone and is consistent with the relevant zone objectives. It retains the existing residential use of the site and provides an improved area of private open space for the existing dwelling that is consistent with the objectives for the zone.*
- *The lack of impacts upon streetscape, landscaped area or neighbourhood amenity is of significant weight."*

Assessing Officer's Comment:

It is disagreed that the proposed development is subject to the 10m height of buildings development standard set by Clause 4.3(2D). The building footprint (both for the dwelling as a whole, and immediately under the portion relevant to this proposal) is at a gradient less than 16.7 degrees or 30%, and so fails part (c) of Clause 4.3(2D). Notwithstanding this, the justification provided by the Applicant in the submitted written request is otherwise agreed with.

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, thereby satisfying Clauses 1.3 (c) and (g) of the EPA Act. Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b).

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

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

Clause 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 addressed as follows:

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

Comment:

The proposed development is consistent with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the subject site and surrounds. The proposed height and scale of the pergola are consistent with that of existing surrounding developments.

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

Comment:

The proposed development is of a height and scale consistent with that of surrounding existing development. The proposed pergola is set at a height lower than that of the majority of the existing roof, with the variation to height arising as a result of the topography of the land below the deck above which it is proposed.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed pergola is of open construction and is well set back from property boundaries. As such, the proposed development is designed and sited so as not to result in unreasonable overshadowing to neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed structure is designed and sited so as not to unreasonably obstruct views to or from public or private places. As such, the proposed development allows for suitable view sharing between the subject site and adjoining sites.

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

Comment:

The proposed pergola suitably responds to the natural topography in that it does not require removal of vegetation, requires minimal earthworks for footings only, and is of a reasonable height above the existing deck to allow usability, without resulting in unreasonable height.

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

Comment:

Not applicable. The subject site and surrounds are not heritage listed, nor within a heritage conservation area.

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 supports continued use of the existing dwelling house, thereby retaining the low-impact residential use of the site.

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

Comment:

The proposed development is designed and sited so as not to unreasonably impact upon the special ecological, scientific and aesthetic values of the subject site and surrounds.

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

Comment:

The proposed development retains the low density use of the site, and its suitably integrated with the landform and landscape in that it does not require earthworks beyond that for footings, and does not require removal of significant vegetation.

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

Comment:

The proposed development does not require removal of any vegetation and will not unreasonably impact upon wildlife corridors.

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:

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of Building development standard associated with a single dwelling house (Class 1 building).

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 proposed development involves minimal earthworks for the posts of the pergola roof, and is acceptable in relation to acid sulfate soils.

7.2 Earthworks

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

7.6 Biodiversity protection

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

(a) *whether the development is likely to have:*

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

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

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

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

Comment:

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

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

Comment:

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

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

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

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

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

Comment:

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

7.7 Geotechnical hazards

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

(a) *site layout, including access,*

(b) *the development's design and construction methods,*

(c) *the amount of cut and fill that will be required for the development,*

(d) *waste water management, stormwater and drainage across the land,*

(e) *the geotechnical constraints of the site,*

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

Comment:

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

Development consent must not be granted to development on land to which this clause applies unless:
(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site.

(b) the consent authority is satisfied that:

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

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, and stormwater management plans. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.10 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 subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Rear building line	6.5m	6m	7.7%	No
Side building line	SW: 2.5m	5.8m	-	Yes
	NE: 1m	2.8m	-	Yes

Building envelope	SW: 3.5m	Within envelope	-	Yes
	NE: 3.5m	Within envelope	-	Yes
Landscaped area	60% (670.8sqm)	Unchanged	-	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
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Detailed Assessment

D1.9 Side and rear building line

The proposed development includes a rear setback of 6m, where a minimum of 6.5m is required by this control. The underlying outcomes of the control are addressed as follows:

To achieve the desired future character of the Locality.

Comment:

The proposed development is consistent with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the subject site and surrounds.

The bulk and scale of the built form is minimised.

Comment:

The proposed structure is open in its construction. The roof of the pergola is louvred, rather than solid. In this way, the proposed structure is of minimal bulk and scale, while still providing adequate shelter and shade to the deck.

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

Comment:

The proposed structure is designed and sited so as not to unreasonably obstruct views to or from public or private places.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

As above, the proposed structure is designed and sited so as to allow for suitable view sharing between the subject site and adjoining sites.

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

Comment:

The proposed development retains existing levels of privacy and amenity and is compliant with the requirements for solar access.

Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment:

The proposed development does not require removal of any significant vegetation, as it is for a pergola roof over a deck only, with the footings of the structure being the only portion requiring earthworks.

Flexibility in the siting of buildings and access.

Comment:

The proposed development allows for flexibility in the siting of structures on the subject site without resulting in any unreasonable impacts to the amenity of the subject site or adjacent sites.

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

Comment:

The proposed development retains all existing vegetation.

A landscaped buffer between commercial and residential zones is achieved.

Comment:

Not applicable. The subject site and surrounding land are zoned for residential development.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

This proposal, for construction of a pergola over an existing deck, has been referred to the Development Determination Panel (DDP) due to the proposed variation to the height of building development standard of greater than 10%. The critical assessment issue related to the height of building development standard variation, which is supported on merit. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary the development standard contained within Clause 4.3 Height of Building, 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 DA2022/0166 for Alterations and additions to a dwelling house on land at Lot 21 DP 1220648, 33 A Queens Avenue, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet 1 of 5 Site Plan / Site Analysis	2 September 2021	Connect Drafting
Sheet 2 of 5 First Floor Plan	2 September 2021	Connect Drafting
Sheet 3 of 5 North East Elevation	2 September 2021	Connect Drafting
Sheet 4 of 5 South West Elevation	2 September 2021	Connect Drafting
Sheet 5 of 5 South East Elevation . Section AA	2 September 2021	Connect Drafting

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 Stormwater Management Plan	Undated	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment Report	24 December 2021	Planning for Bushfire Protection
Preliminary Geotechnical Assessment	26 April 2022	Ascent Geo

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	21 August 2021	Alan Wilde

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. Security Bond

A bond (determined from cost of works) of \$1,000 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

5. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **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.

8. **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.

9. **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

10. **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.

11. **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. Ensure tree protection measures are in place in construction areas. All construction materials, stockpiling and vehicles must be contained within the existing hard stand area so as not to impact on surrounding vegetation and habitat features.

Reason: To protect wildlife habitat.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Geotechnical Requirements**

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **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.

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

14. **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.

15. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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 weeds.

16. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

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

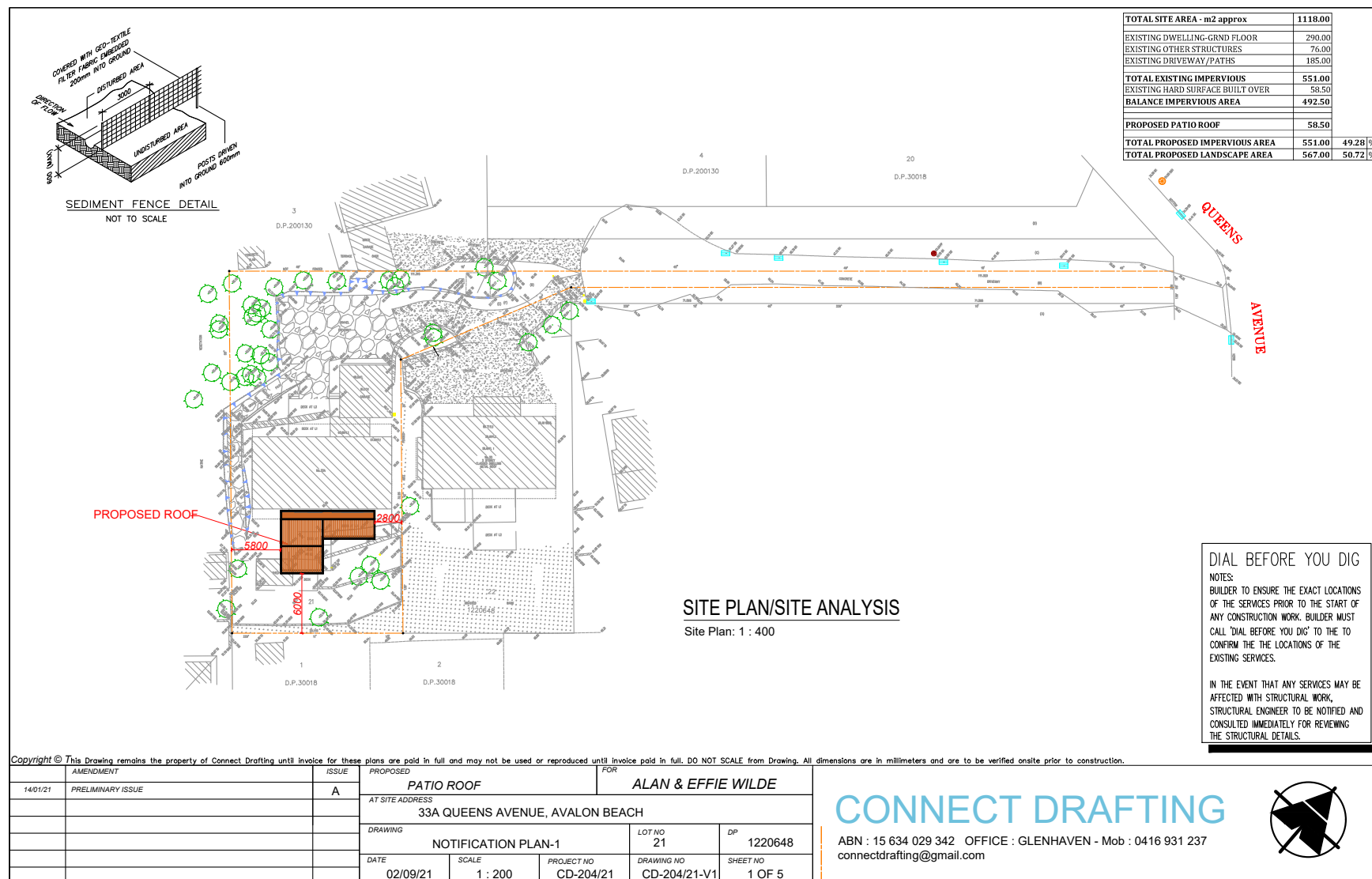
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

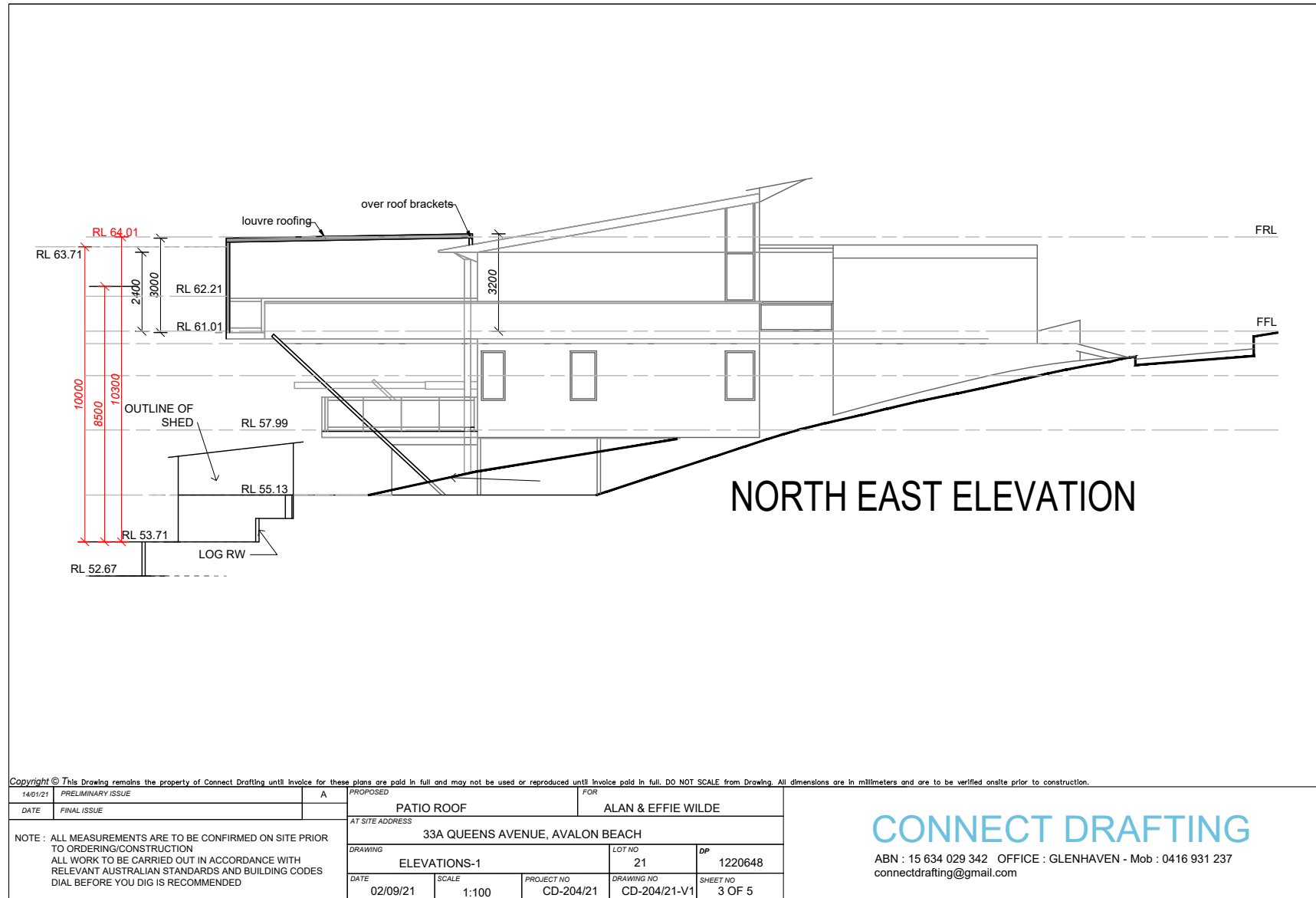
Reason: To ensure geotechnical risk is mitigated appropriately.

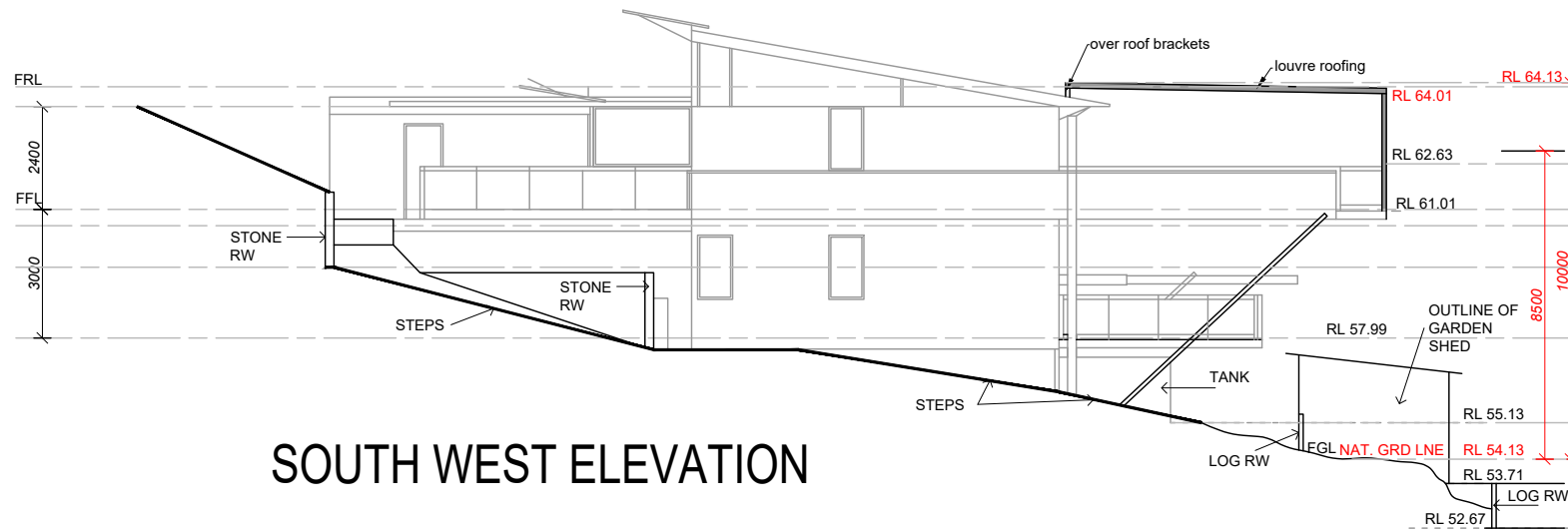
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**18. Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.







SOUTH WEST ELEVATION

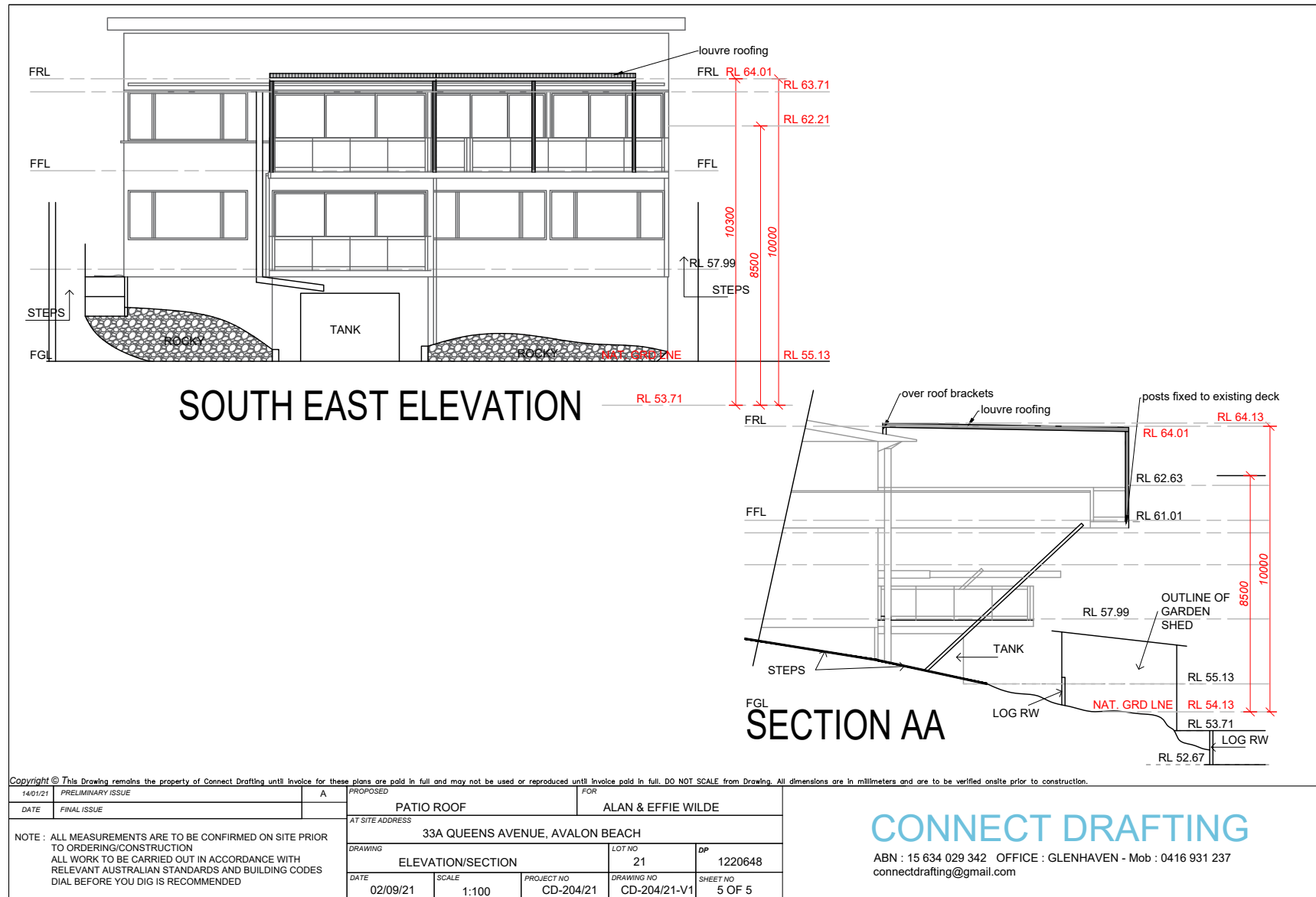
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14/01/21	PRELIMINARY ISSUE	A	PROPOSED	FOR
DATE	FINAL ISSUE		PATIO ROOF	ALAN & EFFIE WILDE
AT SITE ADDRESS				
33A QUEENS AVENUE, AVALON BEACH				
DRAWING	ELEVATIONS-2	LOT NO	21	DP 1220648
DATE	02/09/21	SCALE	1:100	PROJECT NO CD-204/21
				DRAWING NO CD-204/21-V1
				SHEET NO 4 OF 5

NOTE : ALL MEASUREMENTS ARE TO BE CONFIRMED ON SITE PRIOR TO ORDERING/CONSTRUCTION
ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS AND BUILDING CODES
DIAL BEFORE YOU DIG IS RECOMMENDED

CONNECT DRAFTING

ABN : 15 634 029 342 OFFICE : GLENHAVEN - Mob : 0416 931 237
connectdrafting@gmail.com



CLAUSE 4.6 REQUEST FOR
VARIATION OF THE HEIGHT OF
BUILDINGS STANDARD UNDER
CLAUSE 4.3 OF PITTWATER LOCAL
ENVIRONMENTAL PLAN 2014
FOR
PROPOSED LOUVERED
ROOFING OVER AN EXISTING
BALCONY
AT
33A QUEENS AVENUE,
AVALON

LANCE DOYLE
M.Plan (UTS), B.AppSc (UWS), RPIA
Lance@doyleconsulting.com.au
Mob-0414747395



1.0 INTRODUCTION

This request is made under the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014 (LEP 2014).

This Clause 4.6 Request has been prepared in relation to the Height of Buildings Standard under Clause 4.3 of PLEP 2014 in support of a Development Application (DA) seeking approval for "*proposed louvered roofing over an existing balcony*" at 33A Queens Avenue, Avalon (subject site).

For the reasons referred to in this Clause 4.6 Request, I consider that variation of the Height of Buildings Standard in the circumstances of this DA would achieve a better planning outcome, rather than requiring strict adherence to the Height of Buildings Standard.

The proposal, with an overall height of 10.3 metres above existing ground level in the north east corner of the proposed roof will breach the Development Standard by 3% in this portion of the proposal.

Clause 4.6 of LEP 2014 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

Clause 4.6 – Exceptions to Development Standards

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

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

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5.

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

"[63] It is clear from a reading of cl 4.6 of WLEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the 2 development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).

[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:

- (1) are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) have considered a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl. 4.6(3)(b) and cl 4.6(4)(a)(i))."*

In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council* [2001] NSW LEC 46; *Wehbe v Pittwater Council* [2007] NSW LEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90 and *Moskovich v Waverley Council* [2016] NSW LEC 1015.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2012.

I note that the height of Buildings Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2014.

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

4.3 Height of buildings

- (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,
 - (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
 - (c) to minimise any overshadowing of neighbouring properties,
 - (d) to allow for the reasonable sharing of views,
 - (e) to encourage buildings that are designed to respond sensitively to the natural topography,
 - (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) Despite subclause (2), development on land—
- (a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the [Coastal Risk Planning Map](#), and
 - (b) that has a maximum building height of 8.5 metres shown for that land on the [Height of Buildings Map](#),
- may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.
- (2B) Despite subclause (2), development on land—
- (a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the [Coastal Risk Planning Map](#), and
 - (b) that has a maximum building height of 11 metres shown for that land on the [Height of Buildings Map](#),
- may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.
- (2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the [Height of Buildings Map](#), may exceed the maximum building height shown on the [Height of Buildings Map](#) for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.

Column 1

Area

Area 1
Area 2
Area 3
Area 4

Column 2

Maximum height above the flood planning level

11.5 metres
8.5 metres on the street frontage and 10.5 metres at the rear
8.5 metres
7.0 metres

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

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

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

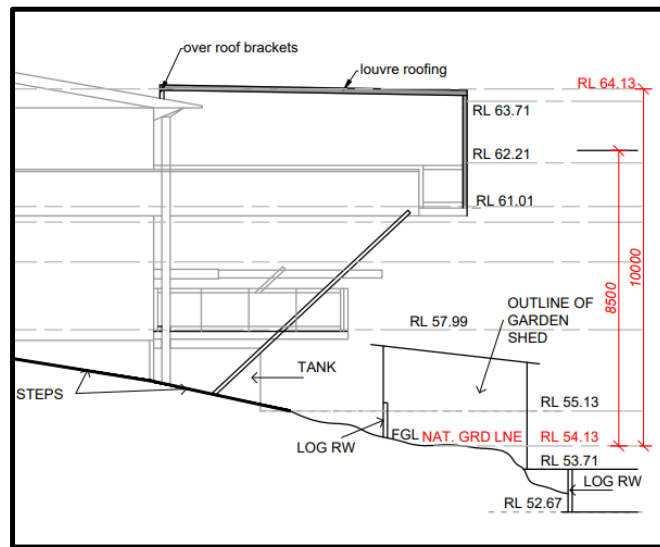
(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment:

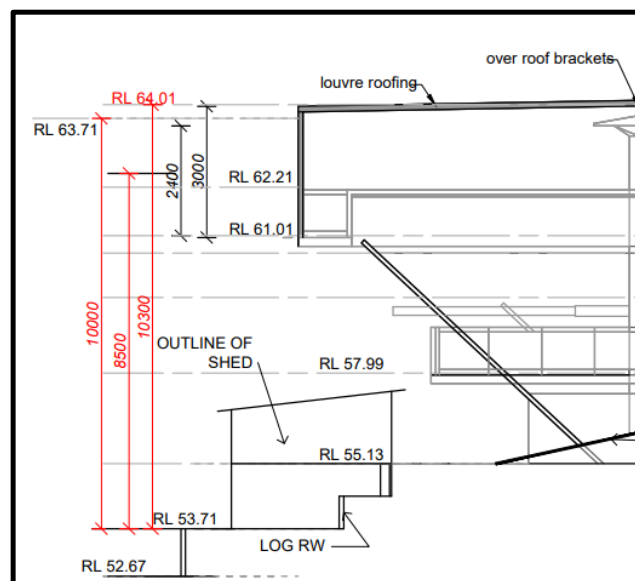
Clause 4.3 entitled “*Height of Buildings*” applies to the proposed development.

The Height of Buildings Standard applicable to the subject site is 8.5m under LEP 2014, pursuant to Clause 4.3(2) however the provisions of Clause (2D) of the PLEP are applicable to the subject proposal as the works proposed are located upon a portion of the subject site with a slope in excess of 16.7 degrees thereby incorporating a maximum building height of 10 metres.

Although the proposed roofing over the existing balcony will result in a breach of the Height of Buildings Standard, the major part of the proposal is at or below the 10 metre height control.



**SOUTH WEST ELEVATION OF PROPOSAL SHOWING HEIGHT ABOVE EXISTING
GROUND LEVEL (10 METRES)**



**NORTH EAST ELEVATION OF PROPOSAL SHOWING HEIGHT ABOVE EXISTING
GROUND LEVEL (10.3 METRES)**

The maximum RL of the proposed development will be RL64.13. This results in a maximum building height for the north east corner of the structure of 10.3 metres when measured from existing ground level to the proposed louvered roofing. The above plan emphasises the height above natural ground level however, illustrates the height (RL 64.13m) above existing ground level of (53.71m), a resultant height, at this point, of 10.42 metres.

This results in a 3% breach of the Height of Buildings Standard. Despite this breach, I consider that variation is reasonable as the breach in this part of the site is due to a lowering of the site across the north eastern corner of the structure which, for the majority of the structure is at 10m or below.

3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The subject site is located within the C4 Environmental Living Zone.

The objectives of the C4 Environmental Living zone are 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 provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposal is consistent with the objectives of the C4 zone, assisting in providing for additional amenity for occupants of the existing dwelling. Furthermore, the proposed development contributes to the variety and range of housing types, thereby providing for the housing needs of the community within the low-density surrounding locality and does not result in any material adverse impacts.

The relevant Objectives of the Height of Buildings Standard for buildings in C4 Environmental Living Zone are as follows:

- (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,*
 - (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (c) to minimise any overshadowing of neighbouring properties,*
 - (d) to allow for the reasonable sharing of views,*
 - (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
 - (f) to minimise the adverse visual impact of development on the natural*

environment, heritage conservation areas and heritage items.

Comment:

The Height of Buildings Standard applicable to the subject site is 8.5 pursuant to Clause 4.3(a) under LEP 2014 however, due to the site sloping in excess of 16.7 degrees within the building footprint, a maximum building height control of 10 metres above existing ground level applies.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (a) of the Height of Buildings Standard for the following reason:

The Desired Character of the Avalon Beach locality is expressed within the provisions of the Pittwater Development Control Plan 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.

The proposal endorses the outcome sought by seeking to provide an informal relaxed environment, does not increase the density and maintains a two storey configuration of the existing dwelling.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (b) of the Height of Buildings Standard for the following reason:

The proposal, when constructed will be entirely compatible with the height and scale of surrounding and nearby development.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (c) of the Height of Buildings Standard for the following reason:

The accompanying shadow diagrams confirm that the proposal will minimise any overshadowing of neighbouring properties.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (d) of the Height of Buildings Standard for the following reason:

Due to the configuration and location of the proposed works I am of the opinion that the proposal will maintain the reasonable sharing of views.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (e) of the Height of Buildings Standard for the following reason:

As the proposal does not seek to carry out any excavation, remove any vegetation or import any fill to the subject site I believe that the proposal does respond sensitively to the natural topography.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, satisfies Objective (f) of the Height of Buildings Standard for the following reason:

The subject proposal will not be visible from any areas of public viewing, will not impact upon the natural environment and is not located within a conservation area or in close proximity to an item of environmental heritage.

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

For the reasons outlined in this Clause 4.6 Request and the accompanying SEE, I consider that the compliance with the height of Buildings Standard under PLEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development.

The steps to considering in assessing whether compliance with the height of Buildings Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**) and are summarised below:

1. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) at [42] and [43].
2. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe* at [45].
3. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe* at [46].
4. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe* at [47].
5. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
6. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

For the purposes of this request, it is my opinion that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard, consistent with the "first way" as set out above.

I wish to particularly note the following points: -

- The majority of the proposed structure will be below the height of Buildings Standard.
- The proposed development is consistent with the relevant objectives of the height of Buildings development standard expressed by clauses 4.3 LEP 2014.
- The proposed development does not offend the relevant Objectives of the C4 Environmental Living Zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing or view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area.
- The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.
- The underlying objective would be thwarted if strict compliance with the Height of Buildings development standard was applied as the development satisfies the objectives or purpose of the standard, despite the non-compliance.

The proposed development, notwithstanding the breach of the Height of Buildings Standard, will result in a range of Positive Outcomes which are referred to in this Clause 4.6 Request and accompanying SEE.

5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

For the reasons outlined in this Clause 4.6 Request and the SEE, I consider that there are strong environmental planning grounds to justify variation of the Height of Buildings Standard.

I note the following environmental planning grounds arising from the proposed development and the breach of the Height of Buildings Standard:

- The proposed development is permissible within the C4 Environmental Living Zone and is consistent with the relevant zone objectives. It retains the existing residential use of the site and provides an improved area of private open space for the existing dwelling that is consistent with the objectives for the zone.
- The lack of impacts upon streetscape, landscaped area or neighbourhood amenity is of significant weight.

6.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

Clause 4.6 (5) relates to matters for consideration by the Secretary as to
*"whether contravention of the Development Standard raises any matter of
significance for State or regional environmental planning."*

The contravention of the Height of Buildings Standard in the circumstances of
this application does not raise any matter of significance for State or regional
environmental planning.

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

This Clause 4.6 Request has demonstrated and justified that:

- The proposed development satisfies the relevant objectives of the Height of Buildings development standard and Objectives of the C4 Environmental Living Zone; and
- Sufficient environmental planning grounds have been established to justify the non-compliance, given the range of positive outcomes and the absence of adverse environmental impacts upon neighbouring properties and the public domain, relative to the Height of Buildings non-compliance.

I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request and the accompanying SEE.

8.0 CONCURRENCE OF DIRECTOR GENERAL

- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Comment:

The Department issued Planning Circular No. PS18-003 (dated 21st February 2018) which notified Council of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6...of the Standard Instrument..."

Clause 64 of the EPA Regulations provide that Council may assume the Director General's [Secretary's] concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

9.0 CONCLUSION

As is portrayed in the North East Elevation of the accompanying plans, the overall height of the proposal when measured from the existing ground level will be 10.3 m. This breach of the 10 m height control however it is for a very minor portion of the subject proposal and being a 3% breach is a minor breach of the Development Standard.

I am of the view that the proposal is worthy of favourable consideration under the provisions of clause 4.6 of the Pittwater Local Environmental Plan 2014 as it satisfies the outcomes of the control and the objectives of the C4 zone and will not result in any material adverse upon streetscape or neighbouring amenity.

MARCH 2022

LANCE DOYLE

M.Plan (UTS), B.AppSc (UWS), RPIA

Lance@doyleconsulting.com.au

Mob-0414747395



ITEM 3.3	DA2022/0130 - 135 SEAFORTH CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Phil Lane
TRIM FILE REF	2022/296830
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/0130 for alterations and additions to a dwelling house on land at Lot 2 DP 236331, 135 Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0130
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 2 DP 236331, 135 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
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:	Paul Dennis Barrett
Applicant:	Paul Dennis Barrett
Application Lodged:	08/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/02/2022 to 03/03/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 26.12% 4.4 Floor space ratio: 8.14%
Recommendation:	Approval
Estimated Cost of Works:	\$ 300,000.00

EXECUTIVE SUMMARY

This report has been submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Development Application DA2022/0130 for alterations and additions to an existing dwelling house. The proposal specifically relates to the construction of a suspended hardstand parking platform at the property frontage, in addition to minor alterations and additions to the existing multi storey dwelling house to provide additional floor space.

The application is referred to the DDP due to the balustrading of the hardstand parking platform having a maximum building height of 10.72m, which represents a 26.12% variation to Clause 4.3 - Height of Buildings of Manly LEP 2013. Any variations to a principal development standard that exceed 10% and relate to a class 1 or 10 structure (i.e. dwelling house and parking space) must be referred to the DDP

for determination. The height breach is directly a consequence of the constrained 52.3% sloping gradient that falls away from the street and does not result in any unacceptable amenity impacts, specifically with regards to view sharing, solar access, privacy and visual bulk. The parking hardstand platform is consistent with adjacent parking structures to the north and south of the site and the balustrading only sits 1.12m above the crown of the road.

The proposal also involves minor variations (i.e. under 10%) to Clause 4.3A - Special Height Provisions and Clause 4.4 - Floor Space Ratio of Manly LEP 2013. The applicant has prepared well-founded written requests pursuant to Clause 4.6 - Exceptions to development standards of Manly LEP 2013 and adequately justified that compliance with the applicable development standards is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variations to the standards.

The proposed development involves variations to the Manly DCP 2013 side setback provision. These variations are due to the irregular shaped allotment and footprint of the existing dwelling house. When considering these variations on merit the proposal is found to be acceptable, noting that the non-compliance results in negligible amenity impacts.

One submission was received following the public exhibition period. The submission raised concern of vehicular sight lines when exiting adjacent properties and concern that the proposal would impeded on adjacent easements and right of footways. A detailed assessment of these issues has been conducted and the application has been found to be satisfactory.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house including a new hardstand parking space. In particular, the works consist of:

Lower Floor

- Demolish the existing external stairs.
- New external stairs.
- New storage room.

Level 1 and 2

- Demolish the existing external stairs.
- Demolish windows in Bedroom 3.
- Demolish existing bathroom and laundry (Internal).
- New external stairs.
- New bathroom and linen cupboard.

Level 3 and 4

- No works proposed.

Level 5

- No works proposed.

Level 6 – Entry

- No works proposed.

Carport Level

- Convert to storage area under proposed suspended driveway.

Proposed Handstand Parking

- New suspended concrete driveway and handstand parking space.
- New stairs.
- New bin storage area.

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 - 3.1.1 Streetscape (Residential areas)
 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 2 DP 236331 , 135 Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the western side of Seaforth Crescent, Seaforth. The site is irregular in shape with a surveyed area of 649.8sqm. The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a five level dwelling house that is generally three storeys at any one point. Access to the dwelling is provided via an inclinator from the existing carport situated below the street level.

The site is well landscaped, particularly within the rear yard, and contains a number of native trees.

The site is constrained with a steep topography and experiences a fall of approximately 29.7m that slopes away from the frontage to the rear. This represents an approximate slope of 52.3%.

The site is constrained by numerous easements and right of footways.

Description of Surrounding Development

The surrounding built environment is characterised by multi-storey dwelling houses on sloping sites. A number of suspended hardstand parking spaces are located to the north and south of the subject site.

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 No. 77/2013** for alterations and additions to an existing two (2) level dwelling including an additional two (2) levels with rear decks, access stairs and tree removal approved by Council with a deferred commencement condition on 6 November 2013. The deferred commencement condition was subsequently satisfied within the prescribed period.
- **Development Application DA2019/1111** for alterations and additions to a dwelling house including a swimming pool withdrawn by the applicant due to issues raised by Council with

respect to the siting of the swimming pool and associated decking.

- **Development Application DA2020/1324** for alterations and additions to a dwelling house including a swimming pool approved by Council on 22 February 2021.
- **Pre-lodgement Meeting PLM2021/0097** held on 18 May 2021 to discuss works pertaining to construction of an elevated carparking area and driveway. The PLM notes stipulate that the works would only be supported if the existing street tree was retained. The works proposed under the subject Development Application retain the street tree in question.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 24 February 2022.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant requesting the following amendments/additional information:

- **Southern Side Setback:** The proposed external access stairs for to the storage area encroached into the neighbouring property to the south. Council did not consider this to be orderly development of land and requested that staircase be located wholly within the subject site.
- **Clause 4.6 requests:** Council requested that a Clause 4.6 written request be submitted for the numeric contravention of Clause 4.3 - Special Height Provisions of Manly LEP 2013. In addition, Council requested a revised written request for the numeric contravention of Clause 4.3 - Height of Buildings to correctly reference the maximum building height.

The applicant subsequently submitted amended plans to demonstrate that the works did not encroach into the neighbouring property. In addition, revised/additional Clause 4.6 written requests were submitted to Council's satisfaction.

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:

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

Section 4.15 Matters for Consideration	Comments
	2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and revised/additional written requests pursuant to Clause 4.6 of Manly LEP 2013 to justify the breaches to Clauses 4.3, 4.3A and 4.4 of Manly LEP 2013. <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. <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.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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	No matters have arisen in this assessment that would justify the

Section 4.15 Matters for Consideration	Comments
interest	refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/02/2022 to 03/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Peter John Nicholson	135 A Seaforth Crescent SEAFORTH NSW 2092

One submission was received following the public exhibition period. The following issues were raised in the submission:

- Vehicular Sight Lines**

The submission raised concern that the proposal would impact upon vehicular sight lines when exiting nearby properties.

Comment:

Council's Development Engineers have reviewed the application with respect to vehicular access and off-street parking and found the development to be acceptable in this regard. Furthermore, the hardstand platform is an open structure, which will assist in facilitating safe traffic movement along Seaforth Crescent.

- Easements and Right of Footways**

The submissions requested that all easements and right of footways be respected.

Comment:

It is noted that the front of the site is burdened by a number of easements and right of footways. The applicant submitted legal advice (prepared by Maddocks Lawyers, dated 2 March 2022), which stipulates that the proposed development does not impede on existing easements and right of footways. Furthermore, Council's Development Engineers have reviewed the proposal in this regard and raised no concerns.

Conclusion

The concerns raised within the submission have been adequately addressed above. The issues raised do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing dwelling, a new suspended parking platform and sub-floor storage, as described and illustrated in the reports and plans. A Arboricultural Impact Assessment accompanies the application and is assessed as part of this Landscape Referral. 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): • 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 As suggested by Council in the Pre-lodgement advice, the proposed development works is designed to retain large existing street Gum tree. The existing property landscape within the rear of the property is retained and thus continues to support the landscape character of the Foreshore Scenic Protection Area. The existing large Gum is protected through the construction of a elevated driveway and hardstand, and the Arboricultural Impact Assessment reports that the "proposed hardstand will be raised over the existing hardstand which will require the installation of piers either on or through the existing re-enforced concrete driveway below. This significantly reduces the level of encroachment to only the pier location which can allow the retention of major tree roots providing the pier location can be flexible to allow the relocation of a pier in the event a major tree root is located", and as noted in section 8. Conclusion, all existing trees in proximity are to be retained. No concerns are thus raised subject to the engagement of a Project Arborist to supervise excavation works and select pier footing location, and conditions of consent shall be imposed.
NECC (Bushland and Biodiversity)	The proposal has been assessed against the following relevant provisions: • SEPP (Coastal Management) - Coastal Environment Area • Manly LEP Clause 6.5 (Terrestrial Biodiversity) The submitted arboricultural assessment and Council's Landscape referral identify tree protection measures and conditions to prevent

Internal Referral Body	Comments
	impacts to native trees/wildlife habitat. As such, the proposal is considered to be consistent with the applicable provisions.
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. The application has also been assessed using Northern Beaches SREP assessment template. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) - and not as an area proximate to littoral rainforest or coastal wetlands (Clause 11) as incorrectly attributed by Watermark Planning in Feb 2022 Statement of Environmental Effects. Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA. Comment: On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Internal Referral Body	Comments
	Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 Harbour Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA. On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met. The subject site is located adjacent to W8 (Scenic Waters – Passive Use) Zones. On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met. Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment it is determined that the proposed development satisfies the requirements of the DCP. <u>Landscape character Assessment</u> The subject site is located within the Landscape Character Type 4 On internal assessment it is determined that the proposed development within the landscape satisfy the relevant criteria. Manly LEP 2013 and Manly DCP

Internal Referral Body	Comments
	Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.
NECC (Development Engineering)	Development Engineering has no objection to the proposed car spaces and storage. However, the proposed storage room is located within the right of footway "D". The owner/s of the benefited lot/s must concur the proposal because their right will be affected. The detail of the concur shall be provided to Council for further assessment.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. As this site drains into the Pittwater estuary, the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to creeks or the waterway. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. The proposal, subject to conditions, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater and its surrounding environment if conditions are adhered to.
Property Management and	The proposal seeks to construct an elevated driveway on Council

Internal Referral Body	Comments
Commercial	road reserve. As per the Roads and Assets Referral Response dated 20/03/2022, a condition requiring an annual lease for the suspended driveway will be imposed on any consent.
Road Reserve	There is no impact on existing road infrastructure. Development Engineering to ensure driveway is appropriately engineered. In accordance with former Manly Council Policy, an annual lease for the elevated and suspended driveway crossing will be required. Council's Property Team to be provided with a referral to ensure this condition is included in the consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid, who responded confirming that a formal assessment was not required.
Aboriginal Heritage Office	Development Application No. DA2022/0130 Description: Alterations and additions to a dwelling house Address: 135 Seaforth Crescent SEAFORTH Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

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 was submitted with this application (see BASIX Certificate No. A436827_02, dated 1 December 2021). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid, who responded confirming that a formal assessment was not required.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area and 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

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

The site is identified within the Coastal Use Area and Coastal Environment Area pursuant to this SEPP. Accordingly, the proposal is considered against Clauses 2.10, 2.11 and 2.12 of the policy as follows:

2.10 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.*

(2) Development consent must not be granted to development on land to which this section 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 subsection (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.*

(3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The site is identified within the Foreshores and Waterways Area pursuant to SREP (Sydney Harbour Catchment) 2005. Therefore, this clause is not applicable.

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(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.

(2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The site is identified within the Foreshores and Waterways Area pursuant to SREP (Sydney Harbour Catchment) 2005. Therefore, this clause is not applicable.

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 nature of the works and separation from the foreshore, Council is satisfied that the proposal is unlikely to increase the risks of coastal hazards within the locality.

Chapter 4 Remediation of land

4.1 Object of this Chapter

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

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

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

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

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

Comment:

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

Conclusion

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	10.72m	26.12%	No
Special height provisions	Not exceed RL62.92 (highest point of road in centre)	RL64.04	1.78%	No
Floor Space Ratio	0.4:1 (259.92sqm)	0.433:1 (281.07sqm)	8.14%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.3A Special height provisions	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 - Height of Buildings

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.72m
Percentage variation to requirement:	26.12%

The top of the balustrading at the rear of the proposed hardstand parking space measures at 10.72m above the existing ground level, which represents a 26.12% variation to Clause 4.3 - Height of Buildings of Manly LEP 2013.

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 applicant's written request argues, in part:

- *"The proposed variation to the building height control is 26.12% or 2.221 metres. It is for a very limited area where it is not visible from the street or easily for side neighbours. The apparent bulk through the variation is negligible and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).*
- *The small area of variation to the height occurs to allow for safe and compliant parking and has similar bulk to the existing roofed non-compliant structure.*
- *As the site slopes, at the rear most point the breach occurs, but for the majority of the length, the height is well under the height limit. The breach is required in this instance to achieve compliant and safe parking and compliance with the development standard would be unreasonable.*
- *The variation is provided in line with both side neighbours and is entirely in character. Compliance with the development standard would be unreasonable.*

- *Solar access impacts as a result of the small height variation are negligible with neighbours having parking platforms adjoining. Accordingly, compliance with the development standard based on this would be unreasonable.*
- *The small variation has no impact on privacy for neighbours, being confined to a parking area and not a living space. Accordingly, the variation is reasonable in the circumstances of the case.*
- *The development of the site is constrained by the slope, falling away dramatically to the rear of the proposed parking structure.*
- *The final design with a variation to the height is a result of the existing site constraints and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying CI1.3(g) and (f).*
- *Strict numerical compliance with the height control would not result in a better urban design outcome with the street view being that of a parking platform at street level with no roof. Compliance with the development standard based on this would be unreasonable.*
- *The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site resulting in the underside of the platform being hidden from view from Seaforth Crescent satisfying CI1.3(g). The streetscape appeal is unaffected by the small variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable parking for a dwelling is proposed. Compliance with the development standard based on this would be unreasonable.*
- *The inclusion of the small height variation to facilitate parking has no impact on the natural environment. The small variation sits in the location of the existing parking structure and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor varied roof form and height satisfying CI1.3 (b). The natural environment is unaffected by the small departure to the development standard, and it would be unreasonable for the development to be refused on this basis.*
- *The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying CI1.3(f). Compliance with the development standard based on this would be unreasonable.*
- *The variation to the height as detailed above will have no social impacts for the site or local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The small variation to the height as detailed above will have no economic impacts for the site or the local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*
- *The variation does not result in a parking structure or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The development allows for safe and compliant parking on site, which would otherwise be unfeasible. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying CI1.3(c). Compliance with the development standard based on this would be unreasonable.*
- *The variation confined to the compliant parking platform is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and safe and accessible parking. These are not simply benefits of the development as a whole but are a direct result of the breach of the maximum height control.*
- *The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e., the development is an orderly and*

economic and development of the land, notwithstanding the height variation".

Development Assessment Planner Comment:

Council's Development Assessment Planner agrees generally with the applicant's justification to contravene Clause 4.3 - Height of Buildings of Manly LEP 2013.

In particular, it is agreed that the non-compliance is a direct result of the significantly steep topography that falls away from the street and is necessary in order to provide for balustrading to ensure safe and convenient parking. The height and nature of the parking structure (i.e. open hardstand parking space) is consistent with existing parking structures on adjacent properties to the north and south of the subject site. Furthermore, the hardstand does not result in unacceptable amenity impacts to surrounding properties, specifically with regards to view sharing, solar access, privacy and visual bulk. The existing carport is accessed via a steep driveway and does not provide for safe and convenient parking. The proposed hardstand provides for orderly development of land and strict compliance with Clause 4.3 - Height of Buildings of Manly LEP 2013 would preclude safe and convenient parking on the site.

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 Manly LEP 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 height of the proposed parking hardstand corresponds with the levels of open parking structures on surrounding properties to the north and south. In this regard, it is considered that the proposal responds to the prevailing height of future context of the locality.

b) to control the bulk and scale of buildings,

Comment:

The open hardstand parking structure does not provide unreasonable bulk within the front setback area. It is noted that the hardstand balustrading sits only 1.12m above the crown of the road.

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:

Noting that the average eye height sits approximately 1.6m above the ground/floor level and that the parking hardstand balustrade sits 1.12m above the crown of the road, standing views towards the Sydney Harbour catchment will be maintained over the top of the development from the road and road reserve. It is further noted that the balustrading is 50% open/transparent.

In regards to views enjoyed from private properties, it is noted that upslope properties to the east (i.e. along David Place) are elevated well above the proposed development and thus, existing view lines towards Sydney Harbour will be maintained over the top of the site. Moreover, dwelling houses to the north and south of the site are situated below the footprint of the proposed hardstand and will not experience any view impacts.

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:

Dwelling houses located to the south of the site are situated further to the west of the carport (i.e. downslope) and will not be subject to further shading as a consequence of the numeric height non-compliance. This is illustrated on the applicant's shadow diagrams.

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 carport has been appropriately sited to ensure the retention of existing native trees within the public and private domain.

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 parking hardstand platform provides safe and convenient parking to an existing dwelling house, which is a permissible land use within the R2 zone. In this regard, it is considered that the proposal provides for the housing needs of the community within a low density residential environment.

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

Comment:

The proposal does not change the existing residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and Clause 4.3 - Height of Buildings.

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).

Clause 4.3A - Special Height Provisions

Description of non-compliance:

Development standard:	Special Height Provisions
Requirement:	Development not to exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot (RL62.92)

Proposed:	Top of balustrading sited at RL64.04
Percentage variation to requirement:	1.78%

The site is identified on the Manly LEP 2013 Height of Buildings Map as being located within the 'Special Height Provisions' area and thus, the proposal is subject to the provisions within Clause 4.3A of Manly LEP 2013. Within this area, development not to exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot. This area has been identified as RL62.92. The top of the hardstand parking balustrading measures at RL64.04, which represents a 1.78% variation to Clause 4.3A - Special Height Provisions of Manly LEP 2013.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3A - Special Height Provisions 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 4.3A - Special Height Provisions development standard is not expressly excluded from the operation of this clause.

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

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

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

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of*

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural*

heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request argues, in part:

- *"The proposed variation of 1.78% is minor in scale being a balustrade which allows for views though to the water from the street. The additional height provided through the variation is negligible and not to the detriment of the view, being consistent with the Seaforth Crescent streetscape satisfying CI1.3(g).*
- *The small area of variation to the height occurs to allow for safe and compliant parking and has similar height to neighbouring structures.*
- *The variation is provided in line with both side neighbours and is entirely in character. Compliance with the development standard would be unreasonable, resulting in either non-compliant balustrading or access to parking.*
- *Views are retained from the street and for neighbours.*
- *The development of the site is constrained by the slope, falling away dramatically to the rear of the proposed parking structure.*
- *It is also constrained by a street tree.*
- *There is no option to provide compliant parking in another form and as this option does not result in view loss, it is reasonable and meets the objects of the Act.*
- *The final design with a variation to the height is a result of the existing site constraints and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying CI1.3(g) and (f).*
- *Strict numerical compliance with the Special Height provision would not result in a better urban design outcome with the street view being that of a parking planform at street level with no roof, with a view through the balustrade. Compliance with the development standard based on this would be unreasonable.*
- *The proposed development will not present with excessive bulk from the public domain with the open balustrade satisfying CI1.3(g). The streetscape appeal is unaffected by the small variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objective of the zone ensuring retention of the street view. Compliance with the development standard based on this would be unreasonable.*
- *The inclusion of the small height variation to facilitate safe parking has no impact on the natural environment. Retention of the water view satisfies CI1.3(b). The natural environment is unaffected by the small departure to the development standard, and it would be unreasonable for the development to be refused on this basis.*
- *The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying CI1.3(f). Compliance with the development standard based on this would be unreasonable.*
- *The variation to the special height provision as detailed above will have no social impacts for the site or local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The small variation to the special height provision as detailed above will have no economic impacts for the site or the local area satisfying CI1.3(b) and accordingly refusal of the*

development based on this reason would be unreasonable.

- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*
- *The variation does not result in a parking structure or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The development allows for safe and compliant parking on site, which would otherwise be unfeasible. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case allowing for the retention of views and satisfying C11.3(c). Compliance with the development standard based on this would be unreasonable.*
- *The variation confined to the compliant tandem parking platform with balustrade is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and safe and accessible parking. These are not simply benefits of the development as a whole but are a direct result of the breach of the maximum height control.*
- *The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e., the development is an orderly and economic and development of the land, notwithstanding the height variation".*

Development Assessment Planner Comment:

Council's Development Assessment Planner agrees generally with the applicant's justification to contravene Clause 4.3A - Special Height Provisions of Manly LEP 2013.

In particular, it is agreed that the non-compliance is a direct result of the significantly steep topography that falls away from the street and is necessary in order to provide for balustrading to ensure safe and convenient parking. The height and nature of the parking structure (i.e. open hardstand parking space) is consistent with existing parking structures on adjacent properties to the north and south of the subject site. Additionally, the parking hardstand balustrading is 50% open transparent and is sited only 1.12m above the crown of the road, which enables view retention from standing positions within the road reserve. The proposed hardstand provides for orderly development of land and strict compliance with Clause 4.3A - Special Height Provisions of Manly LEP 2013 would preclude safe and convenient parking on the site.

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 Special Height Provisions 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 objective of the standard, pursuant to Clause 4.3A – 'Special Height Provisions' of the MLEP 2013 is:

(1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

Comment:

Noting that the average eye height sits approximately 1.6m above the ground/floor level and that the parking hardstand balustrade sits 1.12m above the crown of the road, standing views towards the Sydney Harbour catchment will be maintained over the top of the development from the road and road reserve. It is further noted that the balustrading is 50% open/transparent to assist in view retention.

In regards to views enjoyed from private properties, it is noted that upslope properties to the east (i.e. along David Place) are elevated well above the proposed development and thus, existing view lines towards Sydney Harbour will be maintained over the top of the site. Moreover, dwelling houses to the north and south of the site are situated below the footprint of the proposed hardstand and will not experience any view impacts.

For these reasons, it is considered that the proposal satisfies this clause.

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 parking hardstand platform provides safe and convenient parking to an existing dwelling house, which is a permissible land use within the R2 zone. In this regard, it is considered that the proposal provides for the housing needs of the community within a low density residential environment.

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

Comment:

The proposal does not change the existing residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and Clause 4.3A - Special Height Provisions.

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 Special Height Provisions Development Standard associated with a single dwelling house (Class 1 building).

Clause 4.4 - Floor Space Ratio

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.4:1 (259.92sqm)
Proposed:	0.433:1 (281.07sqm)
Percentage variation to requirement:	8.14% (21.15sqm)

The site is subject to a 0.4:1 FSR development standard. The proposed FSR equates to 0.433:1 (281.07sqm), which does not comply with the development standard. It is noted that the existing FSR on the site is compliant and equates to 0.372:1 (241.8sqm). The additional gross floor area resulting from the proposal is confined to a portion of the storage area under the hardstand parking space (i.e. areas where floor to ceiling heights are more than 1.4m) and the store room on the lower ground floor.

Additionally, the site is an 'undersized allotment' as defined within the Manly DCP 2013, noting that the 0.4:1 FSR requirement is typically based off an average site area of 750sqm. The subject site is 649.8sqm in area. Therefore, when applying the proposed gross floor area of 281.07sqm to an area of 750sqm the proposed FSR would be 0.375:1, which complies with the development standard.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

- *"The proposed variation to the FSR control is minor at just 8.1% or 21.11 m2. It is for a very limited area where it is not visible from the street or easily for side neighbours. The apparent bulk through the variation is negligible and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).*
- *The small variation to the FSR occurs within undercroft and sub-floor areas.*
- *Solar access impacts as a result of the FSR variation are negligible with neighbours having similar bulk adjoining. Accordingly, compliance with the development standard based on this would be unreasonable.*
- *The small variation has no impact on privacy for neighbours, being confined primarily for storage spaces.*
- *Strict numerical compliance with the FSR control would not result in a better urban design outcome and the street view would be unchanged. Compliance with the development standard based on this would be unreasonable.*

- *The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site and location of the undercroft areas resulting in the new storage areas being hidden from view satisfying CI1.3(g). The streetscape appeal is unaffected by the small variation to the FSR standard, and it would be unreasonable to require compliance with development standard based on this.*
- *The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.*
- *The inclusion of the small FSR variation to facilitate enclosure of the undercroft spaces has no impact on the natural environment. The small variation sits within the built form and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor variation satisfying CI1.3(b). The natural environment is unaffected by the small departure from the development standard, and it would be unreasonable for the development to be refused on this basis.*
- *The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying CI1.3(f). Compliance with the development standard based on this would be unreasonable.*
- *The small variation to the FSR as detailed above will have no social impacts for the site or local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The small variation to the FSR as detailed above will have no economic impacts for the site or the local area satisfying CI1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.*
- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*
- *The variation does not result in a building bulk beyond that which is found in the immediate context. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying CI1.3(c). Compliance with the development standard based on this would be unreasonable.*
- *Removal of the non-compliance would not result in alter the perceived bulk and scale due to the minor nature, siting and topography.*
- *The variation confined to the undercroft areas is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity. These are not simply benefits of the development as a whole, but are a direct result of the breach of the maximum FSR control.*
- *The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e., the development is an orderly and economic and development of the land, notwithstanding the FSR variation".*

Development Assessment Planner Comment:

Council's Development Assessment Planner agrees generally with the applicant's justification to contravene Clause 4.4 - Floor Space Ratio of Manly LEP 2013.

In particular, it is agreed that the additional gross floor area is located within storage and subfloor areas that do not significantly increase the bulk and scale of the existing dwelling house when viewed from the Sydney Harbour Catchment or adjacent properties. The additional gross floor area is also sited below the crown of the road. In addition, the existing building envelope is largely retained and the additional FSR does not contribute to unreasonable amenity impacts, specifically with regards to solar access, views and visual bulk. The storage areas are not habitable rooms and will not result in unacceptable visual or aural privacy impacts, given they are low trafficable areas. Overall, there are no

benefits from maintained from full compliance with the FSR standard in this instance.

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 FSR 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 additional gross floor area relates to subfloor and storage areas and does not alter the perceived bulk and scale of the existing multi-storey dwelling house.

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

Comment:

The additional gross floor area does not result in the removal of important landscape features.

c) to maintain an appropriate visual relationship between new development and the existing

character and landscape of the area,

Comment:

The additional gross floor area relates to subfloor and storage areas and does not alter the perceived bulk and scale of the existing multi-storey dwelling house. In this regard, the proposal will continue to maintain an appropriate visual relationship with the surrounding area.

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

Comment:

The existing building envelope is largely retained and the additional FSR does not contribute to unreasonable amenity impacts, specifically with regards to solar access, views, privacy and visual bulk.

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:

This objective is not relevant as the site is within a residential zone.

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 additional gross floor area provides additional storage areas associated with the dwelling house, thereby providing for the housing needs to the community within a low density residential environment.

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

Comment:

The proposal does not change the existing residential land use.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 649.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1150sqm site area	1 dwelling on 649.8sqm site - existing and unchanged	N/A	N/A
	Dwelling Size: minimum 124sqm gross floor area required (based off 5 bedrooms and 3 bathrooms)	281.07sqm	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (nil setback for parking structures)	nil setback - consistent with prevailing building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 4.43m (1/3 of existing max. wall height)	Hardstand: 0.2m Dwelling: 1.68m	up to 95.49%	No
	South: 3.47m (1/3 of existing max. wall height)	Hardstand/Stairs: nil setback Dwelling: 0.38m (lower level stairs)	up to 100%	No
	Windows: no windows within 3m of side boundaries	2x windows setback 1.68m from northern side boundary	44%	No
4.1.4.4 Rear Setbacks	8m	16.6m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (389.88sqm) of site area	62.4% (405.45sqm)	-	Yes
	Open space above ground 25% (101.36sqm) of total open space	19.85% (80.47sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (162.18sqm) of open space	72.07% (292.2sqm)	-	Yes
	3 native trees	> 3 native trees	-	Yes
4.1.5.3 Private Open	18sqm	> 18sqm	-	Yes

Space				
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage (2.45m)	5.03m	105.31%	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
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The Manly DCP 2013 streetscape provision sets out the following considerations for garages, carports or hardstand parking areas:

3.1.1.4 Garages, Carports and Hardstand Areas

a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:

- i) its roof form, material choice and detailing by being subservient to the associated dwelling; and*
- ii) being compatible with the streetscape and the location in relation to front setback criteria.*

b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.

Comment:

The proposed hardstand parking platform is considered to meet this requirement given it is an open structure that does not dominate the street frontage. In addition, the proposed hardstand parking space is consistent with hardstand structures to the north and south of the site in both its nature (i.e. open parking structure) and in relation to its front setback. Figures 1 and 2 below depicts similar parking structures adjacent to the subject site.

Figure 1: hardstand parking space at 133A Seaforth Crescent - south of the subject site



Figure 2: hardstand parking space at 137 Seaforth Crescent - north of the subject site



For these reasons, it is considered that the proposal satisfies the Manly DCP 2013 streetscape provision.

4.1.3 Floor Space Ratio (FSR)

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

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment size of 750sqm. The subject site is 649.8sqm in area. Therefore, when applying the proposed gross floor area of 281.07sqm to an area of 750sqm the proposed FSR would be 0.375:1, which complies with the development standard.

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

Description of non-compliance

The control prescribes a minimum side setback that is 1/3 of the maximum wall height. For the purpose of calculating the side setbacks the maximum wall height has been taken from the existing dwelling house, noting that the works proposed under this application do not increase the maximum wall height. The proposed side setbacks are as follows:

- Northern setback: hardstand setback 0.2m and new works to dwelling setback 1.68m - does not comply with 4.43m requirement (1/3 of wall height).

- Southern setback: hardstand/stairs setback 0m and new works to dwelling setback 0.38m - does not comply with 3.47m requirement (1/3 of wall height).

Additionally, the proposal includes two new windows setback 1.68m from the northern side boundary, which does not comply with the 3m separation requirement for windows.

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 hardstand parking platform is considered to meet this requirement given it is an open structure that does not dominate the street frontage. In addition, the proposed hardstand parking space is consistent with hardstand structures to the north and south of the site in both its nature (i.e. open parking structure) and in relation to its front setback.

Furthermore, the additional floor space proposed to the dwelling house are sited on the lower floors and confirm to the existing side setbacks. In this regard, the works will not be visible from Seaforth Crescent and will not be visually imposing when viewed from the Sydney Harbour Catchment.

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 works result in negligible amenity impacts, specifically with regards to privacy, solar access, views and visual bulk. In addition, the maintenance of the existing side setbacks for the dwelling will ensure that adequate separation is maintained between buildings. Council's Development Engineers have reviewed the proposal with respect to vehicular access and parking and found the development to be acceptable in this regard. Therefore, Council can be satisfied that the hardstand parking space will not preclude safe and adequate traffic conditions. Overall, the proposal is considered to meet this objective.

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

Comment:

Flexibility is afforded in this circumstance as the numeric variations to the side setback provision will not

give rise to unreasonable streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal complies with the Manly DCP 2013 total open space and landscaped area numeric requirements. Furthermore, the works do not necessitate the removal of native canopy trees. In this regard, the proposal is considered to meet this objective.

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

Comment:

The site is not bushfire prone.

Conclusion

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The design of the carport and driveway does not allow vehicles to enter and exit the site in a forward direction, which does not satisfy the prerequisite. Furthermore, the width of the hardstand exceeds the maximum requirement. Nevertheless, Council's Development Engineers have reviewed the proposal with respect to vehicular access and off-street parking and found the proposal to be acceptable in this regard. It is further noted that the size and nature of the hardstand platform corresponds with adjacent parking structures to the north and south of the site. Therefore, the application is supported on merit in this instance.

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 \$3,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$300,000.

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, Clause 4.3 Special Height Provisions 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.

The proposed development involves alterations and additions to an existing dwelling house to provide for a suspended hardstand parking platform and additional floor space to the existing dwelling house.

The proposed development involves variations to applicable height and floor space ratio development standards, in addition to the Manly DCP 2013 side setback numeric requirement. Despite these variations, the works do not significantly alter the envelope of the existing dwelling house and the

hardstand parking platform demonstrates consistency with adjacent parking structures to the north and the south of the site. The numeric non-compliances also result in negligible amenity impacts, specifically with regard to view sharing, solar access, privacy and visual bulk.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Buildings, Clause 4.3A Special Height Provisions and Clause 4.4 Floor Space Ratio development standards pursuant to Clause 4.6 of the Manly LEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0130 for Alterations and additions to a dwelling house on land at Lot 2 DP 236331, 135 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA04 (Revision A) - Site Plan	7 April 2022	Action Plans
DA12 (Revision A) - Proposed Lower Floor Plan	7 April 2022	Action Plans
DA13 (Revision A) - Proposed Level 1 & 2 Floor Plan	7 April 2022	Action Plans
DA14 (Revision A) - Proposed Storage Floor Plan	7 April 2022	Action Plans
DA15 (Revision A) - Proposed Hardstand Floor Plan	7 April 2022	Action Plans
DA16 (Revision A) - North Elevation (House)	7 April 2022	Action Plans
DA17 (Revision A) - South Elevation (House)	7 April 2022	Action Plans
DA18 (Revision A) - West Elevation (House)	7 April 2022	Action Plans
DA19 (Revision A) - Long Section (House)	7 April 2022	Action Plans

DA20 (Revision A) - North Elevation (Hardstand)	7 April 2022	Action Plans
DA21 (Revision A) - South Elevation (Hardstand)	7 April 2022	Action Plans
DA22 (Revision A) - West Elevation (Hardstand)	7 April 2022	Action Plans
DA23 (Revision A) - Long Section (Hardstand)	7 April 2022	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A436837_02	1 December 2021	Action Plans
Geotechnical Assessment Ref. AG 21379	17 November 2021	Ascent Geotechnical Consulting
Arboricultural Impact Assessment	20 December 2021	Hugh The Arborist

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	11 November 2021	Watermark Planning c/o Paul Barrett

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 \$3,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$300,000.00.

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

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

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

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

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

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

6. **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.

7. Erosion and Sediment Control Plan

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

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

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

Reason: Protection of the receiving environment.

8. 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.

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

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

The application is to include four (4) copies of Civil Engineering plans for the design of driveway which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- 1) the structural details of the driveway shall be submitted. No load bearing on the existing road embankment from the proposed structure
- 2) all utility services are plotted on the submitted plan. The cost of any utility relocation shall be borne with the application
- 3) the tree protection plan of the street tree must be provided
- 4) a construction management plan shall be submitted.
- 5) safety devices must be install on he proposed driveway

The fee associated with the assessment and approval of the application is to be in accordance

with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

10. **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.

11. **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.

12. **Use of a Portion of a Road Reserve application**

Prior to issue of the Construction Certificate, the applicant must enter into an approval for the portion of the elevated driveway that is located on Council's road reserve. The relevant form "Use of a Portion of a Road Reserve Application" can be found on Council's website.

Reason: To ensure compliance with the Roads Act 1993.

13. **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.

14. **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

15. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such excavation works and the locations of pier footings for the suspended structure in proximity to tree 1 (Sydney Red Gum) as identified in the Arboricultural Impact Assessment, including compliance to:

- i) section 8 Conclusion, works as described for tree 1,
- ii) section 10. Recommendations generally,
- iii) section 11. Arboricultural Work Method Statement and Tree Protection Requirements for trees 1, 2, 3, and 4.
- iv) section 12. Hold Points.

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.

16. **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.

17. 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

18. 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,
 - iv) any exempt species tree(s) to be removed as referred above in item i) shall be replaced at a ratio of 1:1 with a locally native tree species,
- 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.

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.

19. **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 an Erosion and Sediment Control Plan prepared by a suitably qualified consultant 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.

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

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

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

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

21. **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.

22. **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.

23. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

24. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement 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. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****26. Condition of Retained Vegetation - Project Arborist**

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

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

Reason: Tree protection.

27. Stormwater Disposal

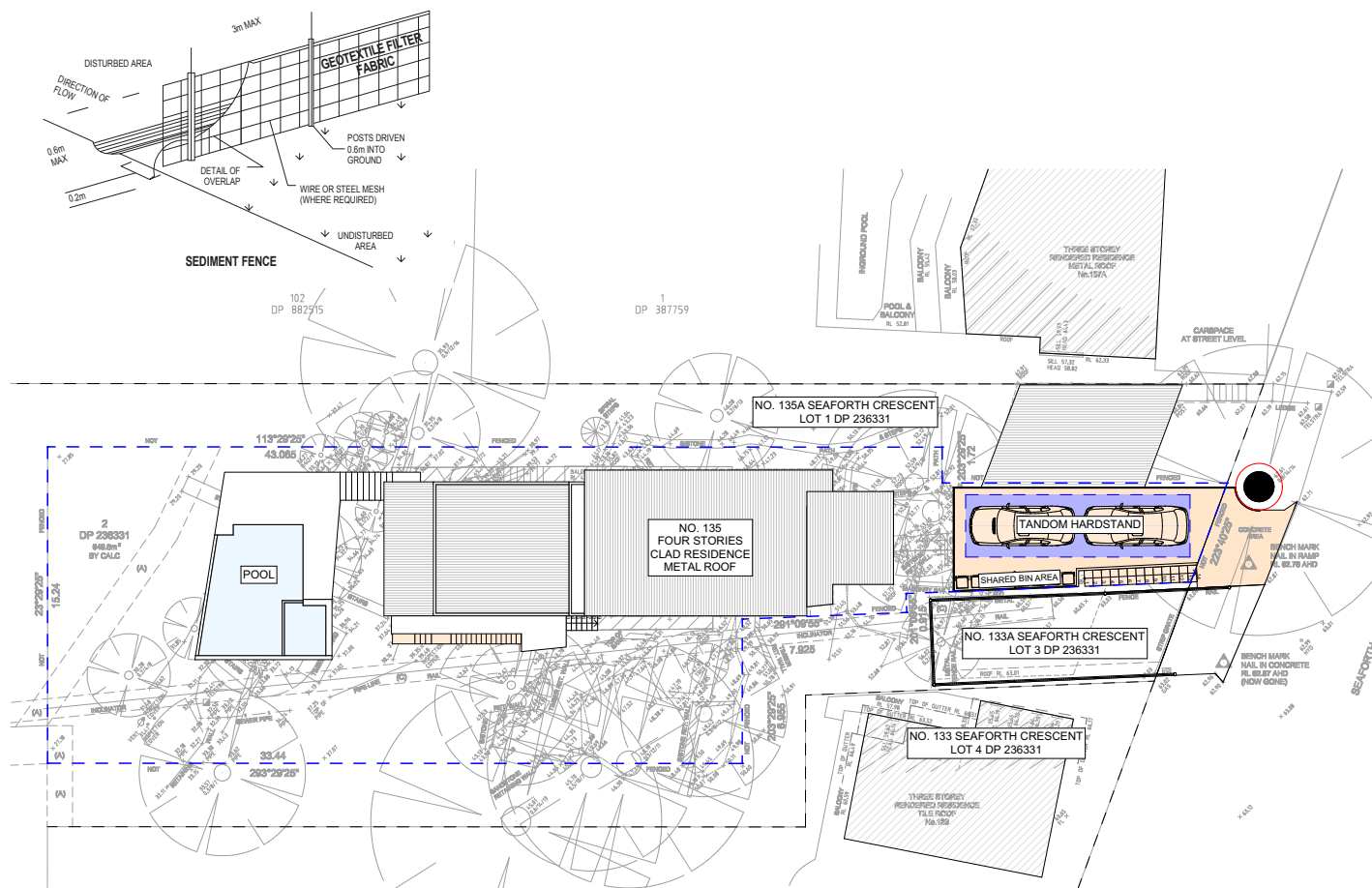
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**28. 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.



NOTES REGARDING BOUNDARY

THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :

TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATE. PREVENT DUST BY COVERING STOCKPILES

SEDIMENT NOTE :

1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEP DAILY.

STOCKPILES :

ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :

PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

**SITE PLAN
1:200@A3**



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LEGEND
 EXISTING
 PROPOSED
 DEMOLISHED

CLIENT
PAUL BARRETT & ELZA
AVERY

PROJECT ADDRESS
135 SEAFORTH CRES,
SEAFORTH, NSW 2092

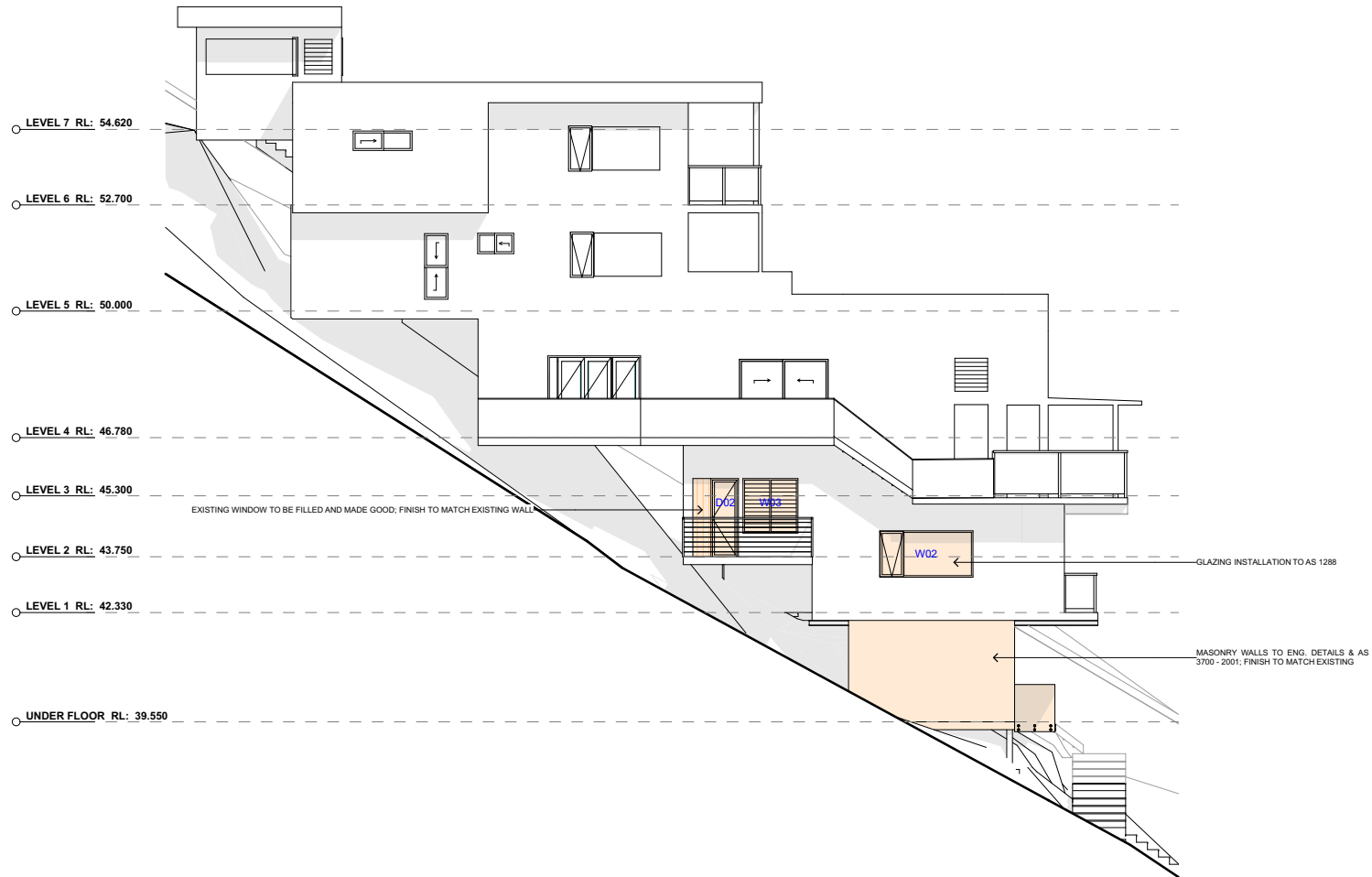
DRAWING NO.
DA04

DATE
Thursday, 7 April 2022

DRAWING NAME
SITE PLAN

SCALE
1:200 @A3





NORTH ELEVATION (HOUSE)
1:100@A3



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LEGEND	
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	PROPOSED
	DEMOLISHED

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AVERY

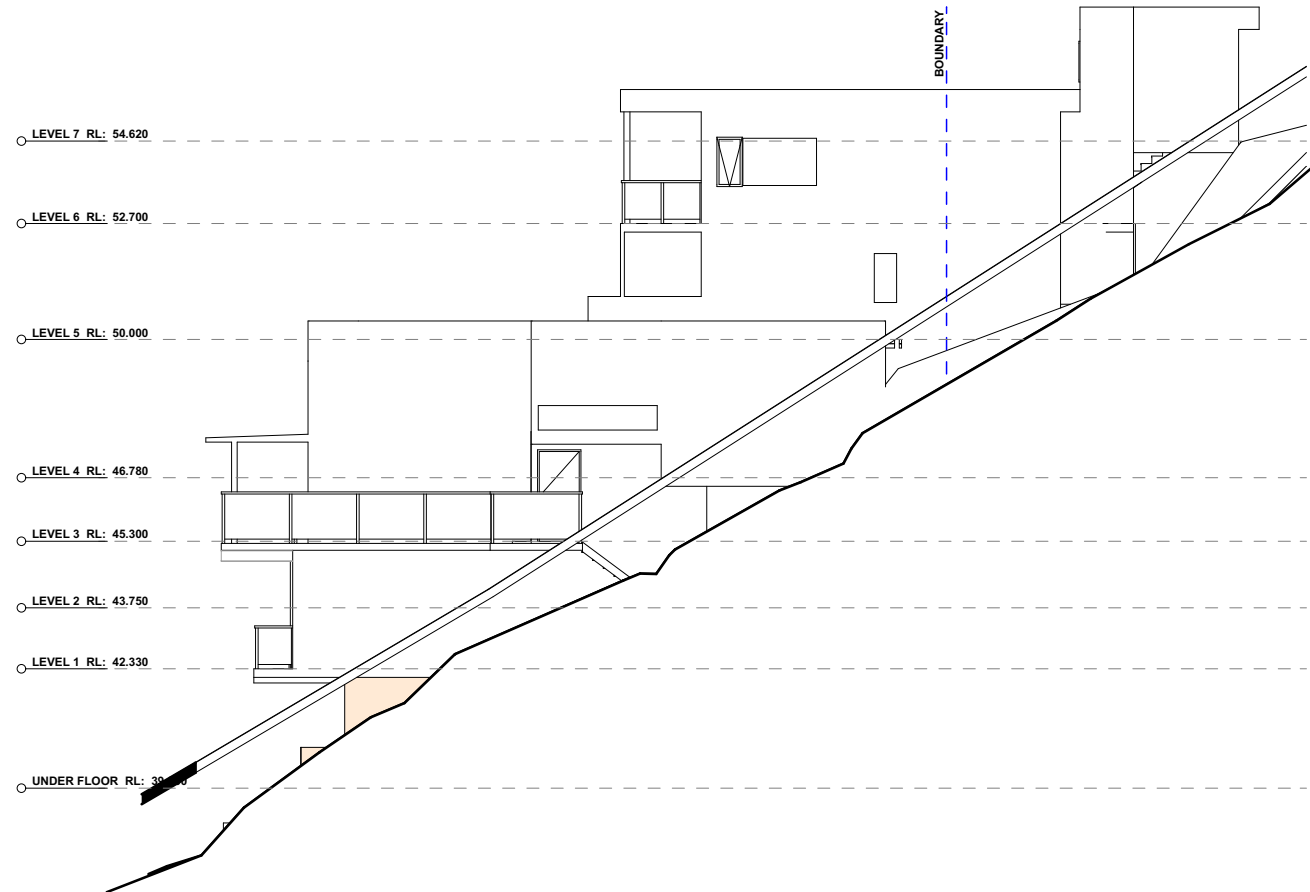
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SEAFORTH, NSW 2092

DRAWING NO.
DA16

DATE
Thursday, 7 April 2022

DRAWING NAME
NORTH ELEVATION (HOUSE)

SCALE
1:100 @A3



SOUTH ELEVATION (HOUSE)
1:100@A3



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LEGEND
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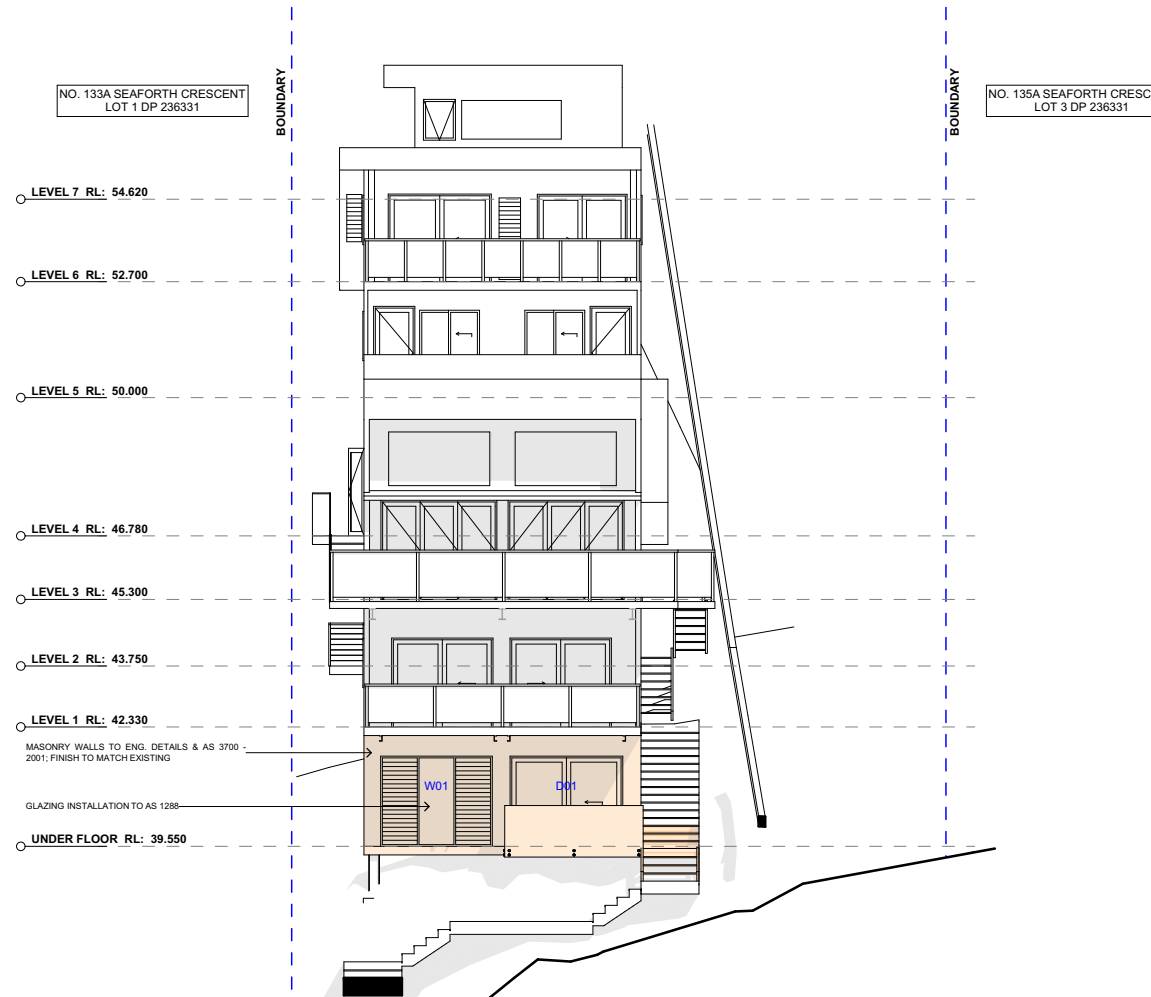
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SEAFORTH, NSW 2092

DRAWING NO.
DA17

DATE
Thursday, 7 April 2022

DRAWING NAME
SOUTH ELEVATION (HOUSE)

SCALE
1:100 @A3



WEST ELEVATION (HOUSE)
1:100@A3



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AVERY

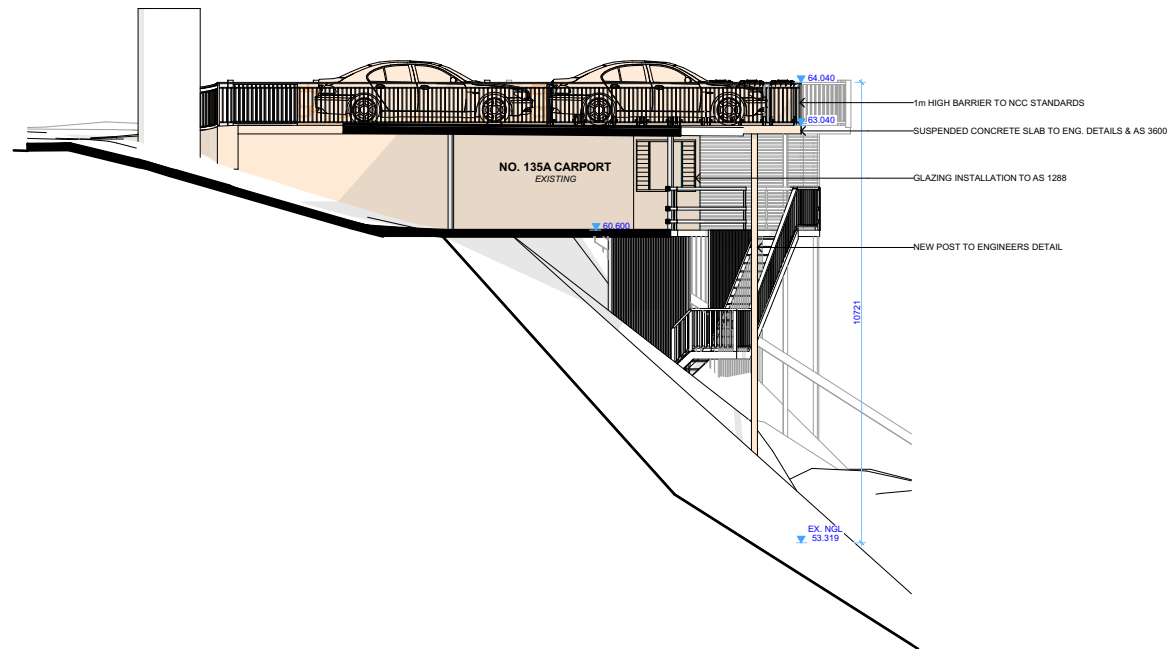
PROJECT ADDRESS
135 SEAFORTH CRES,
SEAFORTH, NSW 2092

DRAWING NO.
DA18

DATE
Thursday, 7 April 2022

DRAWING NAME
WEST ELEVATION (HOUSE)

SCALE
1:100 @A3



NORTH ELEVATION (HARDSTAND)
1:100@A3



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	PROPOSED
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AVERY

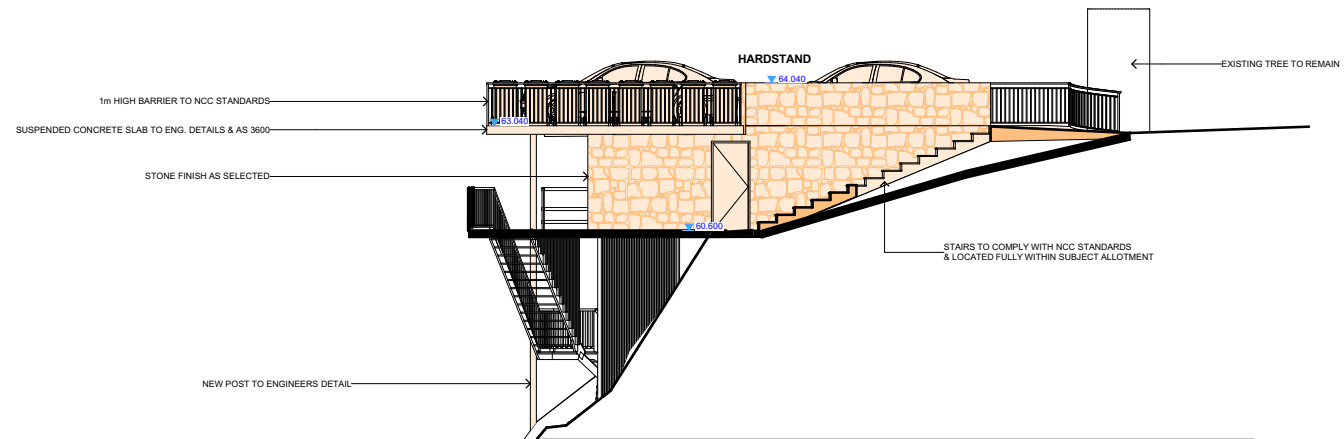
PROJECT ADDRESS
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SEAFORTH, NSW 2092

DRAWING NO.
DA20

DATE
Thursday, 7 April 2022

DRAWING NAME
NORTH ELEVATION
(HARDSTAND)

SCALE
1:100 @A3



SOUTH ELEVATION (HARDSTAND)
1:100@A3



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	DEMOLISHED

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PAUL BARRETT & ELZA
AVERY

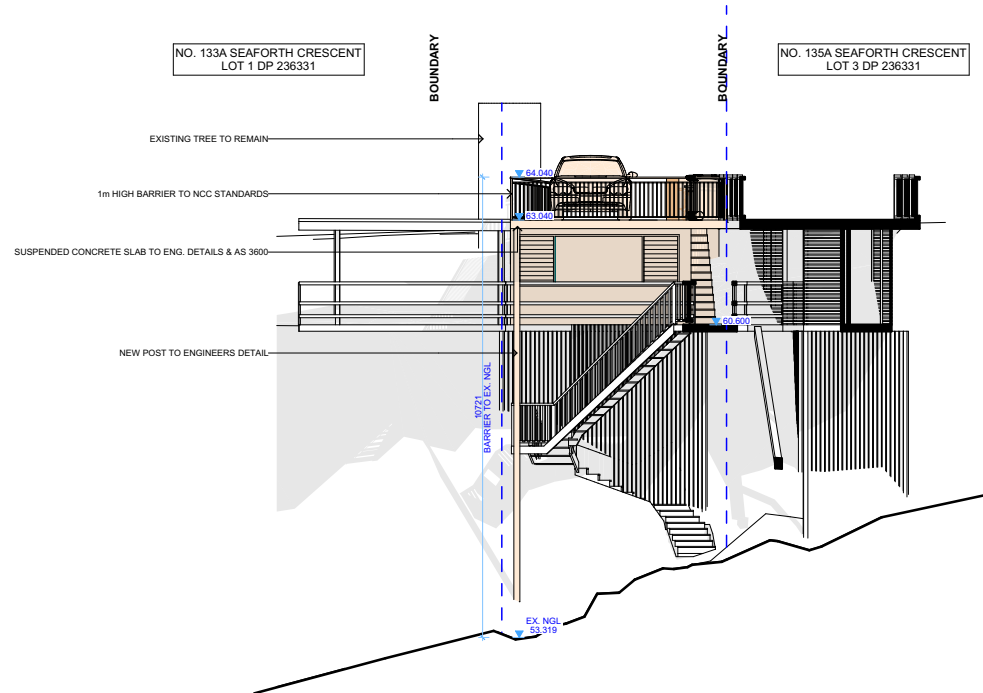
PROJECT ADDRESS
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SEAFORTH, NSW 2092

DRAWING NO.
DA21

DATE
Thursday, 7 April 2022

DRAWING NAME
SOUTH ELEVATION
(HARDSTAND)

SCALE
1:100 @A3



WEST ELEVATION (HARDSTAND)
1:100@A3



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LEGEND	
	EXISTING
	PROPOSED
	DEMOLISHED

CLIENT
PAUL BARRETT & ELZA
AVERY

PROJECT ADDRESS
135 SEAFORTH CRES,
SEAFORTH, NSW 2092

DRAWING NO.

DA22

DATE

Thursday, 7 April 2022

DRAWING NAME
WEST ELEVATION
(HARDSTAND)

SCALE
1:100 @A3

Clause 4.6 Exceptions to Development Standards**Height of Buildings****135 Seaforth Crescent, Seaforth****1. Introduction**

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

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



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

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

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

- (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

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

2. Environmental Planning Instrument Details (Manly LEP 2013)

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

Manly Local Environmental Plan 2013

2.2 What is the zoning of the land?

R2 Low Density Residential

2.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**2.4 What is the development standard being varied?**

CI 4.3 - Height of Buildings

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

CI 4.3 of the Manly Local Environmental Plan 2013

2.6 What are the objectives of the 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,*
- (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.*

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

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

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

The development proposes a maximum height of 10.721 metres.



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

The percentage variation between the proposal and the environmental planning instrument is 26.12% or 2.221 metres.

3. NSW Land and Environment Court Case Law

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

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

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

The five ways outlined in *Wehbe* include:

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

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



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

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

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

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

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

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

3.4 Zhang v City of Ryde

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

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



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

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

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

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

3.5 Action Pty Ltd v Woollahra Municipal Council [2018]

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

4. Consideration

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

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

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

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - *Wehbe v Pittwater*

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

The objectives of the standard are:



(a) to 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 variation is largely the result of the slope of the site and a need to construct compliant and safe parking.

The breach allows for an unroofed structure where car can safely be parked off site, in line with what has been accepted as reasonable for neighbouring sites.

The proposed variation remains compatible with the prevailing height of buildings, and streetscape character within the locality, particularly with regard to parking structures.

The variation is consistent with surrounding development, a result of the site topography and limited to a small form where impacts are negligible. The variation is not visible from the streetscape. It is considered this objective is met, despite the numerical variation.

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

Comment

The variation is for a very insignificant area and is for an unroofed parking structure which is of limited bulk. The majority of the structure would sit as a far lesser height, however, the land falls away steeply in the north western corner resulting in a greater height at this location.

The proposed development will not present with excessive bulk from the public domain or to neighbours due to the sloping topography of the site and surrounding area and due to the small area of variation. The proposed built form is consistent with neighbours and is considered to be negligible in relation to bulk and scale given the existing character of the street and the desired character of the locality.

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

(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 variation in height has no impact on any views being unroofed to ensure views from the public domain are retained.

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

(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 proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings. Solar access for neighbours is fully compliant with the vast majority of the built works on the site under the height control.

(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 variation does not result in the requirement to remove or prune trees on the subject site or on adjoining properties and has been designed to ensure the retention of a valuable street tree.

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

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

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

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

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

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

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to



the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

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

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

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

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

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

In particular:

Detail of Variation

- The proposed variation to the building height control is 26.12% or 2.221 metres. It is for a very limited area where it is not visible from the street or easily for side neighbours. The apparent bulk through the variation is negligible and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).
- The small area of variation to the height occurs to allow for safe and compliant parking and has similar bulk to the existing roofed non-compliant structure.

As the site slopes, at the rear most point the breach occurs, but for the majority of the length, the height is well under the height limit. The breach is required in this instance to achieve compliant and safe parking and compliance with the development standard would be unreasonable.

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The variation is provided in line with both side neighbours and is entirely in character. Compliance with the development standard would be unreasonable.



- Solar access impacts as a result of the small height variation are negligible with neighbours having parking platforms adjoining. Accordingly, compliance with the development standard based on this would be unreasonable.
- The small variation has no impact on privacy for neighbours, being confined to a parking area and not a living space. Accordingly, the variation is reasonable in the circumstances of the case.

Site Constraints

- The development of the site is constrained by the slope, falling away dramatically to the rear of the proposed parking structure.
- The final design with a variation to the height is a result of the existing site constraints and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying Cl1.3(g) and (f).

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcome with the street view being that of a parking platform at street level with no roof. Compliance with the development standard based on this would be unreasonable.
- The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site resulting in the underside of the platform being hidden from view from Seaforth Crescent satisfying Cl1.3(g). The streetscape appeal is unaffected by the small variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable parking for a dwelling is proposed. Compliance with the development standard based on this would be unreasonable.

**Natural Environment**

- The inclusion of the small height variation to facilitate parking has no impact on the natural environment. The small variation sits in the location of the existing parking structure and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor varied roof form and height satisfying Cl1.3(b). The natural environment is unaffected by the small departure to the development standard, and it would be unreasonable for the development to be refused on this basis.

Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The small variation to the height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a parking structure or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The development allows for safe and compliant parking on site, which would otherwise be unfeasible. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.



The variation confined to the compliant parking platform is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and safe and accessible parking. These are not simply benefits of the development as a whole but are a direct result of the breach of the maximum height control.

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

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

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

Zone – R1 General Residential

Objectives of zone

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

Consistent. The proposal is for alterations and additions to an existing dwelling and will provide compliant and safe parking for the residents.

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

Not relevant. The proposal is for alterations and additions to a residential dwelling.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a small area of exceedance confined to the rear of the parking platform and is consistent with surrounding development.

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



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

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

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

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard. The variation is reasonable, with the vast majority of the development easily complying and small component where the variation is sought not easily visible from any viewpoint.

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

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

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

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



(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

As proposed the development allows for all of the above objects to be achieved. In particular it is noted that there is no social or economic impact other than the benefit of a small amount of employment through the works which will be undertaken.

The upgrade of parking to an improved and safe standard is a positive environmentally sustainable result.

The development proposed a good design which is achieved partly through the minor development standard variation.

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to an existing residential dwelling on land zoned R2 – Low Density Residential.

As stated above the proposed non-compliance is limited to the rear of the parking structure at 26.12% or 2.221 metres. The variation does not result in any unreasonable impacts and is largely the result of taking into account the slope of the site and working within the constraints of updating on an existing developed site. It is of a very limited area and is not being easily visible from any location.

The proposed development presents with a compliant height to Seaforth Crescent and does not present with excessive bulk in comparison to surrounding properties. There will not be any view loss and solar access is fully compliant with Council controls. Amenity is retained for all neighbours.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.



The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

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

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.4	DA2021/2626 - 36 GURNEY CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A GARAGE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2022/296368
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard/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 DA2021/2626 for alterations and additions to a dwelling house including a garage on land at Lot 1 DP 1066457, 36 Gurney Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2626
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 1066457, 36 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house including a garage
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Anders Olof Svensson Kirsty Kristine Svensson
Applicant:	Rapid Plans Pty Ltd
Application Lodged:	01/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/02/2022 to 18/02/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 44.71% 4.4 Floor space ratio: 29.75%
Recommendation:	Approval
Estimated Cost of Works:	\$ 225,000.00

EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to a dwelling house including a garage.

The application is referred to the Development Determination Panel (DDP) due to variations to Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio under Manly Local Environmental Plan 2013. The proposal seeks a 44.71% variation to the height of buildings development standard and 29.75% variation to the floor space ratio development standard.

In this instance, the variation to the height of buildings development standard is supportable as the maximum height of buildings remains unchanged with the proposed development. Notably, the proposed works that breach the maximum height of buildings are sighted below the existing first floor roof form. The variation to the floor space ratio development standard is a reduction of the existing non-compliant FSR that has decreased from 0.54:1 to 0.52:1. The applicant has demonstrated by way of a Clause 4.6 variation request that the strict compliance with the height of buildings and floor space ratio development standards are considered to be unnecessary and unreasonable in this circumstance. Furthermore, the applicant has provided sufficient environmental planning grounds to justify the variation to Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio under Manly Local Environmental Plan 2013.

As both the variation to the height of buildings development standard and floor space ratio development standard are greater than 10%, the application is required to be referred to the DDP for determination.

The proposed development was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

Critical assessment issues included height of buildings development standard, and floor space ratio development standard, wall height controls, setback controls, and above ground open space controls.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

Lower Level Store/Workshop

- New privacy screen;
- New cladding for screening;
- Replacement of balustrades;

Basement/Lower Ground Floor

- Deletion of gym;
- Replacement of balustrades;
- New BBQ area;
- New privacy screen;
- Internal alterations;

Ground Floor

- Extension of laundry;
- New privacy screen;
- Extension of existing garage;
- New bin storage;
- New front stairs;
- Internal alterations;

First Floor

- New awning above deck;
- New planter box over garage;
- New stone cladding;
- Internal alterations; and

Roof Plan

- Solar Panels.

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

Assessment - SEPP (Transport and Infrastructure) 2021
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 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

SITE DESCRIPTION

Property Description:	Lot 1 DP 1066457 , 36 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located

between the eastern and western sides of Gurney Crescent.

The site is irregular in shape with an angular frontage of 8.39m along the western side of Gurney Crescent, 26.16m along the eastern side of Gurney Crescent, and a maximum depth of 42.36m. The site has a surveyed area of 937.6m².

The site is located within the R2 Low Density Residential zone from MLEP 2013 and accommodates a dwelling house, swimming pool and attached garage currently on the site.

The site slopes steeply from the eastern front boundary to the western rear boundary over approximately

The site contains existing lawn areas, garden beds, rock outcrops, and trees. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses of similar scale varying in architectural style and design.

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:

DA0458/2004

Development Application for Dwelling House and Swimming Pool.
Approved on 15 December 2004.

DA0458/2004/2

Section 96(1A) Modification for Dwelling House and Swimming Pool.
Refused on 14 September 2006.

Land and Environment Court - Kirzner v Manly Council [2007] NSWLEC 78

Section 96 modification/Building Certificate refusal

DA0458/04/2007/BC

Building Certificate for unauthorised works.
Dated 13 April 2007.

DA0143/2008

Development Application for Use of the lower ground level of a 3 storey dwelling as a family flat.
Refused on 3 March 2009.

DA0072/2014

Development Application for Change of use to a secondary dwelling within the existing dwelling house.
Approved on 20 November 2014.

Application History

Following the preliminary assessment of the application, on 21 April 2022 Council requested that the applicant submit further information in relation to the Floor Space Ratio calculations. As the parking requirements under Manly Development Control Plan 2013 for dwelling houses is 2 car spaces, there is a surplus of 1 car space that is to be included in the FSR calculation.

On 28 April 2022, the applicant provided amended Master Plans, amended Clause 4.6, and amended Statement of Environmental Effects. Upon review of the plans, further clarification was sought in relation to the FSR calculations and as a result the applicant provided amended Master Plans on 29 April 2022, that included a FSR calculation plan. The amended Master Plans, amended Clause 4.6, and amended Statement of Environmental Effects did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

On 3 May 2022, the internal referral comments were reviewed and it was noted that the bin storage was not mentioned in the Road Reserve comments. Clarification was sought from the Road Reserve team and the bin storage was not supportable as it was proposed to be located within Council's Road Reserve. The Road Reserve officer requested amended Master Plans to delete the bin storage. Subsequently, on 4 May 2022 the applicant provided amended Master Plans deleting the bin storage from the Master Plans. The amended Master Plans constituted a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the Floor Space Ratio calculations. Subsequently, the applicant provided amended Master Plans, amended Clause 4.6, and an amended Statement of Environmental Effects. <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. <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. <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. <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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bush Fire Planning Services, dated 16 December 2021). The report stated that the bushfire attack level of the site is “BAL-40 and BAL-29”.

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 04/02/2022 to 18/02/2022 in

accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing dwelling, as described and illustrated in the reports and plans. 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): • 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 Existing public road reserve encroachments exist along both street frontages. New works under this development application are indicated within the road reserve including bin store and stairs and this development application does not approve such works. Any proposed encroachment into public road reserve land shall be considered as part of a section 138 and 139 application under the Roads Act. The proposed alterations and additions are essentially upon existing built upon areas with no impact to existing trees, and standard conditions shall be imposed for tree and vegetation protection. No impact is permitted to existing trees and vegetation within the road reserve and within adjoining properties. A Landscape Plan is submitted and no concerns are raised subject to conditions, should the application be approved.
NECC (Bushland and Biodiversity)	The proposal has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The proposed works are generally limited to the existing footprint and will not require removal of native vegetation or wildlife habitat.
NECC (Development Engineering)	The existing driveway crossing is to remain which is acceptable. The proposal does not require OSD. Development Engineering support the proposal, subject to conditions as recommended.
Road Reserve	The plans refer to existing walls and gardens on the public road reserve. The proposed letter box and new stairs indicated are too close to the kerb and may restrict future pedestrian access. The letterbox must be a minimum of 1.5m from the kerb. The stairs must be a minimum of 1.5m from the kerb and have a landing between the top stair and the kerb. The naturestrip garden consisting of agaves and rocks represents an obstruction and safety issue to pedestrians

Internal Referral Body	Comments
	and must be removed. A Minor Encroachment Application seeking approval under s138 of Roads Act 1993 is required for all works (stairs & letterbox) on the public road reserve. Plans are to be submitted with application showing the required dimensions of walls, letterbox, and stairs. Additional Comment as at 03/05/2022: The proposed bin hide structure on the public road reserve is not permitted. Council's policy requires domestic waste bins to be stored within the property boundaries. The plans are to be amended to remove the proposed bin hide structure shown on plan numbers: DA1004, DA1011, DA1013, DA1014, DA1015, DA1016, DA2003, DA4000, DA4001, DA4002, DA5000, DA5002, DA5003, DA5004, DA5005. Additional Comment as at 05/05/2022: Removal of bin hide structure from road reserve is noted.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable as Ausgrid assets are not affected by the proposed works.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The proposal was referred to NSW Rural Fire Service who provided a response on 21 April 2022 stating that the proposal is acceptable subject to compliance with the recommended conditions. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Request for Comments on Application for Aboriginal Heritage Development Application No. DA2021/2626 Description: Alterations and additions to a dwelling house including a garage Address: 36 Gurney Crescent SEAFORTH Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land

External Referral Body	Comments
	Council (MLALC) should be contacted.

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.A444207 dated 15 December 2021).

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

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	12.3m (Privacy Screen) 12.0m (Outdoor Kitchen Wall) 11.6m (Awning)	44.71% (3.8m) 43.75% (3.5m) 36.47% (3.1m)	No No No

Floor Space Ratio	FSR: 0.4:1 (375.04m ²)	FSR: 0.52:1 (486.60m ²)	29.75% (111.56m ²)	No
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	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:	12.3m
Percentage variation to requirement:	44.71% (3.8m)

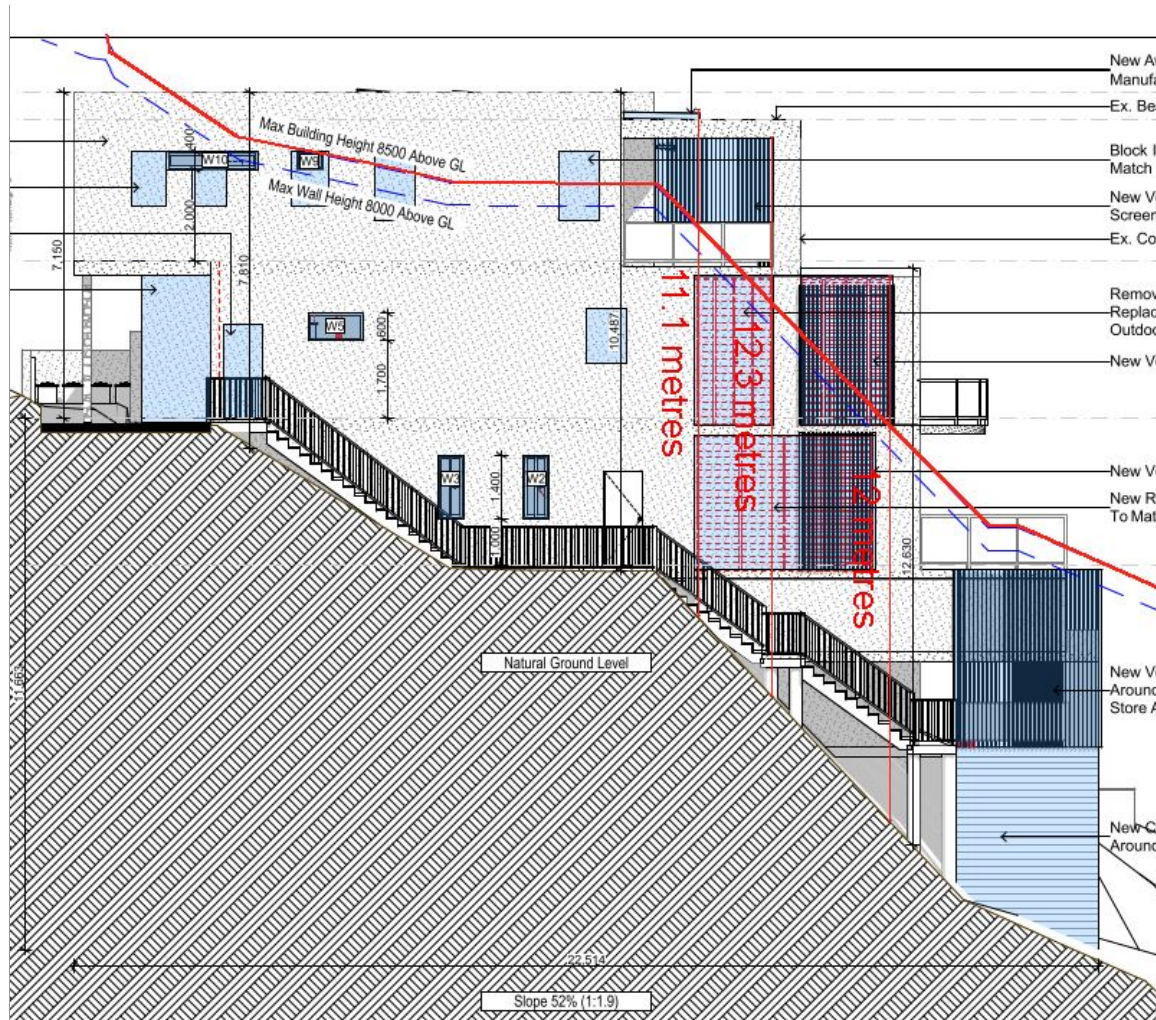


Figure 1. North Elevation (red line showing building height non-compliance)

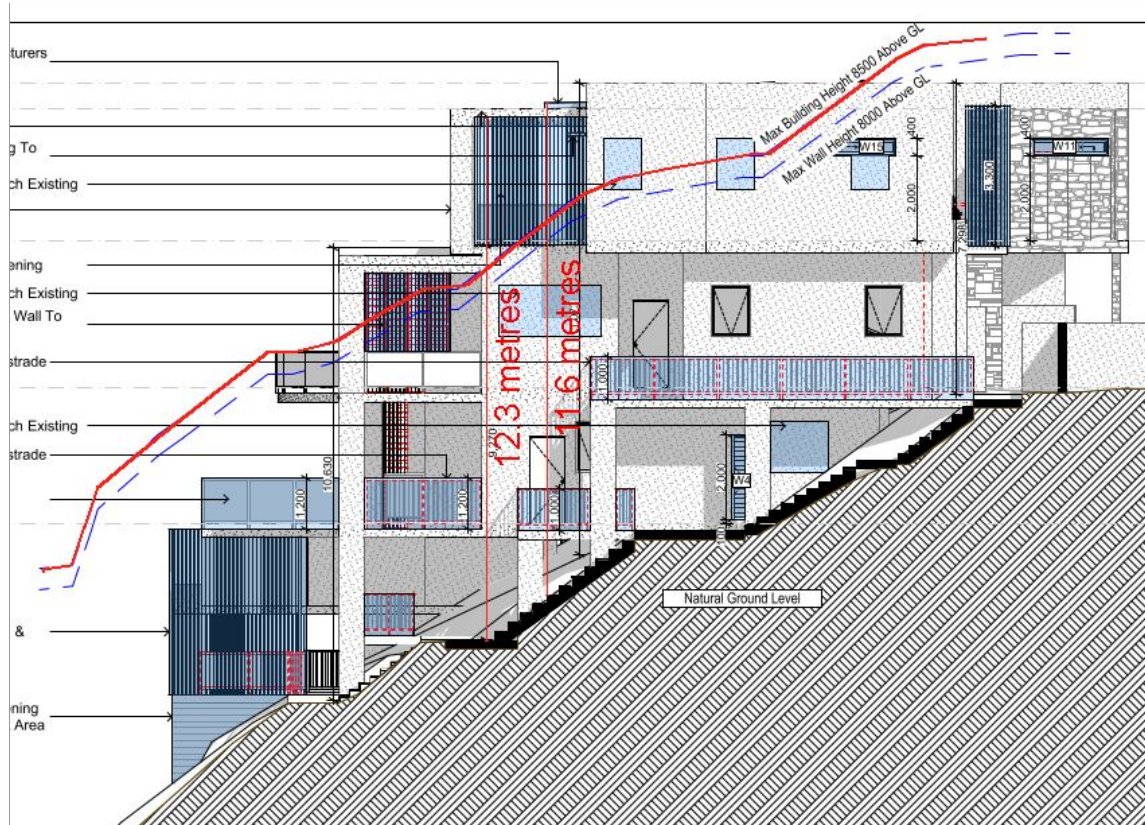


Figure 2. South Elevation (red line showing building height non-compliance)

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:

- *This opinion is justified on the basis that this application does not propose an addition to the building's height, with the exception of the new rear awning deck to the roof and new privacy screens to the existing decks.*
- *This is compatible with surrounding properties that have substantial height & scale to the adjacent properties of similar bulk & scale to the subject site. The visual impacts are minimised as there is existing vegetation to soften the streetscape as well tiering the stories to step back each floor from Gurney Crescent & improved access to the dwelling with the refurbished access stairs provided from the road to the garage up to the dwelling that assists in maintaining the scenic quality of the Seaforth area.*
- *With the existing location of the subject & adjacent dwellings enjoying an elevated position there is no adverse impact of view lines with privacy improved as well as the shadow cast from the proposed works having only a minor impact on the adjacent easterly property roof.*
- *In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height standard given that the resulting development will be absent of any negative environmental or planning outcomes.*
- *The proposed works provide a more efficient and orderly development on the steeply sloping land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.*

It is agreed that the proposal maintains the existing maximum building height, and the proposed works whilst numerically non-compliant are located below the existing maximum height of buildings on the subject site. The proposal is consistent with the locality and neighbouring developments within the vicinity that are of similar scale. In terms of its strict compliance with this development standard it would not result in a net benefit to the desired future character of the locality, as the proposal is considered to be an appropriate design to preserve the residential low density setting.

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 proposed development does not alter the maximum building height, noting that the roof forms are retained. The proposal demonstrates consistency with the steep topographic landscape, prevailing building height and desired future streetscape.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development has been controlled, by existing side setbacks maintained. Additionally, the proposal maintains the existing roof form and follow the steep topography of the site. The proposal has been well articulated through a variety of colours and finishes to mitigate any perceived bulk.

c) to minimise disruption to the following:

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

Comment:

As the proposal maintains the existing maximum height of buildings, the disruption to views are minimised. Furthermore, the proposal largely relies upon replacement of existing privacy screens with infill masonry walls and new privacy screens, that will not alter the existing views.

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

Comment:

As demonstrated on the shadow diagrams that accompany the proposal, sufficient solar access is provided to private open spaces and adequate sunlight has been maintained to private open spaces and 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.*

Comment:

The subject site is not located within a recreation or environmental protection zone and therefore this objective is not relevant.

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 provides for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the residential use of the site and therefore this objective is not relevant.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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:	0.4:1 (375.04m ²)
Proposed:	0.52:1 (486.60m ²)
Percentage variation to requirement:	29.75% (111.56m ²)

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:

- *There is an improvement as there is a decrease in the FSR which is mainly located at the rear of the building due to the existing enclosed gym being removed and reinstated as an outdoor deck area.*
- *The proposed decrease in FSR provides a generally consistent pattern of development with regard to adjoining front building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape.*
- *The proposal extends the existing built form of the subject property with well-designed additions improving on the ageing dwelling & assists landscaping onsite.*
- *The proposed works add to the already renovated & rebuilt dwellings along Gurney Crescent, and as such strict compliance in this regard would limit the objects being fully attained.*
- *The development has no negative consequence of significance as a result of this noncompliance as it is predominately existing, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.*
- *The proposed works provide a more efficient and orderly development on the steeply sloping land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.*

It is agreed that the proposed development results in a decrease of the existing FSR largely due to the removal of the gym located on the ground floor. The existing FSR is 0.54:1 (502.55m²) and the proposed FSR is 0.52:1 (486.60m²), resulting in a reduction of 0.02:1 (15.95m²). Therefore, as the FSR has been reduced it is considered that the justification provided has demonstrated that the proposal demonstrates good design that responds appropriately to the amenity of the built environment.

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 bulk and scale of the development is consistent with the existing and desired streetscape character. The proposal includes new screening, stone cladding, and a planter box along the frontage that will mitigate any unreasonable bulk and scale through utilisation of varying materials to break down the visual appearance of the development.

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:

There are no important landscape features that will be unreasonably impacted by the proposed works, as the density and bulk of the proposed dwelling remains largely consistent with the existing dwelling. In regards to townscape features, there are no townscape features within 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 proposal will maintain an appropriate visual relationship between dwellings located within the immediate vicinity. Overall, the proposal will respond positively to the existing

character and landscape of the area.

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

Comment:

The proposal does not give rise to any adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

The proposal is for residential use. Therefore this objective is not relevant in this instance.

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 provides for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the residential use of the site and therefore this objective is not relevant.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with

correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 937.6m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 8.0m (based on gradient 1:4+)	Lower Ground: 8.6m Ground: 12.1m First: 11.1m to 12.3m	7.5% (0.6m) 51.25% (4.1m) 38.75% to 53.75% (3.1m to 4.3m)	No No No
	S: 8.0m (based on gradient 1:4+)	Lower Ground: 6.6m Ground: 7.9m First: 11.1 to 12.3m	- - 38.75% to 53.75% (3.1m to 4.3m)	Yes Yes No
4.1.2.2 Number of Storeys	2	3 (unaltered)	-	N/A
4.1.2.3 Roof Height	Height: 2.5m	unaltered	-	N/A
	Pitch: maximum 35 degrees	unaltered	-	N/A
4.1.4.1 Street Front Setbacks	E: Prevailing building line	Consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North Lower Ground: 2.87m (based on 1/3 wall height) Ground: 4.03m (based on 1/3 wall height) First: 4.1m (based on 1/3 wall height)	Lower Ground: 2.0m (unaltered) Ground: 2.0m (unaltered) First: 2.0m (unaltered)	- - -	N/A N/A N/A
	South Lower Ground: 2.2m (based on 1/3 wall height) Ground: 2.63m (based on 1/3 wall height) First: 4.1m (based on 1/3 wall height)	Lower Ground: 2.0m (unaltered) Ground: 2.0m (unaltered) First: 1.0m (unaltered)	- - -	N/A N/A N/A
	Windows: 3m	1.6m	46.67% (1.4m)	No
	4.1.4.4 Rear Setbacks	S: 8m	11.5m	- Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (562.56m ²)	77.99% (731.30m ²)	-	Yes
	Open space above ground 25% of total open	37.40% (273.50m ²)	49.59% (90.67m ²)	No

	space (182.83m ²)			
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	57.30% (419.04m ²) (unaltered)	-	Yes
	4 native trees	5 trees	-	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	-	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	8.7m (unaltered)	-	N/A
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	unaltered	-	N/A
	1m curtilage/1.5m water side/rear setback	unaltered	-	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces (unaltered)	-	N/A

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.9 Mechanical Plant Equipment

The proposed development includes solar panels located on the first floor roof.

In this instance, as the proposed works are considered to be exempt under Section 2.41(4) of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, the solar panels will not be included as part of the proposal.

A suitable condition has been imposed to delete the solar panels from the amended plans prior to the issuance of Construction Certificate.

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

Description of non-compliance

Under Clause 4.1.2.1 of Manly Development Control Plan, the maximum external wall height is calculated based on the slope of the land under the proposed wall. In this instance the subject site is located on a steep slope with a site gradient of 1:4 or steeper. Therefore, the required wall height is 8.0m for the northern and southern external walls.

Due to the sloping topography, the wall height varies across the differing floors. The maximum proposed wall height is 12.3m along both the northern wall as a result of the privacy screen on the first floor. The northern façade obtains a numerically non-compliance to the wall height control presenting a variation of 7.5% to the lower ground floor, 51.25% to the ground floor, and 53.75% to the first floor (see Figure 3).

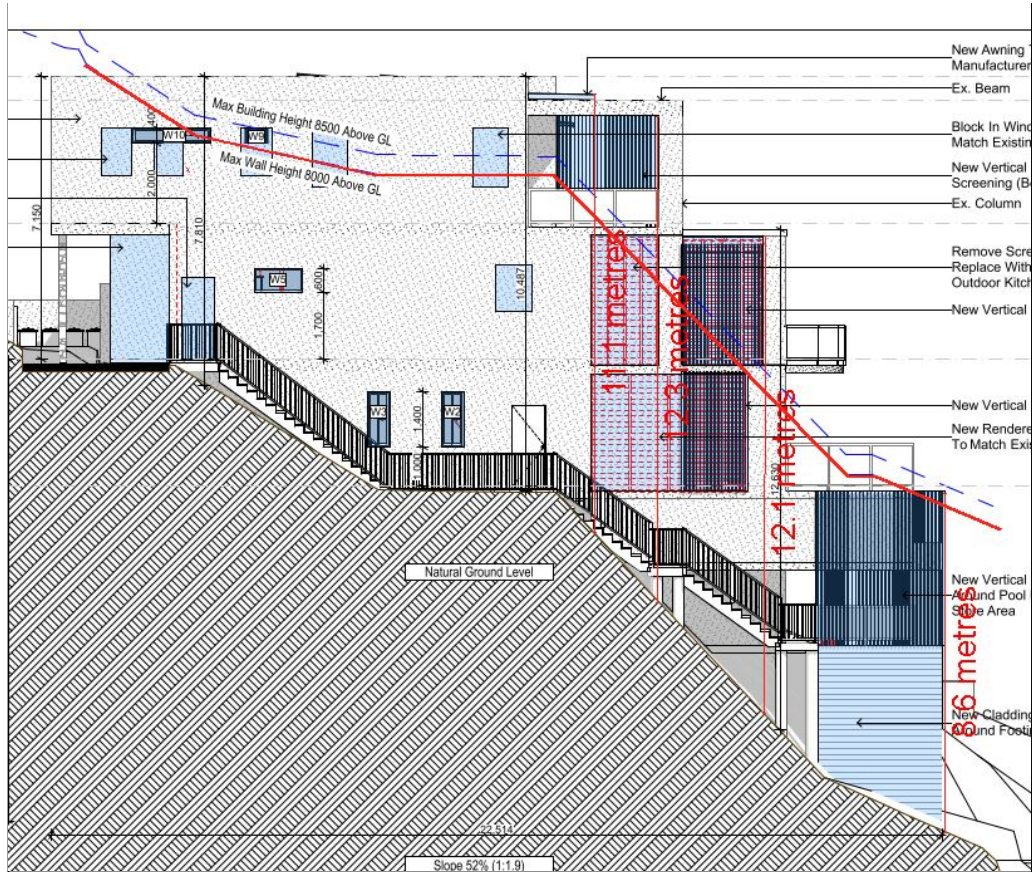


Figure 3. North Elevation (Proposed works in blue and above red line indicates numerical Wall Height non-compliance)

The maximum proposed wall height is 12.3m along both the southern wall as a result of the privacy screen on the first floor. The southern façade obtains a numerically non-compliance to the wall height control presenting a variation of 53.75% to the first floor (see Figure 4). Notably, the site is not as steep along the southern boundary line.



Figure 4. South Elevation (Proposed works in blue and above red line indicates numerical Wall Height non-compliance)

Merit consideration

There are no underlying objectives of this control under 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 consistent with the objectives for Clause 4.3 Height of Buildings and is supportable in this instance.

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 Local Environmental Plan 2013.

In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio 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

Under Clause 4.1.4.2 of MDCP 2013, the requirements for all new windows that face the side boundary are to be setback at least 3.0m from side boundaries. The proposal presents new windows to the lower ground floor that are setback 2.0m from the northern and southern side boundaries. The ground floor

proposes a new window setback 2.0m from the northern boundary and the first floor proposes new windows setback 2.0m from the northern boundary and new windows setback 1.6m and 2.0m from the southern boundary. The variation to the window requirements are considered to be supportable in this circumstance as the objectives of the control have been met as outlined below.

Under Clause 4.1.4.2 of MDCP 2013, the requirements for setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. Due to the varying wall heights, the side setback requirements vary on each floor. It is important to note that the proposal retains all existing side setbacks to the northern and southern boundary across each floor. The proposal however results in the extension of the existing numerical side setbacks to the ground floor. Additionally, the proposal involves the infill of existing windows, and new masonry walls that are proposed to infill existing privacy screens. Notwithstanding, the existing setbacks are retained on each floor, with no further encroachments towards the side boundary lines. The variations to the side setback requirements are supportable as the objectives of the control have been met as addressed below.

Merit consideration:

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

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

Comment:

The proposed works will not detract from the existing streetscape and maintain the desired spatial proportions of the street, the street edge, and the landscape character of the street. Furthermore, the variations to the side setbacks and window setbacks will not be visible from the streetscape due to the steep topography of the site.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal provides through the infill of existing windows and the design of new windows that include high level windows along the northern and southern façades of the ground and first floor. The proposed windows are approximately 1.7m to 2.0m from the finished floor level to ensure privacy to adjoining sites. The new windows along the lower ground floor are approximately 0.6m in width and will not result in unreasonable privacy impacts to adjoining neighbours, due to the sizing. The proposal provides equitable access to light, sunshine, and air movement as detailed in the accompanied shadow diagrams. The proposal will not unreasonably impact upon view sharing and the existing roof is retained resulting in no changes to maximum height of buildings. The proposal provides sufficient building separation between adjoining sites and the existing side setbacks are have been retained. Lastly, there are no changes to the existing traffic conditions as a result of the proposed development.

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

Flexibility is afforded in this circumstance as the window setback variation and side setback variation will not result in unreasonably amenity impacts to the adjoining sites.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal does not alter the existing landscaping on the subject site and subsequently does not result in the removal of existing vegetation or trees. The proposed development does not detract from the context of the site and the site does not adjoin open space lands, national parks, or urban bushland.

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

A Bushfire Report was submitted with the application that includes a Bushfire Risk Assessment Certificate (prepared by Bush Fire Planning Services, dated 16 December 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection 2019. Additionally, the proposed was referred to NSW Rural Fire Service who provided support of the application, subject to recommendations. The recommendations of the Bushfire Report and the recommendations from NSW Rural Fire Service have been included as conditions of consent.

4.1.5 Open Space and LandscapingDescription of non-compliance

Under Clause 4.1.5.1 of Manly Development Control Plan 2013, the above ground open space is to be no more than 25% of total open space.

The proposal presents a variation of 37.40% (273.50m²) above ground open space, resulting in a variation of 49.59% (90.67m²). The additional above ground open space is a result of the deletion of the gym on the lower ground floor that contributes an addition of 20.28m² to above ground open space. Notably, there is an existing numerical non-compliance with the above ground open space control.

The proposal provides a compliant total open space requirement of 77.99% (731.30m²) and compliant landscaped area of 57.30% (419.04m²).

The proposal has been assessed against the objectives of the control and in this instance the variation to the above ground open space is supportable.

Merit consideration:

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

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

Comment:

The proposal retains existing landscaped features and vegetation including remnant populations of native flora and fauna. Council's Landscape Officer has reviewed the proposal and is supportive of the application.

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

Comment:

The proposal maximises soft landscape areas that totals 57.30% that is greater than the required 40% landscaped area. The proposal includes appropriate plantings and maintenance of existing vegetation. Council's Landscape Officer has imposed a suitable on-going condition for Landscape Maintenance.

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

Comment:

The proposal does not result in any unreasonable impacts to amenity including sunlight, privacy, and views. The proposal includes a planter box located above the garage that will enhance the streetscape.

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

Comment:

The proposal maximises water infiltration on-site providing soft landscaping areas and surfaces to minimise stormwater runoff.

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

Comment:

The proposed development would not lead to the significant spread of weeds, or degradation of open space. Additionally, Council's Landscape Officer has imposed an on-going condition stating all weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

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

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$2,250 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$225,000.

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 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.

This proposal, for Alterations and additions to a dwelling house including a garage has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to both the height of buildings and floor space ratio under Manly Local Environmental Plan 2013.

The development application was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

The critical assessment issues surrounding the variation request for the height of buildings development standard and floor space ratio development standard under Manly Local Environmental Plan 2013 has been assessed. The Clause 4.6 variation request has demonstrated compliance with the standards are unreasonable and unnecessary and sufficient planning grounds have justified the contravention.

The variation to the wall height controls, side setback controls, and above ground open space controls under Manly Development Control Plan 2013 have been assessed against the objectives of the controls. In this regard, the objectives of the controls have been satisfactorily met and the variations are supportable.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2626 for Alterations and additions to a dwelling house including a garage on land at Lot 1 DP 1066457, 36 Gurney Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan - DA1004, Rev 1	4 May 2022	Rapid Plans
Demolition Lower Ground Floor Plan -	4 May 2022	Rapid Plans

DA1008, Rev 1		
Demolition Ground Floor Plan - DA1009, Rev 1	4 May 2022	Rapid Plans
Demolition First Floor Plan - DA1010, Rev 1	4 May 2022	Rapid Plans
Lower Level Store/Workshop - DA2001, Rev 1	4 May 2022	Rapid Plans
Lower Ground Floor - DA2002, Rev 1	4 May 2022	Rapid Plans
Ground Floor - DA2003, Rev 1	4 May 2022	Rapid Plans
First Floor - DA2004, Rev 1	4 May 2022	Rapid Plans
Roof Plan - DA2005, Rev 1	4 May 2022	Rapid Plans
Section 1 - DA3000, Rev 1	4 May 2022	Rapid Plans
Section 2 - DA3001, Rev 1	4 May 2022	Rapid Plans
Elevation North - DA4000, Rev 1	4 May 2022	Rapid Plans
Elevation East - DA4001, Rev 1	4 May 2022	Rapid Plans
Elevation South - DA4002, Rev 1	4 May 2022	Rapid Plans
Elevation West - DA4003, Rev 1	4 May 2022	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (No.A444207)	15 December 2021	Rapid Plans
Biodiversity Report	21 December 2021	Rapid Plans
Bushfire Report	16 December 2021	Bush Fire Planning Services
Material & Colour Sample Board - DA5001	4 May 2022	Rapid Plans

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
Landscape Plan - DA1014, Rev 1	4 May 2022	Rapid Plans

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	21 December 2021	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
Aboriginal Heritage Officer	Referral Response - Aboriginal Heritage Office	11 April 2022
NSW Rural Fire Service	Referral - RFS - 36 Gurney Crescent Seaforth	21 April 2022

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

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

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

 - (i) Swimming Pools Act 1992

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$2,250.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$225,000.00.

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

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

6. Security Bond

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

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

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

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

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

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

7. Stormwater 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 proposed buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Gurney Crescent.

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.

8. 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.

9. Amendments to the approved plans

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

- Deletion of solar panels.

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.

10. **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.

11. **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.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Submission of Minor Encroachment Application for Works in the Public Road**

The applicant is to submit a Minor Encroachments/ Constructions With Road Reserve Application for approval (Form #4033) for landscaping, stairway and letterbox on the public road

reserve

The applicant is to enter into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

No work shall commence until written approval has been obtained from Council.

Reason: To ensure private works within the public road reserve are constructed in accordance with relevant standards and Council's specification and assign the responsibility for the structures on Council road reserve to the property owner.

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, 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,
- iv) any exempt species tree(s) referred above in item i) that is removed at any time shall be replaced at a ratio of 1:1 with a locally native tree species.

b) Tree protection shall be undertaken as follows:

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

including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

17. **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.

18. **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.

19. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement 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.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****20. Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) all tree planting as shown on the plan shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings and other trees, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) new landscaping is to be contained within property boundaries,
- iv) any proposed new landscaping within the road reserve shall be subject to a section 138 and 139 application under the Roads Act, for approval or otherwise.

Prior to the issue of an Occupation Certificate, details 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.

21. Stormwater Disposal

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

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

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

22. 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.

23. 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**24. Landscape Maintenance**

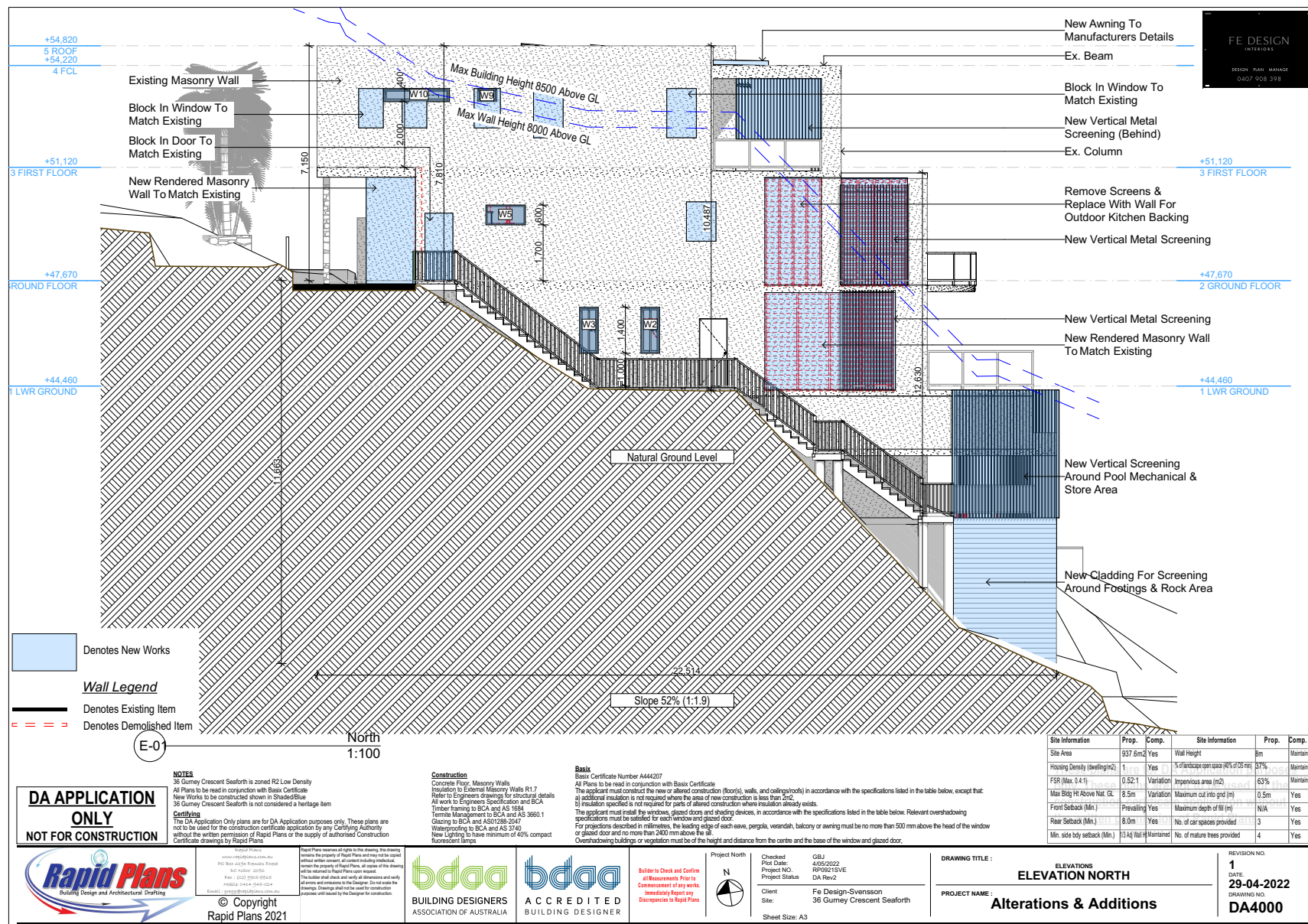
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

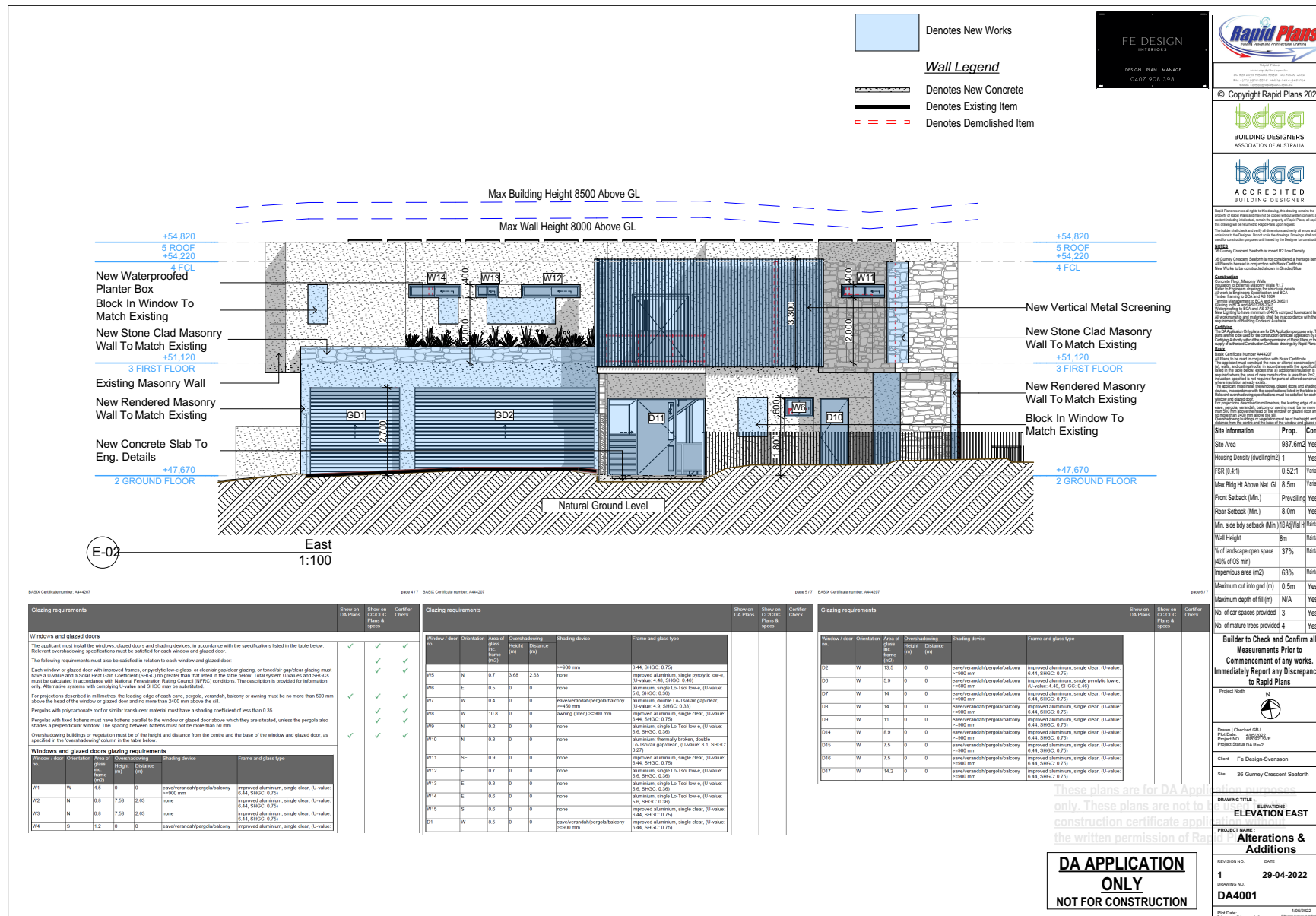
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

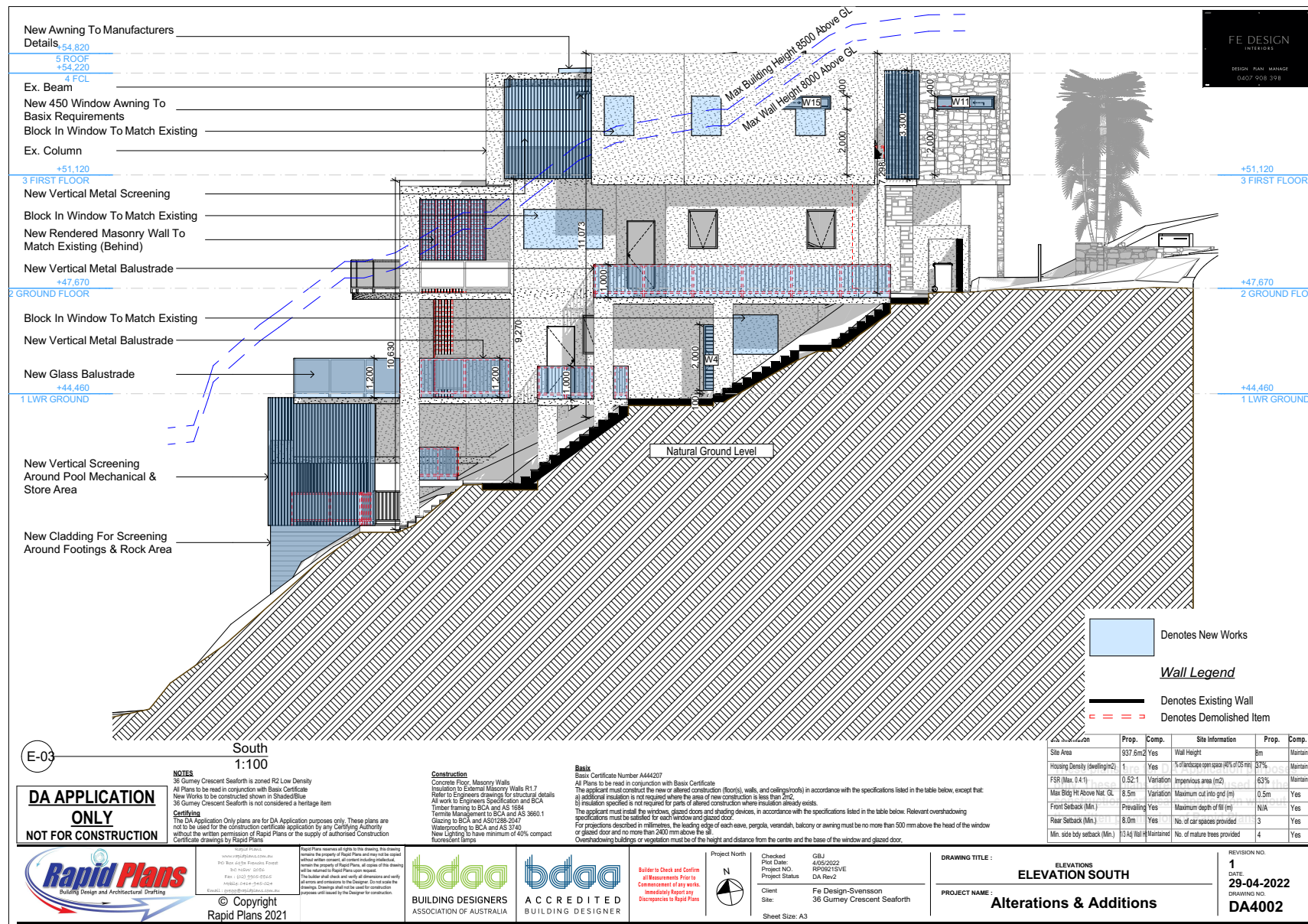
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.











Clause 4.6 Variation To Development Application 36 Gurney Crescent, Seaforth, NSW



**Clause 4.6 Variation
To Development Application
For
36 Gurney Crescent,
Seaforth
NSW 2096
For
Mr & Mrs Svensson**

RAPID PLANS

ABN:	81 737 844 287
ADDRESS:	PO Box 6193 French's Forest D.C 2086
TELEPHONE:	(02) 0414-945-024
FAX:	(02) 9905-8865
EMAIL:	gregg@rapidplans.com.au

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Wednesday, April 27th, 2022
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1 INTRODUCTION

This report pertaining to a Clause 4.6 Variation accompanies the Development Application for the proposed additions at 36 Gurney Crescent Seaforth.

1.1 Site

The residence is located on the western side of Gurney Crescent in the residential neighbourhood of Seaforth.

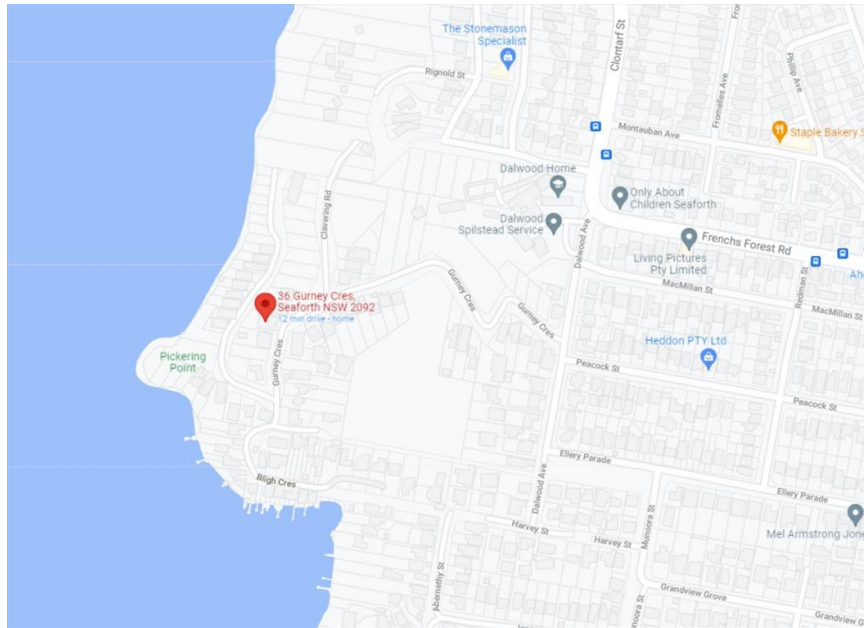


FIGURE 1: LOCATION PLAN 36 Gurney Crescent, Seaforth. ¹ Source Google Maps.

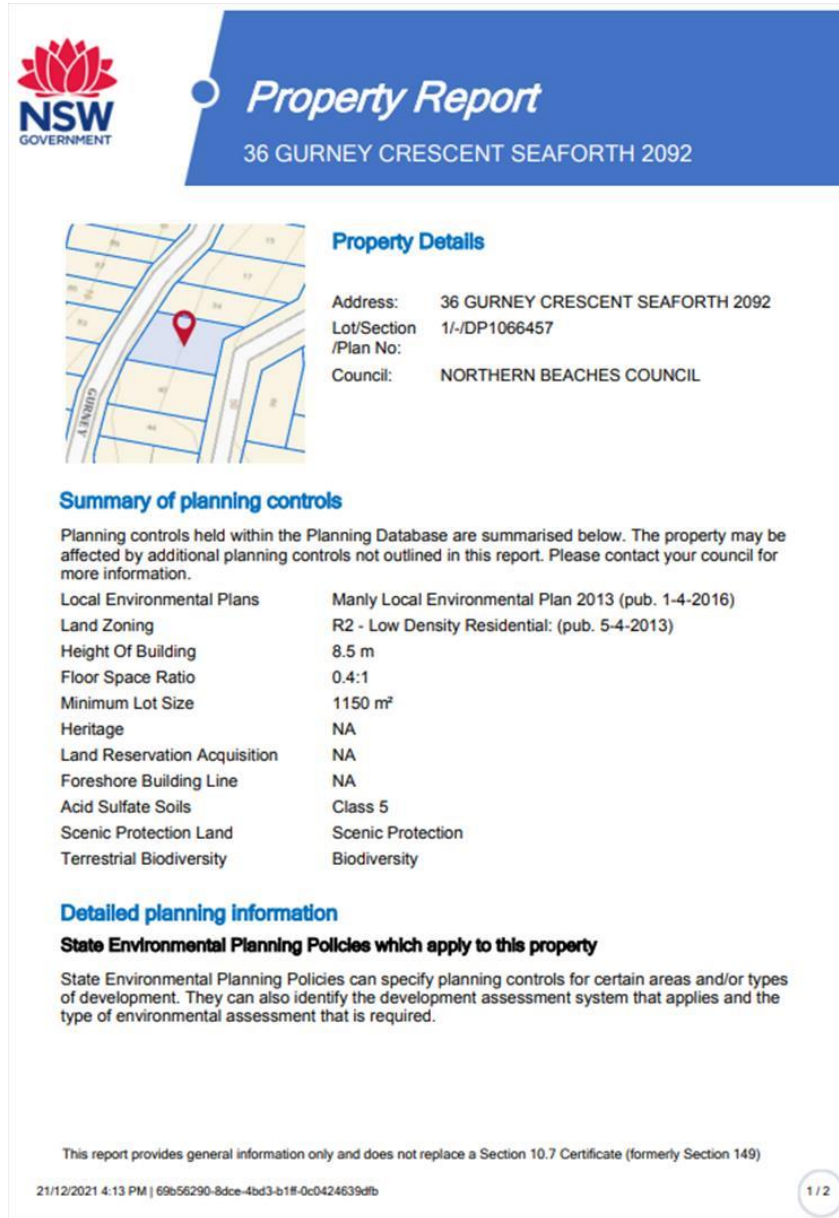
1.2 Local Authority

The local authority for this site is:
Northern Beaches Council (Manly)
Civic Centre, 725 Pittwater Road,
Dee Why NSW 2099
DX 9118 Dee Why
Telephone: 9942 2111

¹ Location Map 36 Gurney Crescent Seaforth;
<<https://www.google.com/maps/place/36+Gurney+Cres,+Seaforth+NSW+2092/@-33.793599,151.2381125,17z/data=!4m5!3m4!1s0x6b12abde2c86c0f3:0x6c88a4664507c70c!8m2!3d-33.7934742!4d151.2366105>>.

1.3 Planning Controls

Planning controls used for the assessment of this Development Application are:
Manly Local Environment Plan 2013
Manly Development Control Plan 2013



Property Report
36 GURNEY CRESCENT SEAFORTH 2092

Property Details

Address: 36 GURNEY CRESCENT SEAFORTH 2092
Lot/Section: 1/-/DP1066457
/Plan No:
Council: NORTHERN BEACHES COUNCIL

Summary of planning controls

Planning controls held within the Planning Database are summarised below. The property may be affected by additional planning controls not outlined in this report. Please contact your council for more information.

Local Environmental Plans	Manly Local Environmental Plan 2013 (pub. 1-4-2016)
Land Zoning	R2 - Low Density Residential: (pub. 5-4-2013)
Height Of Building	8.5 m
Floor Space Ratio	0.4:1
Minimum Lot Size	1150 m ²
Heritage	NA
Land Reservation Acquisition	NA
Foreshore Building Line	NA
Acid Sulfate Soils	Class 5
Scenic Protection Land	Scenic Protection
Terrestrial Biodiversity	Biodiversity

Detailed planning information

State Environmental Planning Policies which apply to this property

State Environmental Planning Policies can specify planning controls for certain areas and/or types of development. They can also identify the development assessment system that applies and the type of environmental assessment that is required.

This report provides general information only and does not replace a Section 10.7 Certificate (formerly Section 149)

21/12/2021 4:13 PM | 69b56290-8dce-4bd3-b1f8-0c0424639db

1 / 2

FIGURE 2: Property report, Spatial Viewer DoPIE. Source DoPIE Planning Portal <<https://www.planningportal.nsw.gov.au/spatialviewer/#!/find-a-property/address>>.

1.1 Objectives of the Zone

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of manly

Comment:

It is considered that the proposed development meets the objectives of the Zone R2 Low-Density Residential. This opinion is justified on the basis that this application provides for the owner's housing needs within the low-density area that is consistent with surrounding properties elevated developments. The proposal allows currently unusable areas to be usable for the owners to assist in day to day living without adversely impacting the low-density environmental aspects as no substantial vegetation is proposed for removal. The works proposed will significantly improve the design and aesthetic quality of the site with the built form outcome complimenting newer style properties along Queenscliff Road.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

2 Clause 4.6 Variation to Development Application

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.*

2.1 Background

The application is in regard to alterations & addition with refurbished internal areas, new front entry & stairs, a small front addition by infill to the existing upper floor under croft, new addition to the existing garage and new entry stairs. Internal works will include reconfiguring internal walls & updating the apartments kitchen, facilities, and storage areas to be more useful for the owners & future tenants proposed for the Gurney Crescent residential dwelling.

2.2 Development Standards Being Varied

After reviewing Manly Council LEP 2013 we advised that a Clause 4.6 Exception to a Development Standard is required due to:

1. This development is classified as a non-complying development due to an encroachment to the Floor Space Ratio (Manly LEP 2013 Part 4 4.4 Floor Space Ratio)
2. This development is classified as a non-complying development due to an encroachment to the Building Height (Manly LEP 2013 Part 4 4.3 Building Height)

The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

3 Manly LEP 2013 Part 4 4.4 Floor Space Ratio

3.1 Objectives of the Development Standard

The objectives of this clause are as follows—

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

Description	Floor Space Ratio (n:1)
MLEP 2013 Sheet FSR_006 Area F	0.4:1 = 375.04m ²
Existing Floor Space Ratio (FSR)	502.55 m ² = 0.54:1
Proposed Floor Space Ratio (FSR)	486.60 m ² = 0.52:1

Streetscape – The visual quality of the streetscape is to be improved with the addition of screening and a planter to the front facade. The front of the building is to remain unchanged apart from the above and an extension to the upper floor undercroft on the northern side and the extension to the garage wall and new garage a door to the front of the Ground Floor. There is an improvement as there is a decrease in the FSR which is mainly located at the rear of the building due to the existing enclosed gym being removed and reinstated as an outdoor deck area. The proposed decrease in FSR provides a generally consistent pattern of development with regard to adjoining front building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape.

Bulk & Scale is maintained for the area as the proposal uses the existing footprint with only a slight increase in the rear NE corner & a section of concrete paved area to fit the front additions. Although the bulk & scale of the building is slightly increased with the awning roof at the rear, the overall size & bulk in relation to the surrounding neighbourhood is to be maintained throughout the development.

Site Access & Circulation is maintained, in relation to the decrease in FSR, with access provided around the property. The proposed development will have no detrimental impact on traffic flow.

Landscape Open Space Area has been maintained for the proposed development. The slight decrease in FSR does not affect the landscaped area, in fact, an additional garden bed is proposed to the front with new native planting.

Openness - A sense of openness has been maintained with the front addition complying to the height to Council requirements & maintaining the open look to the front of the property. The proposed design creates flow between the internal & open

space areas for the owners with elements of the proposal to the side & rear to still allow for a sense of openness to support the desired future character of the Manly low-density area.

Planting – There has been generous amount of area allocated for the provision of planting in the rear area of the property with native shrubs planted along the side & front boundaries.

4 Manly LEP 2013 Part 4 4.3 Building Height

4.1 Objectives of the Development Standard

- (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.

Comment:

It is considered that the proposed development meets the objectives of the height of buildings development standard. This opinion is justified on the basis that this application does not propose an addition to the building's height, with the exception of the new rear awning deck to the roof and new privacy screens to the existing decks. This is compatible with surrounding properties that have substantial height & scale to the adjacent properties of similar bulk & scale to the subject site. The visual impacts are minimised as there is existing vegetation to soften the streetscape as well tiering the stories to step back each floor from Gurney Crescent & improved access to the dwelling with the refurbished access stairs provided from the road to

the garage up to the dwelling that assists in maintaining the scenic quality of the Seaforth area. With the existing location of the subject & adjacent dwellings enjoying an elevated position there is no adverse impact of view lines with privacy improved as well as the shadow cast from the proposed works having only a minor impact on the adjacent easterly property roof.

4.2 Numeric value of the development standard in the environmental planning instrument

MLEP2012 Height = 8.5m

4.3 Proposed numeric value of the development standard in your development application

Proposed Height = 12.630m. **NB: EXSITING** (measured at the West roof corner of ground floor)

4.4 Percentage variation between the proposal and the environmental planning instrument

Proposed Height = 48%

5 Reason for the Variations to the controls

5.1 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The variation is considered moderate in comparison to other developments along Gurney Crescent. This application is in keeping with a low-density residential environment desired by Council in this area as well as the objectives of the zone. The development has no negative consequence of significance as a result of this noncompliance as it is predominately existing, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height standard given that the resulting development will be absent of any negative environmental or planning outcomes. The proposal would be indiscernible

to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the streetscape and general locality along Gurney Crescent.

- *Streetscape* – The visual quality of the streetscape is to be enhanced with the alterations to the property improving the bulk in keeping with the adjacent properties with the existing and proposed landscaping improving the streetscape to complement the existing built form along Gurney Crescent. The height encroachment for the upper floor awning roof and privacy screen to the existing decks is more than halfway up the block with the intention for the dwelling is to match the surrounding designs & present a dwelling that is consistent front to back. The proposed roof does not increase the existing overall height and does not detract from the streetscape along Gurney Crescent as a flat pitched roof is used to reduce pitch & height. The proposed additions provide a generally consistent pattern of development with regard to adjoining building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape & is not out of character for the neighbourhood. These characteristics for the building height conform to the R2 low density residential requirements for the Seaforth area & modifying the structure would, in our opinion, will comply with the R2 zoning objectives of the streetscape along Gurney Crescent & the desired future character of the area.
- *Bulk & Scale* is maintained for the area. Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is to be maintained throughout the development as shown by the similar development on the adjacent westerly property below



FIGURE 3: Street View. Source Google Maps.
<<https://www.google.com/maps/place/36+Gurney+Cres,+Seaforth+NSW+2092/@-33.7934702,151.2369868,3a,75y,274.96h,80.56t/data=!3m6!1e1!3m4!1sA4O83Cq9r>>

LM1AitCyhpOKA!2e0!7i16384!8i8192!4m5!3m4!1s0x6b12abde2c86c0f3:0x6c88a4664507c70c!8m2!3d-33.7934742!4d151.2366105>.

There is no adverse visual impact with surrounding developments to maintain their existing visual amenity. The flat roof awning has been added to the design to reduce the bulk & scale of the roof line from the existing roof to the dwelling to prevent the design from visually dominating surrounding properties as the roof height is lower than the roof at its highest point. It is in our opinion that to remove the proposed awning roof would be unreasonable with the flat roof pitch design allowing for a more sustainable outcome as it provides shade to the dwelling while maintaining the streetscape with the design in keeping with other properties along Gurney Crescent.



FIGURE 4: Front Facade. Source Google Maps.
<<https://www.google.com/maps/place/36+Gurney+Cres,+Seaforth+NSW+2092/@-33.7934702,151.2369868,3a,75y,274.96h,80.56t/data=!3m6!1e1!3m4!1sA4O83Cq9rLM1AitCyhpOKA!2e0!7i16384!8i8192!4m5!3m4!1s0x6b12abde2c86c0f3:0x6c88a4664507c70c!8m2!3d-33.7934742!4d151.2366105>>.

The existing topography & built form prevents the proposed ridges from adhering to the 8.5m building height. This is largely due to the existing roof ridge having been constructed above the height limit. The proposal is a design option that supports a preferred planning outcome of a modern design, that is prevalent in the Seaforth area, as well as complimenting the existing dwelling & the surrounding neighbourhood.

In addition, the new awning roof and deck privacy screens, are justified as the addition is barely visible from the street as it is set back well behind the roof line below & visually maintains the bulk of the upper portion of the dwelling without adversely affecting the streetscape. The intention is to provide a balance between the proposed additions to the existing built form with the majority of the

improvements to the front of the property.

Openness - A sense of openness has been maintained by the landscaping to the front of the property with tiering & stepping the floors back to integrate in with the exiting topography. The proposed design to the upper portion of the dwelling allows the low levels to create flow between the internal & open space areas for the owners with elements of the proposal over the height limit to continue to allow for a sense of openness to support the desired future character of the Seaforth low density area. The openness to the front of the property is improved with the landscaped area & access to compliment the proposed structures to assist in adequate usable outdoor recreation space & water infiltration.

Public & Private Views - The view lines are maintained for the subject & surrounding dwellings with minimal impact in the vicinity of the height encroachment. The aerial photo below indicates the area of the height encroachment area shown below with substantial separation to the surrounding dwellings & maintained view lines from the dwelling to north with their roof line above the subject properties proposed roof.



FIGURE 5: Aerial View Of 36 Gurney Crescent in relation to surrounding vegetation and Pittwater Waterway,² Source, Six maps.

² Six maps; <<https://maps.six.nsw.gov.au/>>.

Site Access & Circulation is improved with vehicular access provided to Gurney Crescent to allow for parking for at least 2 vehicles & the pedestrian stair access, pathways & a levelled grassed area to the front door. The rear deck on the first floor provides access & circulation to the rear yard for the owners that is currently being utilised. It is anticipated that the proposed development will have no detrimental impact on traffic flow.

Planting – There has been generous amount of area maintained for the provision of planting in the front & rear areas of the property. The proposal enhances the amenity of the site by providing a usable garden space that softens the visual amenity of the front of the property. The proposed works to the front of the property are in keeping with the adjacent properties with this proposal to provide planted areas over the garage. The existing vegetation softens the streetscape & allows the development to blend in with the existing environment along Gurney Crescent.

5.2 *How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?*

The proposal extends the existing built form of the subject property with well-designed additions improving on the ageing dwelling & assists landscaping onsite. The proposed works add to the already renovated & rebuilt dwellings along Gurney Crescent, and as such strict compliance in this regard would limit the objects being fully attained. The proposed works provide a more efficient and orderly development on the steeply sloping land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.

5.3 *Is the development standard a performance-based control?*

The objectives of the development standard provide the controls to allow a performance-based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider “compliance to the standard unreasonable in the circumstances of the development”.

5.4 *Would strict compliance with the standard be unreasonable or unnecessary?*

Yes, please refer to answer preceding.

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

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

The following environmental planning grounds justify contravening the development standard.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides improved private open space and landscaping.
- The proposal provides onsite parking.
- The proposal provides improved housing in a low-density environment.

The variation to the maximum building height requirements is, in our opinion, acceptable and there are appropriate planning grounds in support of the non-compliance.

6 CONCLUSION

6.1 *Summary*

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining where possible the conditions set out by Manly Local Environment Plan 2013 by achieving the objectives outlined under Part 4.3 Building Height and Part 4.4 Floor Space Ratio. We consider that the proposal will impose minimal impact and maintains the streetscape & character of the neighbourhood & request that council support the Clause 4.6 Variation of the Development Application.

ITEM 3.5

**MOD2021/0963 - 7 FLORIDA ROAD PALM BEACH -
MODIFICATION OF DEVELOPMENT CONSENT N0417/15
GRANTED FOR DEMOLITION OF EXISTING DWELLING AND
PROPOSED NEW DWELLING**

REPORTING MANAGER

Phil Lane

TRIM FILE REF

2022/298241

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2021/0963 for modification of Development Consent N0417/15 granted for demolition of existing dwelling and proposed new dwelling on land at Lot 2 DP 633579, 7 Florida Road PALM BEACH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0963
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 2 DP 633579, 7 Florida Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent N0417/15 granted for demolition of existing dwelling and proposed new dwelling
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:	Karel Gardiner Wheen
Applicant:	George Livissianis
Application Lodged:	14/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	06/04/2022 to 20/04/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 39.65%
Recommendation:	Approval

EXECUTIVE SUMMARY

This report has been submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of an application made pursuant to Section 4.55(2) of the EP&A Act 1979 seeking to modify Development Consent N0417/15 granted for demolition works and construction of a 4 storey dwelling house with a garage and storage. The application is submitted to the DDP as the original development application was determined by the former Northern Beaches Council Development Unit, which is the equivalent panel to the current DDP. Any Section 4.55(2) modification applications must be referred to the equivalent panel for determination, in accordance with Council's delegation protocols.

The subject modification includes internal reconfigurations, minor amendments to the floor levels and overall building height, changes to decking and eaves, and a new inclinator to provide for greater access to the dwelling, which is situated approximately 14m up the sloping site.

The modified development increases the approved building height from 11.17m to 11.78m, which does not comply with the 8.5m height of buildings development standard. As the application has been made pursuant to Section 4.55(2) of the EP&A Act 1979, which is a free-standing provision that is subject to its own substantially the same test, the modified development is not subject to the provisions within Clause 4.6 of the Pittwater LEP 2014 to determine the appropriateness of the height non-compliance. Notwithstanding, the modified development has been considered against the objectives of Clause 4.3 - Height of Buildings and the C4 Environmental Living zone and the assessment has concluded that the modified proposal is consistent with the objectives of the height standard and the C4 zone, noting that the approved building envelope remains generally consistent with the previously approved development and that the additional 610mm building height increase will not be discernible when compared to the previous approval.

The modified proposal is considered to be substantially the same as what was previously approved, both qualitatively and quantitatively, noting that the modifications will retain the number of storeys, bedrooms and car spaces and will not change the overall building type or have a materially different amenity impact to neighbouring properties in terms of solar access, view sharing, visual bulk and privacy.

Amended plans were submitted throughout the assessment process to include an inclinator adjacent to the south-western side boundary. The amended plans were re-notified for an additional 14 days. One (1) submission was received following the second public exhibition period. The submission raised concern of amenity impacts resulting from the 900mm deck extension to Level 2. A detailed assessment of this issue has been conducted and the application has been found to be satisfactory.

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

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 28 July 2016 under Development Application N0417/15 for Demolition of existing 4 storey dwelling. Proposed new 4 storey concrete and timber clad dwelling with additional garage and storage level off Florida Road. The proposal includes excavation of the site, new retaining wall works and landscape works and the inclusion of 2 lifts to improve vertical access to and within the site.

The consent was subsequently modified under Mod2018/0506, which involved the deletion of the proposed pool and the retention of the existing pool, as well as the reduction of the pool terrace and first floor terrace, and the removal of the lower ground floor terrace. The approved garage and associated excavation was also deleted, and the existing carport replaced.

Subsequently, the consent was again modified under Mod2021/0921, which involved changes to the landscape plan.

This application has been lodged pursuant to Section 4.55(2) of the EP&A Act 1979 seeking to make the following amendments to the approved development:

Site Entry

- Widening of driveway from Florida Road by 1200mm for pedestrian access and vehicle manoeuvrability;
- Lowering of DA approved driveway and hardstand area from RL 44.00 to 42.55 AHD;
- New retaining walls with rockface sandstone cladding;

- New covered bin store and utilities room at driveway edge, set back approximately 8m from front boundary;
- Adjustment to front stair configuration;
- Increased setback to approved earthworks and staircase; and
- New inclinator from northwest corner of site to pool deck above.

Level 1

- New plant room for pool, water heating and solar panels;
- Floor level lowered by 430mm from RL 54.58 to 54.15 AHD;
- Internal and external wall changes to accommodate new kitchenette and storeroom and align with structure above;
- Timber cladding to façade of swimming pool and four new water tanks below pool deck;
- Concrete walls and slab replaced with cross laminate timber (CLT);
- New inclinator landing; and
- Steel post and beam structure to raise CLT off natural ground line resulting in floor thickness increase by 170mm.

Level 2

- New pool plant in undercroft;
- Replacement of existing swimming pool;
- New stairs along the eastern side boundary;
- Approved concrete works replaced with CLT/GLT resulting in increase to approved floor thickness of 170mm (floor level change from RL 57.28 to 57.36 AHD);
- Concrete deck replaced with steel and timber frame and timber boards; and
- Minor internal reconfiguration.

Level 3

- Increased building footprint by 115mm to east and 775mm at rear to accommodate new CLT/GLT and sloped walls;
- Modification of stairs from carport to dwelling for improved drainage and ventilation;
- New panelised walls and minor window changes;
- New CLT resulting in a floor thickness increase by 170mm (floor level change from RL 60.28 to 60.53 AHD);
- New external walkway along southern elevation to entry to provide direct access from living area to pool deck below; and
- Minor internal reconfiguration and amendment to approved staircase.

Level 4

- New panelised walls and minor window changes;
- New CLT and floor thickness increase of 170mm (floor level change from RL 63.28 to 63.85 AHD);
- Minor internal reconfiguration and amendment to approved staircase;
- Increased building footprint by 195mm to the east, 130mm to the south and 195mm to the west for new sloped walls;
- New louvre screens to western façade to reduce solar heat gain on glazing;

- Reduction to eaves on western side of dwelling by 125mm; and
- GLT structural columns on outdoor terrace.

Roof Level

- Replacement of pebbles to Level 4 roof with metal deck to allow for new solar panel fixing system resulting in an increase to the roof thickness of 175mm (roof level change from RL 66.33 to RL 67.025 AHD);
- Additional solar panels to Level 4 roof; and
- Extension to eave.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
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 2 DP 633579 , 7 Florida Road PALM BEACH NSW 2108
Detailed Site Description:	The site is known as 7 Florida Road, Palm Beach and has a legal description of Lot 2 in Deposited Plan 633579. The site is irregular in shape and has a total area of 1008m ² .

Vehicular and pedestrian access is gained via the 19.81m wide frontage of Florida Road, with additional vehicle access provided to the rear of the site via a right of carriageway.

The site is located on the south-eastern side of Florida Road.

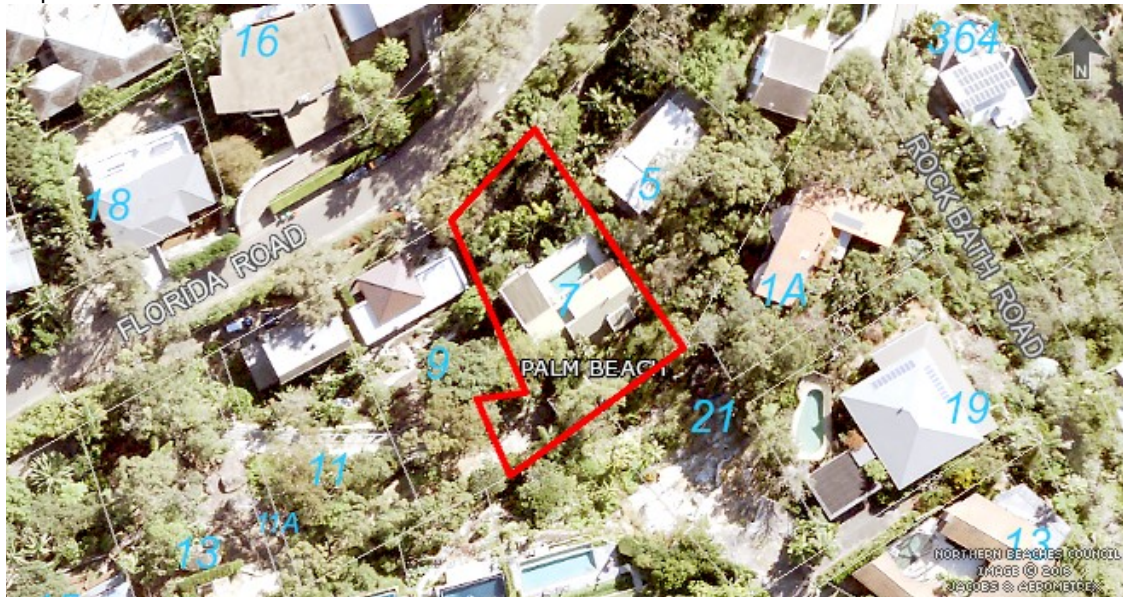
The site experiences a fall of 20.42m from the rear southeastern boundary of the site, down towards the front northwestern boundary of the site, with a slope of approximately 44.78%.

The site is currently occupied by a 4 storey dwelling house, elevated swimming pool, detached carport to the rear and hard stand space to the front of the site.

There are several canopy trees within the front of the site and within Council's road reserve.

The property is surrounded by residential properties to the north, south, east and west. The subject site currently obtains ocean views of Palm Beach, which is located to the far north-west of the site.

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 N0417/15** for Demolition of existing 4 storey dwelling. Proposed new 4 storey concrete and timber clad dwelling with additional garage and storage level off Florida Road. The proposal includes excavation of the site, new retaining wall works and landscape

works and the inclusion of 2 lifts to improve vertical access to and within the site. The application was approved by Council's former Development Unit (equivalent to current Development Determination Panel) on 28 July 2016. It is noted that demolition works to the existing dwelling approved under this consent have lawfully commenced.

- **Modification of Development Consent N0417/15 (Section 4.55(2) Modification)** granted for demolition of existing dwelling and proposed new dwelling approved by the Northern Beaches Development Development Panel on 30 January 2019. The changes included the deletion of the proposed pool and the retention of the existing pool, as well as the reduction of the pool terrace and first floor terrace, and the removal of the lower ground floor terrace. The approved garage and associated excavation was also deleted, and the existing carport at the rear of the site accessed via the shared ROW replaced.
- **Modification of Development Consent N0417/15 (Section 4.55(1A) Modification)** granted for demolition of existing dwelling and proposed new dwelling approved by Council staff under delegated authority on 19 January 2022. The changes involved amending the approved documents to refer to a new landscape plan which includes tree removal and transplanting consistent with what was approved in the parent consent.

APPLICATION HISTORY

During the assessment process the applicant submitted amended plans to include an inclinator to provide access from the garage adjacent to Florida Road to the dwelling house. The amended plans were re-notified between 6 April - 20 April 2022.

The Development Assessment Planner examined the subject site and the surrounds on 29 April 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0417/15, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> where His Honours states: <i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i> <i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i> <i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i> The applicant has provided the following justification to support their argument that the modifications are substantially the same: <i>"In quantitative terms, the proposed modifications will retain the number of dwellings, storeys and car spaces. The minimum front and side setbacks and landscaped area will also be retained as per the approved proposal".</i> <i>"In qualitative terms, the proposed modifications will not visually increase the bulk and scale, alter the overall building type, or reduce solar access to neighbouring properties. The modification will not result in any view impacts, nor will they lead to any additional privacy impacts".</i> <i>"The proposal will also remain the same 'essentially' or 'materially', being a five-bedroom dwelling across four storeys with four car spaces".</i> <u>Development Assessment Planner Comment:</u> Council's Development Assessment Planner agrees generally

Section 4.55 (2) - Other Modifications	Comments
	with the applicant's justification. In particular, the modified development remains a four storey dwelling house with five bedrooms and off-street parking accessed from Florida Road. Furthermore, the envelope remains generally consistent with the previously approved and subsequently modified development to the extent that one would not be able to discern the proposed changes to the envelope as they are considered to be minor in the context of the approved four storey dwelling house. In addition, the proposed modifications will not have a materially different amenity impact to neighbouring properties, specifically with regards to visual bulk, solar access privacy or views. The minor deck extension to the north-east on level 1 is excavated below the ground level and will not encourage opportunities for additional overlooking, whilst the deck extension to the south-west to accommodate for the inclinator does not provide further opportunities for overlooking into the principal private open space at No.9 (i.e. entertaining deck on front elevation) or provide direct sight lines into habitable rooms on the adjacent dwelling. In addition, the 900mm level 2 deck extension to the north is not visible from the principal private open space (i.e. front entertaining deck orientated towards ocean views) on the south-western adjacent site and does not provide additional opportunities for direct overlooking into habitable rooms on the adjacent properties. Moreover, the additional shadows cast by the height increase will be confined to the shared Right of Carriageway off Mitchell Road (upslope) and a heavily vegetated rear portion of the site at 9 Florida Road. It is further noted that the minor height increase will not compromise north-facing view lines towards Palm Beach and Barrenjoey House from upslope properties at Rock Bath Road as the modified roofline is situated approximately 5m below the levels of this road. Furthermore, the previously approved landscape scheme will remain in place. As such, the modifications will not alter the landscape character of the street. Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect	Development Application N0417/15 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation

Section 4.15 'Matters for Consideration'	Comments
planning instrument	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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 06/04/2022 to 20/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Timothy Lindsay McCaughey	11 The Citadel CASTLECRAG NSW 2068

One (1) submission was received following the public exhibition period. The following issue was raised within the submission

- Extension of Level 2 Balcony**

The submission raised concern of potential amenity impacts arising from the balcony extension at Level 2.

Comment:

In reviewing the elevation plans it appears that the Level 2 balcony will protrude an additional 900mm towards the front boundary when compared to the previously approved built form. Nevertheless, the principal private open space (i.e. front decking orientated towards ocean views) on the north-eastern adjacent site (No. 5) is situated on a north-eastern downslope aspect from the Level 2 balcony, which prevents direct sight lines between both areas. Furthermore, this extension does not contribute to additional shading of living room windows or private open space on the adjacent property and does not compromise ocean views from this site. Moreover, as the building envelope is generally consistent with what was previously approved it is considered that the modified proposal will not have a detrimental visual impact on the adjacent site.

Conclusion

The concern raised within the submission has been addressed above. The concern does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Landscape Officer	The proposed modification includes structural minor internal and external modifications to the approved development. The approved landscape works remain and Landscape Referral raise no concerns.
NECC (Bushland and Biodiversity)	Updated Biodiversity Referral (14 March 2022) This updated referral is based on additional information received by Council's Biodiversity Section on 14 March 2022. Additional information provided by the applicant confirms that Trees 8 and 21 were approved for removal under Mod2021/0921. Subject to retention of existing conditions, there are no further objections. Original Biodiversity Referral (23 February 2022) Additional information is required in order to complete the Biodiversity referral. The Statement of Environmental Effects states that "the approved landscape plan is retained with no tree removal proposed". However, the submitted architectural plans (Site Plan, George Livissianis, 07/12/21) identify Tree 8 (<i>Glochidion ferdinandii</i>) and Tree 21 (not identified) as proposed for removal. Tree 8 was proposed for retention under Mod2018/0506, whereas Tree 21 was not shown in any plans for this modification. Neither tree has been addressed in an aboricultural report for either Mod2018/0506 or the current application. Clarification as to the extent of tree impacts is required before compliance against relevant Biodiversity controls can be assessed.
NECC (Development Engineering)	The applicant seek to amending driveway internal changes and provide for a inclinator. Geotechnical Engineers report recommendation are complied. No Development engineering objection subject to conditions: 1. Deleted 7 and 13 in "C" <i>prior to issue of the Construction certificate.</i> 2. Add the following conditions:
Road Reserve	The proposal includes structural retaining walls and other civil works across the road verge including a stairway. A recent Street Levels application is noted however, it is insufficient in its documentation for the civil works and does not cover the stairs or retaining walls. The grass cell driveway crossing within the road reserve does not comply with Council's standards given the requirement for plain concrete and will need to be excluded from the consent and subsequent civil works application. Development Engineering to require s138 Road Act application for driveway civil works including detailed design drawings and structural

Internal Referral Body	Comments
	certifications to ensure compliance with Council standards and specifications.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1264672S_02).

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

Commitment	Required Target	Proposed
Water	40	47
Thermal Comfort	Pass	Pass
Energy	50	99

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 Coastal Use Area pursuant to this SEPP. Accordingly, an assessment has been carried out against Clauses 2.11 and 2.12 of the SEPP as follows:

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(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.

(2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Comment:

The site is located approximately 91m to the south-east of the foreshore building line at Palm Beach. Due to the sufficient separation, the proposed development will not result in overshadowing or wind funnelling of the foreshore area. In addition, as the modified ridge sits approximately 5m below road levels at Rock Bath Road to the rear of the site, which will enable the retention of north-facing public domain views towards Barrenjoey House. Furthermore, the proposal does not compromise access to or along the foreshore area.

As the bulk, height and density of the modified development remains generally consistent with the previously approved four storey dwelling house, it is considered that modified development will not detract from the visual amenity of the coastal area. In addition, the site is not mapped as known for containing Aboriginal relics or significant items. In this regard, the modified development will not have an adverse impact upon Aboriginal cultural heritage, practices or places. The site is also not located within close proximity to items identified with local environmental built heritage and thus, the modified development will not have an adverse impact upon cultural and built environmental heritage.

For the reasons outlined above, it is considered that the modified development is designed, sited and will be managed to avoid an adverse impact upon the matters referred to in subclause (1).

Council's Development Assessment Planner has also taken into account the surrounding coastal and built environment, and the bulk, scale and size of the modified development and concluded that the modified proposal is suitable for this coastal setting due to the general consistencies with the previously approved four storey dwelling house.

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:

Council is satisfied that the modified development is not likely to cause increased risk of coastal hazards within the locality.

Chapter 4 Remediation of land

4.1 Object of this Chapter

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

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

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

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

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

Comment:

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

Conclusion

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

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.17m	11.87m	39.65%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
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
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance

The modified proposal increase the height of the roof from RL 66.33 to RL 67.025 AHD. In turn, this increases the maximum height of the development from 11.17m (previously approved) to 11.78m (proposed), which does not meet the 8.5m statutory requirement.

It is noted that the 10m exemption provision for sloping sites, as detailed within Clause 4.3(2D) of Pittwater LEP 2014, is not applied as the building exceeds the 10m height plane.

Merit Assessment

Whilst this Section 4.55(2) Modification will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (i.e. substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 Modification applications. This notion was outlined in the NSW Land and Environment Court Case of *Gann v Sutherland Shire Council [2008] NSWLEC 157*.

Notwithstanding that Clause 4.6 does not apply to modification applications, Council must still be satisfied that the modified proposal satisfies the objectives of Clause 4.3 - Height of Buildings and the objectives of the C4 Environmental Living zone.

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

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

Comment:

The modified building envelope remains generally consistent with the previous approved four storey dwelling house and the additional increase in the roof height from RL 66.33 to RL 67.025 AHD will not be discernible when compared to the current approved dwelling. Furthermore, the front, side and rear setbacks to the dwelling facade (excluding decking) will remain consistent with the approved development, whilst the approved landscape scheme will remain unchanged. As the height, bulk and scale of the modified development remains consistent with the previously approved four storey dwelling house on the site, it is considered that the development will be consistent with the desired character of Florida Road.

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

Comment:

As discussed above, the height and scale of the modified development is consistent with the previously approved four storey dwelling house. In this regard, it is considered that the modified proposal would not have a materially different impact upon the streetscape when compared with the approved dwelling house. Therefore, the height and scale of the development is considered to be acceptable in this circumstance.

- *to allow for the reasonable sharing of views,*

Comment:

The roofline of the modified development is situated well below upslope properties and is sited approximately 1m above the ridge line of the existing dwelling house that is current being demolished. Figure 1 below depicts existing view lines from 21 Rock Bath Road to the rear (vacant site) and includes the roofline of the existing dwelling house.

Figure 1: north-facing views from 21 Rock Bath Road (source: Council Assessment Report for Development Application N0417/15)



Noting the 1m increase when compared to the ridge line of the existing dwelling, it is evident that the modified roof form would only obscure filtered portions of the view, with the unobstructed view lines towards Palm Beach and the Western Foreshore being maintained. Thus, reasonable view sharing will be maintained, notwithstanding the non-compliance with the height standard.

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

Comment:

The proposed modifications generally maintain the bulk and scale of the approved four storey dwelling house. The height non-compliance is due in the main to the topography of the site, which falls steeply. The building continues to generally step back up the slope in response to the topography, and the proposed modifications are considered to remain sensitive to the topography in this regard.

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

Comment:

The site is sufficiently separated from items of environmental heritage. Moreover, the bulk and scale of the modified development remains largely consistent with the current approved dwelling house and the approved landscaping scheme remains unaltered. Thus, it is considered that the modified proposal will not have an adverse visual impact on the natural environment, heritage conservation areas and heritage items.

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:

It is considered that the modified development will have a similar impact when compared to the previously approved development. Thus, the proposal meets the intent of this objective.

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

Comment:

As noted above, the modified development will not have a different impact upon ecological, scientific or aesthetic values of the locality when compared to the previously approved development.

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

Comment:

The modified development retains a 'terraced style' built form that steps up the slope of the site. This factor, combined with the fact that the landscaping scheme remains unchanged and the building envelope remains generally consistent, will ensure the development integrates effectively with the landform and landscape.

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

Comment:

The modified development does not necessitate the removal of additional vegetation on the site.

Conclusion

Given the consistency of the variation to the objectives of the zone, and the objectives of Clause 4.3 of Pittwater LEP 2014, the proposed variation to the Height of buildings Development Standard is considered acceptable in the circumstances.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved (latest)	Proposed	Complies
Front building line	6.5m	14.5m	unaltered	Yes
Rear building line	6.5m	nil setback (carport) 7m (dwelling)	unaltered 6m (dwelling - level 3)	No further non-compliance No
Side building line	2.5m (north-east)	2.35m	2.35m (dwelling) 1.23m (level 1 deck)	No further non-compliance No
	1m (south-west)	2.0m	2.0m	No further non-compliance
Building envelope	3.5m then projected at 45 degrees (north-east)	Outside envelope	Outside envelope (minor additional non-compliance)	No
	3.5m then projected at 45 degrees (south-west)	Outside envelope	Outside envelope (minor additional non-compliance)	No
Landscaped area	60%	46.1% (464sqm)	unaltered	No further non-compliance

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	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

A4.12 Palm Beach Locality

The approved dwelling house is four storeys in height, whereas the Palm Beach DFC locality statement calls for two storey development within low density residential areas.

Nevertheless, the modified proposal does not increase the number of storeys to the development and maintains an envelope that is generally consistent with the current approval. As the height, bulk and scale of the modified development remains consistent with the previously approved four storey dwelling house on the site, it is considered that the development will be consistent with the desired character of Florida Road.

C1.19 Incline Passenger Lifts and Stairways

Description of non-compliance

The control requires incline passenger lifts to be located within 1m of the existing ground level. The proposed incline passenger lift is generally located within 1m of ground level, with the exception of the portion that extends upwards to provide access to the level 1 decking. Thus, the proposal does not meet the numeric requirement.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the

underlying outcome of the control as follows:

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.*

Comment:

Due to the steep slope and varying levels of the land, it is difficult to ensure the inclinator is within 1m of the ground level for the entire site. Thus, to determine consistency with this outcome the development is considered against the remaining provisions of this control as follows:

- i) be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees,

Comment:

The excavation works for the footings is not excessive. In addition, the inclinator does not result in the removal of natural rocks and the development's impact upon vegetation is considered to be acceptable by Council's Landscape Officer.

- ii) be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures,

Comment:

As noted above, a significant portion of the inclinator track is confined in close proximity to ground level (i.e. within 1m). The area that protrudes above 1m is setback approximately 14m from the front boundary and will be softened by the approved landscaped treatment.

- iii) be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings,

Comment:

A suitable condition has been included with this consent that requires noise to remain at an acceptable level. Details regarding a privacy screen have not been provided. Thus, a condition has been included requiring the outer edge (i.e. south-west) of the inclinator to be affixed with a 1.65m high privacy screen to prevent overlooking.

- iv) be painted to blend in with surrounding vegetation and screened by landscaping,

Comment:

The approved landscape treatment will soften the visual impacts of the inclinator.

- v) be set back two (2) metres from the side boundary to the outer face of the carriage

Comment:

The inclinator track is located over 2.05m from the south-western side boundary.

- vi) be located wholly on private land, and

Comment:

The inclinor is located wholly within the subject site.

vii) have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.

Comment:

As noted above, a privacy screen has been conditioned.

Conclusion

Based on the above assessment, it is concluded that the inclinor is supportable on merit, subject to conditions.

D12.6 Side and rear building line

Description of non-compliance

The modified development conforms to the side setbacks of the previously approved development, with the exemption of decking on level one which is setback 1.23m from the north-eastern side boundary, which does not satisfy the 2.5m requirement. However, it is noted that this area is excavated below the natural ground levels of the side boundary.

Furthermore, the walkway on level 3 is setback 6m from the rear boundary, which does not meet the 6.5m requirement. The walkway is sited within a disturbed area of the site below an existing retaining wall.

Merit Assessment

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

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

Comment:

The height, bulk and scale of the modified development remains generally consistent with the previously approved four storey dwelling house on the site. As such, it is considered that the development will be consistent with the desired character of Florida Road.

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

Comment:

The minor decking and walkway component does not exacerbate the bulk and scale of the approved four storey dwelling house.

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

Comment:

As discussed within the section of this report relating to Clause 4.3 - Height of Buildings of Pittwater LEP 2014, the modified proposal does not unreasonably impact upon existing views from upslope properties.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

As noted above, reasonable view sharing will be achieved.

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

Comment:

The minor balcony and walkway extension is situated below the ground level on the side boundaries and will not create additional privacy impacts. Furthermore, the additional shadows cast by the modified development are confined to the shared Right of Carriageway off Mitchell Road (upslope) and a heavily vegetated rear portion of the site at 9 Florida Road.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The approved landscaping scheme will remain in place subsequent to the modification. This includes the planting of native canopy trees.

- *Flexibility in the siting of buildings and access.*

Comment:

Flexibility is afforded with regards to the location of the decking as the modified development does not have a materially different amenity impact when compared to the previously approved development.

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

Comment:

The approved landscaping scheme will remain in place subsequent to the modification.

- *To ensure a landscape buffer between commercial and residential zones is established.*

Comment:

The site does not adjoin a commercial zone.

Conclusion

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

D12.8 Building envelope

Description of non-compliance

The approved four storey dwelling house protruded outside of the prescribed side building envelope on the south-western and north-eastern side boundaries. The non-compliance was supported on merit due to consistencies with the outcomes of this control.

The modified proposal increases the building height from RL 66.33 to RL 67.025 AHD and involves additional upper floor minor elements that protrude outside of the prescribed envelope. Figures 2 and 3 below depicts the components of the building that protrude outside of the prescribed envelope and the additional areas of non-compliance.

Figure 2: elements outside of prescribed envelope

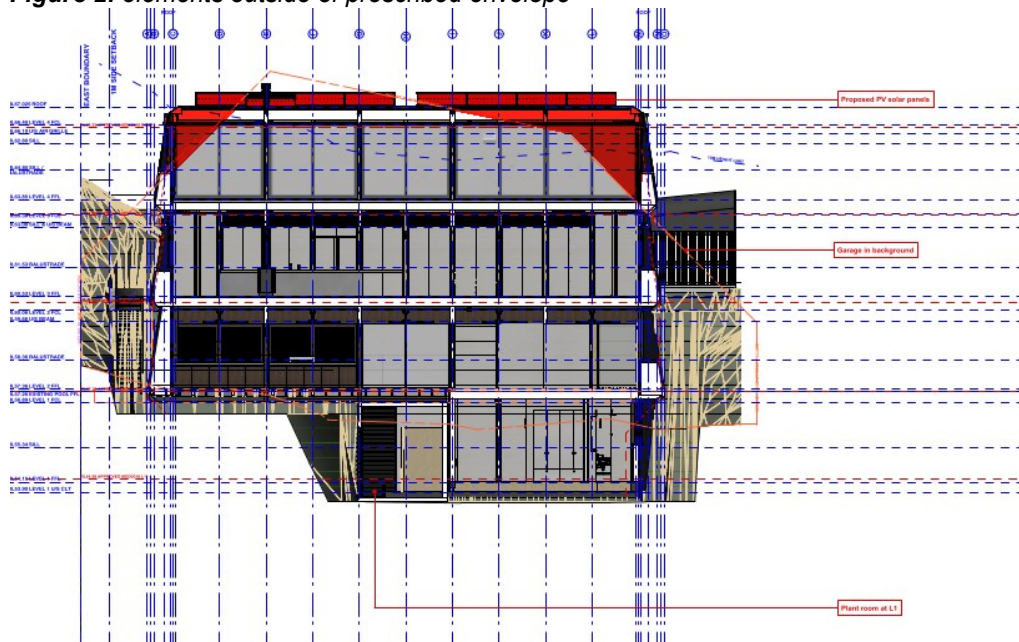
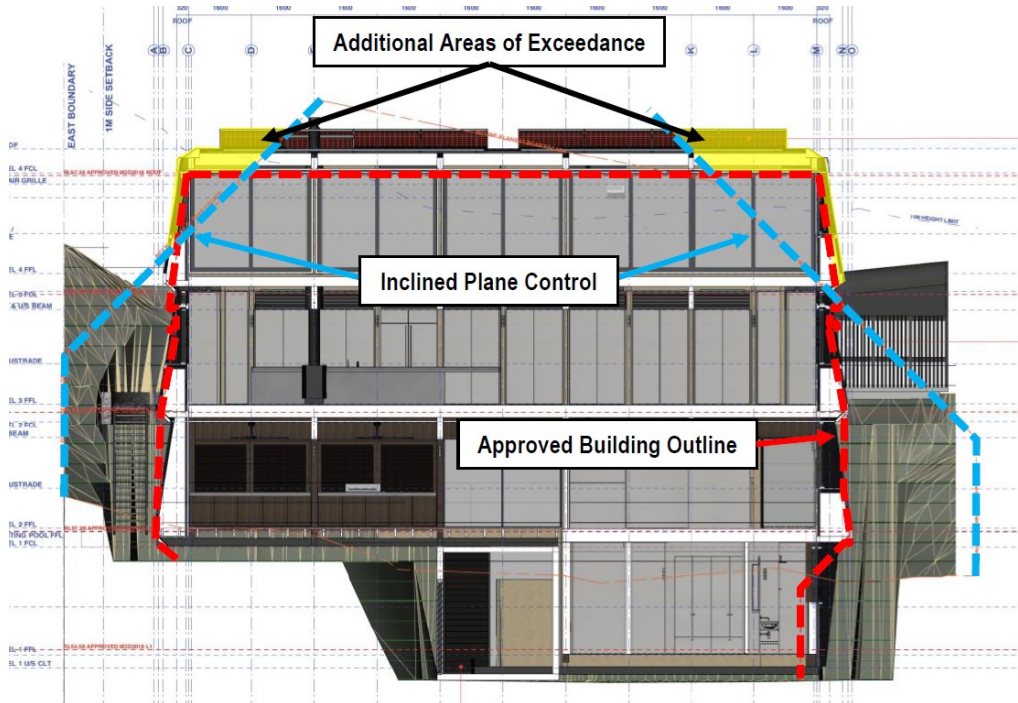


Figure 3: additional areas of non-compliance shaded in yellow



Merit Assessment

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

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

Comment:

The height, bulk and scale of the modified development remains generally consistent with the previously approved four storey dwelling house on the site. As such, it is considered that the development will be consistent with the desired character of Florida Road.

- *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 building, as modified, still employs a 'terraced style' built form that steps up the slope of the site and integrates with the landform and landscaping. In addition, the modified proposal does not increase the number of storeys to the built form. Furthermore, the approved landscaping scheme will remain unchanged and the height of the modified development sits below the top of the escarpment and tree canopy. For these reasons, it is considered that this outcome is achieved.

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

Comment:

The modified development retains the general footprint of the approved dwelling and will respond to the spatial characteristics of the existing natural environment.

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

Comment:

The height, bulk and scale of the modified development remains generally consistent with the previously approved four storey dwelling house on the site. The additional elements of the building that protrude outside of the prescribed side building envelope will not be discernable when compared to the current approved four storey dwelling house.

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

Comment:

As discussed earlier within this report, reasonable view sharing will be achieved.

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

Comment:

As discussed earlier within this report, the modified development will not have a materially different amenity impact to neighbouring properties when compared to what is currently approved on the site.

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

Comment:

The approved landscaping scheme will remain unchanged.

Conclusion

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

D12.10 Landscaped Area - Environmentally Sensitive Land

The existing non-compliant landscaped area remains unchanged subsequent to the modified development. Thus, the existing approved non-compliance is supported 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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

The modified proposal involves internal reconfigurations, minor amendments to the floor levels and overall building height, changes to decking and eaves, and a new inclinator to provide for greater access to the dwelling.

Whilst the overall building height is increased by 695mm, it is considered that the changes will not be discernible when compared to the previously approved four storey dwelling house.

The modified proposal is considered to be substantially the same as what was previously approved, both qualitatively and quantitatively, noting that the modifications will retain the number of storeys, bedrooms and car spaces and will not change the overall building type or have a materially different amenity impact to neighbouring properties in terms of solar access, view sharing, visual bulk and privacy.

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0963 for Modification of Development Consent N0417/15 granted for demolition of existing dwelling and proposed new dwelling on land at Lot 2 DP 633579,7 Florida Road, PALM BEACH, subject to the conditions printed below:

CONDITIONS TO BE INCLUDED UNDER THIS MODIFIED CONSENT

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1C. Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
00.01 (Revision C)	21/03/2022	George Livissianis
01.01 (Revision B)	07/12/2021	George Livissianis
01.02 (Revision C)	01/12/2021	George Livissianis
01.03 (Revision B)	07/12/2021	George Livissianis
01.04 (Revision C)	07/12/2021	George Livissianis
01.05 (Revision C)	21/03/2022	George Livissianis
01.06 (Revision C)	21/03/2022	George Livissianis
02.01 (Revision B)	07/12/2022	George Livissianis
02.02 (Revision C)	21/03/2022	George Livissianis
02.03 (Revision C)	21/03/2022	George Livissianis
02.04 (Revision C)	21/03/2022	George Livissianis
03.01 (Revision C)	21/03/2022	George Livissianis

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

Report on Geotechnical Site Investigation Ref. 2014-015.1	17/12/2021	Crozier Geotechnical Consultants
BASIX Certificate No. 1264672S_02	06/12/2021	Envirostructure

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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

C14. 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 Crozier Geotechnical consultant dated December 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 Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

C15. 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.

C16. Submission Roads Act Application for Civil Works in the Public Road

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

The application is to include four (4) copies of Civil Engineering plans for the design of Retaining wall, stairs, driveway crossing and lay back to Council's Crossing standards which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- The existing retaining wall is to set back 1.2 from the kerb alignment (invert of gutter) along the full frontage of the subject site.
- Construction of kerb & gutter fronting the subject site with smooth transition to existing conditions.
- A 3.5 metre wide concrete vehicular crossing to Northern Beaches Council's Extra High profile, drawing No. A4 3330/4 shall be incorporated with the internal driveway design.
- Detail design for the pedestrians access (stairs) within the road reserve.
- Details structural design with for the stairs, driveway, retaining wall, kerb & gutter and road reserve works.

- Detail cross-section and longitudinal sectional design with existing and proposed in AHD levels for the required road works.
- Any previously approved Section 138 Road Act is annulled and do not apply.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

C17. Vehicle Driveway Gradients

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

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

Reason: To ensure suitable vehicular access to private property.

C18. Privacy Screen to Inclinator

A non-transparent screen at a height of 1.65 metres above the finished floor level is to be affixed to the entire south-western elevation of the inclinator carriage. The screen is to be a fixed panel or louver style construction with a maximum spacing of 20 millimetres.

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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

D22. 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.

D23. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 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.

D24. Vehicle Crossings

The Applicant is to construct one extra high vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/4 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

E13. Retaining wall

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety.

E14. Certification driveway, retaining wall stairs within the road reserve

The Applicant shall submit a work as executed plan prepared by a registered surveyor and a Structural Engineers' certificate certifying that the elevated driveway and parking facility was constructed in accordance within the approved Section 138 Road Act Approval and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: Compliance with this consent.

ON-GOING CONDITIONS TO BE MAINTAINED OVER THE LIFE OF THE DEVELOPMENT

B34. Level 1 not to be used for Separate Habitation

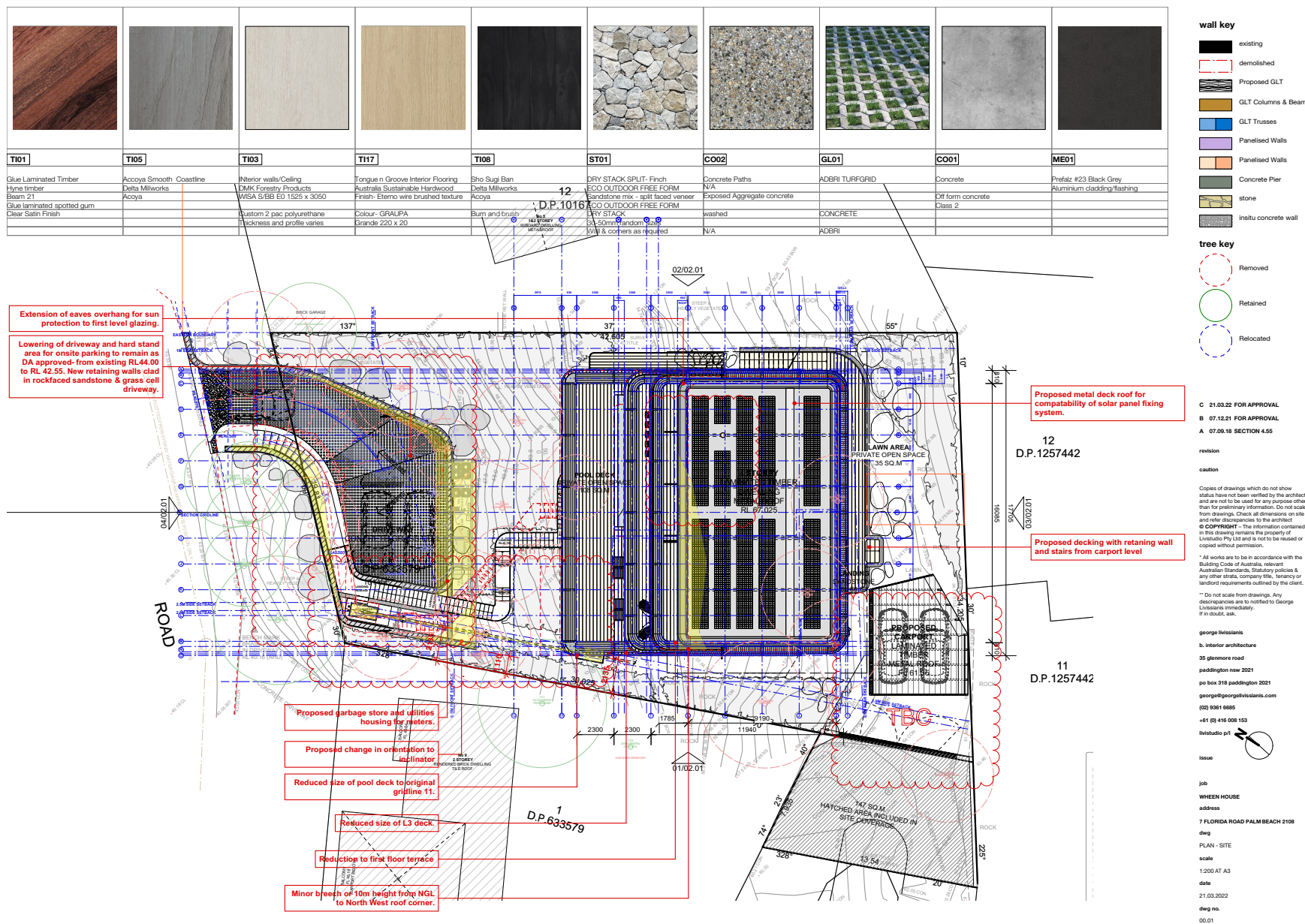
No approval is granted under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy.

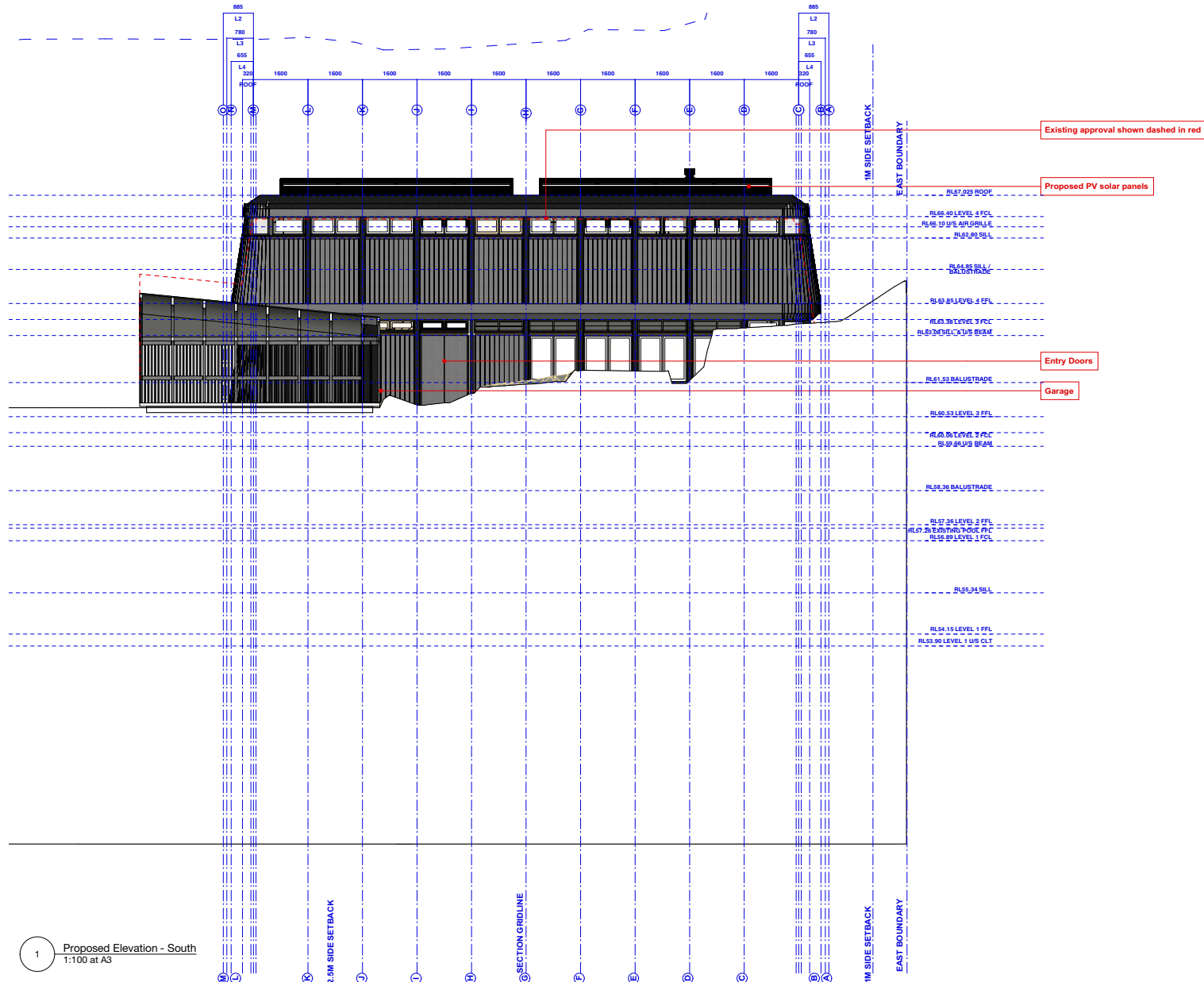
Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

CONDITIONS TO BE DELETED FROM DEVELOPMENT CONSENT N0417/15

C7. 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.

C13. Applicants will be required to obtain prior to the issue of a Construction Certificate, a Section 139 Consent for Works on a Public Road Reserve issued by the Council under the provisions of Section 138 of the Roads Act 1993 for the design and construction of any works located on the road reserve including Access Driveways.





- wall key**
- existing
 - demolished
 - Proposed GLT
 - GLT Columns & Beams
 - GLT Trusses
 - Panelised Walls
 - Panelised Walls

B 07.12.21 FOR APPROVAL
A 07.09.18 SECTION 4.85

revision
caution

Copies of drawings which do not show status have not been verified by the architect and are not to be used for any purpose other than for preliminary information. Do not scale from drawings. Check all dimensions on site and refer discrepancies to the architect.
COPYRIGHT - The information contained in this drawing remains the property of Livstudio Pty Ltd and is not to be reused or copied without permission.

* All works are to be in accordance with the Building Code of Australia, relevant Australian Standards, Statutory policies & any other strata, company title, tenancy or landlord requirements outlined by the client.

** Do not scale from drawings. Any discrepancies are to be notified to George Livissianis immediately. If in doubt, ask.

george livissianis

b. interior architecture

35 glenmore road

paddington nsw 2021

po box 318 paddington 2021

george@georgelivissianis.com

(02) 9361 6665

+61 (0)416 008 153

livstudio ptl

Issue

job

WHEN HOUSE

address

7 FLORINDA ROAD PALM BEACH 2108

dwg

ELEVATIONS - SOUTH EXTERIOR

scale

1:100 AT A3

date

07.12.2021

dwg no.

02.01

