AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held onvia teleconference

WEDNESDAY 8 JUNE 2022



Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 8 June 2022 Commencing at 10:00am

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Development Determination Panel held 25 May 2022

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS 4

3.1 DA2021/1487 - 35 Bungan Head Road NEWPORT - Demolition works and construction of a dwelling house, including an outbuilding and a swimming pool 4

3.2 DA2021/2232 - 1851 Pittwater Road BAYVIEW - Demolition works and construction of a dual occupancy 20

3.3 Mod2022/0059 - 1793, 1795, 1797 Pittwater Rd MONA VALE and 38 Park St MONA VALE - Modification of Development Consent DA2020/1179 granted for demolition works and construction of a Seniors Housing development with basement parking & associated landscaping 63

3.4 Mod2022/0023 - 30 - 38 Ethel Street SEAFORTH - Modification of Development Consent DA2019/0865 granted for use of Balgowlah RSL carpark for an Organic Food Market 91

3.5 DA2022/0399 - 48 Carawa Road CROMER - Alterations and additions to a dwelling house and attached secondary dwelling 106

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 25 MAY 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 25 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	**DA2021/1487 - 35 BUNGAN HEAD ROAD NEWPORT - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE, INCLUDING AN OUTBUILDING AND A SWIMMING POOL**
REPORTING MANAGER	**STEVE FINDLAY**
TRIM FILE REF	**2022/333071**
ATTACHMENTS	**1 ⇩DDP Mintues - 13 April 2022** **2 ⇩Supplementary Memo** **3 ⇩Site Plan and Elevations**

PURPOSE

To refer the attached application for determination following the meeting of 13 April 2022 where the application was deferred for amended plans.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council as the consent authority **approves** Development Consent to DA2021/1487 for Demolition works and construction of a dwelling house, including an outbuilding and a swimming pool on land at Lot 58 DP 10423, 35 Bungan Head Road NEWPORT, subject to the conditions set out in the Assessment Report.

DETERMINATION OF DEVELOPMENT APPLICATION

THAT Council as the consent authority, **defers determination** of Development Application DA2021/1487 for Demolition works and construction of a dwelling house, including an outbuilding and a swimming pool on land at Lot 58 DP 10423, 35 Bungan Head Road NEWPORT for the reasons following reasons.:

1) Amended Plans
Amended plans are to be received to address view sharing and issue relating to the outbuilding.

The amended plans are to be submitted to the Council within 21 days from the date of the meeting, otherwise the application will be determined on the information currently provided. Following receipt of this information, the application will be re-notified for a period of 7 calendar days to the neighbouring properties. On conclusion of the re-notification period, and consideration of any further submissions received, the Panel will determine the application electronically, unless the Chair determines that a further public meeting is required.

3/0

Memo

Planning & Place

To:	Adam Susko, Principal Planner
Cc:	Steve Findlay, Manager Development Assessment
From:	Development Determination Panel
Date:	31 May 2022
Subject:	Development Application No. DA2021/1487, No. 35 Bungan Head Road, Newport
Record Number:	2022/328725

Development Application No. DA2021/1487 ("DA2021/1487") was reported to the Development Determination Panel ("DDP") on 13 April 2022 with a recommendation for approval.

The recommendation was subject to a number of conditions, including Condition No. 10 which reads:

> ***10. Amendments to the approved plans***
>
> *The following amendments are to be made to the approved plans:*
>
> *a. The two storey cabana/outbuilding located to the southern end of the site is to be deleted in its entirety. No ground works, excavation or vegetation removal on the footprint of this structure is authorised under this consent.*
>
> *b. The inclinator and its associated landings are to be deleted from the plans*
>
> *c. Planter box(es) are to be installed for along the outermost western edge of the deck accessible from the kitchen and living room for the full width of the deck. The planter box(es) are to have a minimum internal dimension of 1.0m and shall be constructed or installed to a minimum height of 1.0m above finished floor level. The planter box(es) are to be planted with native species capable of reaching a height between 1.0m and 1.5m at maturity.*
>
> *d. A fence or screen that is non-transparent is to be erected along the outermost western edge of the swimming pool deck to a height of 1.7m measured from finished floor level.*
>
> *e. The balustrade of the balcony accessible from the 'kids breakout' room is to be either solid or opaque in finish.*
>
> *Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

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

In the DDP Minutes of 13 April, 2022, the Panel noted as follows (extract):

- *With respect to the impact on views from No. 60 Bungan Head Road, it was noted by the Panel that the size and scale of the proposed garage will impact upon the views from No. 60 Bungan Head Road. One element of the garage that results in some of the view impact is the southern edge, which exceeds the 8.5m height limit. The Panel queried the applicant on the necessity of the size and scale of the proposed garage, its chosen location and what had been done to minimise its size. The panel was not satisfied that the reasons provided justified the impact. The Panel formed the opinion that the proposed garage could be redesigned to reduce its length and width to ensure better view sharing is achieved.*

- *The issue relating to the outbuilding was considered by the Panel, the Panel agrees with the assessment report that the current proposal is capable for habitation considering that bedrooms, living room and bathrooms are all proposed which is contrary to the intent of the control, is not considered a separately accessible structure and better fits the definition of a secondary dwelling.*

  In this regard, the panel agrees that the structure should be deleted as stipulated by Condition 10 a, or alternatively the applicant can submit a revised scheme for a single storey structure that meets the requirement of Clauses C1.11 and C1.14 of Pittwater 21 DCP and compliance with the rear setback control is achieved.

- *Amended plans are to be received to address view sharing and issue relating to the outbuilding.*

  The amended plans are to be submitted to the Council within 21 days from the date of the meeting, otherwise the application will be determined on the information currently provided. Following receipt of this information, the application will be re-notified for a period of 7 calendar days to the neighbouring properties. On conclusion of the re-notification period, and consideration of any further submissions received, the Panel will determine the application electronically, unless the Chair determines that a further public meeting is required.

It is noted that the DDP Minutes were not publicly released until 19 April 2022 and therefore a corresponding extension to the 21-day deadline was granted to the applicant.

On 5 May 2022, the applicant uploaded revised plans via the Planning Portal which includes the following amendments:

"Adjustments include:

- ***Garage / view impacts***
  - *Southern edge of garage roof lowered 300mm*
  - *View analysis provided for revised proposal*
- ***"Separately accessible structure"***
  - *Cabana floor plan reduced to <60sqm*
  - *All setbacks comply*

- *Internal arrangement and intended function aligns with C1.14 i.e. office, rumpus, toilet, studio and, critically, no sleeping quarters*
- *Studio volume shifted west over floor below such that eastern elevation of studio and ground level of the "separately accessible structure" aligns*
- *Perimeter planting added and deck area reduced to mitigate potential for cross-viewing*

- ***Landscaping***
  - *Landscape calculation plan updated to reflect amendments*
  - *Landscaped calculation plan revised to omit section of soft landscaping under driveway, excluded by council assessment planner*
  - *Compliance achieve by way of minor amendment across site, including reduced southern edge of deck to pool*

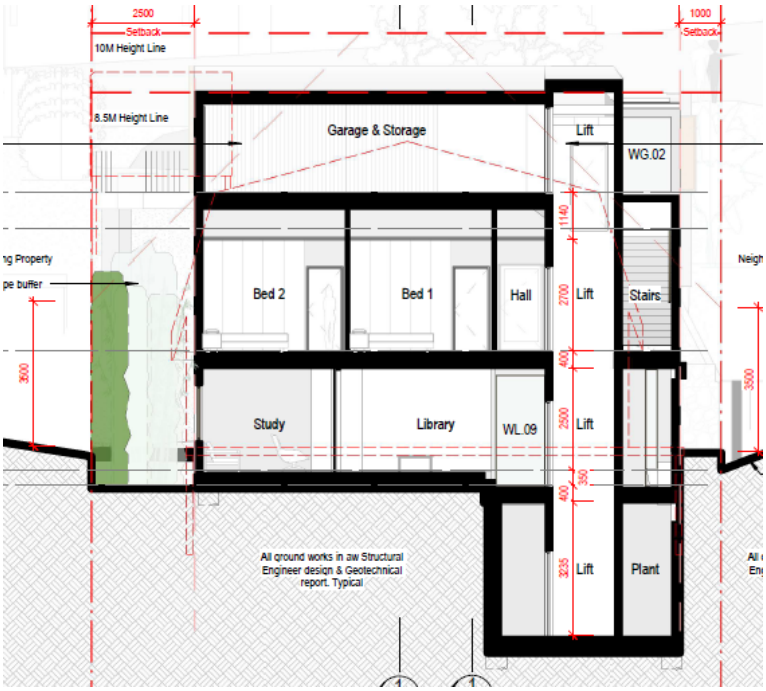
We've made these adjustments without the opportunity to clarify the Panel's directions. We ask that if the information supplied is found to be insufficient that we be given the opportunity to adjust accordingly.“

The applicant also provided a letter to the DDP (TRIM : 2022/290484) and a View Impact Analysis (TRIM : 2022/290480).

Review of Additional Information

In response to the applicant’s submissions to address the DDPs requests, the assessment officer has made the following observations:

- The southern (rear) portion of the garage has a reduced roof height from RL54.71 to RL54.41. The below sectional drawing by the project architect shows the reduced roof height, noting that the previous outer roof edge ran at the same level as the top of the lift-shaft.



- The footprint, location and layout of the garage has not changed.
- The applicant contends that no unreasonable view loss occurs consequent of the garage.
- The outbuilding subject of Condition 10(a) has been reduced in internal area from 65.55m$_2$ to 59.9m^2. The room annotations have changed from '*living, kitchenette, bath, bed 1 and bed 2*' to '*rumpus, bath, home office'*. The plans have removed the kitchenette area.
- The applicant has elected to retain the two-storey component of the outbuilding by retaining the studio on Level 1. The deck area adjacent to the studio has been reduced in depth by the installation of planter boxes inward of the outermost western edge.

Submissions to Re-notification

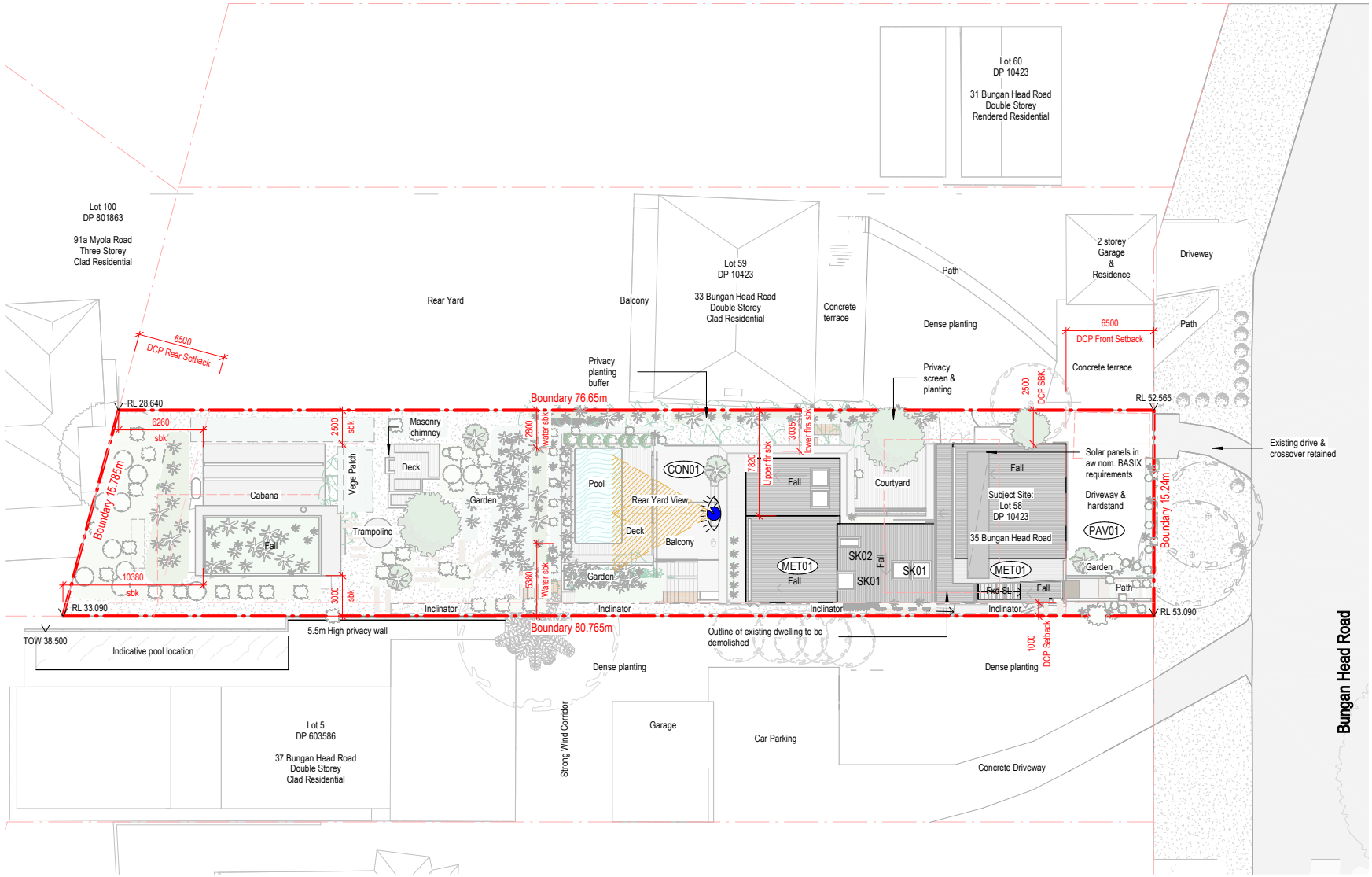
In response to the re-notification of the amended plans, five (5) written objections were received, which generally state that the concerns raised in the initial submissions still remain valid, and that the amended plans have not gone far enough to address their concerns.

Notes for Panels Consideration

It is acknowledged that the applicant attempted to make contact with the DDP several times, however that Panel does not exist to give advice but rather to make determinations. The applicant therefore discussed the proposed amendments with Council's assessment officer, to which it was advised that the assessment officer could only rely on the written advice on the DDP Minutes and the applicant's response.

Recommendation

That the amended plans are referred to the DDP for their consideration and determination of the application.



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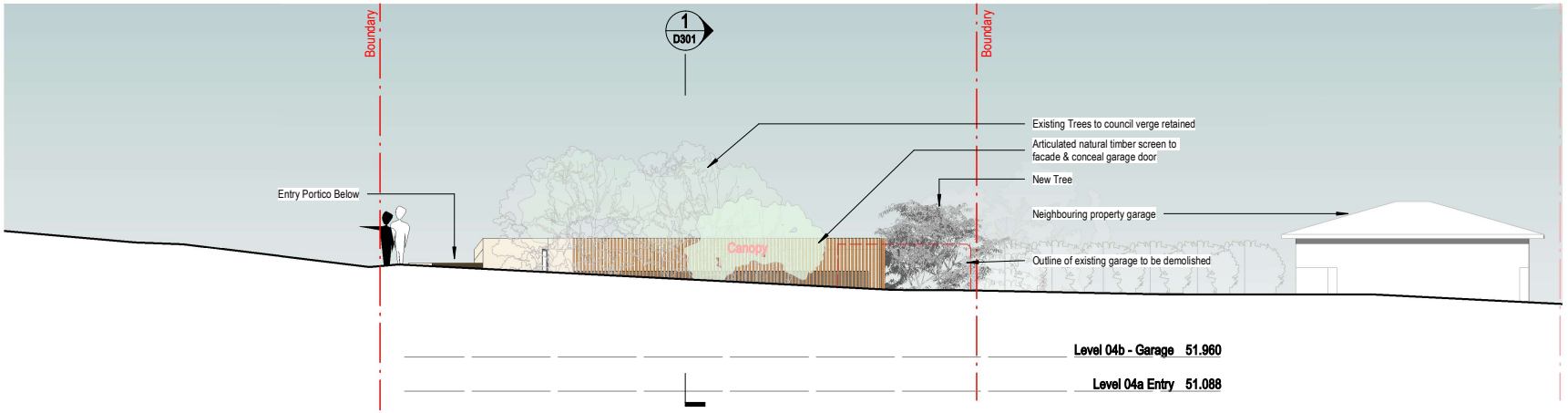
Development Application

No.	Description	Date
1	Updated for consultant information and issued for Development Application	18 May 2021
2	Issued for Submission	01 June 2021
3	Updated for DA submission	23 Dec 2021
4	Updated for panel review	04 May 2022

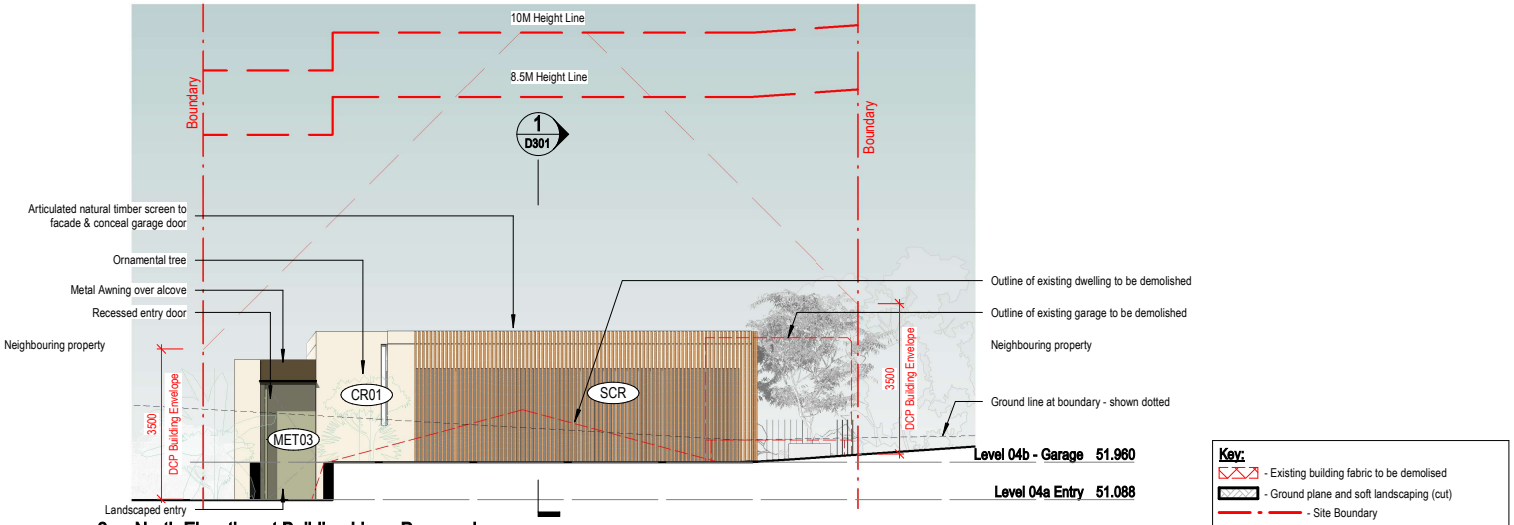
Project: **Bungan Residence**
Location: **35 Bungan Head Road, Newport, 2106**
Client: **Gorazdowski & Verbeek Family**
Drawing: **Site Layout - Proposed**

Scale @ A3	Drawn by	Checked by
1 : 250	BS	BS
Project Issue Date: May 2020	Sheet Issue Date: 04 May 2022	
Project number: 1180	Drawing #: D011	Revision: 4

4/05/2022 10:09:09 PM



__1__ **Streetscape Elevation - Proposed**
1 : 100



__2__ **North Elevation at Building Line - Proposed**
1 : 100

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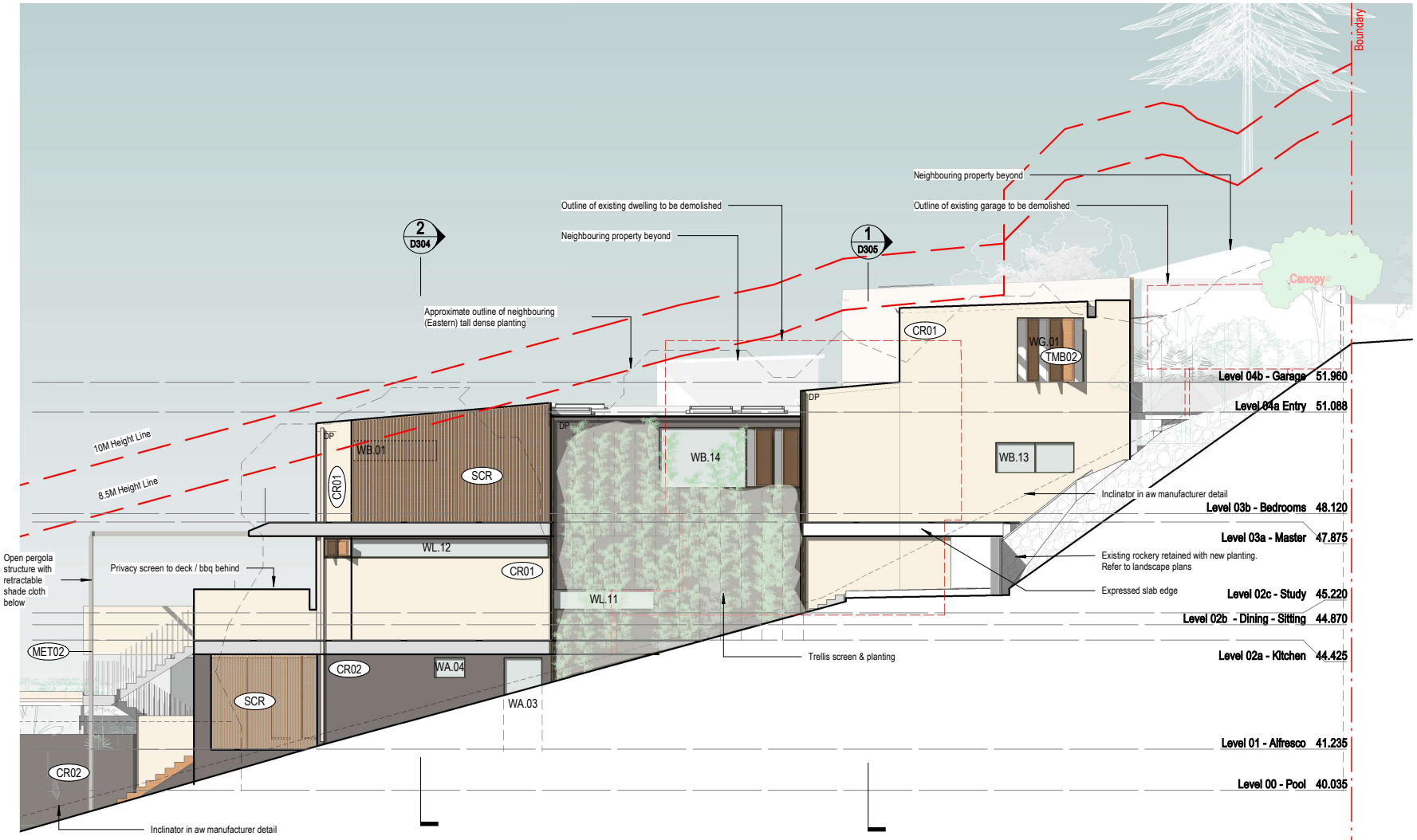
Development Application

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4	Updated for panel review	04 May 2022

Project: **Bungan Residence**
Location: **35 Bungan Head Road, Newport, 2106**
Client: **Gorazdowski & Verbeek Family**
Drawing: **North Elevation - Proposed**

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS
Project Issue Date	**Sheet Issue Date**	
May 2020	04 May 2022	
Project number	**Drawing #**	**Revision**
1180	D400	4

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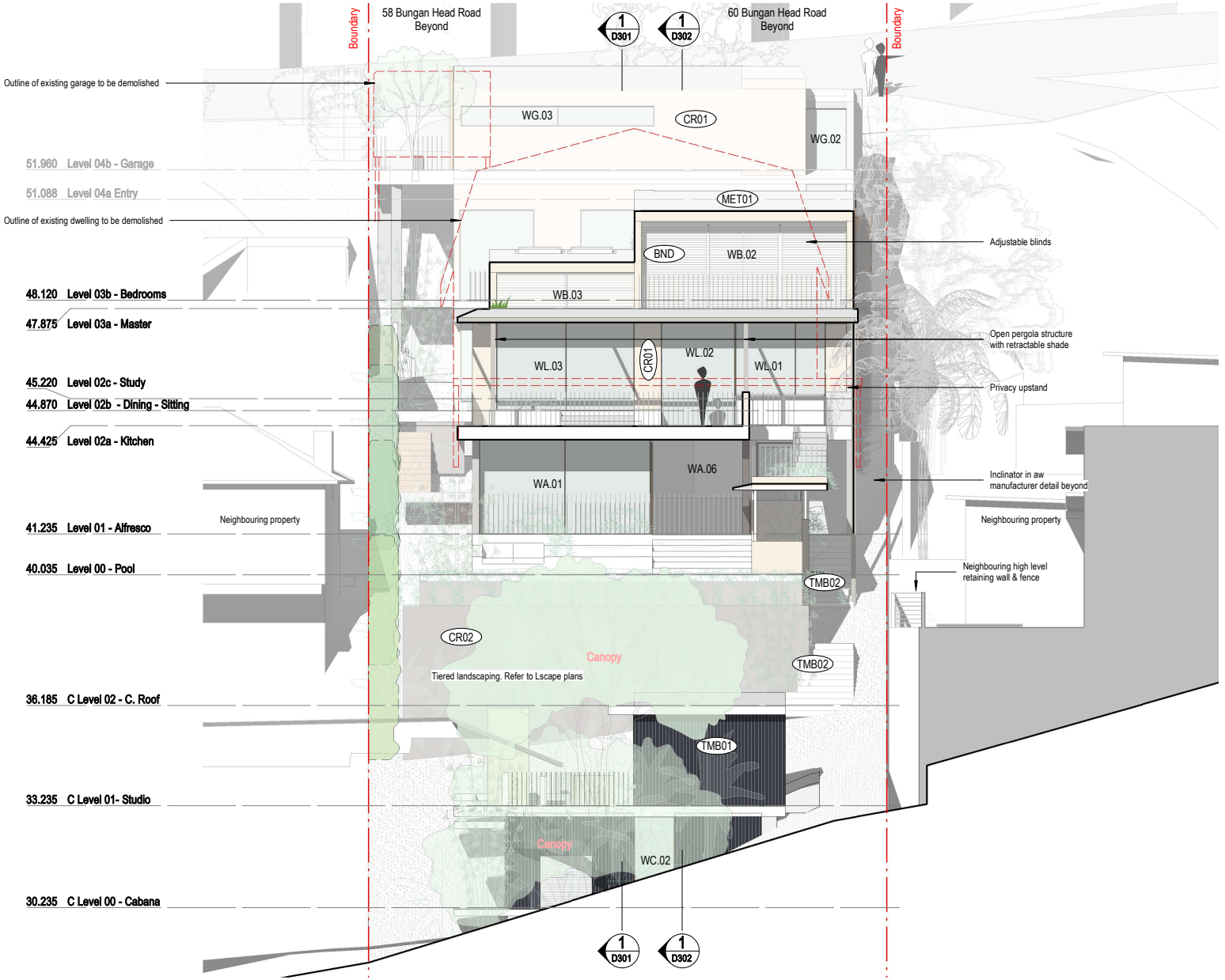
Development Application

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4	Updated for panel review	04 May 2022

Project: Bungan Residence
Location: 35 Bungan Head Road, Newport, 2106
Client: Gorazdowski & Verbeek Family
Drawing: East Elevation - Proposed

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS
Project Issue Date: May 2020	Sheet Issue Date: 04 May 2022	
Project number: 1180	Drawing #: D401	Revision: 4

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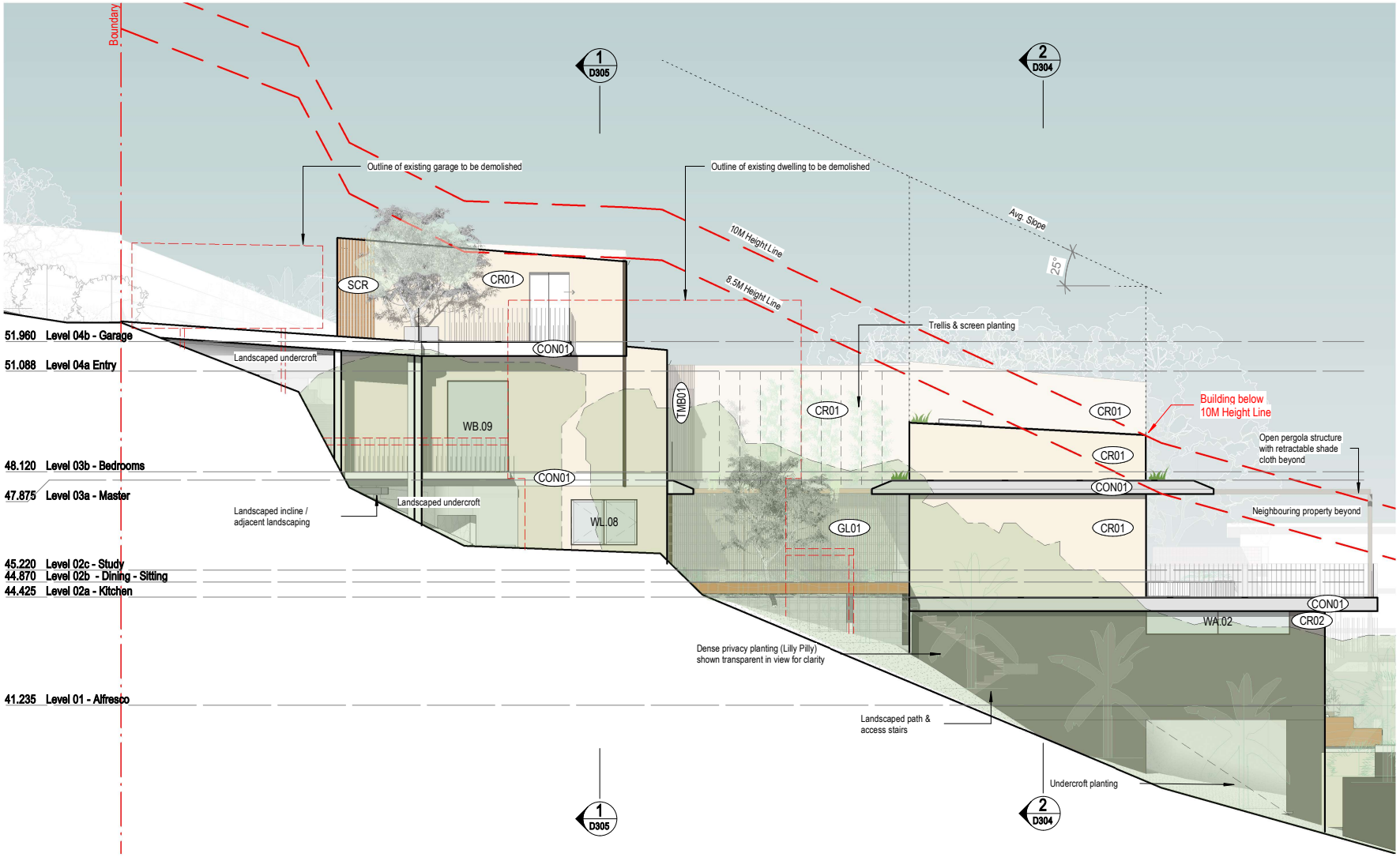
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Development Application

Project: **Bungan Residence**
Location: **35 Bungan Head Road, Newport, 2106**
Client: **Gorazdowski & Verbeek Family**
Drawing: **South Elevation - Proposed**

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS
Project Issue Date: May 2020		
Project number: 1180	Drawing #: D402	Revision: 4

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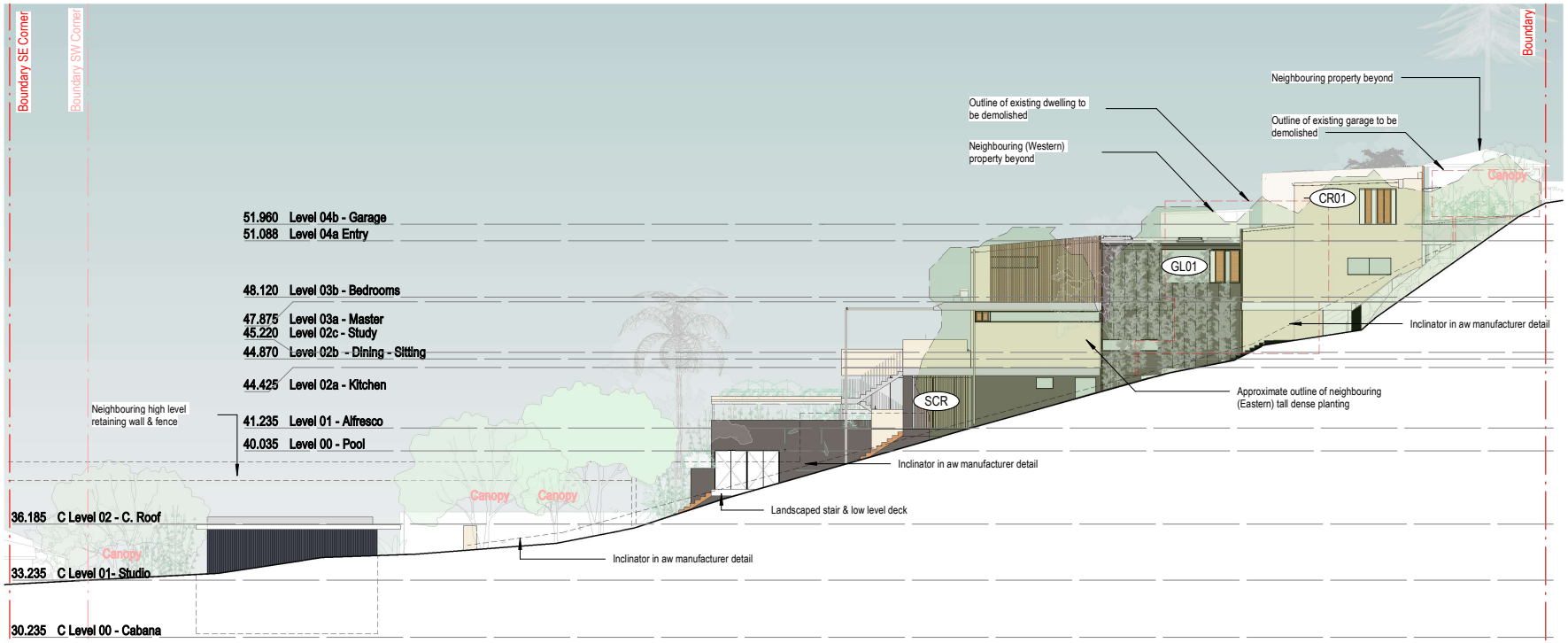
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3	Updated for DA submission	23 Dec 2021
4	Updated for panel review	04 May 2022

Project: Bungan Residence
Location: 35 Bungan Head Road, Newport, 2106
Client: Gorazdowski & Verbeek Family
Drawing: West Elevation - Proposed

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS
Project Issue Date: May 2020	Sheet Issue Date: 04 May 2022	
Project number: 1180	Drawing #: D403	Revision: 4

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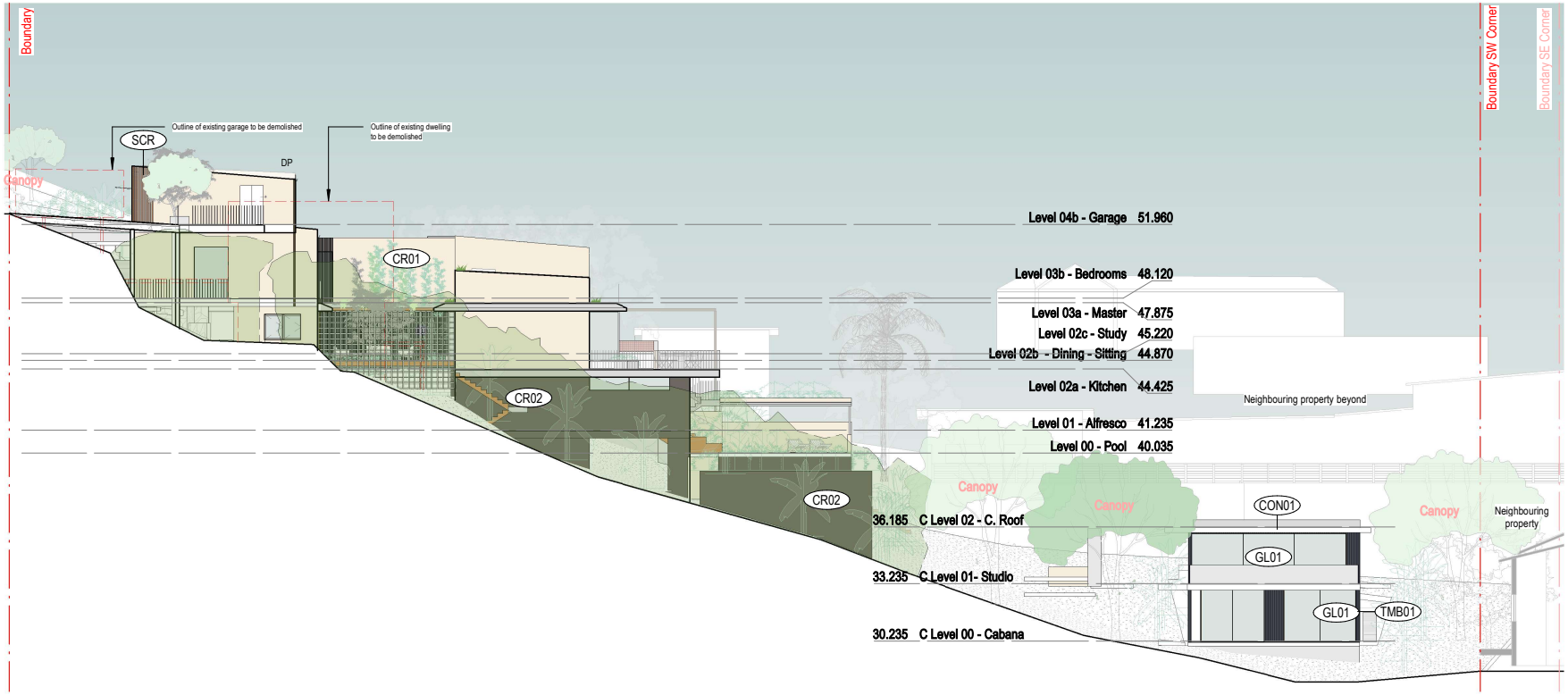
Development Application

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2	Issued for Submission	01 June 2021
3	Updated for DA submission	23 Dec 2021
4	Updated for panel review	04 May 2022

Project: Bungan Residence
Location: 35 Bungan Head Road, Newport, 2106
Client: Gorazdowski & Verbeek Family
Drawing: East Site Elevation - Proposed

Scale @ A3	Drawn by	Checked by
1 : 200	BS	BS
Project Issue Date: May 2020	Sheet Issue Date: 04 May 2022	
Project number: 1180	Drawing #: D406	Revision: 4

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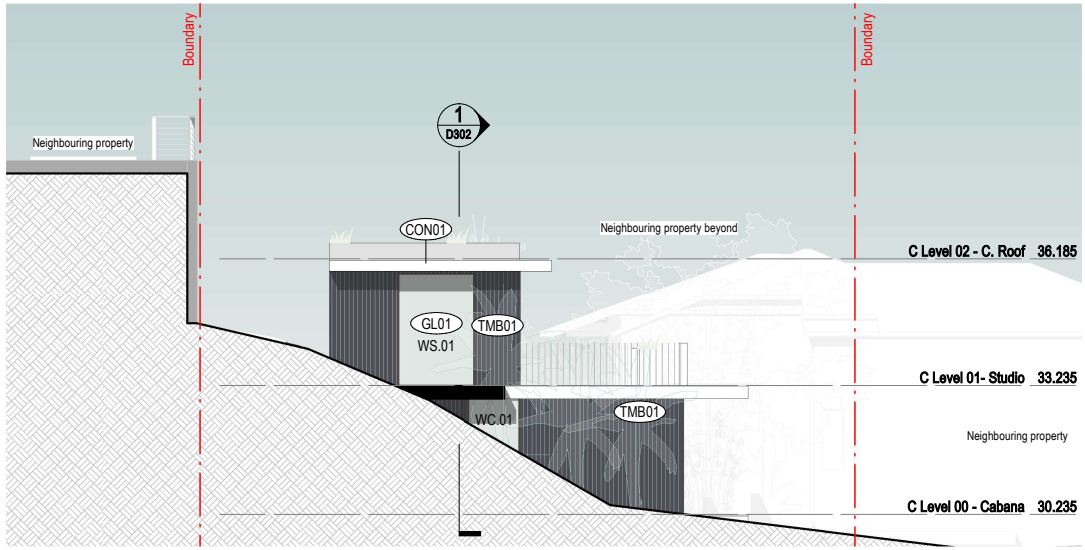
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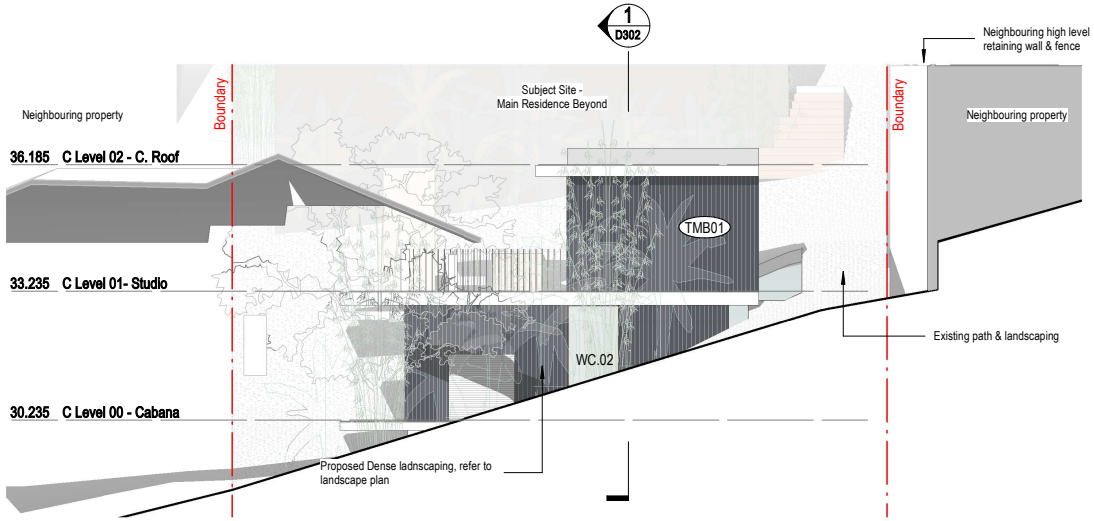
Project: **Bungan Residence**
Location: **35 Bungan Head Road, Newport, 2106**
Client: **Gorazdowski & Verbeek Family**
Drawing: **West Site Elevation - Proposed**

Scale @ A3	Drawn by	Checked by
1 : 200	BS	BS
Project Issue Date: May 2020	Sheet Issue Date: 04 May 2022	
Project number: 1180	Drawing #: D408	Revision: 4

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__1__ Proposed Cabana - North Elevation
1 : 100



__2__ Proposed Cabana - South Elevation
1 : 100

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3	Updated for DA submission	23 Dec 2021
4	Updated for panel review	04 May 2022

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Development Application

Project
Bungan Residence

Location
35 Bungan Head Road, Newport, 2106

Client
Gorazdowski & Verbeek Family

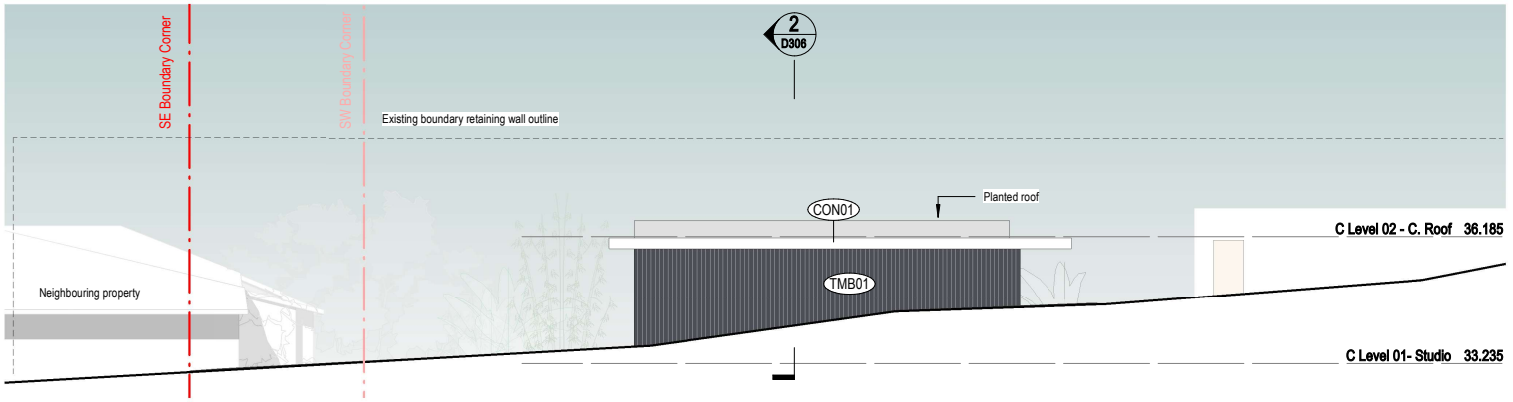
Drawing
Cabana Proposed - North & South Elevations

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS

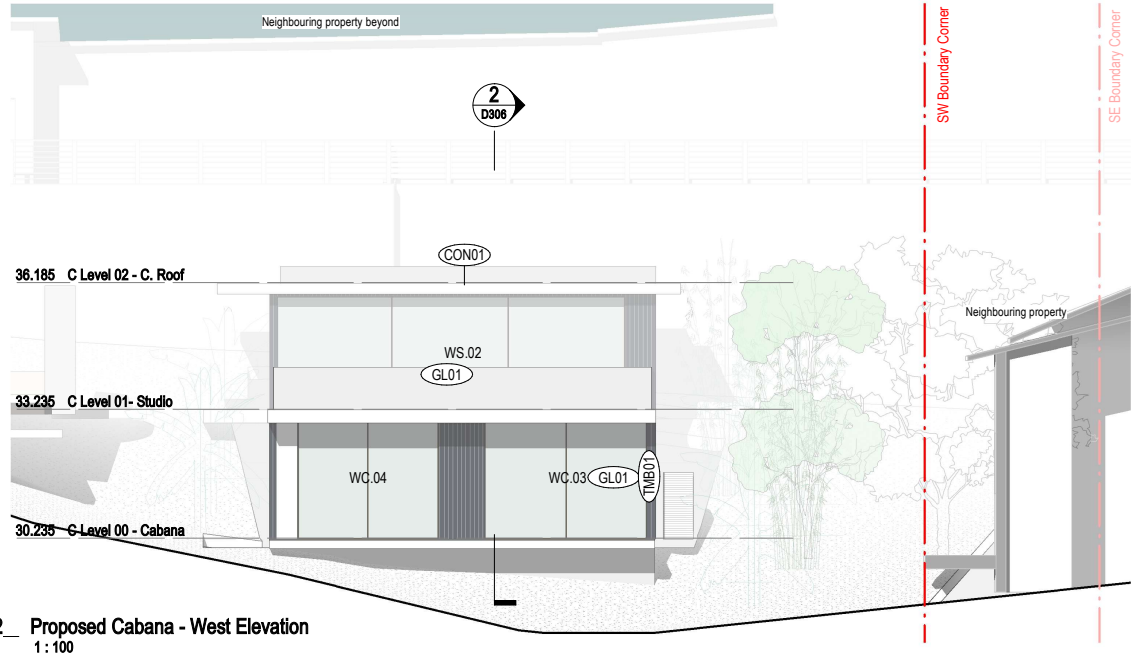
Project Issue Date
May 2020

Project number	Drawing #	Revision
1180	D410	4

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__1__ **Proposed Cabana - East Elevation**
1 : 100



__2__ **Proposed Cabana - West Elevation**
1 : 100

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Development Application

Project
Bungan Residence

Location
35 Bungan Head Road, Newport, 2106

Client
Gorazdowski & Verbeek Family

Drawing
Cabana Proposed - East & West Elevations

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS

Project Issue Date
May 2020

Project number	Drawing #	Revision
1180	D411	4

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ITEM 3.2	**DA2021/2232 - 1851 PITTWATER ROAD BAYVIEW - DEMOLITION WORKS AND CONSTRUCTION OF A DUAL OCCUPANCY**
REPORTING MANAGER	**STEVE FINDLAY**
TRIM FILE REF	**2022/332898**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council as the consent authority **approves** Development Consent to DA2021/2232 for demolition works and construction of a dual occupancy on land at Lot B DP 416603, 1851 Pittwater Road BAYVIEW, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2232

Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot B DP 416603, 1851 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Demolition works and construction of a dual occupancy
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Marjorie Vera Gamble
Applicant:	Marjorie Vera Gamble

Application Lodged:	30/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	07/12/2021 to 12/01/2022
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,595,000.00

EXECUTIVE SUMMARY

This Development Application seeking consent for demolition works and the construction of an attached dual-occupancy development is reported to the Development Determination Panel (DDP) as more than three unique objections have been received and the capital investment value of the proposal exceeds $1 million.

The exhibition of the application attracted submissions from five (5) households which raised a number of concerns regarding the driveway location, car parking and a restrictive development covenant that applies to the land. Questions were raised in submissions about the site's right to have an access on the adjoining Vista Avenue when the property address is on Pittwater Road.

The concerns raised are all addressed later in this report, but in summary is it found that there is no

issue with retaining the existing driveway crossing onto Vista Avenue; that the shortfall in car parking has been rectified by amended plans; and that the restrictive covenant is not a matter for Council to consider as it has not been imposed by Council for a planning purpose.

Generally the proposal is compliant with all relevant built form controls, with two variations to the front building line (5%) and the building envelope to the southern elevation (28.5%). These variations, and the proposal as a whole, are not found to have any unreasonable impacts on the environment and amenity of neighbouring property owners.

On balance it is considered that the proposed development is reasonable in its context, and therefore this report concludes that the DDP, as the consent authority, **APPROVES** the DA.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and the construction of a part-one/part-two storey dual-occupancy development with associated parking and private open space areas.

ADDITIONAL INFORMATION

During the course of the application, Council requested additional information from the applicant, including; a Biodiversity Development Assessment Report, a new car parking space (from 3 to 4 spaces), further details about the extent of an existing covenant, and stormwater details.

The applicant provided the additional information to Council which has been made available on Council's website. The additional information did not necessitate the renotification of the application.

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 - 1.9A Suspension of covenants, agreements and instruments
Pittwater Local Environmental Plan 2014 - 4.1B Minimum lot sizes for dual occupanices
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - D4.5 Front building line
Pittwater 21 Development Control Plan - D4.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot B DP 416603 , 1851 Pittwater Road BAYVIEW NSW 2104
Detailed Site Description:	The subject property is legally described as Lot B in Deposited Plan 416603 and is known as 1851 Pittwater Road, Bayview. The site falls within the R2 Low Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014. The site is irregular in shape with a width of around 39m, depth of 30m and an access handle to Vista Avenue to the northwest measuring some 14m in length. Overall the site has a surveyed area of 1,043m^2. Presently the site accommodates a part-one / part-two storey detached brick dwelling. Topographically the site falls by about 8m from west to east, and then drops another 7m across Council's road reserve down to Pittwater Road. The property accommodates a number of large, mature native trees as well as other vegetation. The property is bound by a Council pathway to the north, a 15m wide densely vegetated road reserve to the north, a private driveway to the south and a dwelling house to the west.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of

Section 4.15 Matters for Consideration	Comments
(EP&A Regulation 2000)	consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to stormwater management and covenants applying to the property. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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 07/12/2021 to 12/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr John Joseph William Illingsworth	7 Vista Avenue BAYVIEW NSW 2104
Natalie Jane Parkinson	13 / 90 Mona Vale Road WARRIEWOOD NSW 2102
Mrs Dorothy Louise Anderson	11 Vista Avenue BAYVIEW NSW 2104
O'Brien Legal	Suite 2 196 Military Road NEUTRAL BAY NSW 2089
Ms Heather Margaret Rulli	1847 Pittwater Road BAYVIEW NSW 2104
Ms Lynette Illingsworth	7 Vista Avenue BAYVIEW NSW 2104

During the notification of the application, submissions were received from five (5) individual households. One of those submissions included a petition with several signatures, however in accordance with Council's Community Participation Plan, the petition only constitutes one objection.

Another submission objected to any changes to the vehicular access point into the site via an existing private road, however such is not proposed under this application.

The following issues were raised in the remaining submissions:

- **Driveway**
- **Carparking**
- **Covenant**
- **Construction impacts**

The above issues are addressed as follows:

- **Driveway**

  Four (4) objections received stated that the proposal should not get vehicular access from Vista Avenue, but should instead obtain access from Pittwater Road or an adjoining private road. One objection from a partial owner of the private road objects to the proposal obtaining access over the private road.

  Comment:

The existing dwelling obtains vehicular access from Vista Avenue across Council's road reserve before reaching the boundary of the site. The proposal seeks to retain this driveway and crossing. There is no legal impediment to the property obtaining access from Vista Avenue.

The alternatives suggested by objectors have been considered. Requiring vehicular access to Pittwater Road would require major tree removal, ground works and disruption to a main road. It is unlikely that the vegetative impacts would be supported. The alternate access proposed is over private property. The proposed vehicular access is on the subject site itself and Council land. Despite the shape of the road reserve being different to neighbouring sites, the operation of a driveway over a road reserve exists on every property, and this application is no different.

A submission states that the proposal doesn't comply with the relevant Australian Standards, and it is noted that such matters are addressed by way of condition if a consent is granted.

A submission also states that the proposal could jeopardise pedestrian safety, particularly along the adjoining pathway. No evidence to demonstrate a safety risk has been supplied. In the absence of such evidence, it is not considered that pedestrian safety is jeopardised, and it is considered that the relevant Australian Standards would ensure a safe pedestrian environment is achieved.

These concerns are addressed by condition and do not warrant the refusal of the application.

- **Carparking**

The submissions raised concerns that the proposal provided only 3 spaces and not the required 4 spaces.

Comment:

Amended plans were received during the course of the application which provided for an additional car parking space, therefore achieving the 4 spaces and complying with the controls.

This matter has been satisfied by amended plans.

- **Covenant**

The submissions raised concerns that the proposal is inconsistent with a covenant that applies to the property which seeks to restrict the buildable area.

Comment:

The covenant in question is not a covenant imposed or required to be imposed by Council. It is understood (but not confirmed) that the original intention of the covenant was to protect a view corridor. The covenant does not constitute a Planning Agreement.

Clause 1.9A of the Pittwater Local Environmental Plan 2014, makes it clear that given the above factors, the covenant does not apply to the development, and therefore no weight can be given to this matter.

Notwithstanding the above, for clarity it appears that the building complies with the covenant, but that a small pergola covered with an operable roof and bound by a clear glass screen (for acoustic attenuation) encroaches beyond the covenant line. No amenity concerns regarding the

encroachment beyond the covenant line have been stated by objectors.

This matter does not warrant the refusal of the application.

- **Construction Impacts**

The submissions raised concerns that the construction process would result in increased traffic, on-street parking, noise and dust.

Comment:

Construction inherently creates a temporary period of increased noise and traffic, and this is somewhat unavoidable with any construction works on a property. Conditions are imposed in the recommendations of this report which regulate hours of construction, and enforce noise and dust requirements as per the Australian Standards. Whilst inconvenient, there is no legal basis to prohibit trades people from utilising public street parking that is available for anyone to park in.

These concerns do not warrant the refusal of the application, and are appropriately addressed via conditions where possible.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for the demolition of the existing dwelling and the construction of a dual occupancy residence, and landscape works. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D4 Church Point and Bayview Locality The Landscape Plan submitted proposes landscape surface treatments, structures and planting that enhance the landscape outcome of the property and no concerns are raised. The Arboricultural Impact Assessment recommends the removal of one locally native tree species, identified as tree number 25 - Spotted Gum, of high retention value. The concerns of Natural Environment Referral Team - Biodiversity are noted regarding this tree and any approval to either remove this tree or otherwise is subject to approval from Council's Biodiversity Referral Team. The Arboricultural Impact Assessment recommends the removal of three Exempt Species identified as tree numbers 10, 23 and 24 in proximity to development works, and these do not require Council consent.

Internal Referral Body	Comments
	It is noted that the property contains many locally native trees that are not impacted by development works and recommendations for protection measures are included in the Arboricultural Impact Assessment, and that it is noted that any redesign shall not result in the building alignment altered to be closer to these locally native trees, including the high retention value trees located east of tree number 25 such as other Spotted Gums numbered 13, 14, 15, and 16, and the Lemon Scented Gum numbered 11. Should the development application be approved, Landscape Referral provide conditions of consent for landscape works completion and for the tree protection measures.
NECC (Bushland and Biodiversity)	The application seeks approval for the demolition of the existing single dwelling and construction of new one and two storey attached residences with external works and landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **Biodiversity Conservation Regulation 2017** **Pittwater Local Environmental Plan (PLEP)** • 7.6 Biodiversity Protection **Pittwater Development Control Plan (PDCP)** • B4.6 Wildlife Corridors **<u>Updated Recommendation - 28/04/2022</u>** The submission of the updated BDAR is noted. All requests for update or clarification to the biodiversity aspects of the DA have been made by the consultant, therefore Council's Natural Environment Unit - Biodiversity have no objection to the proposal. Subject to conditions the Natural Environment Unit - Biodiversity find the application to be consistent against relevant environmental controls. **<u>Original Recommendation - 8/12/2022</u>** The rear (east) of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values mapping: https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS).

Internal Referral Body	Comments
	No objection is raised by Council's Natural Environment Unit - Biodiversity with regard to the proposed removal of exotic trees (T. 10, 23 & 24), however Tree 25 (*Corymbia maculata*) is a native species, the removal of which requires assessment under the Biodiversity Assessment Methodology 2020 as it is situated within DPIE's Biodiversity Values mapping. The applicant is encouraged to redesign in order to retain Tree 25, or must alternatively submit a Biodiversity Development Assessment Report (BDAR) prepared by an Accredited Assessor: https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor On receipt of updated designs providing for retention of Tree 25 and all other native vegetation, otherwise the submission of the required BDAR, Council's Natural Environment Unit - Biodiversity can reassess the application.
NECC (Coast and Catchments)	The application has been assessed in consideration of the *Coastal Management Act 2016,* State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Coastal Management) 2018** The subject land has been included on the ' Proximity to Coastal Wetlands Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11 and 15 of the CM SEPP apply for this DA. Comment: On internal assessment, the DA satisfies requirements under clauses 11 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Pittwater LEP 2014 and Pittwater 21 DCP**

Internal Referral Body	Comments
	No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Development Engineering)	*Planner comment: At the time of writing final conditions and comments remain outstanding from Council's Development Engineering department, however the extent of those comments are not considered to be tantamount to a recommendation other than Approval.* *On that basis, this report is proceeding to the DDP in anticipation of Engineering comments being received before that date.* 3/3/2022: The development application is for the demolition of the existing dwelling and construction of a dual occupancy residence with landscape works. **Access** There is bushland Reserve between the site and Pittwater Road therefore the site has no direct frontage to Pittwater Road. Pedestrian access is by a public pathway runs beside the northern side of the site. There is existing driveway and crossing from Vista Avenue. No changes are proposed to existing driveway. Existing driveway seems to be non compliant to Council's standard driveways profiles, applicant to apply for vehicle crossing application. **Stormwater** No site stormwater management plans are provided. Applicant to provide the same. **Geotech** Site is mapped as Geotechnical Hazard Area H1. Geotechnical assessment by ASCENT Geotechnical Consulting, Ref AG 21412, Dated 2nd Dec 2021 is provided with form 1 and 1a. **13/04/2022:** Stormwater plans prepared by ITM Design Pty Ltd, Issue A, Job No 21/154, Drawing No-H-DA-00 to H-DA-03, Dated 04/04/2022 are provided. Onsite Stormwater Detention system for both dwellings is proposed but no hydraulic calculations are provided (Volumes of tanks etc.). Also it is unclear that how much freeboard is available between habitable floor and top of OSD tank?

Internal Referral Body	Comments
	Underground OSD tanks should have maintenance access hatch and it must be able to be accessed externally to the building. Applicant to provide hydraulic calculations, sections showing locations of tanks (with dimensions) and access to tanks.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. No objection to the application, subject to conditions.

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	***Supported, with conditions*** *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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

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

1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
    a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
    b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The site is noted as being in land proximate to coastal wetlands. The consent authority may be satisfied that the proposed development will not significantly impacted on the criterion of cl.2.8(1)(a) and (b) as

above.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:

The development is to be constructed on an already developed site in a residential area, notwithstanding the fact that the land is proximate to coastal wetlands. The proposal is not considered likely to caused an increased risk of coastal hazards generally.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum Lot sizes for Dual Occupancy	800sqm	Lot Size: 1,043sqm	-	Yes
Height of Buildings	8.5m	7.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.1B Minimum lot sizes for dual occupanices	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

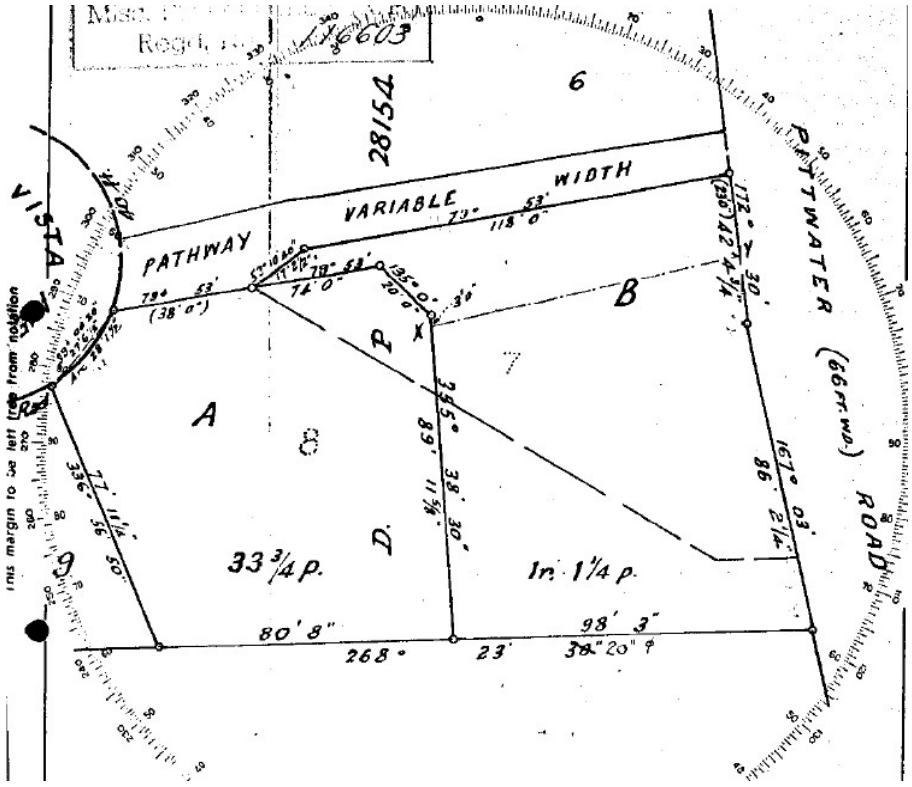
Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

The site is subject to a covenant referenced as 'H566786' which relevantly includes a provision which reads:

(a) That no building or structure ill be erected North of a line parallel with and 9 feet south of the line marked X-Y on the said plan.

The title documents include a diagram depicting the aforementioned line:



It is understood (but not confirmed) that the original purpose of this covenant was to retain a view corridor from No. 11 Vista Avenue to the west ('A' on the diagram) over the site and towards Bayview.

Clause 1.9A of PLEP 2014 reads:

1.9A Suspension of covenants, agreements and instruments

(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

(2) This clause does not apply—

(a) to a covenant imposed by the Council or that the Council requires to be imposed, or

(b) to any relevant instrument within the meaning of section 13.4 of the Crown Land Management Act 2016, or

(c) to any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or

(d) to any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or

(e) to any property vegetation plan within the meaning of the Native Vegetation Act 2003, or

(f) to any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or

(g) to any planning agreement within the meaning of Subdivision 2 of Division 7.1 of the Act.

(3) This clause does not affect the rights or interests of any public authority under any registered instrument.

(4) Under section 3.16 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).

The covenant is understood to have been made in a civil capacity and was not imposed or required to be imposed by Council. The covenant does not constitute a Planning Agreement.

The covenant restricts the carrying out of development on a portion of the site, however that restriction is not consistent with the requirements of the relevant environmental planning instruments.

Given the inconsistency between the relevant instruments and the covenant, the covenant which restricts the carrying out of development does not apply to the extent necessary to serve that purpose.

Therefore, the covenant is not a relevant consideration to the determination of this application and holds no weight.

4.1B Minimum lot sizes for dual occupanices

Clause 4.1(B) of the Pittwater Local Environmental Plan 2014 (PLEP 2014) requires that:

1. *Development consent may only be granted to development on a lot for the purpose of a dual occupancy if:*
   a. *the development is permitted on that lot with development consent, and*
   b. *the area of the lot is equal to or greater than 800 square metres.*

Development for the purpose of a dual occupancy development is permitted in the R2 Low Density Residential zone with development consent.

The site has a surveyed area of 1,043sqm and therefore complies with the minimum lot area pursuant to subclause (b).

Therefore, the site is permitted and capable of accommodating a dual occupancy.

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

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

Comment: The 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.

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

7.7 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, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

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

(b) the consent authority is satisfied that:
(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(east to Pittwater Road) 10.0m	Balcony (dwelling 2) - 9.5m Building - 10-11m	5% -	**No** Yes
Rear building line	(west) 6.5m	6.5 - 9.0m	-	Yes
Side building line	(north) 2.5m	Patio - 4.9m Building - 8.0m	- -	Yes Yes
	(south) 1.0m	1.0m	-	Yes
Building envelope	(north) 3.5m	No encroachments	-	Yes
	(south) 3.5m	Two encroachments, maximum 1m in height by 4.5m in width	28.5%	**No**
Landscaped area	60% (625.8sqm)	60.2% (628sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.8 Dual Occupancy Specific Controls	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	No	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.11 Fences - General	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B6.1 Access driveways and Works on the Public Road Reserve

Concerns have been raised in several submissions received about the location of the proposed driveway.

The proposal seeks to utilise the existing driveway location which connects to Vista Avenue to the west. The curtilage of the site and its relationship to Vista Avenue and Pittwater Road is shown on the below aerial image:



The remainder of land between the cul-de-sac end of Vista Avenue and the westernmost edge of the site (as well as the strip of land to the north of the site) is Council road reserve and is no different in classification to a traditional road reserve that runs in front of other houses.

The applicant is seeking to retain their existing driveway location, and no objections to this have been raised by Council's Development Engineers, subject to conditions.

On this basis, there are no concerns about the driveway location or its crossing-over of the road reserve.

D4.5 Front building line

Description of Non-Compliance

Clause D4.5 of the P21DCP requires a 10.0m setback to Pittwater Road. Whilst the building complies with this, a portion of the balcony on Dwelling 2 encroaches the setback area by 500mm, thus equating to a variation of 5%.

Merit Consideration

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

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

  Comment:

  The extent of variation to the front building line only occurs for a small portion of the width of frontage and is limited to a balcony only. The extent of variation does not inhibit the ability for the development to achieve the desired future character of the locality.

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

  Comment:

  The encroachment within the front building area does not detract from any views of vistas currently enjoyed from the public or private domain.

- *The amenity of residential development adjoining a main road is maintained.*

  Comment:

  The development is considered to provide an acceptable level of amenity to future occupants, notwithstanding the fact that the building is positioned on the busy Pittwater Road.

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

  Comment:

  The proposal does require the removal of one tree, however that removal is not consequent of the encroaching balcony, and is supported by the relevant referral bodies. The remaining landscaping in combination with the new landscape plan will visually reduce the built form from viewed from the public domain.

- *Vehicle manoeuvring in a forward direction is facilitated.*

  Comment:

  Vehicular access to the site is not via the front boundary given topography and the extent of vegetation. This matter is discussed in more detail elsewhere in this report.

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

  Comment:

  The proposal adequately preserves and enhances the bushland character of the locality.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

  Comment:

  The building is of a compliant height and overscale

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

Comment:

The development provides an attractive street frontage and sits well within the landscape. The proposal maintains the existing driveway to Vista Avenue and the pedestrian experience does not change.

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

  Comment:

  The footprint, envelope and design of the building are considered to appropriately respond to the sites context, topography and landscaped setting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

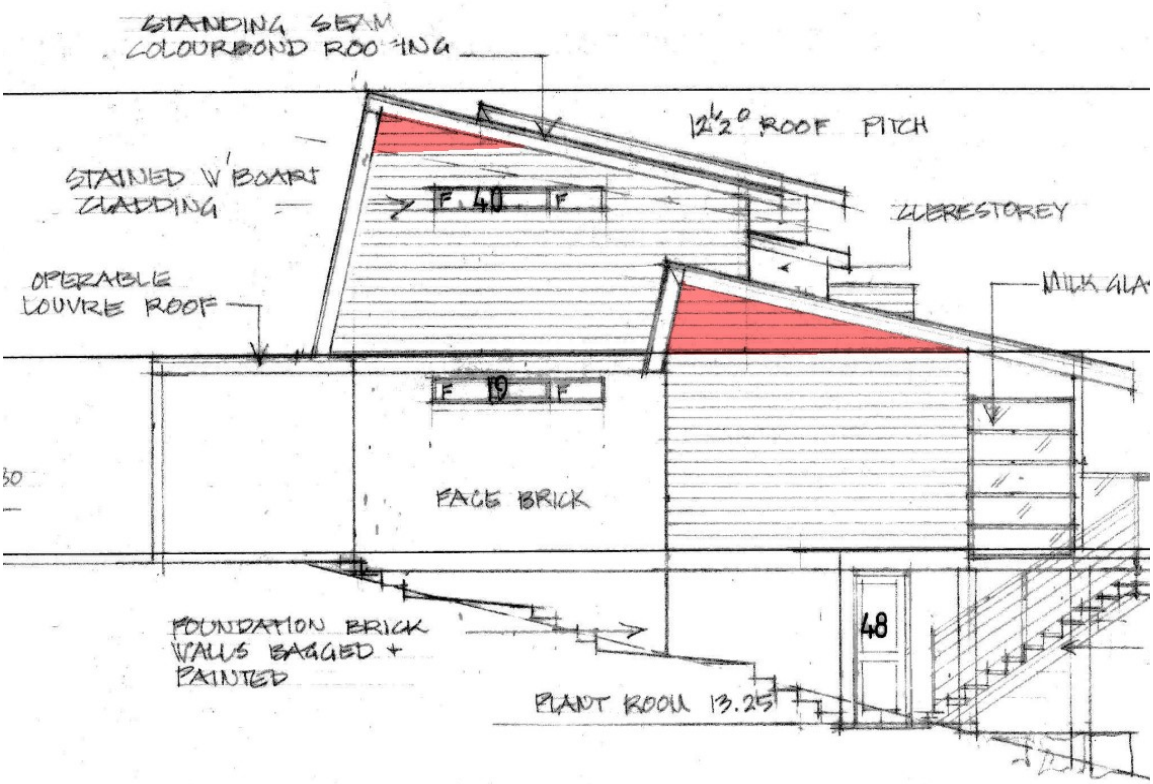
D4.8 Building envelope

Description of Non-Compliance

Clause D4.8 of the P21DCP prescribes a 3.5m building envelope control, measured from the northern and southern edges of the site.

In this instance, the southern elevation of the development encroaches the prescribed envelope in two locations, both in the form of gradually diminishing triangles. The larger of the two encroachments measures at a maximum height of 1.0m with a maximum with of 4.5m, thus equating to a variation of 28.5%.

The extent of variation is highlighted in red on the below diagram:



Merit Consideration

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

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

  The variation sought to the building envelope control does not detract from the quality of the locality nor its desired future character.

  The building as a whole is well articulated, formed of an interesting palette of materials and is surrounded by landscaping. The building would not be readily visible from the public domain, and the extent of variation is only visible from a shared communal driveway to the south.

  On balance the proposal achieves the desired future character of the locality.

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

  Comment:

  The building is of a compliant density and height and generally sits beneath the height of trees on the site.

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

  Comment:

  The development is sensitively designed in response to the topography of the site and the placement of trees throughout.

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

  Comment:

  The overall bulk and scale of the built form is considered to be appropriate by way of having a 'broken up' massing, an interesting palette of materials and significant landscaping throughout.

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

  Comment:

  The encroachment of the building envelope is not considered to detract from the equitable preservation of views and vistas from the private and public domain.

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

  Comment:

  The development is not found to result in any adverse visual privacy or solar access impacts on adjoining properties.

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

  Comment:

  The development does seek to remove one tree, however that loss is supported by Council's Landscape and Bushland Officers as the loss is adequately compensated for. The encroachment of the building envelope does not require the removal of any vegetation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 $15,950 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,595,000.

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;
- 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 assessment of this application has concluded that the proposed development is appropriate for the context of the site and is appropriately sited and designed to minimise impacts on neighbours and the environment. Whilst concerns have been raised by the community regarding several aspects of the application, those concerns are not tantamount to the refusal of the application.

It is on that basis that this report concludes that the Development Determination Panel should **APPROVE** the development application.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2232 for Demolition works and construction of a dual occupancy on land at Lot B DP 416603, 1851 Pittwater Road,

BAYVIEW, 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**
01 Rev. B - Site Plan	21 February 2022	Emiat Pty Ltd
02 Rev. B - Roof Plan, Ground & First Floor Plans	21 February 2022	Emiat Pty Ltd
03 Rev. B - Elevations & Cross Section	21 February 2022	Emiat Pty Ltd
04 Rev. A - Site Section & Longitudinal Section	21 February 2022	Emiat Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment & Tree Protection Plan	01 October 2021	The Ents Tree Consultancy
BASIX Certificate No. 1250248M	07 November 2021	Concept Designs Australia
Biodiversity Development Assessment Report	21 April 2022	ACS Environmental Pty Ltd
Geotechnical Assessment (ref:AG21412)	02 December 2021	Ascent Geotechnical Consulting
NatHERS Certificate No. 0006766158	07 November 2021	Concept Designs Australia
NatHERS Certificate no. 0006766125-01	07 November 2021	Concept Designs Australia

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
LP-01 Rev. B - Landscape & Open Space Area Diagram + Existing Trees Schedule	04 November 2021	Caldesign
LP-02 Rev. B - Landscape Plan + Proposed Planting List	04 November 2021	Caldesign

Waste Management Plan		
Report Title	**Dated**	**Prepared By**
Waste Management Plan	13 November 2021	Marjorie Gamble

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

(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 $15,950.00 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 $1,595,000.00.

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

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

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

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

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

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

7. **Notification of determination to which the Biodiversity Offset Scheme applies**
The applicant or Project Ecologist, on behalf of the applicant, must download and complete the "Biodiversity Offsets Scheme – Notification of Determination" form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to the LMBC Service Centre bam.support@environment.nsw.gov.au. The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the Certifying Authority must be copied into the notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning, Industry and Environment are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance.

8. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**
Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Certifying Authority prior to release of construction certification.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	**TEC**	**Number of ecosystem credits**	**Containing HBT**	**IBRA sub-region**	**Plant community type(s) that can be used to offset the impacts from development**
1214 - Pittwater Spotted Gum Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	No	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion This includes PCT's: 1214, 1589

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

9. **Variation rule credit retirement conditions - Ecosystem credit retirement conditions**
Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 2 must be retired to offset the impacts of development.

Evidence of the retirement of credits in satisfaction of Table 2 requirements is to be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and the Certifying

Authority prior to release of construction certification.

Table 2 Ecosystem credits required to be retired – variation rules

Impacted plant community type	Number of ecosystem credits	Containi
1214-Pittwater Spotted Gum forest	1	No

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report 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.

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

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

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

12. **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. **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

14. **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.

15. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

16. **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

17. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
i) section 4 - Discussions
ii) section 5 - Recommendations, excluding removal of tree 25 until advised for either removal, retention, or replacement

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

18. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

19. **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.

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

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

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

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

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

21. **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.

22. **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.

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

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

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

24. **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

25. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan,
i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, and 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 metres from buildings for small trees and 5 metres from buildingd for medium to large trees, and at least 2 metres from common boundaries,
ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
https://5milliontrees.nsw.gov.au/

26. **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.

27. **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.

28. **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.

29. **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.

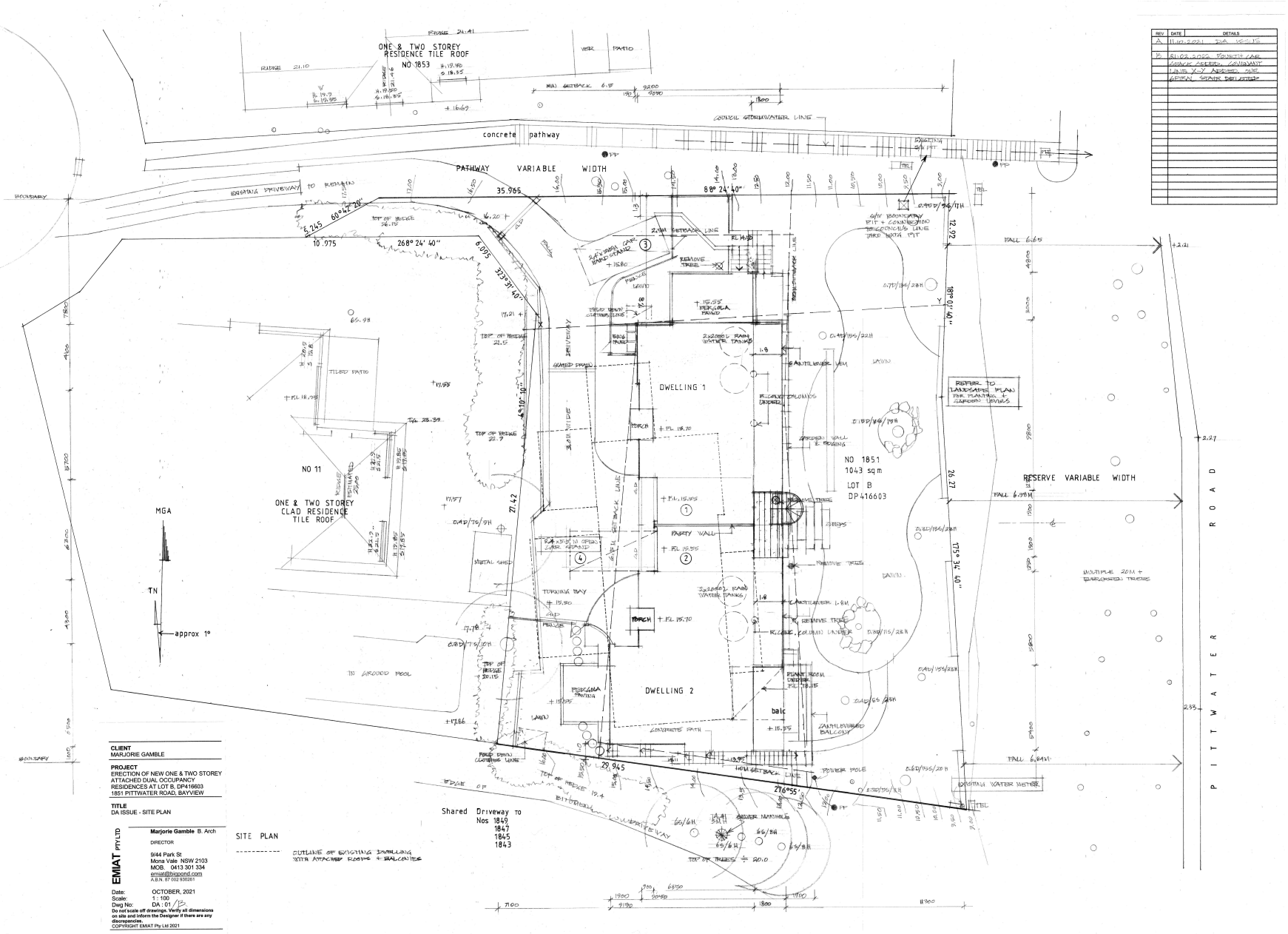
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

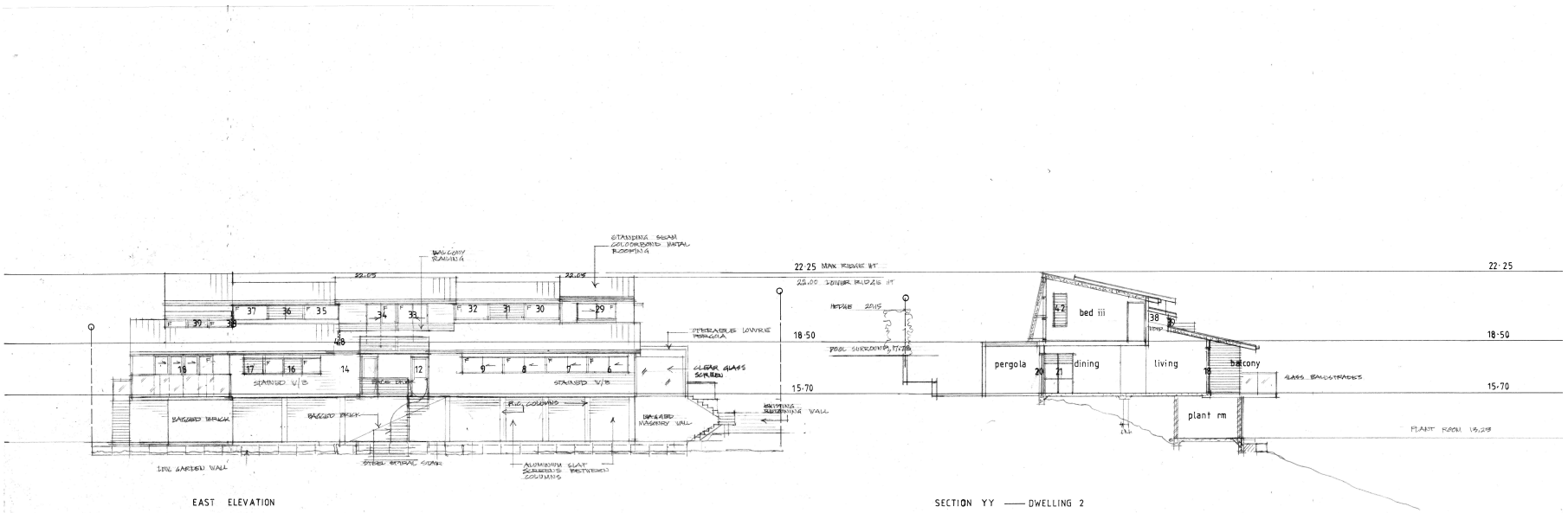
30. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

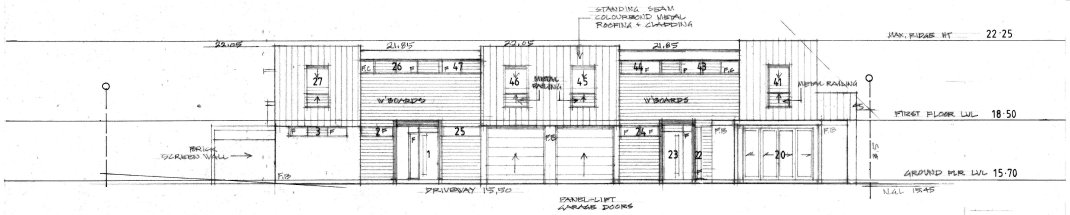
Reason: To protect wildlife habitat.

31. **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 me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

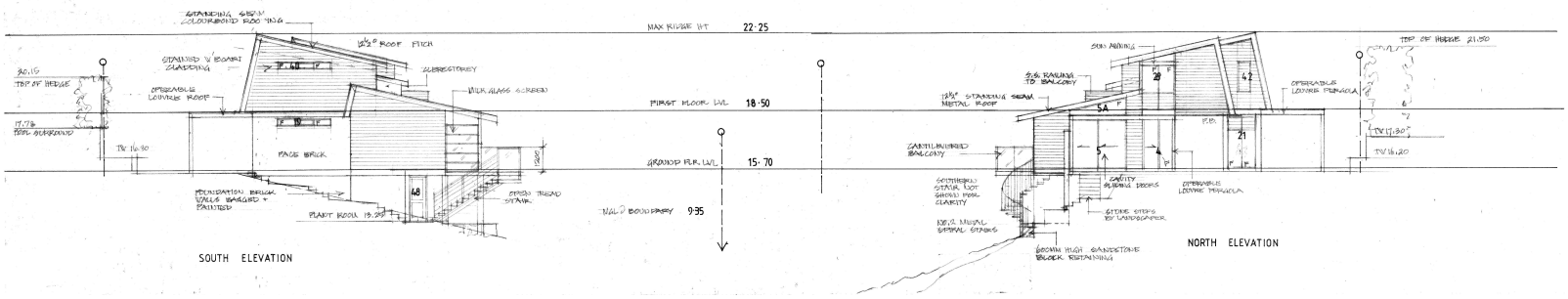

ONE & TWO STOREY RESIDENCE TILE ROOF NO 1853
concrete pathway
PATHWAY VARIABLE WIDTH
35.965
8° 24' 40"
268° 24' 40"
323° 37' 40"
DWELLING 1
DWELLING 2
NO 1851
1043 sq m
LOT B
DP416603
NO 11
ONE & TWO STOREY CLAD RESIDENCE TILE ROOF
RESERVE VARIABLE WIDTH
PITTWATER ROAD
Shared Driveway to Nos 1849 1847 1845 1843
MGA
TN
approx 1°
SITE PLAN
OUTLINE OF EXISTING DWELLING WITH ATTACHED ROOFS & BALCONIES
CLIENT
MARJORIE GAMBLE
PROJECT
ERECTION OF NEW ONE & TWO STOREY ATTACHED DUAL OCCUPANCY RESIDENCES AT LOT B, DP416603
1851 PITTWATER ROAD, BAYVIEW
TITLE
DA ISSUE - SITE PLAN
EMAT PTY LTD
Marjorie Gamble B. Arch
DIRECTOR
9/44 Park St
Mona Vale NSW 2103
MOB. 0413 301 334
emat@bigpond.com
A.B.N. 87 002 930261
Date: OCTOBER, 2021
Scale: 1 : 100
Dwg No: DA : 01 /B
Do not scale off drawings. Verify all dimensions on site and inform the Designer if there are any discrepancies.
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EXTERNAL COLOURS AND FINISHES	
ROOFING	STANDING SEAM COLOURBOND STEEL IN 'BASALT'
FLAT ROOFS	EPND MEMBRANE
FOUNDATION LEVEL MASONRY WALLS	BAGGED & PAINTED COMMON BRICKS IN 'PEWTER'
FOUNDATION OPEN AREA SUPPORTS	CONC COLUMNS WITH METAL SCREEN INFILLS
GROUND FLOOR MASONRY WALLS	AUSTRAL 'OVERLAND' FACE BRICKS
FRAMED WALLS	150mm SPLAYED PROFILE TIMBER WEATHERBOARDS STAINED LIMED GREY
GUTTERS & DOWNPIPES	COLOURBOND STEEL IN 'BASALT'
FASCIAS & BARGES	COLOURBOND STEEL IN 'BASALT'
ALUMINIUM WINDOWS & DOORS	ALUMINIUM POWDERCOAT 'SHALE GREY'
FRONT DOOR	MERBAU TIMBER IN NATURAL FINISH
ENTRY PORCH CEILING	MERBAU TIMBER IN NATURAL FINISH
PERGOLAS	TILED CONCRETE PAVING AND ALUMINIUM POSTS AND LOUVRED OPERABLE ROOF
BALCONY BALUSTRADING & SCREEN	SEMI-FRAMED OBSCURE GLASS IN 'BASALT'
PAVING SLABS	600 X 600MM LIGHT GREY PORCELAIN
DRIVEWAY	GREY CONCRETE WITH 600 D STEPPING STONES INSET
SIDE FENCES	TIMBER PALING FROM REAR B'NDRY TO FRONT SETBACK OF HOUSES
COURTYARD FENCES	TIMBER SLATS
METAL SPIRAL STAIRS	GALV STEEL
EXTERNAL STAIRS / PATHS	CONCRETE

REV	DATE	DETAILS
A	11.10.2021	DA ISSUE
B	21.03.2022	DWG GENERAL STAIR TREATMENT SOLID SCREEN TO NORTH PERGOLA RELPLACED WITH CLEAR GLASS



CLIENT
MARJORIE GAMBLE

PROJECT
ERECTION OF NEW ONE & TWO STOREY ATTACHED DUAL OCCUPANCY RESIDENCES AT LOT B, DP419803
1851 PITTWATER ROAD, BAYVIEW

TITLE
DA ISSUE
ELEVATIONS & CROSS SECTION

EMIAT PTY LTD
Marjorie Gamble B. Arch
DIRECTOR
9/44 Park St
Mona Vale NSW 2103
MOB.: 0413 301 334
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A.B.N. 87 002 630 261

Date: OCTOBER, 2021
Scale: 1 : 100 @ A3
Dwg No: DA : 03 / B

Do not scale off drawings. Verify all dimensions on site and inform the Designer if there are any discrepancies.

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ITEM 3.3	**MOD2022/0059 - 1793, 1795, 1797 PITTWATER RD MONA VALE AND 38 PARK ST MONA VALE - MODIFICATION OF DEVELOPMENT CONSENT DA2020/1179 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT WITH BASEMENT PARKING & ASSOCIATED LANDSCAPING**
REPORTING MANAGER	
TRIM FILE REF	**2022/330036**
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.

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 Mod2022/0059 for Modification of Development Consent DA2020/1179 granted for demolition works and construction of a Seniors Housing development with basement parking & associated landscaping on land at Lot 4 DP 76695, 1795 Pittwater Road MONA VALE Lot 1 DP 219265, 1797 Pittwater Road MONA VALE Lot 2 DP 219265, 38 Park Street MONA VALE, Lot 5 DP 77493, 1793 Pittwater Road MONA VALE, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0059

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 4 DP 76695, 1795 Pittwater Road MONA VALE NSW 2103 Lot 1 DP 219265, 1797 Pittwater Road MONA VALE NSW 2103 Lot 2 DP 219265, 38 Park Street MONA VALE NSW 2103 Lot 5 DP 77493, 1793 Pittwater Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2020/1179 granted for demolition works and construction of a Seniors Housing development with basement parking & associated landscaping
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Mona Vale 3 Pty Ltd Mona Vale 3 Pty Limited
Applicant:	Mona Vale 3 Pty Ltd

Application Lodged:	16/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/02/2022 to 14/03/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 3.5%
Recommendation:	Approval

EXECUTIVE SUMMARY

This application seeks consent for the modification of Development Consent No. DA2020/1179, which approved a Seniors Housing development, involving changes to the roof design to increase the height of the roof by between 200mm - 600mm. Other minor changes include the introduction of a Vergola and

privacy screens to the eastern balcony of Unit 20 and a change in the design of the Entry Canopy. The proposal will result in a maximum building height of 8.8m, which represents a 300mm (3.5%) breach of the 8.5m building height development standard pursuant to the Pittwater LEP 2014. The breaching roof elements are generally contained within the centre of the development.

There is no change to the footprint, setback or density of the approved development and the proposal maintains the landscape area outcomes. Despite the increase in the height of the development, the proposal maintains the two storey built form which is consistent with the scale and character of the locality. Furthermore, the increase in the height of the development will not result in any unreasonable amenity impacts in terms of overshadowing or view loss. The increase in the height and minor changes to the external treatment of the development and introduction of privacy screens will not result in any unreasonable visual impacts on the streetscape.

The Section 4.55(2) modification is being referred to the Development Determination Panel (DDP) as the original development application was determined by the DDP.

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

This report concludes with a recommendation that the DDP should grant approval to the application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the modification of consent DA200/1179 which approved a Seniors Housing development. In detail, the changes include:

- Changes to the roof design including an increase in the height as follows:

  - Lower Roof: 200- 400mm - increase RL17.00 to RL17.4 and RL17.2 to RL17.6
  - Middle Roof: 500 mm increase from RL17.75 to RL18.25
  - Upper Roof: 600mm increase from RL18.450 to RL19.05
  - Lift over-run: 500mm increase from RL18.7 to RL19.2

  (*Note: The measurements are taken from a cross comparison of Section A DA-10 Rev B dated 27.01.2021 prepared by Gartner Trovato in the approved drawing set and Section 1 DA04-003 Rev A prepared by KND Architects in the subject modification set of drawings)

- Unit 20 - Introduction of a Vergola and operable privacy screen to the eastern balcony
- Modification to the entry canopy design

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 - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.10 Building Facades

SITE DESCRIPTION

Property Description:	Lot 4 DP 76695 , 1795 Pittwater Road MONA VALE NSW 2103 Lot 1 DP 219265 , 1797 Pittwater Road MONA VALE NSW 2103 Lot 2 DP 219265 , 38 Park Street MONA VALE NSW 2103 Lot 5 DP 77493 , 1793 Pittwater Road MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of four (4) allotment located on the south-western side of Pittwater Road. The site is irregular in shape with a primary frontage of 64.2m along Pittwater Road and a secondary frontage of 63.9m along Park Street. The sites are legally described as: Lot 2, DP 219265 - No. 39 Park Street, Mona Vale Lot 1, DP 219265 - No. 1797 Pittwater Road, Mona Vale Lot 4, DP 76695 -No 1795 Pittwater Road, Mona Vale Lot 5, DP 77493, No. 1793 Pittwater Road, Mona Vale. The site has a depth of between 36.25m and 68.48m and a surveyed area of 3240.42m². The site is located within the R2 Low Density Residential zone and single story dwellings are accommodated on each existing allotment. The site has a slope 5.8% that falls from the west to the east. The site contains several native and non-native canopy trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining development is characterised by weatherboard dwelling houses to the northwest and south-east. The immediately adjoining neighbour to the south is Pittwater Medical Practice and a Health Space clinic. Surrounding development to the west on the opposite side of Park Street includes The Sacred Heart Catholic Church

	and the Woolworths arcade connecting to the Mona Vale Town Centre further to the south-west. To the east, on the opposite side of Pittwater Road are a number of attached townhouse developments.

Map:



SITE HISTORY

PLM2020/0128
On 2 July 2020 a pre-lodgement meeting (PLM 2020/0128) was held in relation to the development of this site for seniors housing. The proposal sought to develop the site with a separate building containing six (6) dwellings and a shared driveway access to basement parking. The design as proposed at the PLM contained a height breach and substantial noncompliance with the basement setback to Pittwater Road. Based on the proposal as profferred, the scheme was not supported and required design amendments and the preference for site consolidation.

DA2019/1072
On 9 July 2020, DA2019/1072 was approved by Council for demolition works and construction of a seniors housing development consisting of sixteen (16) units and thirty four (34) basement parking spaces at Nos. 1795 and 1797 Pittwater Road and No. 38 Park Street, Mona Vale.

DA2019/1179
On 10 February 2021, DA2019/1179 was approved by Council (DDP) for demolition works and construction of a seniors housing development consisting of six (6) units and twelve (12) basement parking spaces connecting with the approved development (DA20191072) at Nos. 1793, 1795 and 1797 Pittwater Road and No. 38 Park Street, Mona Vale. The approval consolidated all 4 sites to link the additional six (6) dwellings to the twelve (12) approved under DA2019/1072.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1179, 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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/1179 for the following reasons: The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: The previously approved building height is increased by a maximum of 600mm. The applicant notes *the increase will enhance amenity and buildability, however, such increase does not give rise to any inappropriate or jarring streetscape, residential amenity, heritage conservation or environmental consequences.* The applicants justification is generally supported. The siting (setbacks) and scale (density / FSR and depth of excavation) and landscape area outcomes of the approved development are maintained. The increase in height will not result in unreasonable impacts on neighbouring residential amenity by virtue of overshadowing or view loss. Minor changes are proposed to the unit 20

Section 4.55 (2) - Other Modifications	Comments
	including the introduction of privacy screens and a vergola to the eastern balcony which will enhance the amenity of the unit and provide for enhanced privacy to the neighbouring medical centre.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/1179 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential

Section 4.15 'Matters for Consideration'	Comments
	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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested to clarify the increase in height. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original 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	(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.

Section 4.15 'Matters for Consideration'	Comments
economic impacts in the locality	(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 28/02/2022 to 14/03/2022 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
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS - **Supported** Discussion of reason for referral This proposal has been referred to Heritage as the subject property is within the vicinity of two heritage items: **"Glenroy" (house)** 1789 Pittwater Road, Mona Vale **St John's Anglican Church and gravestones** - 1624 Pittwater Road, Mona Vale Details of heritage items affected Details of the items as contained within the Pittwater inventory are as follows:

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
Glenroy
<u>Statement of significance:</u>
Glenroy at 1789 Pittwater Road in Mona Vale has historic and aesthetic significance as a good
example of a Federation House associated with the early inhabitants of Pittwater, the Johnson
family. It is one of the earliest surviving houses in the locality. It features simplified elements of the
Federation House, including the use of weatherboard, the shady veranda, the corrugated iron roof
and the plain or sparingly decorated timber posts.

<u>Physical description:</u>
Glenroy features simplified elements of the Federation House, including the use of weatherboard, a
shady veranda, corrugated iron roof and plain or sparingly decorated timber posts.

St John's Anglican Church and gravestones
<u>Statement of significance:</u>
St John's Anglican Church is historically significant as one of the earliest churches of Pittwater. It was
built in 1871 and relocated to Bayview in 1888. It was demolished and rebuilt in 1907. It is socially
significant due to its being one of the earliest Churches built by the Anglican community in the area.
Group of three relocated headstones typical of the late nineteenth century design, removed from lost
grave sites on Mona Vale Headland. The group includes a memorial to a worker killed during the
erection of Barrenjoey Lighthouse.

<u>Physical description:</u>
St Johns Anglican Church is a sandstone one-storey church located on Pittwater Road with a later
modern addition. It is built in a simple style featuring Victorian Rustic Gothic characteristics,
including: a steep-pitch roof, prominent gable with wide bargeboard, two-centred pointed arched
opening.
<table>
<tr><td colspan="3">Other relevant heritage listings</td></tr>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td></td><td></td></tr>
<tr><td></td><td></td><td></td></tr>
</table>
</td></tr>
</table>

Internal Referral Body	Comments
	RAIA Register of 20th Century Buildings of Significance: No Other: N/A Consideration of Application The proposal seeks consent for modifications to an approved seniors living development. Changes include an increase in building heights, changes to materiality as well as the addition of vergolas and privacy screens. Glenroy is located to the east of the subject property across 1791 Pittwater Road while the church is located to the north east across Pittwater Road. Given the nature of the changes proposed, they are considered to not impact upon the heritage item or its significance. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
Strategic and Place Planning (Urban Design)	**Supported** The proposed modifications are generally acceptable for the following reasons: • The siting and scale of the development is generally the same as the approved scheme except for the minor increase in building height. • The proposal maintains the previously approved setbacks, Floor Space Ratio and landscaped area outcomes. As such, the modified proposal will have minor impact to adjoining development with regards to visual and audio privacy, solar access and view sharing.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised. The conditions recommended by Ausgid in the original consent remain valid and still apply.

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 original application (see Certificate No. 1134209M dated 14 September 2020).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	48	45

A condition has been included in the original consent which is still relevant requiring compliance with the commitments indicated in the BASIX Certificate. Given the minor nature of the modification sought there is no need for an amendment to the certificate.

SEPP (Housing for Seniors or People with a Disability) 2004

Cause 40(4) requires the height of the building not to exceed 8m, measured to the top of the ceiling.

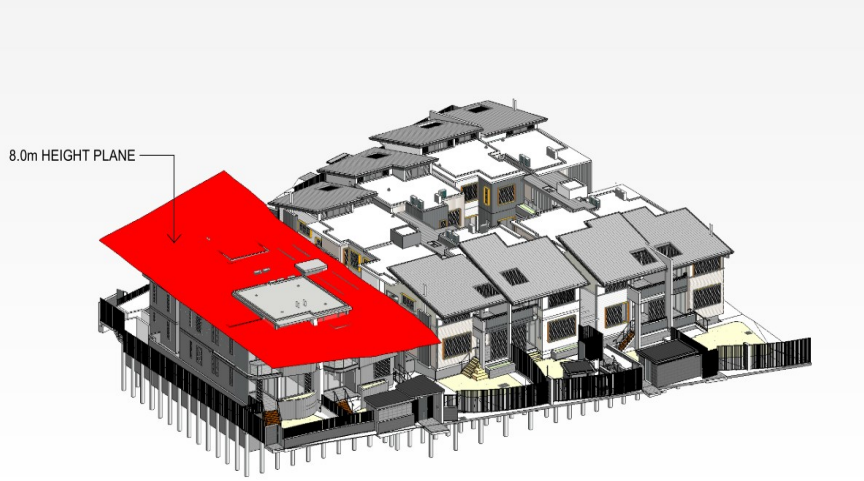
Note: SEPP (HSPD) defines height as:

> *height in relation to a building, means the distance measured vertically from any point on the c*

Comment:

The proposal seeks a max 600mm increase in the height of the development. Despite the increase in the height the proposal remains compliant with the 8m max height limit as height is measured from the top of the ceiling under SEPP (HSPD). Refer to height diagram below which shows the central roof

element and lift shaft that project beyond the 8m height blanket.



8m height plane (source KND architects)

Notwithstanding an assessment of the development remains to be consistent with the character of the locality as the breaching element are set back from the edge of the building and the built form will continue to read as a two storey building within a landscape setting. The breaching element will not detract from the design quality of the development in the streetscape or result in unreasonable impacts on residential amenity in terms of solar access, which remains to be compliant, or view sharing.

The proposal remains to be consistent with all other SEPP (HSPD) controls and the detailed assessment of such controls contained with the original DA assessment report remain to be valid. Refer also to detailed discussion under Clause 4.3 of the Pittwater LEP below.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response was received at the time of writing this report and it is therefore assumed that the conditions recommended by Ausgrid to the original DA are still relevant.

Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The original application was referred to TfNSW who offered no objections to the proposal subject to conditions. The conditions remain valid.

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	8.0m	8.8m (300mm increase above 8.5m)	3.5%	No

Compliance Assessment

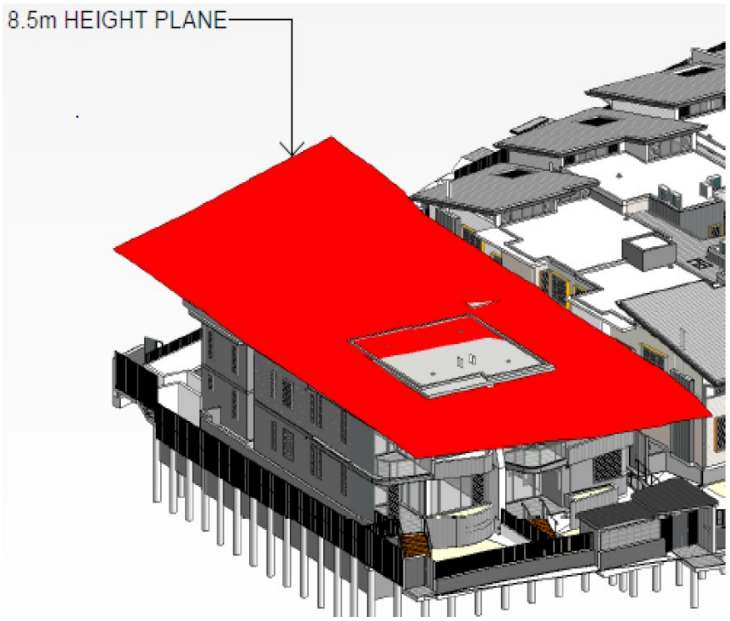
Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

As discussed above, the proposal, as modified, has a maximum building height of 8.8 metres representing a variation of 300mm or 3.5% with the LEP building height standard. The modified roof design represents a small beach in the mid-section of the roof as per the diagram below.



8.5m height envelope (source KND architects)

Whilst the Clause 4.6 development standard variation mechanism does not apply to an application seeking to modify a consent the acceptability of the increase in building height has been assessed against the objectives of the standard 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 modifications result in a minor increase in overall building height the height and scale of the development. Despite this the proposal will remain consistent with the desired character of the locality being 2 storey building forms within a landscaped setting.

The breaching elements is setback from the edge of the building (middle roof element) and will not impact on the design quality of the development or its streetscape. The development by virtue of its height and scale will remain consistent with the desired character of the locality being an outcome

accepted in the approval of the original scheme.

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

Comment:

As noted above, despite the minor increase in overall building height the height and scale of the development it will remain consistent with the desired character of the locality being 2 storey building forms within a landscaped setting.

The modified development maintaining the previously approved spatial relationship to adjoining development. The proposed development, notwithstanding the building height breaching elements, will remain complimentary and compatible with the height and scale of surrounding and nearby development

(c) to minimise any overshadowing of neighbouring properties

Comment:

The application is supported with shadow diagrams that demonstrates that the modified shadowing impacts maintain compliant levels of solar access to surrounding residential development.

(d) to allow for the reasonable sharing of views

Comment:

The 200-600mm increase in the height of the roof will have no discernible adverse impacts on view sharing.

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

Comment:

The building height breaching elements are not a consequence of the desire to further alter the natural topography of the site.

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

Comment:

The minor increase in overall building height will not compromise the heritage conservation outcomes afforded through approval of the original scheme.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m Pittwater Road	8m - 8.2m to building wall 6.8m-7m to balconies Nil to bin store	unaltered	No

Rear building line	6.5m Park Street	6.5m - 7.5m to building line 4m to balconies	unaltered	Yes No
Side building line	2.5m southern boundary	3m	unaltered	Yes
	1m northern boundary	Ni	unaltered	No
Building envelope	3.5m north-west	Outside envelope 1.4m in height x a length of 6.6m	unaltered	No
	3.5m south-east	Within envelope	unaltered	Yes
Landscaped area	50%	41 %	unaltered	No

There is no change to the footprint / setbacks of the approved development. As such, the assessment of the built form controls referenced above as detailed in the original assessment report are still relevant.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	No	Yes
D9.10 Landscaped Area - General	No	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

The proposal seeks to introduce an operable privacy screen to the eastern and western edge of the balcony of unit 20. The original approval did not include any screens to the balcony. (Note: the original approval references unit 20 as unit 4).

Unit 20 (previously No. 4) is located on level 1 and faces Pittwater Road to the east. The modification provides enhanced privacy protection for the future residents and neighbors as compared to the approved scheme. The operable design of the screen is assessed as acceptable as the balcony faces Pittwater Road (a public road) to the east and overlooks the roof of the neighbouring single storey medical practice to the west.

C1.10 Building Facades

The minor changes to the building facades as a result of the introduction of screens to the balcony of unit 20 and the minor change to the roof design will not adversely impact the aesthetic quality of the design and its presentation in the street.

The vergola to the balcony of unit 20 offers enhanced weather protection to the occupiers of the unit and will not be readily visible from the streetscape.

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

There is no change to the footprint, setback or density of the approved development.

The 200mm-600mm increase in the height of the building will result in a 300mm (3.5%) breach of the LEP height standard. Despite the breach of the height limit, the proposal will not result in any unreasonable visual amenity impacts on the streetscape and will maintain the two storey built form which is in character with the locality. In addition, the proposal will not result in any unreasonable impacts on neighbouring amenity by way of overshadowing or view loss.

The introduction of privacy screens to the eastern balcony of Unit 20 will enhance the amenity of the

unit and offer greater privacy protection to the neighbouring medical centre.

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. Mod2022/0059 for Modification of Development Consent DA2020/1179 granted for demolition works and construction of a Seniors Housing development with basement parking & associated landscaping on land at Lot 4 DP 76695,1795 Pittwater Road, MONA VALE, Lot 1 DP 219265,1797 Pittwater Road, MONA VALE, Lot 2 DP 219265,38 Park Street, MONA VALE, Lot 5 DP 77493,1793 Pittwater Road, MONA VALE, subject to the conditions printed below:

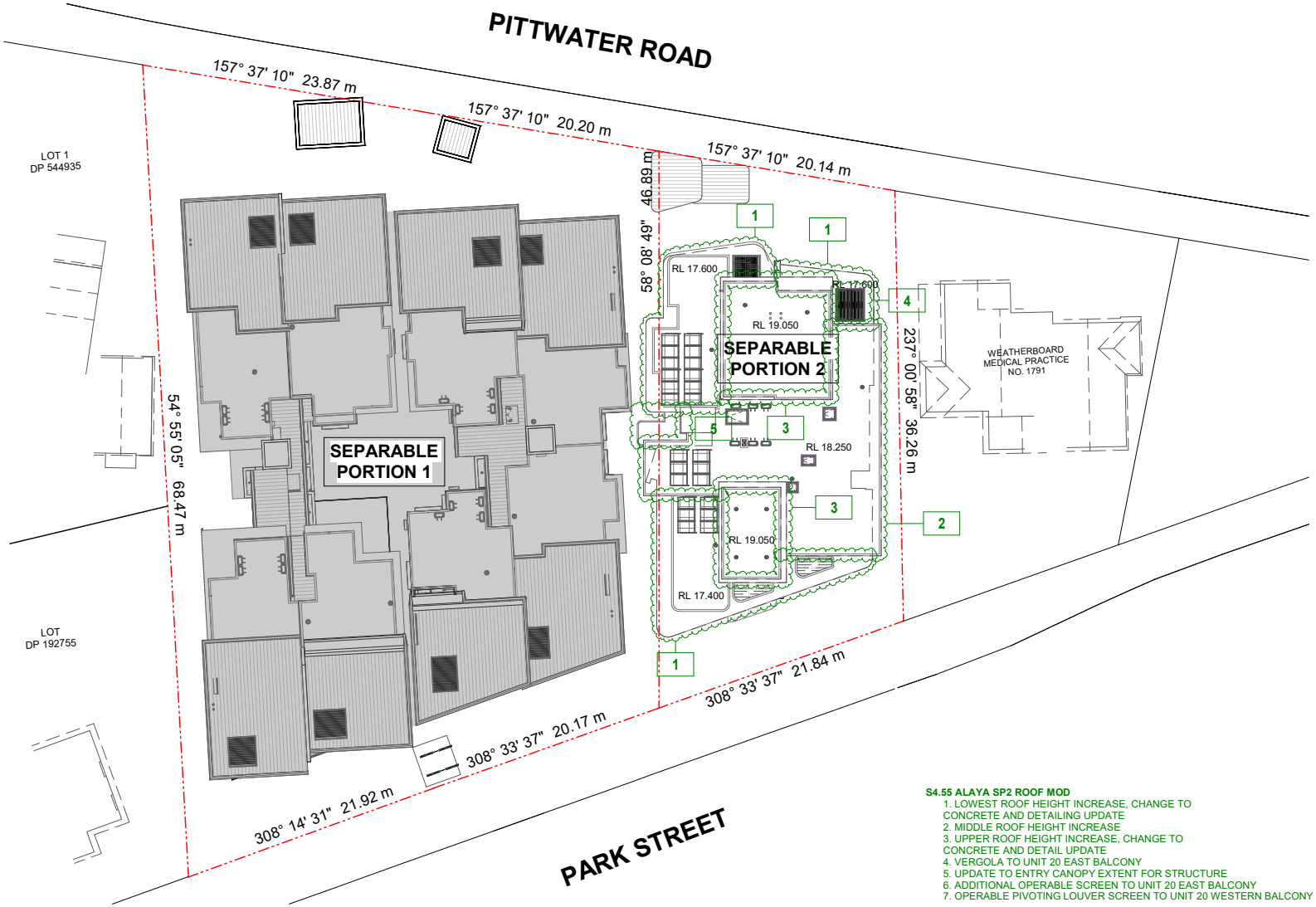
A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA01-101 Rev A Overall Plan - Roof Plan	21.12.2021	KND Architects
DA02-001 Rev A Lower Roof Plan - SP2	21.12.2021	KND Architects
DA202-002 Rev A Roof Plan - SP2	21.12.2021	KND Architects
DA03-001 Rev A East Elevation - SP2	21.12.2021	KND Architects
DA03-002 Rev A South Elevation - SP2	21.12.2021	KND Architects
DA03-003 Rev A North Elevation - SP2	21.12.2021	KND Architects
DA03-004 Rev A West Elevation - SP2	21.12.2021	KND Architects
DA04-001 Rev A Section A	21.12.2021	KND Architects
DA04-002 Rev A Section B	21.12.2021	KND Architects
DA04-003 Rev A Section 1	21.12.2021	KND Architects

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



S4.55 ALAYA SP2 ROOF MOD

1. LOWEST ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAILING UPDATE
2. MIDDLE ROOF HEIGHT INCREASE
3. UPPER ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAIL UPDATE
4. VERGOLA TO UNIT 20 EAST BALCONY
5. UPDATE TO ENTRY CANOPY EXTENT FOR STRUCTURE
6. ADDITIONAL OPERABLE SCREEN TO UNIT 20 EAST BALCONY
7. OPERABLE PIVOTING LOUVER SCREEN TO UNIT 20 WESTERN BALCONY

IMPORTANT NOTES:
Do not scale from drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author, and must not be retained, copied or used without the express authority of KHUAT AND DUNSKI PTY. LTD. t/a KND ARCHITECTS.

FOR REVIEW

REV	DATE	DESCRIPTION	BY
A	21/12/2021	ISSUED FOR S4.55 APPROVAL	LK

CLIENT:

KEYPLAN

KND ARCHITECTS

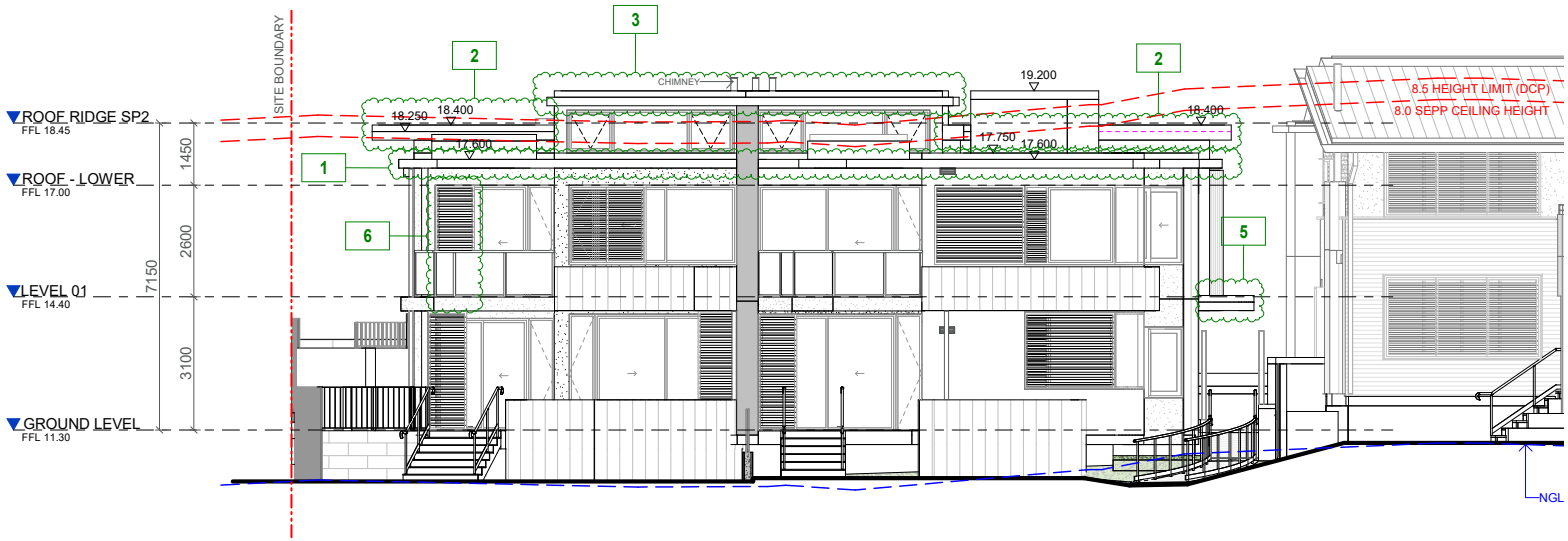
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E info@kndarchitects.com.au
www.kndarchitects.com.au
NSW Nom Arch - Pav Dunski (11381)
D+BP Reg's 2021 - DEP0001677
ACN 643 817 985

CLIENT	MONA VALE 3 PTY LTD
DRAWING TITLE	OVERALL PLAN - ROOF PLAN
PROJECT	ALAYA APARTMENTS (SENIORS LIVING)
	1793, 1795, 1797 PITTWATER ROAD + 38 PARK ST, MONA VALE NSW

SCALE @ A3	DATE	DRAWN	CHECKED
1 : 300	02/08/2021	TN	LK
JOB	DRAWING		REVISION
21011	DA01-101		A

S4.55 ALAYA SP2 ROOF MOD

1. LOWEST ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAILING UPDATE
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FOR REVIEW	A	21/12/2021	ISSUED FOR S4.55 APPROVAL	LK

CLIENT: KEYPLAN

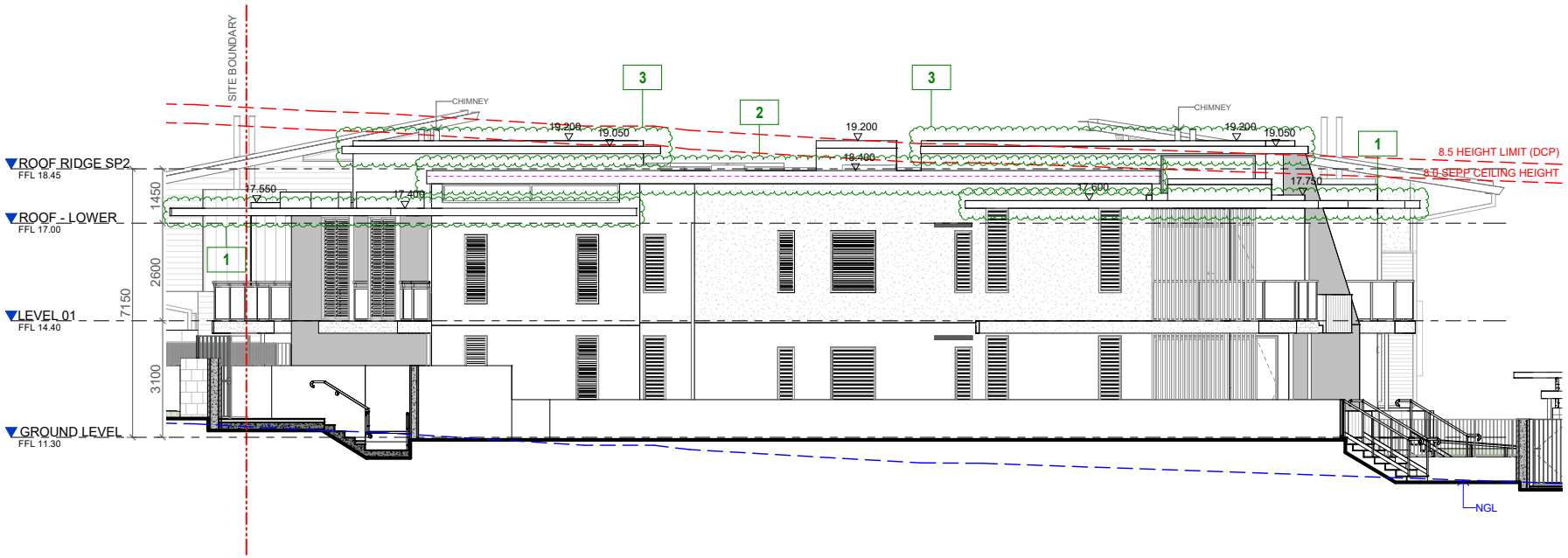
KND ARCHITECTS

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www.kndarchitects.com.au
NSW Nom Arch - Pav Dunski (11381)
D+BP Reg's 2021 - DEP0001677
ACN 643 817 985

CLIENT	DRAWING TITLE			
MONA VALE 3 PTY LTD	EAST ELEVATIONS - SP2			
PROJECT: ALAYA APARTMENTS (SENIORS LIVING)	SCALE @ A3: 1 : 100	DATE: 02/08/2021	DRAWN: TN	CHECKED: LK
1793, 1795, 1797 PITTWATER ROAD + 38 PARK ST, MONA VALE NSW	JOB: 21011	DRAWING: DA03-001		REVISION: A

S4.55 ALAYA SP2 ROOF MOD

1. LOWEST ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAILING UPDATE
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3. UPPER ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAIL UPDATE
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FOR REVIEW

REV	DATE	DESCRIPTION	BY
A	21/12/2021	ISSUED FOR S4.55 APPROVAL	LK

CLIENT:

KEYPLAN

KND ARCHITECTS

KnD Architects Pty Ltd
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NSW Nom Arch - Pav Dunski (11381)
D+BP Reg's 2021 - DEP0001677
ACN 643 817 985

CLIENT
MONA VALE 3 PTY LTD

DRAWING TITLE
SOUTH ELEVATIONS - SP2

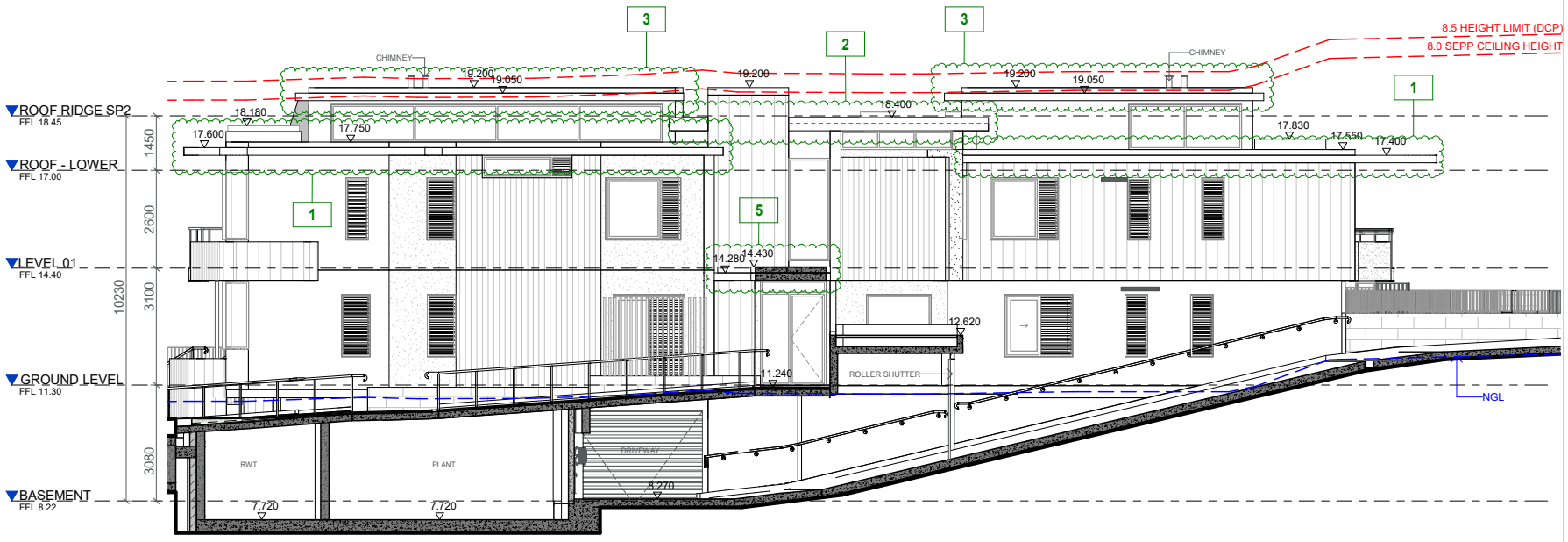
PROJECT
ALAYA APARTMENTS (SENIORS LIVING)
1793, 1795, 1797 PITTWATER ROAD + 38 PARK ST, MONA VALE NSW

SCALE @ A3	DATE	DRAWN	CHECKED
1 : 100	02/08/2021	TN	LK

JOB	DRAWING	REVISION
21011	DA03-002	A

S4.55 ALAYA SP2 ROOF MOD

1. LOWEST ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAILING UPDATE
2. MIDDLE ROOF HEIGHT INCREASE
3. UPPER ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAIL UPDATE
4. VERGOLA TO UNIT 20 EAST BALCONY
5. UPDATE TO ENTRY CANOPY EXTENT FOR STRUCTURE
6. ADDITIONAL OPERABLE SCREEN TO UNIT 20 EAST BALCONY
7. OPERABLE PIVOTING LOUVER SCREEN TO UNIT 20 WESTERN BALCONY



IMPORTANT NOTES:
Do not scale from drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author, and must not be retained, copied or used without the express authority of KHUAT AND DUNSKI PTY. LTD. t/a KND ARCHITECTS.

FOR REVIEW

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A	21/12/2021	ISSUED FOR S4.55 APPROVAL	LK

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CLIENT
MONA VALE 3 PTY LTD

DRAWING TITLE
NORTH ELEVATIONS - SP2

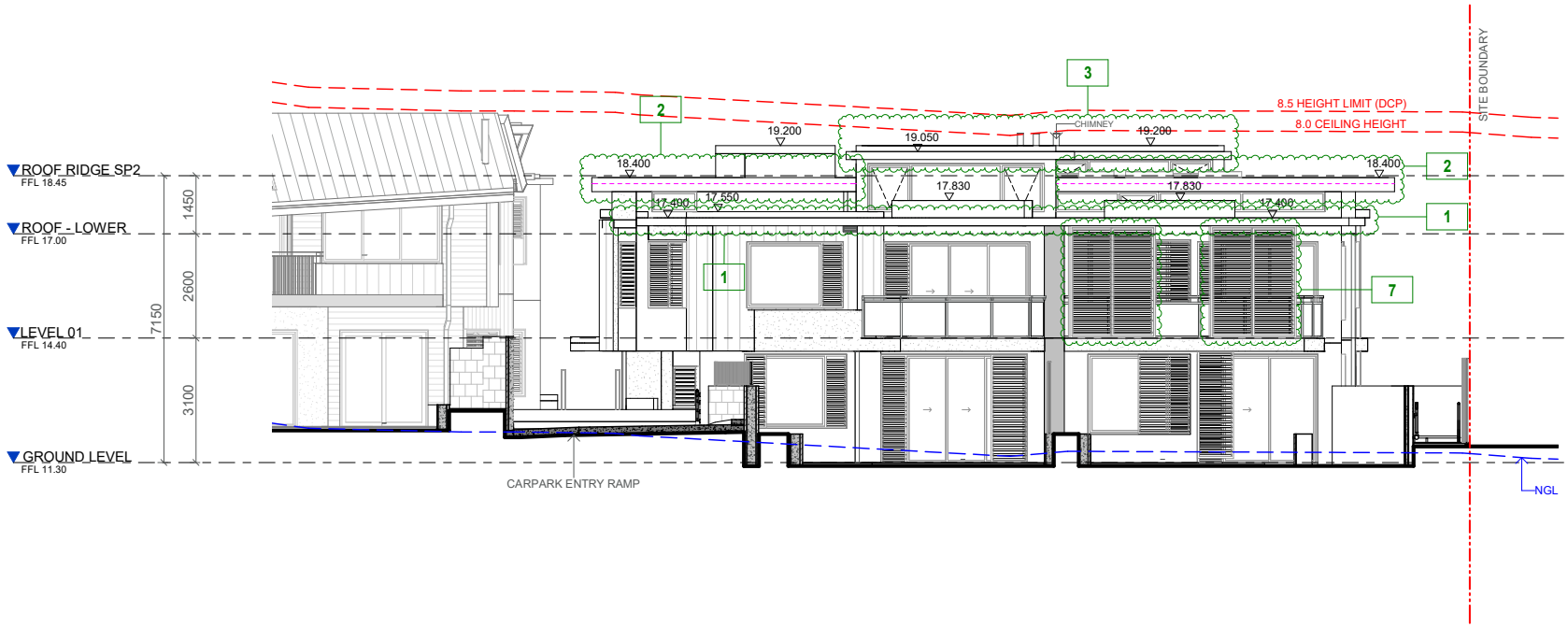
PROJECT
ALAYA APARTMENTS (SENIORS LIVING)
1793, 1795, 1797 PITTWATER ROAD + 38 PARK ST, MONA VALE NSW

SCALE @ A3	DATE	DRAWN	CHECKED
1 : 100	02/08/2021	TN	LK

JOB	DRAWING	REVISION
21011	DA03-003	A

S4.55 ALAYA SP2 ROOF MOD

1. LOWEST ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAILING UPDATE
2. MIDDLE ROOF HEIGHT INCREASE
3. UPPER ROOF HEIGHT INCREASE, CHANGE TO CONCRETE AND DETAIL UPDATE
4. VERGOLA TO UNIT 20 EAST BALCONY
5. UPDATE TO ENTRY CANOPY EXTENT FOR STRUCTURE
6. ADDITIONAL OPERABLE SCREEN TO UNIT 20 EAST BALCONY
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FOR REVIEW

REV	DATE	DESCRIPTION	BY
A	21/12/2021	ISSUED FOR S4.55 APPROVAL	LK

CLIENT:

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ACN 643 817 985

CLIENT: MONA VALE 3 PTY LTD			DRAWING TITLE: WEST ELEVATIONS - SP2	
PROJECT: ALAYA APARTMENTS (SENIORS LIVING) 1793, 1795, 1797 PITTWATER ROAD + 38 PARK ST, MONA VALE NSW	SCALE @ A3: 1 : 100	DATE: 02/08/2021	DRAWN: TN	CHECKED: LK
	JOB: 21011	DRAWING: DA03-004		REVISION: A

4.0 Height of buildings

The subject application was approved pursuant to the provisions of SEPP HSPD which contains development standards in relation to building height. We note at paragraph 153 of the judgment in the matter of Eastern Suburbs Leagues Club Ltd v Waverley Council [2019] NSWLEC 130 Moore J found:

> *I have concluded that the provisions of the SEPP do have the effect of overriding both the building height development standard and the FSR development standard otherwise applicable to the site as arising from the WLEP. As a result of this conclusion, it is not necessary for me to consider whether or not the contingent requests made by the Club for dispensation utilising cl 4.6 of the WLEP from compliance with those development standards meets the relevant tests set by cl 4.6(3) and (4).*

Whilst the SEPP HSPD building height provisions prevail over the clause 4.3 PLEP height standard an assessment against the latter numerical provision is considered appropriate. In this regard clause 4.3 states that the height of a building on any land is not to exceed 8.5 metres or 8 metres above any flood planning level (FPL). The stated objectives of such control 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.*

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.

We confirm that the proposal, as modified, has a maximum building height of 8.8 metres representing a variation of 300mm or 3.5% with the building height breaching elements limited to those depicted in the building height blanket diagram at Figure 1 below.

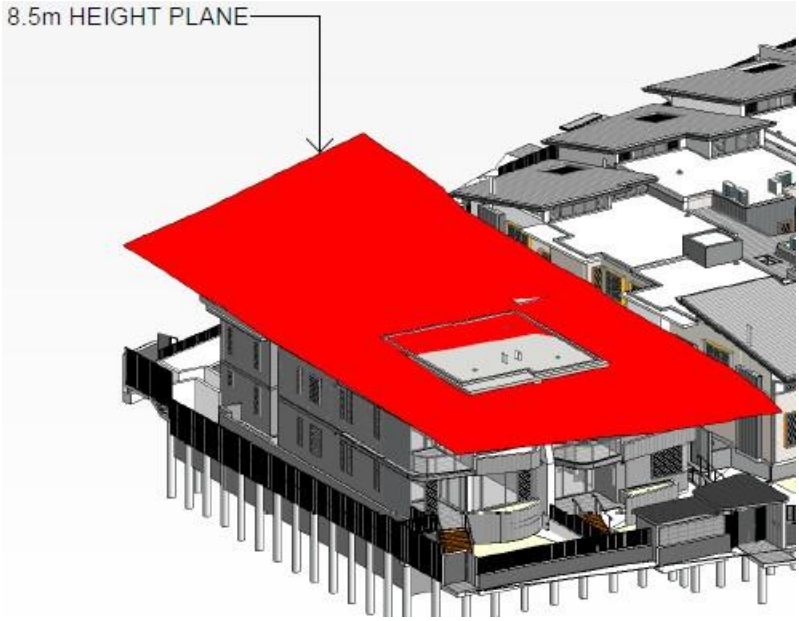


Figure 1 – Building height blanket (8.5 metres) depicting building height breaching elements

Whilst the clause 4.6 PLEP development standard variation mechanism does not apply to an application seeking to modify a consent the acceptability of the increase in building height has been assessed against the objectives of the standard 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: Whilst the modifications result in a minor increase in overall building height the height and scale of the development will remain consistent with the desired character of the locality being 2 storey building forms within a landscaped setting.

The breaching elements will not impact on the design quality of the development or its streetscape or residential amenity outcomes and to that extent the building, by virtue of its height and scale, will remain consistent with the desired character of the locality being an outcome accepted in the approval of the original scheme. The proposal remains consistent with this objective.

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

Comment: Whilst the modifications result in a minor increase in overall building height the height and scale of the development will remain consistent with the desired character of the locality being 2 storey building forms within a landscaped setting. This submission demonstrates that the modified development is of exception design quality with the development maintaining the previously approved spatial relationship to adjoining development. The proposed development, notwithstanding the building height breaching

elements, will remain complimentary and compatible with the height and scale of surrounding and nearby development.

The proposal remains consistent with this objective.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The accompanying shadow diagrams clearly demonstrate the modified shadowing impacts associated with the modifications sought with compliant levels of solar access maintained to surrounding residential development. Notwithstanding the building height non-compliance, overshadowing has been minimised to neighbouring properties to the extent that compliant solar access is maintained.

The proposal remains consistent with this objective.

ITEM 3.4	**MOD2022/0023 - 30 - 38 ETHEL STREET SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0865 GRANTED FOR USE OF BALGOWLAH RSL CARPARK FOR AN ORGANIC FOOD MARKET**
REPORTING MANAGER	**STEVE FINDLAY**
TRIM FILE REF	**2022/329931**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan

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 Mod2022/0023 for modification of Development Consent DA2019/0865 granted for use of Balgowlah RSL carpark for an Organic Food Market on land at Lot 1 DP 1102512, 30 - 38 Ethel Street SEAFORTH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0023

Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 1 DP 1102512, 30 - 38 Ethel Street SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2019/0865 granted for use of Balgowlah RSL carpark for an Organic Food Market
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Balgowlah RSL Memorial Club
Applicant:	Organic Food Markets

Application Lodged:	25/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	03/02/2022 to 17/02/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This application is to modify the development consent granted for the Organic Food Market at the Balgowlah RSL carpark, to change from the originally approved 18 month trial period, to a 5 year operation (from the date of determination of the current application). As the markets commenced in February 2021, the current application was lodged within the period prescribed by Condition 11 on the consent, to allow the modification of the limited operational period imposed on the consent.

The development application was determined by the Development Determination Panel (DDP), therefore, the modification application is referred back to the DDP for determination, as required by the DDP Charter.

There are no built form controls to consider in relation to this application. The notification of the application resulted in three (3) submissions being received, including; two in support and one requesting details on what the application is proposing. No submissions raised objections to the proposal.

The markets have operated without incident over the 18 month trial period.

Based on the assessment, the report concludes with a recommendation that the DDP grant approval to the modification.

PROPOSED DEVELOPMENT IN DETAIL

The modification application proposes the extended operation of the Organic Food Markets at the Balgowlah RSL carpark for 5 years. Condition No. 11 on the Notice of Determination facilitated the continued operation of the use, after the initial 18 month trial period, which was to be applied for immediately before the end of the trial period.

If approved, the consent would then expire on the date which is 5 years from the date of determination of this modification application. The proposal also seeks consent to reapply for a further modification six months before that date for a further extension or for the permanent operation of the markets.

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 - 2.8 Temporary use of land

SITE DESCRIPTION

Property Description:	Lot 1 DP 1102512 , 30 - 38 Ethel Street SEAFORTH NSW 2092
Detailed Site Description:	The subject property is commonly known as 30-38 Ethel

	Street, Seaforth and legally known as Lot 1 in DP 1102512. The site is located on the northern side of Ethel Street. The property is irregular in shape and has a frontage of 61m to Ethel Street and an average depth of 65m and an overall site area of 4,128m2. The property currently contains the Balgowlah RSL Memorial Club with associated carparking. The land is zoned B2 Local Centre under the Manly Local Environmental Plan 2013 (MLEP 2013). The surrounding area includes commercial and residential development.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history as background to the assessment of the current application:

DA2019/0865 - Use of Balgowlah RSL for an Organic Food Market.
The application was approved for use of part of the existing Balgowlah RSL Club car park for an organic food market, with the following characteristics:

- Up to 50 days per year (Sundays only)
- Customer Operating Hours - 8.00am to 12:30pm
- Traders Operating Hours - 7.00am to 2.00pm
- Approximately 40 food and non-food stalls, all located on the northern portion of the first floor car park
- Onsite Managers Office
- Entertainment (music)

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 DA2019/0865, 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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0865 for the following reasons: • No new works are proposed and the development will remain the same
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/0865 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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 planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition 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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control

Section 4.15 'Matters for Consideration'	Comments
locality	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 03/02/2022 to 17/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Ciro Romano	1 / 41 Ethel Street SEAFORTH NSW 2092
Mr Richard Choularton	10 Chiltern Road INGLESIDE NSW 2101
Balgowlah RSL Memorial Club	30 - 38 Ethel Street SEAFORTH NSW 2092

The notification of the application resulted in three (3) submissions. Two of those submissions were in support of the application and one submission was requesting details on what the application is proposing. No submissions raised objections to the proposal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Environmental Health (Industrial)	**General Comments** The proposed modification is essentially to extend the existing approval for the Market. The market appears to have operated without incident. Current conditions of approval will remain in place. Therefore Environmental Health supports the proposal.
Environmental Health (Food Premises, Skin Pen.)	**General Comments** The proposed modification is essentially to extend the existing approval for the Market. The market appears to have operated without incident. Current conditions of approval will remain in place. Any Covid 19 requirements will be imposed independently by NSW Health. Therefore Environmental Health supports the proposal.
Traffic Engineer	The modification seeks a five year extension to existing approval for the operation of Sunday markets from within the RSL Carpark. Since DA2019/0865 was approved, no adverse feedback has been received by the traffic team concerning the operation of the markets. Two parking survey reports (dated Sun 14/2/2021 and Sun, 16/5/2021) were submitted to support the modification application reflecting conditions before and 3 months after commencement of the operation of the markets. The reports indicate that the markets have had an impact upon the availability of parking with less parking spaces available both on and offstreet within the RSL carpark. The surveys do however demonstrate that there was still adequate parking available for residents and visitors (37% parking occupancy on Ethel Street, 38% occupancy on Coral Street and similar date for other streets). Given that this event is not a full-time operation and appears to be supported by the community at this point, the traffic team do not oppose the extension of approval. To ensure that ongoing monitoring of conditions continues the applicant will be required to perform an additional parking occupancy survey two years after the consent is issued and submit to Council for

Internal Referral Body	Comments
	review. This survey shall be performed in November, December or January. It was noted that a revised traffic report was not submitted with this application, if a further extension beyond the five years is sought a revised traffic and parking implications report will be required at that point to ensure that conditions current at the time are reflected.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

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
The modification does not propose any new works, therefore there are no principal development standards under Part 4 of the PLEP 2014 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
2.8 Temporary use of land	Yes

Clause	Compliance with Requirements
6.21 Noise impacts—licensed premises	Yes

Detailed Assessment

2.8 Temporary use of land

(3) Development consent must not be granted unless the consent authority is satisfied that:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

Comment:
The proposed modification does not alter the approved development's compliance with this cause. Inherently, the proposed development does not involve any permanent physical works and the land will be returned to its original state following the finish of the market events. Therefore, the proposed development will not prejudice the subsequent carrying out of development on the land.

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

Comment:
The operation of the markets over the initial approved period proposed has demonstrated that is has not unreasonable impacted on nearby residential amenity, as no issues were raised with Council during the trial period. Additionally, no submissions were raised in objection to the Organic Food Markets.

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

Comment:
The proposed modification does not alter the approved development's compliance with this clause. Inherently, the market operations involve only temporary structures. The site of the markets is also an existing carpark and does not present any impacts to environmental attributes or features.

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Comment:
The proposed modification does not alter the approved development's compliance with this clause. As stated above, the markets involve only temporary structures, to be set up in the morning and removed at the end of the day. At the cessation of trading and pack-down, the site is returned back to its usual condition as a carpark for the RSL club.

Manly Development Control Plan

Built Form Controls
The modification does not propose any new works, therefore the built form controls are not relevant to the assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.7 Seaforth Local Centre	Yes	Yes
4.2.7.3 Car Parking and Access	Yes	Yes
4.2.7.6 The Townscape Plan and Precincts within Seaforth Centre	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

The current application for extension of the consent period of the markets for five (5) years is referred to the Development Determination Panel as required by the DDP Charter.

The public exhibition of the application resulted in three (3) submissions; two (2) in support and one (1) requesting details on what the application is proposing. No submissions raised objections to the proposal. Therefore, the proposal to extend the use to 5 years is consistent with maintaining the public interest.

The markets have operated without incident over the 18 month trial period, which is testament to the good management of the markets.

Additionally, the traffic and parking requirements set down under the initial 18 month trial period have been satisfied, with the parking surveys revealing that there is still on-street parking available in the surrounding streets.

Therefore, the proposal for a 5 year consent period, from the date of determination of the modification application, is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0023 for Modification of Development Consent DA2019/0865 granted for use of Balgowlah RSL carpark for an Organic Food Market on land at Lot 1 DP 1102512,30 - 38 Ethel Street, SEAFORTH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Operational Management Plan	January 2022	Seaforth Markets

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.	**Dated**	**Prepared By**
Waste Management Plan	January 2022	Organic Food Markets

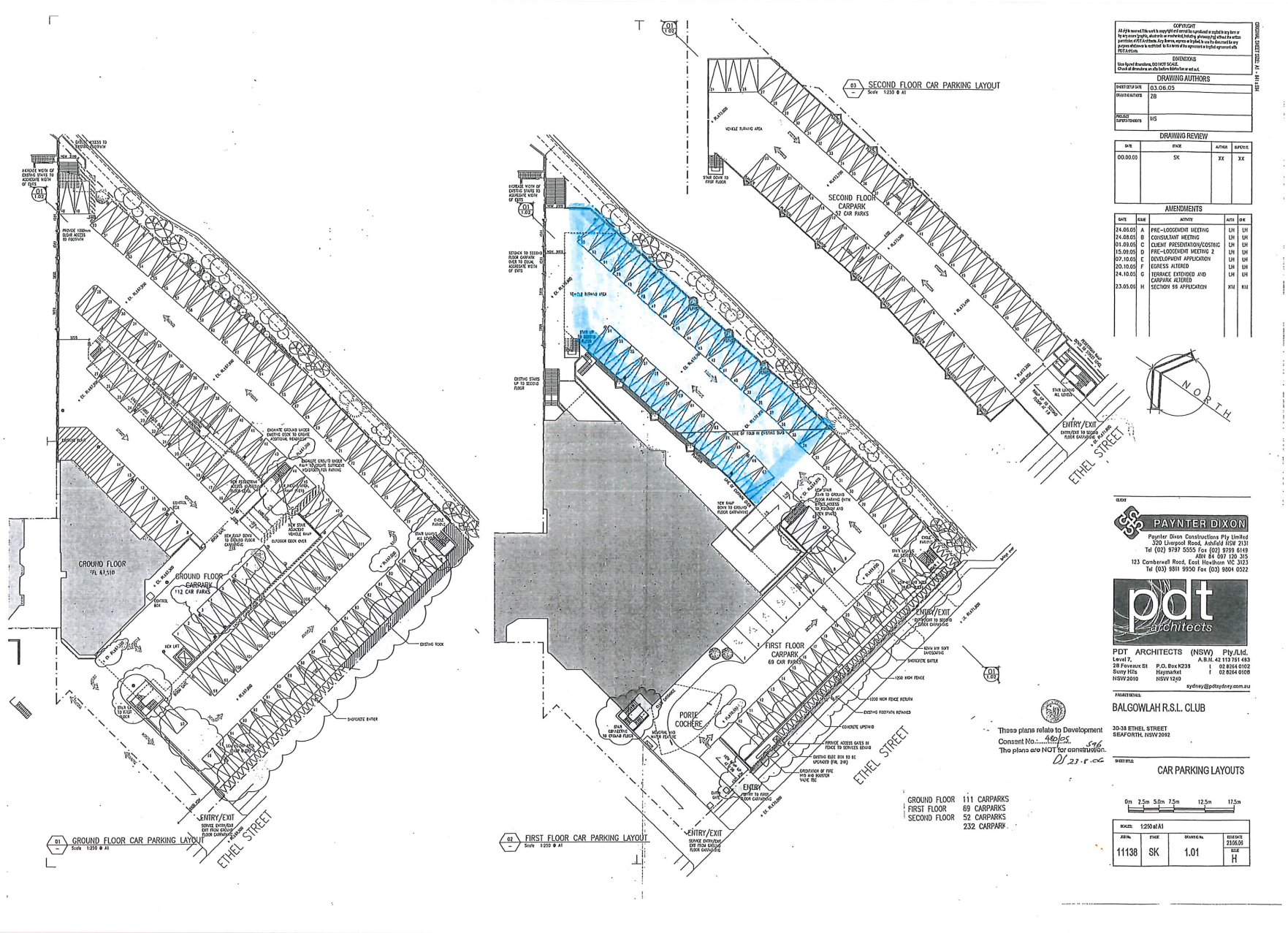
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Modify Condition 11 Trial Period to read as follows:

Condition 11 - 5 Year Limited Consent Period

The consent shall expire 5 years from the date of determination of Modification Application No. MOD2022/0023. The applicant may lodge a S4.55 Modification of Consent Application six (6) months before the expiry of this 5 year consent period, to extend the consent for a further period as determined by Council.

Reason: To monitor the operation of the markets to ensure no adverse impacts on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent.


01 GROUND FLOOR CAR PARKING LAYOUT
Scale 1:250 @ A1
GROUND FLOOR
FL 61.510
GROUND FLOOR CARPARK
112 CAR PARKS
ENTRY/EXIT
ETHEL STREET
02 FIRST FLOOR CAR PARKING LAYOUT
Scale 1:250 @ A1
FIRST FLOOR CARPARK
69 CAR PARKS
PORTE COCHERE
ENTRY/EXIT
ETHEL STREET
03 SECOND FLOOR CAR PARKING LAYOUT
Scale 1:250 @ A1
SECOND FLOOR CARPARK
52 CAR PARKS
ENTRY/EXIT
ETHEL STREET
NORTH
GROUND FLOOR 111 CARPARKS
FIRST FLOOR 69 CARPARKS
SECOND FLOOR 52 CARPARKS
232 CARPARKS
These plans relate to Development Consent No.: 460/05 546
The plans are NOT for construction.
DJ 23.8.06
COPYRIGHT
DIMENSIONS
Use figured dimensions, DO NOT SCALE.
Check all dimensions on site before fabrication or set out.
DRAWING AUTHORS
SHEET ISSUE DATE 03.06.05
DRAWING AUTHORS ZB
PROJECT SURVEYOR/ENGINEERS MS
DRAWING REVIEW
DATE 00.00.00 STAGE SK AUTHOR XX REVIEW XX
AMENDMENTS
DATE ISSUE ACTIVITY AUTH DR
24.06.05 A PRE-LODGEMENT MEETING LH LH
24.08.05 B CONSULTANT MEETING LH LH
01.09.05 C CLIENT PRESENTATION/COSTING LH LH
15.09.05 D PRE-LODGEMENT MEETING 2 LH LH
07.10.05 E DEVELOPMENT APPLICATION LH LH
20.10.05 F EGRESS ALTERED LH LH
24.10.05 G TERRACE EXTENDED AND CARPARK ALTERED LH LH
23.05.06 H SECTION 96 APPLICATION KH KH
PAYNTER DIXON
Paynter Dixon Constructions Pty Limited
320 Liverpool Road, Ashfield NSW 2131
Tel (02) 9797 5555 Fax (02) 9799 6149
ABN 84 097 120 315
123 Camberwell Road, East Hawthorn VIC 3123
Tel (03) 9811 9950 Fax (03) 9804 0522
pdt architects
PDT ARCHITECTS (NSW) Pty.Ltd.
Level 7, 28 Foveaux St Surry Hills NSW 2010
P.O. Box K238 Haymarket NSW 1240
A.B.N. 42 113 781 483
t 02 8264 0102
f 02 8264 0108
sydney@pdtsydney.com.au
BALGOWLAH R.S.L. CLUB
30-38 ETHEL STREET SEAFORTH, NSW 2092
CAR PARKING LAYOUTS
0m 2.5m 5.0m 7.5m 12.5m 17.5m
SCALES: 1:250 at A1
JOB No. 11138 STAGE SK DRAWING No. 1.01 ISSUE DATE 23.06.06 ISSUE H

Organic Food Markets - Balgowlah Markets
Draft Layout V1

Key:

- Stall position
- Musician

A two stage bump-in bump-out methodology will be used. During bump-in the outer stalls located in the parking bays will be located first and before the stalls in the centre.

Stall located in the central area will unload and trolly their goods and equipment to their positions from the temporary marked loading bay.



ITEM 3.5	**DA2022/0399 - 48 CARAWA ROAD CROMER - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND ATTACHED SECONDARY DWELLING**
REPORTING MANAGER	**PHIL LANE**
TRIM FILE REF	**2022/328572**
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 DA2022/0399 for alterations and additions to a dwelling house and attached secondary dwelling on land at Lot 3 DP 11799, 48 Carawa Road CROMER, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0399

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 3 DP 11799, 48 Carawa Road CROMER NSW 2099
Proposed Development:	Alterations and additions to a dwelling house and attached secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Amber Charlotte Mackay Emma Jane Mackay
Applicant:	Amber Charlotte Mackay

Application Lodged:	17/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/04/2022 to 18/04/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 232,722.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling and secondary dwelling, as follows:

- Extensions to the principal dwelling and new front entry with porch; and
- Extended rear deck for the secondary dwelling.

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 - 6.2 Earthworks
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 3 DP 11799 , 48 Carawa Road CROMER NSW 2099
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Carawa Road, Cromer. The site is regular in shape with frontages of 16.5m along Carawa Road and 44.195m along Geelong Road. The site has a surveyed area of 709m². The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house with attached secondary dwelling. The site is generally level and contains some mature vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one- and 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:

- Complying Development Certificate CDC2012/0184 for alterations an additions to the existing dwelling to incorporate secondary dwelling was approved by a private certifier on 26 June 2012.
- Complying Development Certificate CDC2012/0269 for modified CDC (above) was approved on 20 August 2012.

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 Matters for Consideration	Comments
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 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. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to tree protection. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. 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 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/04/2022 to 18/04/2022 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:
Mrs Kirsty Leanne Skalic	50 Carawa Road CROMER NSW 2099

The following issues (as relevant to the proposed works) were raised in the submission from No. 50 Carawa Road:

- The owner of No. 50 Carawa Road states they were not notified about the development application.
- Concerns about the proposed front setback.
- Concerns about stormwater management.
- Objection to removal of any trees.

The submission also made statements about a previous development application that are not relevant to the assessment of this application.

The above issues are addressed as follows:

- **Notification**
  Comment:
  Council's records show that a letter to surrounding properties, including No. 50 Carawa Road was sent on 22 March 2022, providing notification of the development application. A further letter was sent to the same recipients on 30 March 2022, correcting an error in the previous correspondence.

- **Front Setback**
  Comment:
  The proposed front setback is acceptable for the reasons detailed in the section of this report relating to Part B7 Front Boundary Setbacks of the WDCP 2011.

- **Stormwater Management**
  Comment:
  Conditions of consent have been applied to ensure the proposed development is adequately managed in relation to stormwater, in compliance with Council's Water Management for Development Policy.
- **Tree Removal**
  Comment:
  No trees are proposed to be removed for the proposed development.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Team. There are no concerns regarding this application, subject to conditions.
Landscape Officer	Additional Information Comment 20/05/2022: The Arboricultural Impact Assessment (AIA) by Complete Arborcare (13/05/2022) is noted. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation Landscape Referral supports the recommendations for tree protection of T1 and T2 as outlined in the AIA, subject to the imposed conditions. The AIA identifies T3 as in poor condition, having low retention value and short useful life expectancy, thus its removal is supported. One small native replacement tree shall be installed within the property boundary to offset any canopy loss, subject to the imposed conditions. Original Comment: The development application is for alterations and additions to a dwelling house and attached secondary dwelling. The Survey identifies existing trees within the property boundary and within the road reserve. Existing trees aren't identified on any of the proposed works plans, submitted with the application, and after

Internal Referral Body	Comments
	investigation Landscape Referral have concerns that the proposed alterations and additions will impact the tree protection zones of multiple existing trees within the property boundary. It is noted that the proposed stockpiling location's, identified on the Site Management Plan, will further impact the tree protection zones and structural root zones of existing trees to the front and rear of the property. An Arboricultural Impact Assessment, prepared by an Arborist with minimum AQF Level 5 in arboriculture, is required to determine the existing trees significance, what impact the proposed works will have to existing trees and the appropriate tree protection measures. An Arboricultural Impact Assessment is required to continue the Landscape Referral.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate Nos. A444892 and A444900 dated 23 December 2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

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

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

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	**Compliance/Comment**
a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	The proposal retains the principal and secondary dwellings on the subject site.
b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	No floor space ratio is applicable to the subject site.
c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	The proposed alterations to the secondary dwelling retain is 60sqm floor area.

Clause 53 – Non-discretionary development standards	
Standard	**Compliance/Comment**
a) For a detached secondary dwelling - a	The subject site is 708sqm in area.

minimum site area of 450m².	
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The proposed development retains existing parking on site.

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	5.4m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality
Comment:
The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

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

(c) the quality of the fill or the soil to be excavated, or both
Comment:
The excavated material will be processed according to the Waste Management Plan for the development. 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 watercourse, drinking water catchment or environmentally sensitive area
Comment:
The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	Max. 7.2m	3.8m	-	Yes
B3 Side Boundary Envelope	4m	N: Within Envelope	-	Yes
		W: Within Envelope	-	Yes
B5 Side Boundary Setbacks	Min. 900mm	W: 900mm	-	Yes
		N: 15.6m	-	Yes
B7 Front Boundary Setbacks	Primary (Carawa): 6.5m	4.3m	33.8%	No
	Secondary (Geelong): 3.5m	1.4m	60%	No - Existing
D1 Landscaped Open Space (LOS) and Bushland Setting	Min. 40% (283.2sqm)	47.1% (336.7sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	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	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

The proposed development includes new works within 4.3m of the primary street frontage (Carawa Road), and 1.4m of the secondary street frontage (Geelong Road), where minimums of 6.5m and 3.5m are required, respectively. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

To create a sense of openness.
Comment:
The proposed non-compliance to the primary street frontage arises due to the inclusion of a new entry porch, which is roofed but open in its construction. The remainder of the building is compliant with the

6.5m minimum front boundary setback. The proposed non-compliance with the secondary street frontage arises as the proposed northern extension (single storey) follows the existing setback to the eastern boundary. The proposal retains a suitable sense of openness to both the primary and secondary street frontages.

To maintain the visual continuity and pattern of buildings and landscape elements.
Comment:
The proposed development retains a building line to the building proper (that is, excluding the open porch structure) on both street frontages that is consistent with comparable developments. In this way, the proposal maintains suitable visual continuity and pattern of buildings and landscaped elements to both Carawa Road and Geelong Road.

To protect and enhance the visual quality of streetscapes and public spaces.
Comment:
The proposed development results in an update to the visual presentation of the dwelling house to the street without any unreasonable impacts, despite its non-compliance with the front boundary setback control.

To achieve reasonable view sharing.
Comment:
The proposed setbacks to both the primary and secondary street frontages do not obstruct any significant views to or from public or private places.

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 $2,327 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $232,722.

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
- Inconsistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/0399 for Alterations and additions to a dwelling house and attached secondary dwelling on land at Lot 3 DP 11799, 48 Carawa Road, CROMER, 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**
A.01.1 Site Analysis Plan Revision B	23 February 2022	Anthony Lewis
A.02.1 Ground Floor Plan and Roof Plan	23 February 2022	Anthony Lewis
A.03 1 South Elevation and East Elevation	23 February 2022	Anthony Lewis
A.03.2 North Elevation and West Elevation	23 February 2022	Anthony Lewis
A.04.1 Building Sections	23 February 2022	Anthony Lewis

Engineering Plans		

Drawing No.	Dated	Prepared By
A.01.3 Stormwater Concept Plan Revision B	23 February 2022	Anthony Lewis

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A444892	23 December 2021	A J Lewis
BASIX Certificate No. A444900	23 December 2021	A J Lewis

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	23 December 2021	Applicant

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

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

2. **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 $2,327.22 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 $232,722.00.

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 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.

7. **Facilites**

The development must demonstrate compliance with **Part 3.8.3 Facilities** of the National Construction Code (BCA) 2019 and associated Australian Standards prior to the issue of a Construction Certificate.

Reason: To ensure compliance with NCC.

8. **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.

9. **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.

10. **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

11. **Tree Removal Within the Property**

This consent approves the removal of the following tree within the property (as recommended and identified by tree number in the Arboricultural Impact Assessment):
i) T3 - *Melia azedarach,*

ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

13. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation,

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

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, in particular:
i) section 9 Recommendations/Conclusions,
ii) Appendix C and Appendix D.

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Reason: Tree and vegetation protection.

14. **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.

15. **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.

16. **Fire Safety**

The development must be constructed in accordance with **Part 3.7.3 Fire protection of separating walls and floors** of the National Construction Code (BCA) 2019 and associated Australian Standards.

Reason: To ensure compliance with the NCC and occupant safety.

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

17. **Required Tree Planting**
One (1) locally native tree shall be planted within the property boundary to achieve at least 6 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Narrabeen Ward, or Council's Tree Guide, and in accordance with the following:
i) tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
ii) 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) 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.

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

Reason: To maintain environmental amenity.

18. **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.

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

19. **Landscape Maintenance**

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

If any tree 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 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.

SILT AND SEDIMENT CONTROL

THE CONTRACTOR SHALL IMPLEMENT SITE SILT AND SEDIMENT CONTROL IN ACCORDANCE WITH THE REQUIREMENTS OF NORTHERN BEACHES COUNCIL.

ALL SILT AND SEDIMENT CONTROL MEASURES ARE TO BE INSTALLED BEFORE THE COMMENCEMENT OF ANY SITE WORKS, INCLUDING DEMOLITION AND / OR EXCAVATION WORK. ADDITIONAL BARRIERS MAYBE REQUIRED TO THOSE SHOWN ON THE DRAWINGS.

ALL SILT BARRIERS SHALL BE REGULARLY INSPECTED AND CLEANED OF SILT TO ENSURE CONTINUED OPERATION. ANY SILT BARRIERS THAT ALLOW SILT TO PASS ARE TO BE REPLACED.

SILT STOP BARRIERS SHALL BE PROVIDED AROUND ALL STOCKPILES.

TREE PROTECTION

ALL TRESS WITHIN 5 METRES OF THE PROPOSED DEVELOPMENT AREA SHALL BE PROTECTED BY MEANS OF GENERAL PROTECTIVE FENCING BY FENCING AROUND GROUPS OF TREES OR BY INDIVIDUAL TREE GUARDS. ALL PROTECTIVE TREE FENCING IS TO TO BE TO THE SATISFACTION OF NORTHERN BEACHES COUNCIL.

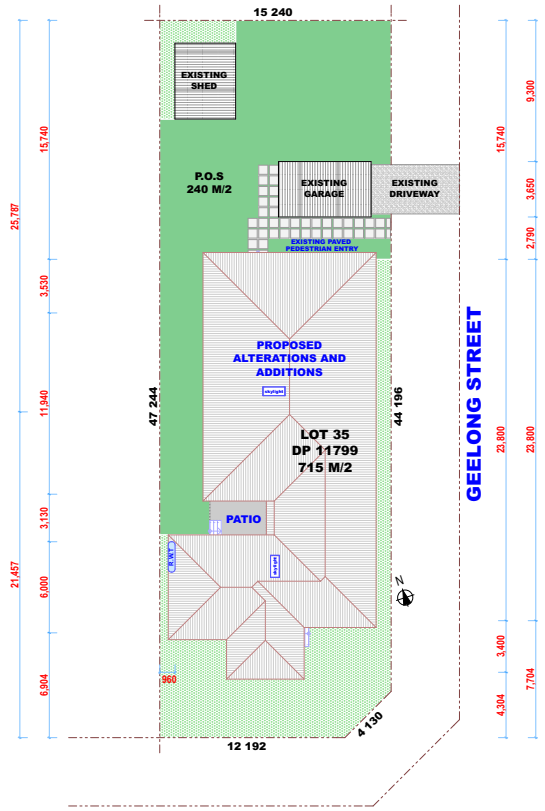
PUBLIC PROTECTION

THE CONTRACTOR SHALL PROVIDE ALL NECESSARY BARRIERS, WARNING AND / OR DIRECTIONAL SIGNS, LIGHTING, ETC TO PROTECT PEDESTRIANS FROM TRAFFIC ON CARAWA ROAD AND GEELONG STREET. THESE SIGNS SHALL ALSO PROTECT THE PUBLIC FROM TRUCKS AND VEHICLES ENTERING OR LEAVING THE CONSTRUCTION SITE.

THE CONTRACTOR SHALL ALSO PROVIDE SUITABLE FENCING AND LOCKABLE GATES AS REQUIRED TO PROTECT THE PUBLIC FROM ENTERING THE CONSTRUCTION SITE.

ALL BARRIERS, FENCING, AND GATES SHALL BE TO THE SATISFACTION OF WORK COVER AND SAFETY REQUIREMENTS, CENTRAL COAST COUNCIL, AND ANY OTHER SUCH AUTHORITY.

ALL BARRIERS, FENCING, AND GATES SHALL BE PROPERLY MAINTAINED UNTIL ALL WORKS ARE COMPLETE.



Site Analysis Plan 1:200

SITE ANALYSIS - FLOOR SPACE RATIO

SITE AREA	715.00 M/2
UNIT 1 EXISTING FLOOR AREA	090.30 M/2
UNIT 1 PROPOSED ADDITIONS	064.43 M/2
TOTAL UNIT 1 FLOOR SPACE AREA	154.73 M/2
UNIT 2 EXISTING FLOOR AREA	060.00 M/2
TOTAL COMBINED FLOOR SPACE RATIO	214.73 M/2
TOTAL PROPOSED FLOOR SPACE RATIO	**0 . 30 : 1 %**

SITE ANALYSIS - SITE COVERAGE

SITE AREA	715.00 M/2
PROPOSED DWELLING AREA	214.73 M/2
EXISTING CONCRETE PATIO AREA	022.28 M/2
UNIT 1 PROPOSED TIMBER DECK AREA	015.40 M/2
UNIT 2 PROPOSED TIMBER DECK AREA	030.09 M/2
EXISTING GARAGE AREA	022.30 M/2
EXISTING STORAGE SHED AREA	020.00 M/2
TOTAL PROPOSED SITE COVERAGE	324.80 M/2
TOTAL PROPOSED SITE COVERAGE RATIO	**0 . 45 : 1 %**

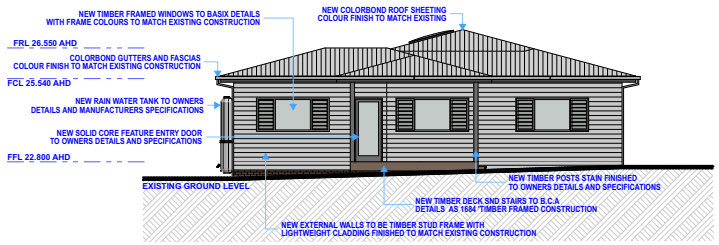
Development Type: **PROPOSED ALTERATIONS AND ADDITIONS**

Issue	Amendments	Date
A	Issued for Development Application	23/12/2021
B	Room Changes	23/02/2022

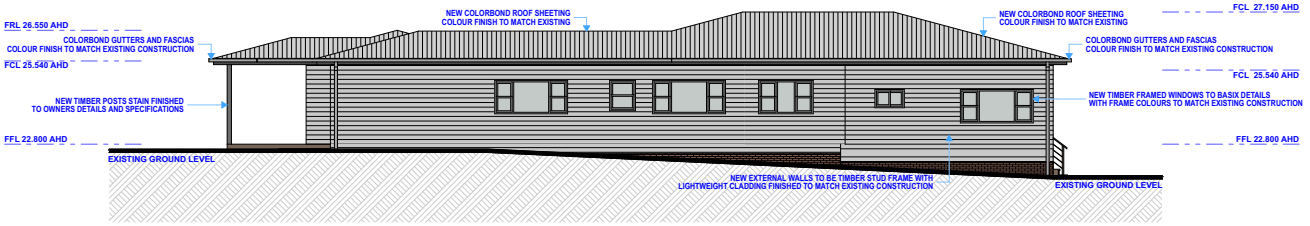
Client / Applicant: **AMBER AND EMMA MACKAY**
Site Address: **48 CARAWA ROAD CROMER NSW 2099**

LOT	D.P	Scale	Sheet Size
3	11799	AS NOTED	A 2
Drawn by: A J LEWIS	Date: 23 DEC 2021	Layout ID: A.01.1	Status: D.A

ANTHONY LEWIS
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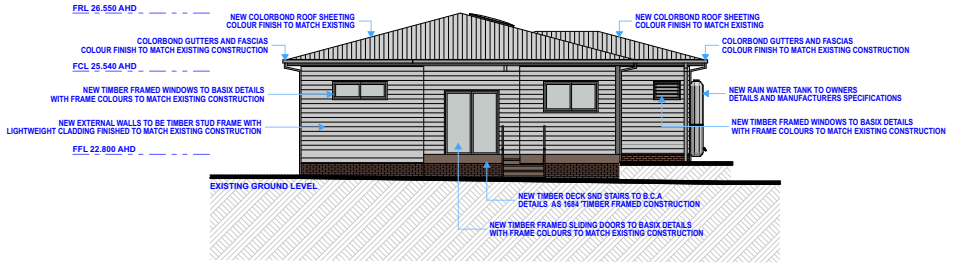
Dwelling South Elevation 1:100



Dwelling East Elevation 1:100

Development Type: **PROPOSED ALTERATIONS AND ADDITIONS**	Issue	Amendments	Date	Client / Applicant: **AMBER AND EMMA MACKAY**	LOT: **3**	D.P: **11799**	Scale: **AS NOTED**	Sheet Size: **A 2**
	A	Issued for Development Application	23/12/2021	Site Address: **48 CARAWA ROAD CROMER NSW 2099**	Drawn by: **A J LEWIS**	Date: **23 DEC 2021**	Layout ID: **A.03.1**	Status: **D.A**
	B	Room Changes	23/02/2022					

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Dwelling North Elevation 1:100



Dwelling West Elevation 1:100

Development Type: **PROPOSED ALTERATIONS AND ADDITIONS**	Issue	Amendments	Date	Client / Applicant: **AMBER AND EMMA MACKAY**	LOT: **3**	D.P: **11799**	Scale: **AS NOTED**	Sheet Size: **A 2**
	A	Issued for Development Application	23/12/2021	Site Address: **48 CARAWA ROAD CROMER NSW 2099**	Drawn by: **A J LEWIS**	Date: **23 DEC 2021**	Layout ID: **A.03.2**	Status: **D.A**
	B	Room Changes	23/02/2022					

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ITEM 3.6	**DA2022/0093 - 56 WOODLAND STREET BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SECONDARY DWELLING AND FENCING**
REPORTING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2022/328724**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0093 for alterations and additions to a dwelling house including a secondary dwelling and fencing on land at Lot 1 DP 9928, 56 Woodland Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0093

Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 1 DP 9928, 56 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a secondary dwelling and fencing
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:	Daniel Andrew Hilson Zoe Hilson
Applicant:	Bokey Grant Architects Pty Ltd

Application Lodged:	07/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	15/02/2022 to 01/03/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 20%
Recommendation:	Approval

Estimated Cost of Works:	$ 776,500.00

EXECUTIVE SUMMARY

The application is for the proposed alterations and additions to an existing dwelling and a new secondary dwelling at 56 Woodland Street, Balgowlah Heights.

The application requests a 20% variation to Clause 4.3 Height of Buildings of the MLEP 2013 and as such triggered referral to the Development Determination Panel (DDP) for determination. The applicant has provided a Clause 4.6 written request to vary a development standard as part of the submission to Council.

No submissions were recieved with reference to the subject application.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of the following works:

Dwelling/Garage/Studio

- Some demolition works
- Conversion of existing lower ground level store to a gym and the existing laundry to a store
- Internal reconfiguration of existing ground and first floor plan
- New non trafficable canopy top the front of the dwelling
- New no trafficable planter beds on the first floor
- Conversion of existing store/office area to a secondary dwelling (total size 24.4m^2)
- New roof to the reconfigured first floor

Landscaping

- Tree removal
- Landscaping works inclusive of new access pathways, retaining walls, lawn, screen planting and trees, BBQ, retractable awning, new stairs and terraced areas within the backyard
- New pool paving to replace existing
- New suspended decking to the rear (east) of the pool
- New 2.4m fence to the southern boundary

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 DP 9928 , 56 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Woodland Street, Balgowlah. The site is regular in shape with a frontage of 15.24m along Woodland Street. and a depth of 53.95m. The site has a surveyed area of 822m². The site is located within the R2 Low Density Residential zone and accommodates a two storey rendered residence with a tile roof. Vehicular access is available to the site via a concrete driveway to garage with a storage area underneath. There is a swimming pool within the rear yard. The site slopes to the east, with a fall of approximately 9 metres from the front to the rear of the site. The site is characterised by a variety of trees and shrubs throughout the site. The front boundary is relatively open with the exception of a sandstone retaining wall to the south set behind an existing hedge. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by leafy streetscapes, stone walling, landscaped gardens, street trees and a variety of housing types including large modern and contemporary dwellings and traditionally designed dwellings, ranging in height from single to three storeys. The site shares a boundary with the unformed section of Hilder Road, which is currently an informal open space area with vegetation and lawn.

Map:



SITE HISTORY

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

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

Application History

Following preliminary assessment of the application amended plans were recieved to address Council's concerns in relation to privacy, open space above ground and landscaping. The applicant responded by providing amended plans which significantly reduced the size of the proposed rear deck. The amended plans did not require renotification in accordance with the Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) –	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Provisions of any development control plan	
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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Amended plans were requested to address concerns raised during preliminary assessment. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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

Section 4.15 Matters for Consideration	Comments
	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 15/02/2022 to 01/03/2022 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
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	The development application is for alterations and additions to the existing dwelling and associated external works, and conversion of an under garage area to a secondary dwelling, as described and illustrated in the reports and plans. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral.

Internal Referral Body	Comments
	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 • 4.1.9 Swimming Pools, Spas and Water Features, The site contains established landscaped areas including mature vegetation and perimeter boundary planting, lawn set within timber retaining walls, stairs and paved paths. The rear yard is a well established garden setting with vegetation that currently provides privacy within the property to adjoining properties. The Arboricultural Impact Assessment provides recommendations to remove four existing trees impacted by the development works. These four trees are all exempt species that do not require Council consent for management nor removal. All other existing trees within the property including native trees and exempt species are proposed for retention in the Arboricultural Impact Assessment. Exempt species are recommended for retention to assist in providing privacy to open space areas, and conditions shall be imposed for retention and protection. Tree protection measures as recommended shall be subject to conditions. The Landscape Plan submitted includes enhancement of the landscape setting and includes the retention of existing tree and vegetation within the rear of the property. It is however noted that the proposed suspended decking with seating and tree cutouts is at the same level as the existing pool and is located 1400mm from the rear boundary and concern is raised that the existing vegetation currently providing privacy will require extensive pruning that may remove the privacy aspect of the existing vegetation and lead to privacy issues. Additionally it is noted that this existing vegetation screening is provided by exempt conifer species that are recommended for retention, and not by the existing Gum trees with their high canopies. No information is provided on enhanced planting along the rear to compensate for expected pruning works, and the proposed decking level at RL51.10 is approximately 2 metres above the existing level along the common boundary within the rear property. Council's Planning Officer shall provide merit consideration on this privacy matter, and to assist Landscape Referral recommend that screen shrub planting be imposed as a condition to achieve a height at maturity at least 3 metres from the existing ground level at the rear of the property. <u>Planner comment:</u> Following preliminary assessment of the application and a site visit to

Internal Referral Body	Comments
	the subject site the applicant was requested to make amendments to satisfy some outstanding concerns. One of these concerns was privacy. The applicant responded with amended plans to reduce the size of the deck. The recommended condition above requiring additional screen planting in conjunction with the reduced decking will ensure a reasonable level of privacy will be maintained for the subject site and surrounding sites.
NECC (Development Engineering)	Development Engineering has no objection the application subject to the following conditions of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A428277_02 dated 10 January 2022 and 1232708S_02 dated 10 January 2022).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	**Compliance/Comment**
a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	The proposal will result in one principal dwelling and one secondary dwelling. A condition has been included as part of the development consent to ensure this.
b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	The floor area of the principal dwelling and the secondary dwelling is compliant with all environmental planning instruments.
c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	The total floor area of the proposed secondary dwelling is 25m^2 and therefore complies with this control.

Clause 53 – Non-discretionary development standards	
Standard	**Compliance/Comment**
a) For a detached secondary dwelling - a	The site area is 822m^2 and therefore complies

minimum site area of 450m².	with this control.
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The number of parking spaces on the site remains unchanged as part of the development application.

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	10.5m	20%	**No**
Floor Space Ratio	FSR: 0.45:1 (369.9m^2)	FSR: 0.34:1 (279.3m^2)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes
6.22 Development for the purposes of secondary dwellings in certain residential and environment protection zones	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.5m

Percentage variation to requirement:	20%

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 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 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:

A development at 56 Woodland Street, Balgowlah strictly complying with the 8.5m height of buildings

standard is unreasonable or unnecessary given the following circumstances:

- The existing built form departs from the standard (as shown in Figure 1 and 2 below)
- Compliance with the standard would require demolition of the existing dwelling which is economically impractical and inconsistent with the objects of the Act
- The only additional area of departure relates to the new rear gable roof element. This design response provides visual interest, not additional yield
- The departure is centrally located at the rear of the dwelling over a portion of the site where the land falls sharply. Subsequently, the departure is a function of the site's topography
- Compliance is maintained with the floor space ratio, open space and landscaped area
- The maximum ridge line is not altered. The new rear gable roof element sits behind and below the existing main roof ridge and is not visible from the site's Woodland Street frontage
- The dwellings existing footprint and envelope is generally unchanged
- The altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hill side development within the vicinity
- The height, bulk and scale of the dwelling will not set an undue precedent. A highly articulated and visually interesting built form is maintained
- The largely retained built form provides for an equitable planning outcome in relation to solar access and overshadowing, access to natural daylight and ventilation, aural and visual privacy, views and vistas and the streetscape
- The dwelling height does not preclude redevelopment of the neighbouring and nearby properties

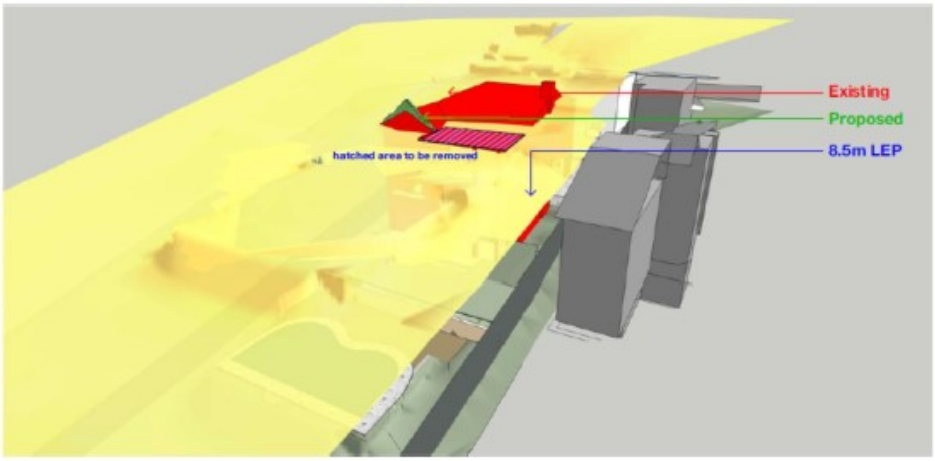


Figure 1 – View 1 comparing the existing and proposed departure from the standard

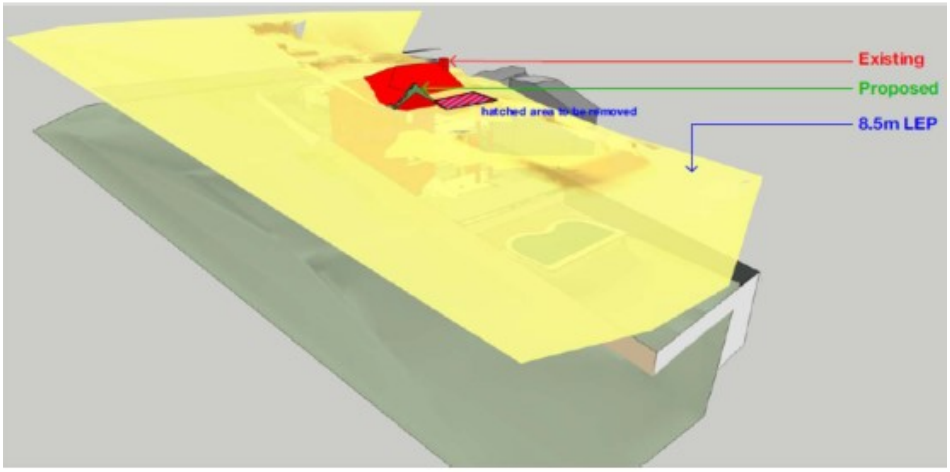


Figure 2 – View 2 comparing the existing and proposed departure from the standard

Following assessment of the application, Council generally agrees with the applicants argument and considers the application meets the relevant objectives of the act. In addition, the proposed gable element of the dwelling is not directly relating to habitable space that would significantly increase the bulk of the building when viewed from the streetscape and surrounding dwellings or lead to any additional amenity impacts. The gable is located below the existing maximum RL and is not expected to be highly visible.

The proposal also seeks to demolish a portion of the dwelling that does not comply with this control, therefore reducing the overall perceived bulk of the dwelling particularly when viewed from the south and east.

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 dwellings maximum ridge line remains unchanged, with the new roof gable element sited downhill of the maximum RL. The dwelling sits comfortably within its established and future built form context when viewed from the surrounding public domain and is largely screened from view as a result of the topography of the site. The built form and envelope of the existing dwelling generally remain unchanged as a result of the works.

b) to control the bulk and scale of buildings,

Comment:

The proposed gable roof element is not expected to result in any unreasonable bulk and scale. The dwelling generally remains unchanged when viewed from the streetscape as this element is sited downhill and will be lower than the existing maximum RL. The gable is considered to provide additional articulation to provide visual interest.

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 largely retained built form is not expected to result in any unreasonable impacts on views enjoyed to and from the site. The site adjoins a large open space to the south of the unformed section of Hilder Road. The development is not expected to have any disruption to any views between public spaces and all view corridors will remain available.

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:

There is no unreasonable overshadowing impacts as a result of the location of the new gable element. Occupants of the subject site and adjoining sites will continue to receive solar access to private open spaces and habitable rooms.

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 gable will not result in the removal of any existing vegetation. The gable element will be sited below the existing tree canopy.

Zone objectives

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

- To provide 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 the residents

Conclusion:

The proposal will maintain the existing low density residential use. The proposal provides for a low density single dwelling house provides for increased housing needs for the community through the provision of a secondary dwelling.

The site will continue to enable land uses to meet the day to day needs of the residents.

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).

6.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

environmentally sensitive area

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 822m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	N/S: 7.7m (based on gradient 1:5)	no changes, 8m	N/A	N/A
4.1.2.3 Roof Height	Height: 2.5m	no changes	N/A	N/A
	Parapet Height: 0.6m	no changes	N/A	N/A
	Pitch: maximum 35 degrees	no changes	N/A	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	no changes, 2m	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.4m (based on wall height of dwelling) 1.1 (rear decking)	North: no changes (dwelling), garage/studio (no changes), rear decking (7.6m) South: no changes (dwelling), garage/studio (no changes), rear decking (1.9m)	N/A N/A N/A N/A N/A N/A	N/A N/A Yes N/A N/A Yes
	Windows: 3m	North: 2.8m (dwelling) South: 1m (dwelling)	7% 66%	**No** **No**
4.1.4.4 Rear Setbacks	8m	27m (dwelling), 6.5m (rear decking)	N/A N/A	Yes Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area	74% (607.6m^2)	N/A	Yes

Residential Open Space Area: OS3	Open space above ground 25% of total open space	18% (108.6m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	45.8% (139.1m^2)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	<18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	no changes	N/A	N/A
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	no changes	N/A	N/A
	1m curtilage/1.5m water side/rear setback	no changes	N/A	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	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

Detailed Assessment

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

The proposal does not comply with the maximum height of buildings control. A clause 4.6 has been provided and assessed as part of this application. See Part 4.6 Exemptions to development standards for further discussion and support on merit.

The existing building does not comply with the maximum wall height control, however there are no proposed changes as part of this development application. No further assessment is required.

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

Description of non-compliance

The proposal comprises of alterations and additions to an existing non compliant northern and southern side boundary setbacks and therefore all new windows are non compliant with the control requiring a 3m setback. The proposed windows will be setback 2.8m to the north, which is a 7% variation to the control and 1m to the south, which is a 66% variation to the control.

Merit consideration:

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

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 existing setbacks of the dwelling and garage remain unchanged. The development is considered to respond and enhance the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

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

- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed new window openings are not expected to result in any unreasonable amenity impacts and are therefore supported on merit.

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

Comment:

Flexibility is necessary in this circumstance given the footprint and siting of the existing dwelling. Strict compliance with this control is considered unnecessary in this circumstance.

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 readily complies with the minimum required open space and landscaping control.

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

Comment:

The site is not located on bush fire prone land.

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

4.1.5 Open Space and Landscaping

A condition has been recommended as part of the development consent requiring the applicant to plant a locally indigenous tree and new screen planting in response to the proposed removal of four exempt species.

In conjunction with existing trees on site, the recommended condition will ensure there will be at least two native trees on site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $7,765 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $776,500.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2022/0093 for Alterations and additions to a dwelling house including a secondary dwelling and fencing on land at Lot 1 DP 9928, 56 Woodland Street, BALGOWLAH HEIGHTS, 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**
A.001 Site Analysis/Roof Plan RevD	16 May 2022	Bokey Grant Architects Pty Ltd
A.201 Proposed Basement RevD	16 May 2022	Bokey Grant Architects Pty Ltd
A.211 Proposed Ground Floor RevD	16 May 2022	Bokey Grant Architects Pty Ltd
A.221 Proposed First Floor RevC	13 April 2022	Bokey Grant Architects Pty Ltd
A.301 Elevations RevC	13 April 2022	Bokey Grant Architects Pty Ltd
A.300 Elevations RevD	16 May 2022	Bokey Grant Architects Pty Ltd
A.302 Elevations RevD	16 May 2022	Bokey Grant Architects Pty Ltd
A.303 Sections RevD	16 May 2022	Bokey Grant Architects Pty Ltd

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
H-DA-00 Legend, Catchment Calcs and Sed Control Issue B	13 January 2022	itm design
H-DA-01 Basement & Ground Floor Stormwater Issue B	13 January 2022	itm design
H-DA-02 First Floor & Roof Stormwater Issue B	13 January 2022	itm design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A428277_02	10 January 2022	Bokey Grant Architects Pty Ltd

BASIX Certificate No. 1232708S_02	10 January 2022	Bokey Grant Architects Pty Ltd
Waste Management Plan	17 January 2022	Bokey Grant Architects Pty Ltd
Arboricultural Impact Assessment Report	November 2021	Earthscape Horticultural Services

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**
A.400 Landscape Plan RevC	16 May 2022	Bokey Grant Architects

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Response Ausgrid Referral	9 March 2022

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a 'dwelling house' and a 'secondary dwelling'

A dwelling house is defined as:
"a dwelling house means a building containing only one dwelling"

A secondary dwelling is defined as:
"secondary dwelling means a self-contained dwelling that-
(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling"

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

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

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

4. **Prescribed Conditions**

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

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars

of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's

footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

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

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation

area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $7,765.00 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 $776,500.00.

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

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

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

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

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

7. **Security Bond**

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition

work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $5000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

9. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **Laundry Facilities**
The layout of the secondary dwelling is to be designed to incorporate clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine and is required to comply with Part 3.8.3 of the Building Code of Australia –'Facilities'. A kitchen sink or washbasin must not be counted as a laundry washtub. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity.

11. **Weatherproofing of Masonry**
The existing/new building that is proposed to be constructed as a secondary dwelling is required to comply with Part 3.3.4 of the Building Code of Australia –'Weatherproofing of Masonry'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity.

12. **On-site Stormwater Disposal Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater disposal system in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY, and generally in accordance with the concept drainage plans prepared by itm design, drawing number H-DA-00 to H-DA-02, dated 13/1/2022.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

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.

14. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the pipeline connection from No.56 Woodland Street to a Council's stormwater pit which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website. The applicant must provide in the following:
1) an arborist report must be provided to investigate and assess the possible impact and risk to the street trees due to to the pipeline connection;
2) a detailed survey plan of the Council stormwater pit and pipe;
3) a detailed design plan of the pipeline connection must be provided; and
4) any utilities services must be plotted to the submitted plan

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

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

Standards.

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

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

16. **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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **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,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on

Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
i) section 10 Recommended Tree Protection Measures, including all nominated works to the nominated existing trees,
ii) section 11 Replacement Planting,
iii) appendix 6 - Tree Protection Plan.

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

18. **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.

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

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

20. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

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

22. **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.

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

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

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

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

24. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) all new landscape works shall be limited to within the site boundaries,
ii) the eastern rear boundary shall be planted with shrub screen planting as selected to achieve a mature height of at least 3 metres, and shall be installed at a 300mm container size, and at a minimum 1 metre interval,
iii) one replacement locally indigenous tree shall be installed within the property at a minimum planting size of 75 litres, to achieve a minimum of 10 metres in height and shall meet the requirements of Natspec - Specifying Trees, and selected as recommended in the Arboricultural Impact Assessment,
iv) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 2.0

metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
v) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

25. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

26. **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.

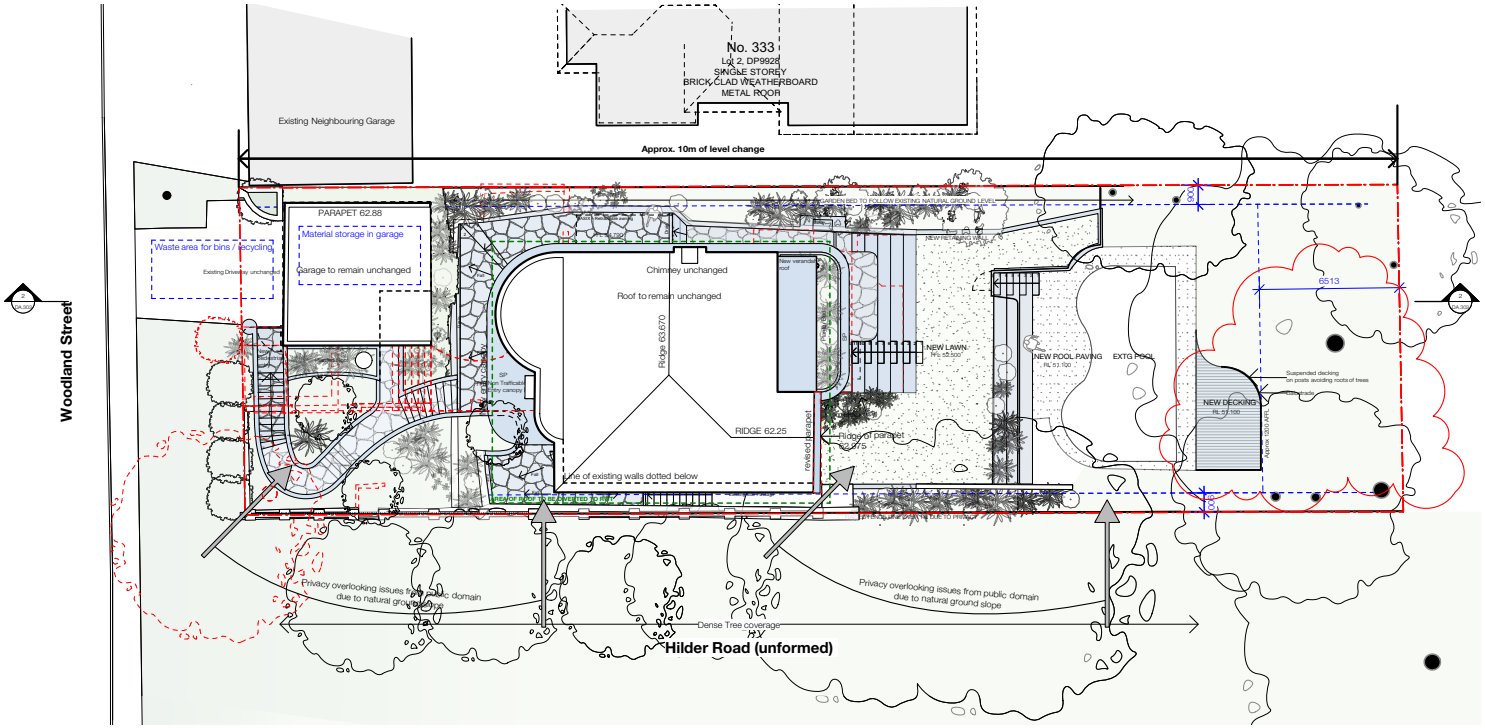
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

27. **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.



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LEGEND

SYMBOL	DESCRIPTION
	EXISTING
	NEW WORK

LEGAL DESCRIPTION

SITE ADDRESS:	56 Woodland Street Balgowlah Heights, NSW 2093
LOT:	LOT 1
D.P.:	D.P. 9928
LOCAL BODY:	Northern Beaches Council (formerly Manly Council)
ZONE:	R2 Residential
HERITAGE:	NONE
FLOOD CONTROL	NO

SITE AREA

TOTAL SITE AREA: : 822m2

EXISTING GROSS FLOOR AREA - GFA

Basement Level:	33.80m2
Main House Ground Floor :	123.60m2
Under Garage Storeroom :	21.70m2
First Floor :	112.60m2
TOTAL	291.70m2

FSR Allowed = 0.45 : 1 = 369.90m2

PROPOSED GROSS FLOOR AREA - GFA

Basement Level:	33.80m2
Main House Ground Floor :	123.60m2
Secondary Dwelling *(converted Under Garage store)*	24.40m2
First Floor :	111.70m2
TOTAL	293.50m2

FSR Allowed = 0.45 : 1 = 369.90m2

ABBREVIATIONS

CONC	Concrete
FFL	Finished Floor Level
FG	Fixed Glazing
GU	Gutter
JU	Joinery Internal
MDR	Metal Deck Roofing
MI	Mirror
RM	Rendered Masonry
SC	Stucutral Column
SP	Steel Plate
TJ	Timber Window / Door Joinery
WB	Weather Boards

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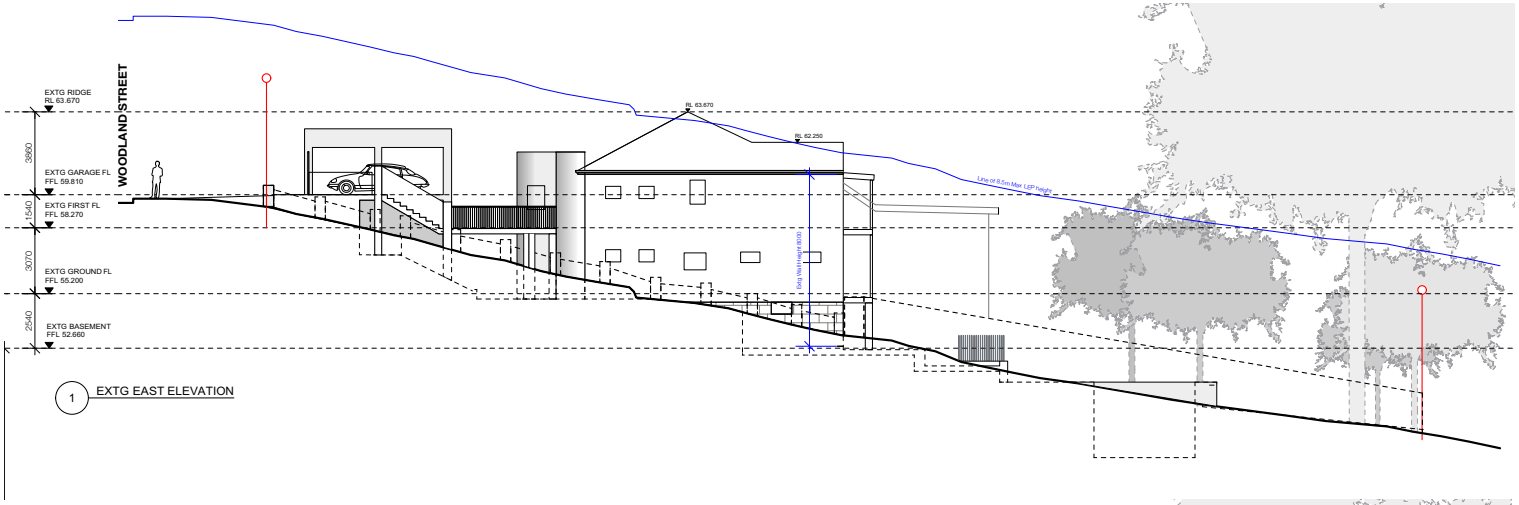
Site Analysis / Roof Plan

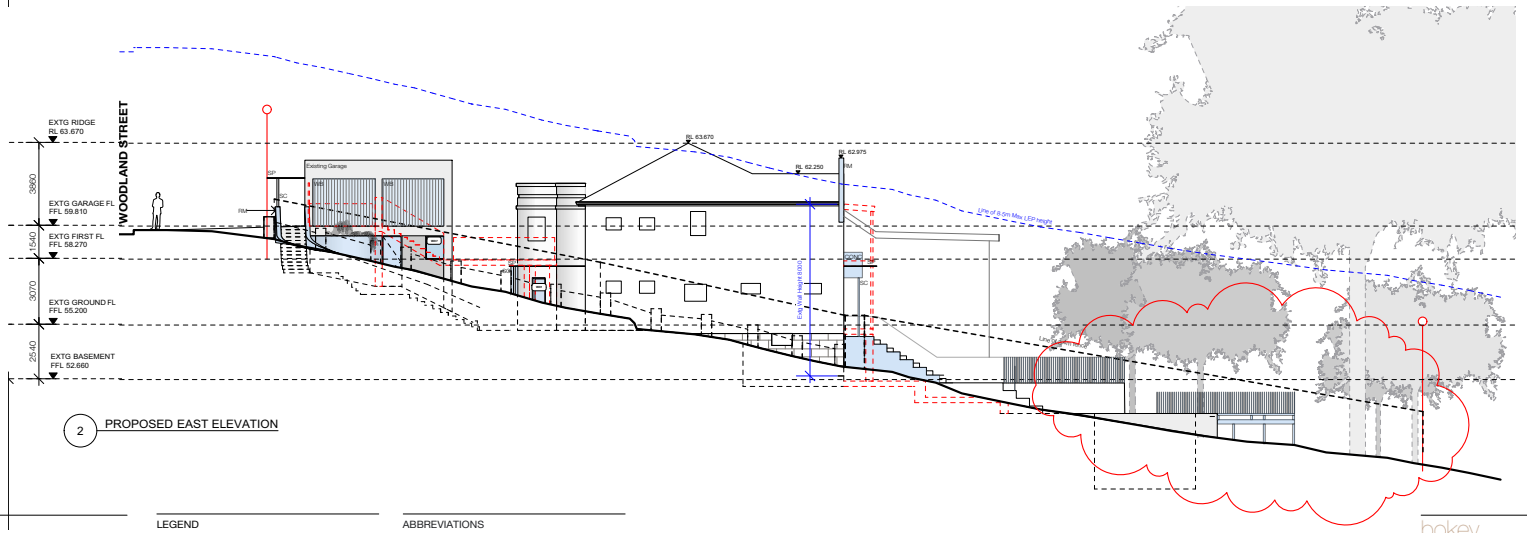
ZD HOUSE - 56 Woodland Street, Balgowlah Heights, 2093, NSW

NO	AMENDMENTS	
D	DA Submission-RFI	16.05.2022
C	DA Submission-RFI	13.04.2022
B	DA Submission	10.01.2022

DATE	16.05.22	DWG NO.
SCALES	1:200 @ A3	A.001

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LEGEND

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	EXISITNG
	DEMOLITION
	PROPOSED NEW WORK

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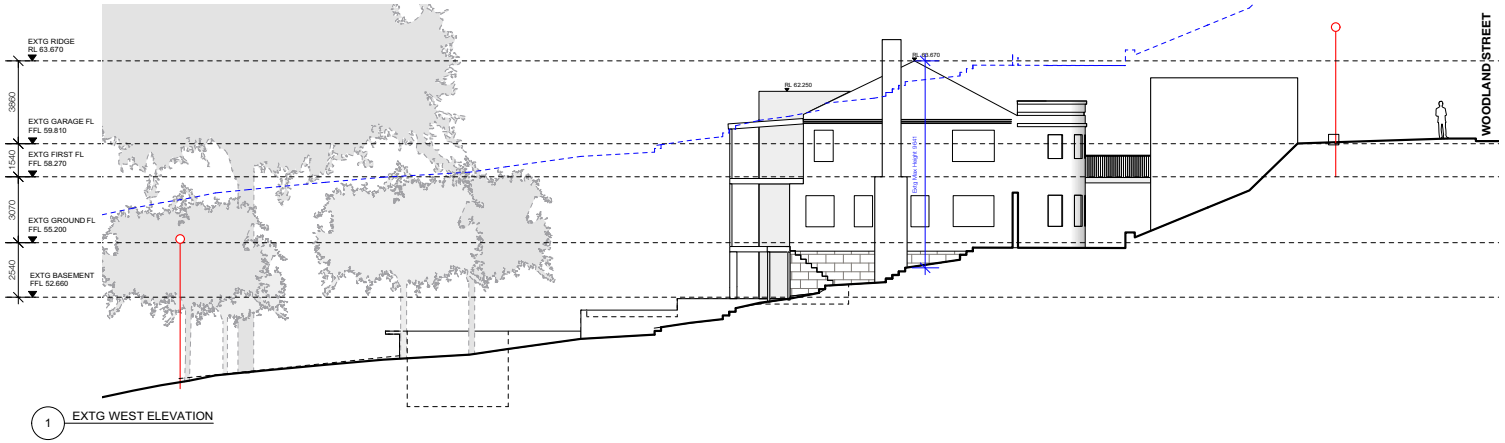
Elevations

ZD HOUSE - 56 Woodland Street, Balgowlah Heights, 2093, NSW

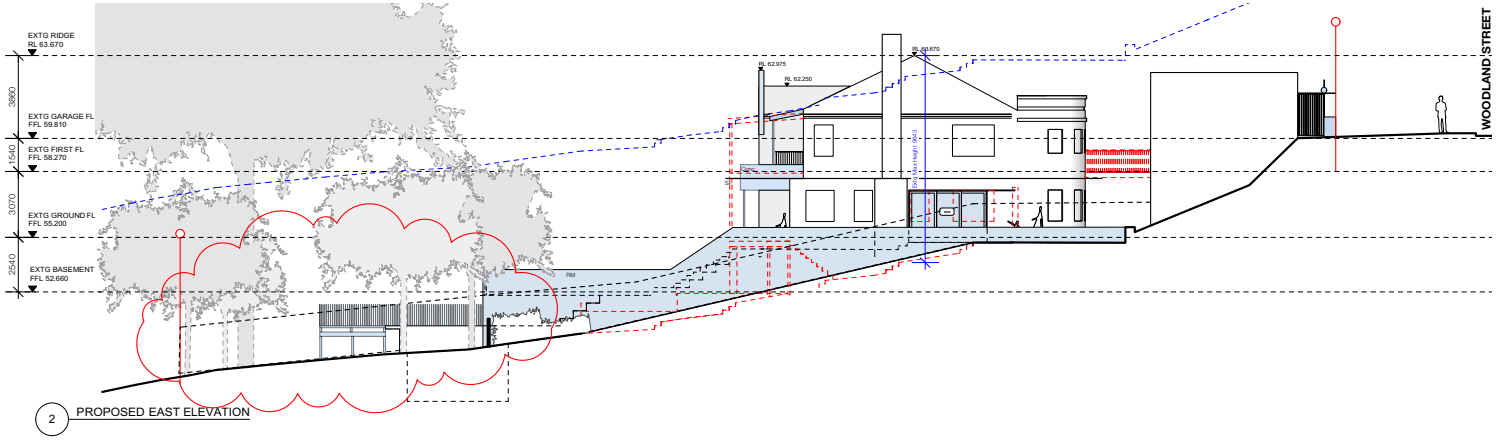
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D	DA Submission-RFI	16.05.2022
C	DA Submission-RFI	13.04.2022
B	DA Submission	10.01.2022

DATE	16.05.22	DWG NO.
SCALES	1:200 @ A3	A.300

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1 EXTG WEST ELEVATION



2 PROPOSED EAST ELEVATION

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Elevations

ZD HOUSE - 56 Woodland Street, Balgowlah Heights, 2093, NSW

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B	DA Submission	10.01.2022

DATE	16.05.22	DWG NO.
SCALES	1:200 @ A3	A.302

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CLAUSE 4.6 VARIATION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Alterations and additions and conversion of an under garage area to a secondary dwelling

56 Woodland Street, Balgowlah Heights

Prepared on behalf of

Zoe and Dan Hilson c/- Bokey-Grant Architects

18 JANUARY 2022

Lockrey Planning & Development Solutions Pty Ltd ABN 24 118 105 589 | ACN 118 105 589
PO Box 2257 Clovelly NSW 2031 **M** 0413 483 120 **E** slockrey@lpds.com.au **www.lpds.com.au**

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1.0 INTRODUCTION

This Exception to Development Standards Submission accompanies a Development Application (**DA**) proposing alterations and additions to the dwelling house, conversion of an existing under garage area to a secondary dwelling, landscaping and other required site works at 56 Woodland Street, Balgowlah Heights (the **site**).

Calculations in this submission are based on plans and information provided by Bokey-Grant Architects. This submission should be read in conjunction with the detailed supporting technical information (reports and plans) submitted separately with the DA.

As noted in the separate SEE, the proposed built form departs from the height of buildings development standard (**height standard**) at Clause 4.3(2) of Manly Local Environmental Plan 2013 (**LEP 2013**).

As required pursuant to Clause 4.6(3) of LEP 2013, this submission provides a written request to the Northern Beaches Council (the **Council**) that seeks to justify the proposal's existing and proposed departure from the height standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

This submission (relative to format and content) takes into consideration relevant (current) NSW Land and Environment Court (**NSW LEC**) judgements.

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2.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

2.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013 (**LEP 2013**).

2.2 What is the zoning of the land?

The site (land) is zoned R2 Low Density Residential.

2.3 What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

2.4 What is the development standard being varied?

Development Standards' are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: …

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

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

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and

*(o) such other matters as may be prescribed. (**my emphasis**)*

The height control at Clause 4.3(2) of LEP 2012 is clearly a development standard as it relates to the height of buildings as specified at **subclause (c)**.

2.5 Is the development standard a performance based control? Give details.

Yes, as it contains stated objectives to which compliance with the standard is targeted to achieve.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The height of buildings development standard is listed at Clause 4.3(2) of LEP 2013.

2.7 What are the objectives of the development standard?

Relevant to the site and the land use zone it is located within, the objectives of the height standard are expressly stated at Clause 4.3(1)(a) of LEP 2013 and 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,

(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.

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3(2) of LEP 2013 establishes a maximum building height of 8.5m for the site.

2.9 What is the proposed numeric value of the development standard in the development application?

Ostensibly the existing building envelope is retained with minor additions and removal of some elements. The dwelling has an existing maximum building height of 9.687m (RL 63.67). However, and due to the site's topographical characteristics works (the gable roof element) at the rear technically increase the height of the dwelling to 10.475m (RL 62.975).

Figures 1 and **2** provide a comparison of the existing and proposed built form which depart from the height standard. The only new departure (shown coloured green) to the standard is the new gable roof element at the dwelling's rear. It is noted that existing elements departing from the standard will be removed (shown hatched and purple).

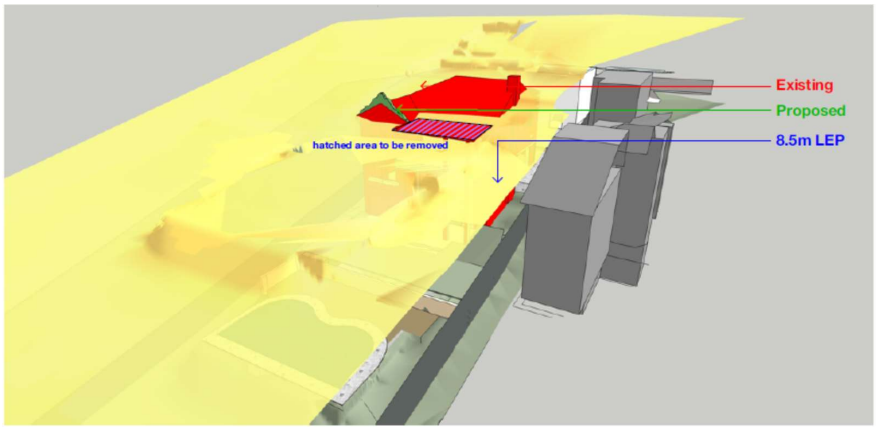


***Figure 1** – View 1 comparing the existing and proposed departure from the standard*

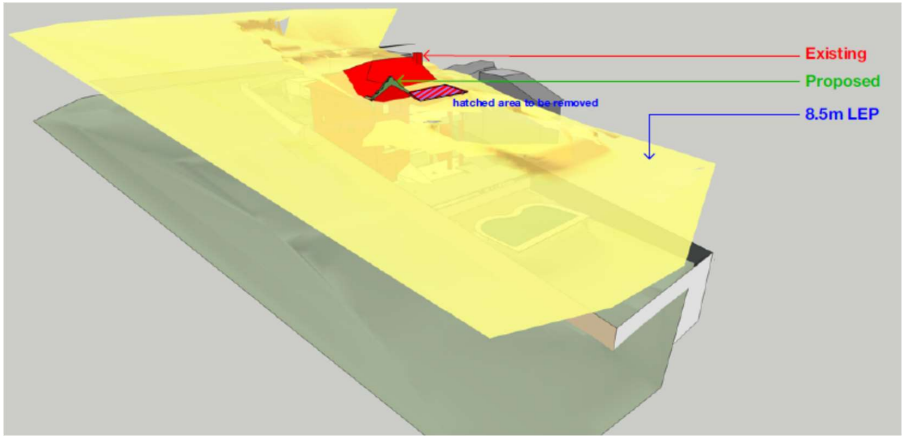


***Figure 2** – View 2 comparing the existing and proposed departure from the standard*

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

Relative to the height standard, the existing departure is 1.187m (rounded to 1.19m) or 14% (rounded up).

Relative to the height standard, the proposed departure is 1.975m (rounded to 1.98m) or 23.2%.

The percentage variation between the existing and proposed height (gable roof element only) is 8.1%.

3.0 ASSESSMENT OF THE PROPOSED VARIATION

3.1 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

3.1.1 Objectives of the zone

As stated at Clause 2.3 of LEP 2013, the objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment.*
    - a low density residential (principal dwelling and secondary dwelling) land use is maintained on the existing low density residential allotment of land. This is the desired future character. The proposal maintains and alters a built form that will have an improved relationship to the site's locational characteristics through a high quality architectural, urban and landscape design solution. The built form maintains visual interest and a human scale. Compliance is maintained with the FSR standard and complementary open space and landscaped area guidelines. The existing setback conditions are not materially altered. The overall built form sits comfortably within its established and likely future built form context as desired by the planning controls.
    - the proposal provides for a low density single dwelling house and maintains flexible housing for a family through the provision of a new secondary dwelling.
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*
    - not applicable for this site. It does provide the opportunity for the occupants to work from home as/if required.
    - does not threaten existing nearby non-residential land uses that provide daily services to the local community.

The site may be developed with the stated variations to the height standard. Consistency is not readily quantifiable in absolute numerical terms. The proposed development despite its existing and proposed departure from the height standard is consistent with the stated objectives of the R2 Low Density Residential zone and is therefore a suitable and appropriate redevelopment of the site as it:

- a low density built form is maintained within a garden / park like setting;
- maintains an appropriate mix of residential land uses in the locality;
- extends, modernises and improves the internal and external amenity for the occupants;
- is located on a site of sufficient size to appropriately accommodate the proposal;
- responds positively to the site's locational characteristics and complements the existing streetscape character, height, bulk and scale of existing and future dwellings in the immediate vicinity; and
- there are no unreasonable amenity impacts to neighbouring and nearby properties and the surrounding public domain.

3.1.2 Objectives of the height of buildings standard

The proposal despite the departure from the height standard is nonetheless consistent with its objectives and therefore provides an appropriate planning outcome for the following reasons:

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

Objective (b) - to control the bulk and scale of buildings

- A permissible low density residential use is maintained on an existing low density residential allotment of land.
- The dwelling's maximum roof ridge is not altered. The altered dwelling sits comfortably within its established and likely future built form context when viewed from the surrounding public domain, albeit it is largely screened from view by the locality's topographical characteristics, the street front built form and established vegetation and screen planting (see Section 2 within the SEE). Although the dwelling's height is technically increased, ostensibly the envelope is not dissimilar to that existing (see **Figure 3** below). At the rear it has been reduced through the reconfiguration of the balconies. The altered built form's height, bulk and scale is consistent with that on nearby properties. There will be no visual built form dominance. The dwelling and its surrounds sit within an appropriate landscape (garden / park like) setting (refer **Figure 15** within the SEE).
- The existing built form technically comprises three storeys at its rear. It is for the most part a two storey dwelling as is expected by the relevant planning controls. The existing three storey built is largely a consequence of the site's topographical characteristics, with a fall of approximately 11m from its front to rear boundary. This is a slope exceeding 1:10. This condition enables a lower ground floor level or undercroft area. The principal dwelling's three storey built form does not result in unreasonable amenity or environmental impacts to the neighbouring properties or the public domain. The dwelling (including the lower ground floor level) is largely screened from view (see **Figures 3**, **4** and **11** within the SEE). It sits comfortably within its established and likely future built form context. A comparison of the existing and proposed built form relative to storeys is provided at **Figure 3**.

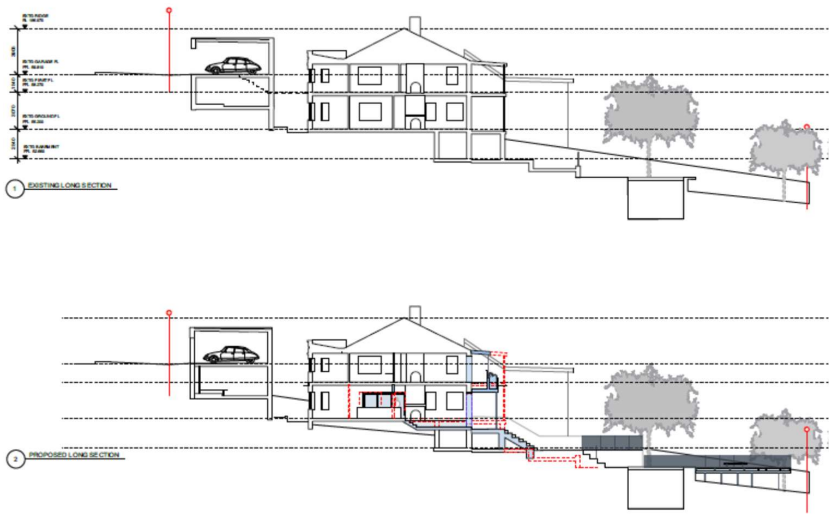


Figure 3 – *Comparison section of the existing and proposed built form*

- The existing floor finished floor levels (**FFL**) have been retained. The built form generally follows the fall of the land, being an approximate fall of 11m over its 53m length. This is a slope exceeding 1:10. As demonstrated at **Figures 1** and **2**, the additional departure is centrally located at the rear of the dwelling and is the new gable roof element. This is in a section of the site where it falls sharply. Further existing roof areas over the external first floor level balcony which depart from the height standard are to be removed and replaced with roofing that complies. This is a desirable outcome. Notwithstanding the new gable roof element departing from the standard, the resultant built form is expected and anticipated and is therefore consistent with the desired future character of the area as expressed by the relevant planning controls.
- Compliance is maintained with the LEP 2013 FSR standard (0.36:1 proposed v 0.45:1 permitted).
- Compliance is maintained with the total open space and landscaped area (deep soil landscaping) complementary development guidelines within DCP 2013.
- Additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield.
- The surrounding locality is characterised by leafy streetscapes, stone walling, landscaped gardens, street trees, and a variety of housing types including large modern and contemporary dwellings and traditionally designed dwellings, ranging in height from single to three storeys. Dwellings on the high (western) side of Woodland Street are typically provided with a large setback and garaging to the street and large front yards. They are higher up the ridge and look out and over the site in an easterly direction. Dwellings on the eastern or lower side of Woodland Street are typically provided with garaging at the street level and at least two levels of accommodation beyond and below the street level. Other than their roof forms, they are not readily visible from the public domain. The site's built form is particularly consistent with the prevailing built form character on the lower side of Woodland Street.
- Moreover, the dwelling's height is also consistent with the topography of Woodland Street. In general, built form slopes down from north to south and from west to east. The existing and proposed to be altered built form appropriately follows the site's natural landform (see **Figure 3** above). Existing FFL's are retained and limited site disturbance is proposed. The built form has a similar height and number of storeys as numerous nearby properties. Thus, the proposal has a height (and new rear gable end roof form) which is consistent with the desired future character of surrounding buildings. The street front appearance (or that part of the dwelling visible – its roof form) is not altered.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance. The unformed section of Hilder Road is to the site's south. As such the site does not have a southern boundary built form (residential) neighbour. Rather it is in effect a large informal open space area littered with vegetation and lawn. Substantial curtilage is maintained.
- The dwelling's height does not result in unreasonable environmental impacts to neighbouring properties and the public domain. The largely retained built form (envelope) provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;

- views and vistas; and
- visual and streetscape impact.

- The proposal responds and contributes to its context by engaging its desired future character as envisaged by the proposed land uses and densities permissible in the surrounding locality. The surrounding area is undergoing a period of regeneration and the proposal will provide for a built form which is appropriate.

Objective (c) - to minimise disruption to the following:

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

- The site and its surrounds is not a waterfront, harbour or foreshore location.
- Ostensibly the envelope is not dissimilar to that existing. There are no unreasonable view impacts to neighbouring and nearby properties. The site's built form largely remains screened from view. Those dwellings to the site's west and higher up the ridge will continue to look out and over the site (as existing or where interrupted by existing mature vegetation). Given the rear building alignment has been reduced, there is no impact to the neighbour to the north and there is no built form neighbour to the south. The neighbour to the east is lower down the ridge, is oriented to the east and has mature vegetation adjacent the shared boundary, effectively screening the site from view.
- There is no loss of views or vistas from the surrounding public domain.
- There is no loss of view or vistas between public spaces.
- The built form is largely compliant and therefore anticipated by the planning controls. An equitable outcome is provided relative to view / vista sharing and outlook.

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

- There is no overshadowing impact to any designated public open space and all neighbouring properties are not additionally affected by the proposal.
- That part of the dwelling towards its front that departs from the height standard does not in any way cast unreasonable shadows. The shadows cast by the largely compliant built form are anticipated by the planning controls and do not adversely impact the amenity of the neighbouring owners. The shadow diagrams demonstrate that additional shadows are cast over the unformed section of Hilder Road to the site's south.
- There is no material impact on neighbouring properties at any critical time of the day or year, that is appropriate levels of sunlight have been retained to these properties and their primary living rooms and private open space areas.
- The site's primary living rooms will receive adequate levels of direct solar access.
- An appropriate portion of the site's landscaped and private open space area receives satisfactory levels of direct solar access.
- Relatively small areas of land are affected and their relative useability is not materially compromised.

- The resultant overshadowing impact of the proposal is unlikely to preclude an appropriate redevelopment or the redevelopment potential of the adjoining properties.
- The design is consistent with the objectives of the control as it ensures the form and scale of the built form whilst large is not excessive and sits comfortably within its established and likely future built form context.
- The limited overshadowing of the proposal is acceptable in the circumstances of the case as it occurs for short periods of time and in the winter arc of the sun.

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

- The site and all neighbouring and nearby properties are zoned R2 Low Density Residential.
- There will be no conflict between the site and recreation and environmental protection zoned land as curtilage to this land has been retained. Similar built form is provided on land between the site and any recreation or environmentally zoned property.
- Compliance is maintained with the LEP 2013 FSR standard (0.36:1 proposed v 0.45:1 permitted).
- Compliance is maintained with the total open space and landscaped area (deep soil landscaping) complementary development guidelines within DCP 2013.
- The proposal:
  - provides for an altered built form that sits comfortably within its established and likely future built form context;
  - maintains the site's existing natural features;
  - proposes minimal or standard earthworks;
  - maintains existing FFL's;
  - maintains existing vegetation and landscaping where required
  - has not identifiable impact on any reserve, foreshore or waterway location;
  - provides a built form that is not inconsistent with the locality's prevailing character;
  - has no identifiable impact on any ecological, scientific or aesthetic values, bushland, natural drainage patterns, generally maintains the site's topographical characteristics; and
  - has no unreasonable amenity impacts.
- The visual catchment contains several buildings that will present a similar bulk and scale and which set the character. Consequently, the non-compliance with the standard does not result in a scale of building that is out of character with the surrounding development.
- The site is proportioned to allow the efficient realisation and internalisation of the impacts of the altered built form without an adverse visual impact or perceived built form dominance.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

3.2.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

A development at 56 Woodland Street, Balgowlah Heights strictly complies with the 8.5m height of buildings standard is unreasonable or unnecessary given the following presented circumstances:

- The existing built form departs from the standard.
- Compliance with the standard would require demolition of the existing dwelling which is economically impractical and inconsistent with the objects of the Act.
- Parts of the dwelling which depart from the standard, are being removed and replaced by new built form which complies.
- The only additional area of departure relates to the new rear gable roof element. This design response provides visual interest, not additional yield.
- The built form generally follows the fall of the land, being an approximate fall of 11m over its 53m length. This is a slope exceeding 1:10. As demonstrated at **Figures 1** and **2**, the additional departure is centrally located at the rear of the dwelling and is the new gable roof element. This is in a section of the site where it falls sharply. The departure is a function of the site's topography.
- Compliance is maintained with the LEP 2013 FSR standard.
- Compliance is maintained with the total open space and landscaped area (deep soil zones) complementary development guidelines within DCP 2013. Significant landscaped areas are retained which maintain the landscape and scenic quality/characteristics of the locality. The site's permeability is increased from that existing.
- Additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield.
- The maximum roof ridge is not altered. The new rear gable roof element sits behind and below the existing main roof ridge. It is not visible from the site's Woodland Street frontage.
- As the dwelling's envelope is not materially altered, existing curtilage to the neighbours has been retained.
- Following a rigorous merit based assessment, approval of a building height on the site that relates to the existing and in part (by design elements) desired future character for the locality as expressed in LEP 2013 but which exceeds the LEP 2013 development standard, will not set a precedent for other non-conforming applications.
- The altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity.
- The height, bulk and scale of the dwelling will not set an undue precedent. A highly articulated and visually interesting built form is maintained.

- Within this context the site can accommodate the building height proposed and the development is of an intensity and scale commensurate with the built form character and the prevailing urban conditions and capacity of the locality.
- The dwelling's height does not result in unreasonable environmental impacts to neighbouring properties and the public domain. The largely retained built form (envelope) provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual and streetscape impact.
- The dwelling's height does not preclude (and hasn't done so in the past) redevelopment of the neighbouring and nearby properties.

In ***Wehbe v Pittwater Council [2007] NSWLEC 827***, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

Are the objectives of the standard achieved notwithstanding non-compliance with the standard?

See above detailed assessment of the proposal by reference to the objectives of the height standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard, and in some cases the non-compliance better achieves the objectives by allowing for additional amenity for the site's occupants whilst maintaining the amenity of neighbouring properties.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?

On this occasion LPDS does not believe that the underlying objective or purpose is not relevant to the development and therefore LPDS does not rely on this reason.

Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?

Compliance with the underlying objectives of the 8.5m height standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason and would require demolition of the existing built form which would be inconsistent with the objects of the Act.

The resultant altered dwelling exhibits a quality architectural and landscape design solution within an urbanised environment. It includes appropriate environmental initiatives, improves the amenity of the owners and maintains expected amenity for the neighbours.

Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

A review of Council's published Variations Registers (by year with 30 June 2021 being the latest), demonstrates that the development standard cannot said to be abandoned, however, there is numerous built form in the surrounding locality and throughout the Northern Beaches LGA (including Balgowlah Heights) subject to the provisions of LEP 2013 and zoned R2 Low Density Residential that depart from the current height standard.

Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location. Low density multi storey dwellings set within established landscaped gardens on consistently sized allotments of land are the predominant / prevailing built form / land use in the locality. The locality is undergoing periodic regeneration.

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

Although the term 'environmental planning ground' is not defined, it is commonly accepted that the objects of the Act constitute 'environmental planning grounds'. Regarding the proposed development at 56 Woodland Street, Balgowlah Heights, there are sufficient environmental planning grounds to justify contravening the height of buildings standard being:

- As demonstrated at **Figures 1** and **2**, the additional departure is centrally located at the rear of the dwelling and is the new gable roof element. The proposed departure is a function of the site's topography (a fall of 11m over its 53m length, being a slope exceeding 1:10), not the size of the built form in terms of GFA. The departure occurs at a point where the site is steep and the provision of the gabled pitched roof form is proposed.
- Existing roofed areas atop the external first floor level balcony which depart from the height standard are to be removed and replaced with a reconfigured balcony design and roof element that complies. This is a desirable outcome.
- Additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield.
- The maximum roof ridge is not altered. The new rear gable roof element sits behind and below the existing main roof ridge. It is not visible from the site's Woodland Street frontage.
- A low density residential (principal dwelling and secondary dwelling) land use is maintained on the existing low density residential allotment of land. This is the desired future character. The proposal maintains and alters a built form that will have an improved relationship to the site's locational characteristics through a high quality architectural, urban and landscape design solution.
- The development provides for an appropriate environmental planning outcome and is not an overdevelopment of the site as follows:
  - the proposal satisfies the objectives of the R2 Low Density Residential zone;
  - the proposal satisfies the stated objectives of the height of buildings standard;
  - compliance is maintained with the LEP 2013 FSR standard.

- compliance is maintained with the total open space and landscaped area (deep soil zones) complementary development guidelines within DCP 2013. Significant landscaped areas are retained which maintain the landscape and scenic quality/characteristics of the locality. The site's permeability has increased from that existing.
- ostensibly the envelope is not dissimilar to that existing. Existing setback conditions are respected.

- Only new roof elements are proposed above the height standard. They do not add to its bulk and scale, rather provide visual interest.
- The altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity, including neighbouring built form.
- The dwelling's height does not result in unreasonable environmental impacts to neighbouring properties and the public domain. The largely retained built form (envelope) provides for an acceptable and equitable planning outcome in relation to:
  - solar access and overshadowing;
  - access to natural daylight and ventilation;
  - aural and visual privacy;
  - views and vistas; and
  - visual and streetscape impact.
- The nature of such an urban environment is that all future development will seek to maximise amenity and density through design. In this regard, the proposal represents an appropriate planning outcome without any adverse environmental impacts.
- The proposal generally is of an intensity and scale commensurate with the locality's established and likely future urban conditions.
- The departure from the standard and the resultant built form does not in any way preclude the redevelopment of any neighbouring property.

3.4 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application as the departure from the height standard relates to local and contextual conditions. The variation sought is responding to the broad brush nature of the control applied across the Northern Beaches LGA under the auspices of LEP 2013.

The resultant built form is one that exhibits architectural merit on an existing low density residential allotment of land. This provision of such built form with associated amenities will assist in meeting housing and locational context demand. The site's overall built form sits comfortably within its established and desired future built form local context.

Finally, LPDS is not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

3.5 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The relevant objects of the Act as specified in Section 1.3, are in our opinion, achieved by the proposed development in that it:

- promotes the social and economic welfare of the community;
- facilitates ESD;
- promotes the orderly and economic use and development of land;
- promotes the sustainable management of built and cultural heritage;
- promotes good design and amenity of the built environment; and
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

A strictly complying development would require demolition of the existing dwelling which is unquestionably economically impractical, given the scope of the external built form works which depart from the standard. Considering demolition of the dwelling, in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 1.3 of the Act.

The site's redevelopment and subsequent minor additional departure from the height standard does not preclude or isolate an adjacent property(s) from being appropriately redeveloped. The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 1.3.

3.6 Is there public benefit in maintaining the development standard?

Generally, there is a public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the height standard is not achievable given the existing departing built form and would serve no planning purpose other than to impose numerical inflexibility. A rigid and inflexible compliance based approach to the standard forgoes the opportunity to provide or encourage an appropriate planning outcome given the presented circumstances.

It is known that Council has considered applications favourably which depart from the height standard. There are no reasons why it is not in the public interest and its refusal based on the standard's departure is not warranted. Under the presented circumstances the variation to the height standard is in the public interest because it is not inconsistent with the stated objectives of the height standard and neither is it inconsistent with the objectives for development in the R2 Low Density Residential Zone. Therefore, it is argued that there is no public benefit in maintaining the adopted height of buildings planning control.

On balance the variation to the height standard is an appropriate use of the provisions of Clause 4.6 and the development is therefore capable of being granted consent.

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3.7 Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified at Section 1.3 of the Act.

4.0 CONCLUSION

The proposed variation to the height standard is based on the reasons contained within this formal request for an exception to the standard. A development strictly complying with the numerical height standard would not significantly alter the development's environmental impacts and therefore impacts to neighbouring properties and the surrounding public domain as:

- the proposal satisfies and achieves the objectives of the R2 Low Density Residential zone;
- the proposal satisfies and achieves the stated objectives of the height standard;
- existing roofed areas atop the external first floor level balcony which depart from the height standard are to be removed and replaced with a reconfigured balcony design and roof element that complies;
- additional habitable accommodation is not provided above the height standard. Typically, those areas existing and proposed which depart from the height standard are roof elements. They provide interest, not yield;
- the maximum roof ridge is not altered. The new rear gable roof element sits behind and below the existing main roof ridge. It is not visible from the site's Woodland Street frontage;
- compliance is maintained with the LEP 2013 FSR standard.
- compliance is maintained with the total open space and landscaped area (deep soil zones) complementary development guidelines within DCP 2013. Significant landscaped areas are retained which maintain the landscape and scenic quality/characteristics of the locality. The site's permeability has increased from that existing;
- ostensibly the envelope is not dissimilar to that existing. Existing setback conditions are respected; and
- the altered built form sits comfortably in the site's wider visual context as viewed from the surrounding public domain, given the scale and form of other hillside developments in the vicinity and that desired / permissible by the relevant planning controls.

It is concluded that the objection:

- is well founded;
- demonstrates that compliance with the standard is both unnecessary and unreasonable;
- demonstrates that there are sufficient environmental planning grounds in which to support the proposal; and
- the concurrence of the Secretary is likely to be forthcoming because there is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard and there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

On that basis, the consent authority can be satisfied that the proposed development is in the public interest because it is consistent with the objectives for development in the zone and the stated objectives of the standard. It therefore is clearly appropriate to exercise the flexibility provided by Clause 4.6 of LEP 2013 in the circumstances of this DA.

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ITEM 3.7	**DA2021/2081 - 21 WHITE STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE, INCLUDING CONSTRUCTION OF A GARAGE**
REPORTING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2022/328746**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. THAT Council as the consent authority **approves** Development Consent to DA2021/2081 for Alterations and additions to a dwelling house, including construction of a garage on land at Lot 1 DP 64165, 21 White Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2081

Responsible Officer:	David Auster
Land to be developed (Address):	Lot 1 DP 64165, 21 White Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house, including construction of a garage
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Elizabeth Mary Eastwood Paul Michael Eastwood
Applicant:	Paul Robert Lucas

Application Lodged:	18/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/12/2021 to 15/12/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 29%
Recommendation:	Approval

Estimated Cost of Works:	$ 450,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposed works are as follows:

Lower Ground Floor

- New entry door to dwelling
- New stacking doors to rear garden
- New stair from subterranean garage to lower ground floor to ground floor

Ground Floor

- Reconfigure entry to provide a new hallway and coat cupboard
- Entry porch and hall reconfigured to form new walk'in wardrobe and en'suite bathroom to bedroom 5
- Existing central masonry wall/column to be removed from living/dining/kitchen area.
- New stair from new garage.

First Floor

- Unchanged

Attic Space

- Unchanged

Garage

- New garage with access via Burton Street with associated covered (underground) access to the house. Garage to be beneath the existing garden.
- Existing garden to be raised to provide a level area.
- Existing vehicular cross-over to Condamine Street to be replaced with a pedestrian pathway to the property.
- Existing boundary entry gate to White Street to be repositioned.
- New timber weatherboard cladding to first floor external walls

The garage was originally proposed as a double garage with a nil setback to the front boundary, with double width driveway. Council's Engineers were not satisfied that adequate driveway gradients could be achieved, and the plans were amended to reduce the driveway width and increase the garage setback during the assessment process. As these changes generally reduced the environmental impacts of the development, the plans were not re-notified, consistent with the Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly 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)
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 1 DP 64165 , 21 White Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject property is commonly known as 21 White Street, Balgowlah and legally known as Lot 1 in DP 64165. The site is located on a corner allotment, on the southern side of White Street and eastern side of Condamine Street. The property is rectangular in shape and has a frontage of approximately 10m to White Street and an approximate depth of 36m and an overall site area of 371.5m2. The property currently contains a three storey dwelling with vehicular access via an existing driveway from Condamine Street to an existing garage to the side of the existing dwelling. The property slopes from the front of the site to the rear and includes an approximate crossfall of approximately 4m. The area includes residential development which surrounds the subject site and North Harbour Reserve which is in close vicinity to the south-east. The subject site shares an eastern boundary with 19 White Street, has a frontage at White Street and extends to have a rear boundary at Burton Street.

Map:



SITE HISTORY

- DA445/2004- Alts and Adds to dwelling including new rear deck and alts and ads to windows and doors approved by DAU on 4 November 2004.
- DA83/2016- Alterations and additions to an existing dwelling house including a new first floor roofed deck at the rear of the property approved by DAU on 18 May 2016.
- Mod2018/0431 - Modification of Development Consent DA83/2016 granted for alterations and additions to an existing dwelling house including a new first floor roofed deck at the rear of the property approved under delegation by Council staff on 07/11/2018.

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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) –	None applicable.

Section 4.15 Matters for Consideration	Comments
Provisions of any planning agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to driveway gradients and design of the garage. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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.

Section 4.15 Matters for Consideration	Comments
	(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 01/12/2021 to 15/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Keith Beresford Wilson	3 Burton Street BALGOWLAH NSW 2093

The following issues were raised in the submissions:

- Construction works
- Silt and sediment

The above issues are addressed as follows:

- **Construction works**

  The submission raised concerns that there had been a recent long running and similar (in terms of excavation) construction at 161 Condamine St that had led to disruption in the neighbourhood in terms of noise, dust pollution and general construction impacts.

  Comment:
  Standard conditions of consent are recommended in relation to construction of the proposal, with regard to hours of work, minimising noise and other pollution. Council's Engineer has also

recommended conditions in relation to maintaining the road reserve in a safe condition at all times, and in relation to traffic control during works. This condition requires that vehicular access to private properties is to be maintained at all times during the works. It is inevitable that construction will result in some impacts on neighbours during works. However, subject to these conditions, the impacts will be reasonably minimised.

- **Silt and sediment**

  The submission raised concerns with dust and waste materials washing over the nature strip into properties opposite the excavation on Burton Street during rain.

  Comment:

  Conditions of consent are recommended to ensure silt and sediment controls are in place during excavation and construction. Subject to these controls being maintained during the works, runoff from the site will be retained.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application seeks consent for alterations and additions to an existing dwelling and construction of a new garage. Councils Landscape Referral section has considered the application against the Manly Local Environmental Plan, and the following Manly DCP 2013 controls: l 3.3.1 Landscaping Design l 3.3.2 Preservation of Trees or Bushland Vegetation l 4.1.5 Open Space and Landscaping Excavation for the proposed garage will require removal of some existing vegetation, which is indicated as <5m in height on the Survey Plan. One small tree on the White Street frontage is also indicated for removal to create a new entrance. No objections are raised to the proposed vegetation removal subject to replanting.
NECC (Development Engineering)	The proposal to provide a new double garage off Burton St has been assessed and the proposed driveway grades are too steep and vehicles will scrape when entering and exiting the garage. In order for the grades to comply with Council's standards, the crossing profile would need to be designed in accordance with Council's normal profile drawing A4/3330/1 N and the garage would need to be offset a minimum of 4 metres from the rear boundary. The proposal also exceeds 50 square metres of impervious area and as such on-site stormwater detention (OSD) is required for the proposal in

Internal Referral Body	Comments
	accordance with Council's Water Management for Development Policy. Development Engineering cannot support the proposal due to insufficient information to address vehicular access and stormwater management in accordance with Part 3.7 and Schedule 3 of the DCP. **Amended plans received 22/3/22** The amended plans have not addressed the previous issue raised with respect to the driveway crossing grades. Also no drainage plans have been provided for the proposal. Development Engineering cannot support the proposal due to insufficient information to address vehicular access and stormwater management in accordance with Part 3.7 and Schedule 3 of the DCP. **Additional Garage Plans and Sections Received 28/4/22** The sections indicate that a transition will be required on the low side to achieve the required garage level. Also the high side level of 0% in the footpath area is not acceptable and will need to provide a 200mm increase in level at the boundary from the invert level i.e. RL 17.00. As such the design will require a driveway between the boundary and the garage of 1.731 metres to achieve the transition grades from the road. This will require the garage to be deeper within the property to ensure the minimum parking space length is achieved. It is noted that this design will still only provide one parking space, and may require some removal of the rock face along the boundary to achieve a suitable sight triangle for vehicles exiting the site. No stormwater details have been provided for assessment. Development Engineering cannot support the proposal due to insufficient information to address vehicular access and stormwater management in accordance with Part 3.7 and Schedule 3 of the DCP. **Amended plans received 18/5/2022** The proposed driveway crossing grades have been checked and are acceptable. The proposed garage will only be accessible by one vehicle and it is considered that a condition be provided by Planning to ensure the approved garage is for a single vehicle only. Also due to the extent of excavation, it is recommended that Planning include the geotechnical Report in the list of approved reports. A review of the proposed impervious area indicates that the subject site is exempt from on-site stormwater detention. Development Engineering support the proposal subject to conditions

Internal Referral Body	Comments
	as recommended.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application. 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 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.

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	New works 5.5m	N/A	Yes
Floor Space Ratio	FSR: 0.5:1 (183.95sqm)	FSR Proposed: 0.7:1 (256.5sqm) Existing: 0.63:1 (230.9sqm)	29%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.5:1
Proposed:	0.7:1 (256.5sqm)
Percentage variation to requirement:	29%

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 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 that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and

assessment.

The applicants written request argues, in part:

- *"The bulk and scale of proposed design is in keeping with the neighbouring property. The built form of the property is remaining relatively as-is with the majority of the floor area increase by way of enclosing the existing entry porch area and re-purposing the existing garage. The only built increase to the FSR is the garage access stair which equates to an increase of 3sqm.*
- *The development will have minimal adverse environmental impact on the adjoining neighbours due to the minor nature of the works.*

- *The FSR of the existing building being over the current zoned FSR (0.5:1). The proposal for additional FSR has negligible impact on neighbours or streetscape of the locality.*
- *The proposed increase in FSR to the property will have only a small increase (3sqm) to the building envelope as the majority of the increase to the FSR will be gained from the re-use of the existing entry porch and garage.*
- *The proposal is in keeping with the locality and surrounding buildings and will have limited impact to the adjacent properties.*
- *The development does not impact any important Landscape and townscape features"*

These arguments are generally concurred with. In particular, the fact that the increase to FSR is primarily caused by internal alterations to the existing built form is a strong argument in favour of the development standard being considered unreasonable or unnecessary in the circumstances of the case. The only significant change to the external built form is the proposed stair well which will be located off the south eastern corner of the existing building. Otherwise, the increase in FSR is caused primarily by conversion of the existing garage and front entry porch, and the proposed new garage is located wholly underground. The overall bulk and scale of the building will therefore remain generally unchanged, with only a minor change to the south eastern corner to accommodate the new stairwell.

It is also agreed that the proposal will have no unreasonable environmental impacts on surrounding neighbours or on the public domain, and given that the existing built form of the above ground building will remain largely unaltered, it will remain consistent with existing development.

The arguments above are supported in this regard.

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 R1 General 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 existing building will remain largely unchanged, with the exception of a relatively minor addition to the south eastern corner of the building to accommodate the new stairwell to the underground garage. As such the proposal will ensure the existing building on site remains generally consistent with the existing streetscape and desired character.

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

Comment:

As discussed above, the proposal does not significantly alter the existing bulk of the building, with only a small addition proposed to accommodate the new stairwell. The increase in floor space occurs largely as a result of the conversion of the existing garage and entry porch to gross floor area for the purposes of measuring FSR, and this increase is internal to the existing building on site. The proposal will not obscure any important landscape and townscape features.

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

Comment:

The proposal will not significantly alter the visual relationship between the existing building and the surrounding area, given the minor nature of external changes to the built form.

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

Comment:

The proposal will not have any significant impacts on the use or enjoyment of any adjoining land or the public domain, given the minor nature of changes proposed to the existing external built

form.

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 will not have any negative impacts on any business zones or uses.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

  Comment: The proposal will not alter the existing single dwelling use of the site, and will continue to provide for the housing needs of the community.

- *To provide for a variety of housing types and densities.*

  Comment: The proposal is for alterations and additions to an existing detached dwelling, and will continue the existing use.

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

  Comment: The proposal will not prevent other land uses or services from taking place in the area.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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).

6.1 Acid sulfate soils

Site site is mapped as class 5 on the Acid Sulphate Soils map. It is also approximately 120m from class

2 land to the south. However, the site is well above 5m AHD, with the works being at RL17.10 at the lowest point. Additionally, the geotechnical report provided with the application states that *"Due to the position of the Site relative to the slope and the underlying geology, no significant standing water table is expected to influence the site."*

The proposal is therefore considered acceptable in relation to this clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 367.9sqm	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 300sqm	1 dwelling	N/A	Yes
	Dwelling Size: 129sqm	256.5sqm	N/A	Yes
4.1.2.1 Wall Height	E: 7.35m (based on gradient 1:7)	New work: 5.5m	N/A	Yes
	W: 7.35m (based on gradient 1:7)	Existing and unchanged	N/A	Yes
4.1.2.2 Number of Storeys	2	Existing and unchanged	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	Existing and unchanged	N/A	Yes
	Pitch: maximum 35 degrees	Existing and unchanged	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	South Nil, other front setbacks to east and north unaltered	100%	**No**
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.83m (based on wall height)	900mm	50%	**No**
	Windows: 3m	900mm	70%	**No**
4.1.4.4 Rear Setbacks	8m	No rear boundary	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area	64.2% (236.5sqm)	N/A	Yes
	Open space above ground 25% of total open space	15.4% (36.5sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	51.5% (121.9sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	<50%, 3m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	**No**

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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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)	No	Yes

Detailed Assessment

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

Description of non-compliance

The proposed new garage will be located 1.73m from the southern boundary to Burton Street, and the walls around and above the new driveway on a nil setback to the boundary (100% non-compliance).

The proposed new stairwell from the underground garage up to the existing dwelling will be located in the existing eastern side setback area, 900mm from the eastern side boundary (50% non-compliance based on the wall height). A window is proposed in this stairwell which will also be 900mm from the side boundary (70% non-compliance on the 3m requirement). The existing front porch window facing over the eastern side boundary will become a bathroom window, and is also setback 900mm.

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 existing streetscape of Burton Street is a relatively narrow street, with reduced front setbacks in the vicinity of the site. There are existing detached garages and carports on nil front setbacks on the neighbouring properties to the east, and a large double garage on a nil setback on the neighbour opposite across Burton Street. The proposal will be below the existing ground level, and somewhat hidden in this regard. Given the existing precedent in the streetscape for parking structures in the front setback area, the proposal will not detract from the streetscape character. The minor addition of the stairwell at the south eastern corner of the dwelling will not be readily visible from the front of the site on Burton Street given the ground levels, and will not have any significant impacts when viewed from Burton Street further to the east.

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 garage is below the existing ground level on site, and will not have any significant impacts on any of the above matters for consideration. Council's Development Engineer required amendments to the originally proposed plans, to set the garage back further from the boundary to allow for adequate driveway gradients. With regard to the proposed new stairwell window, and the existing porch window converted to a bathroom window, a condition is recommended to require the stairwell window and bathroom window to be opaque glazing given their proximity to the side boundary. Subject to this condition the proposal will not result in any unreasonable privacy impacts.

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

Comment:

The proposal will not have any unreasonable impacts on the surrounding area, and a degree of

flexibility is considered appropriate in the circumstances.

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 will reinstate the existing garden/lawn above the proposed underground garage upon completion. Council's Landscape Officer has assessed the proposal and is satisfied subject to conditions of consent.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

There is one existing parking space on site, and this space will be replaced by one new space. The application originally proposed a new two car garage fronting onto Burton Street. However, Council's Development Engineers were not satisfied that the necessary driveway gradients could be attained, and the driveway width was reduced to only enable the garage to be used for a single car. Although the garage remains of two car width, access to only one side of the garage for a vehicle will be possible.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposal will remain a single dwelling, and will retain one off street car parking space as currently exists. There is adequate on street parking available in the area, and retention of a single car space as currently exists is considered acceptable.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal will maintain the existing situation on site, having only one off street space rather than the two required for a dwelling house. However, this maintains the existing situation. It is noted that an extra on street parking space will be created by the demolition of the existing driveway on the Condamine Street frontage (there is currently no parking permitted in the area of the proposed new driveway on Burton Street), and the on-street parking situation will therefore be improved by the proposal.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed new garage is underground, and the existing front lawn area will be reinstated over the top of the garage once completed. Council's Development Engineers are satisfied with the driveway design as amended.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposal requires a significant amount of excavation, as the proposed new garage is beneath the existing ground level of the southern front lawn area. However, a geotechnical report has been provided with the application which states that *"Normal groundwater seepage is expected to move downslope through the soil profile along the interface with underling bedrock or any impervious horizons in the profile such as clays. Due to the position of the Site relative to the slope and the underlying geology, no significant standing water table is expected to influence the site."* The geotechnical report does not anticipate any unreasonable impacts with regard to site instability or interruption to ground water flows. The recommendations of the report are included as a condition of consent.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

There is no current footpath on Burton Street.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The new garage will be recessed beneath the existing front lawn area, and behind the existing rock outcrops at the south western corner of the site, screening the proposal as far as practicable.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and

promote clean air.

Comment:

The proposal maintains the existing one off street parking space.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The control generally limits excavation to a maximum depth of 1m below the natural ground level (with the exception of swimming pools and basement car parking), however, parking is to be within the footprint of the building. The proposal involves excavation to a maximum depth of 4m to accommodate for the new garage. While excavation for parking is permitted, the proposed garage is not beneath the existing building footprint, and therefore fails to meet the requirement.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

Once the garage is constructed the existing lawn / garden area above will be reinstated at generally similar levels as currently exists. In this way the existing landscape character and topography will be generally maintained. Further, the reduction in width to the driveway to be single car width will enable retention of the existing rock outcrops at the southwestern corner of the property in full.

The geotechnical report provided indicates that there will be no significant impacts to groundwater flows, and given that the existing surface will be generally reinstated, flows across the surface will not be significantly impacted. Conditions of consent are recommended to ensure sedimentation is contained within the site during construction. The retaining wall proposed above the garage is 600mm in height, and will enable retention of the existing lawn level. The proposal is therefore considered to be generally consistent with the objective of the control, despite the technical non-compliance.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $4,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $450,000.

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 4.4 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.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/2081 for Alterations and additions to a dwelling house, including construction of a garage on land at Lot 1 DP 64165, 21 White Street, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
01B	21.03.22	Cradle Design
09B	21.03.22	Cradle Design
10B	21.03.22	Cradle Design
11C	13.05.22	Cradle Design
12C	13.05.22	Cradle Design
13B	21.03.22	Cradle Design
14B	21.03.22	Cradle Design
15C	13.05.22	Cradle Design
16C	13.05.22	Cradle Design
17B	21.03.22	Cradle Design
18C	13.05.22	Cradle Design
19C	13.05.22	Cradle Design
21C	13.05.22	Cradle Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Assessment Ref: AG 21342	27 October 2021	Ascent Geotechnical Consulting
BASIX Certificate A435798	28 October 2021	Cradle Design

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**
Northern Beaches Council Waste Management Plan	21.10.21	Paul Lucas

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	Not dated

(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.

5. **Sewer / Water Quickcheck (Crown Land Only)**
The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset’s sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and

- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $4,500.00 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 $450,000.00.

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.

7. **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

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

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

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

9. **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.

10. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- Remove the 'Double Garage' label and the indicative cars from the Garage Level/Plan (plan no. 11C).

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

Reason: The width of driveway and garage door only enables parking for a single car.

11. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

12. **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.

13. **Vehicle Crossings Application**
The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected including:
   i) all trees and vegetation within the site not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
   ii) all trees and vegetation located on adjoining properties,
   iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
   i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

16. **Road Reserve**

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

Reason: Public safety.

17. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

18. **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.

19. **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.

20. **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.

21. **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.

22. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3 metres wide in the Burton Street frontage in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant layback and crossing in Condamine Street are to be restored to kerb, footpath and 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.

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

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

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

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

24. **Required Tree Planting**
a) Trees shall be planted in accordance with the following:
i) 1 tree capable of attaining a minimum height of 5m at maturity; located within the grounds of the property; minimum pot size 200mm

b) Native tree planting species may be selected from Council's list:
www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Government's 5 Million trees initiative

https://5milliontrees.nsw.gov.au/

Reason: To maintain environmental amenity.

25. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

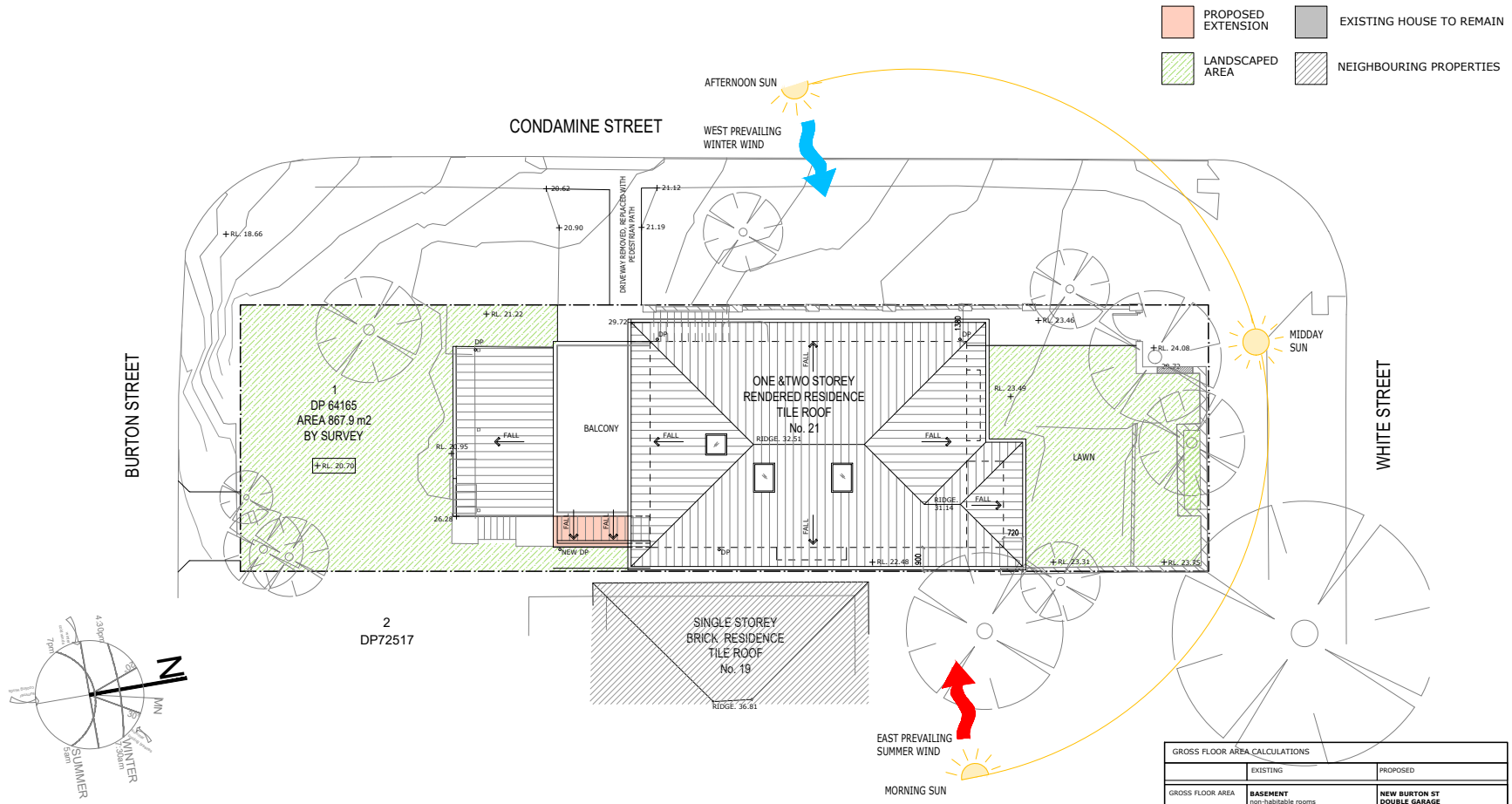
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

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

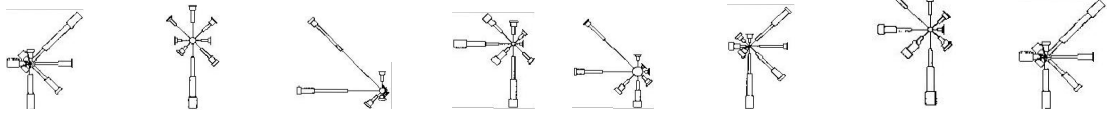
26. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



WIND ROSES

Sydney Airport AMO/AWS:
Source NSW Bureau of Meteorology



GROSS FLOOR AREA CALCULATIONS		
	EXISTING	PROPOSED
GROSS FLOOR AREA	**BASEMENT** non-habitable rooms (laundry & store) - 21.5 m2 single garage - 21 m2 **GROUND FLOOR** - 101 m2 **FIRST FLOOR** (stair well 3m2) - 80 m2 **ATTIC STORAGE RM** (stair well 1.5m2) - 25 m2 **TOTAL GFA** (excludes basement areas) - 206 m2	**NEW BURTON ST DOUBLE GARAGE** (incl store & access) - 49 m2 **BASEMENT** non-habitable rooms (laundry & store) - 21.5 m2 entry room/hall - 18.5 m2 **GROUND FLOOR** - 106 m2 **FIRST FLOOR** (stair well 3m2) - 80 m2 **ATTIC STORAGE RM** (stair well 1.5m2) - 25 m2 **TOTAL GFA** (excludes basement laundry & store & new double garage) - 229.5m2

DEVELOPMENT APPLICATION

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ORIENTATION

REVISION: REV. A - 28.10.21 - ISSUED FOR DEVELOPMENT APPROVAL; REV. B - 21.03.22 - RE-ISSUED FOR DEVELOPMENT APPROVAL

DETAILS
CLIENT: PAUL AND ELIZABETH EASTWOOD
ADDRESS: LOT 1, DP 64165, 21 WHITE STREET, BALGOWAH, NSW 2093

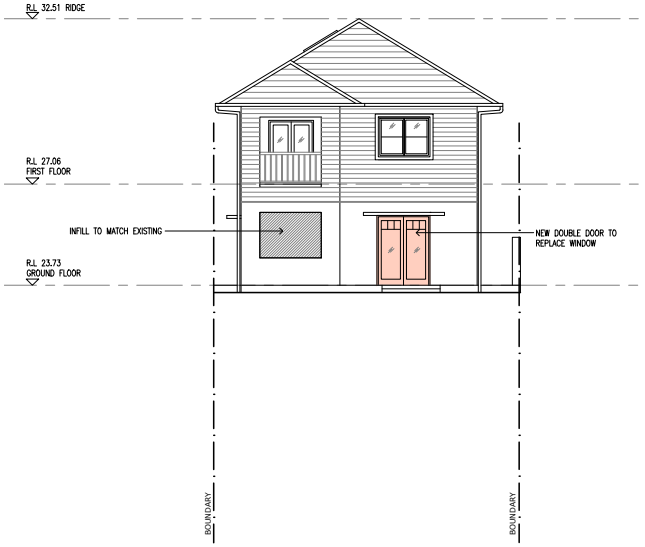
PROJECT
DRAWING TITLE: SITE ANALYSIS PLAN
REFERENCE: 556 - 21 WHITE STREET
SCALE: 1:100@A2
DRAWN: PL

DA| 01 B (DRAWING / ISSUE)

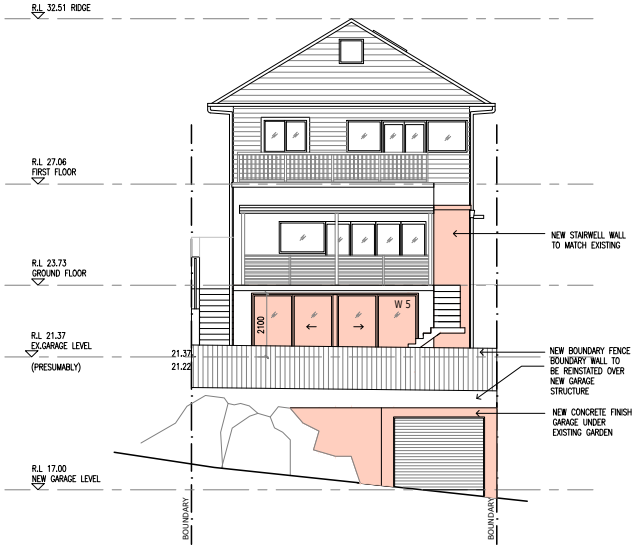
LEGEND

PROPOSED NEW WORKS

REPLACED WITH A WALL



01 PROPOSED NORTH ELEVATION
1:100 ELEVATION



02 PROPOSED SOUTH ELEVATION
1:100 ELEVATION

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DEVELOPMENT APPLICATION

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ORIENTATION

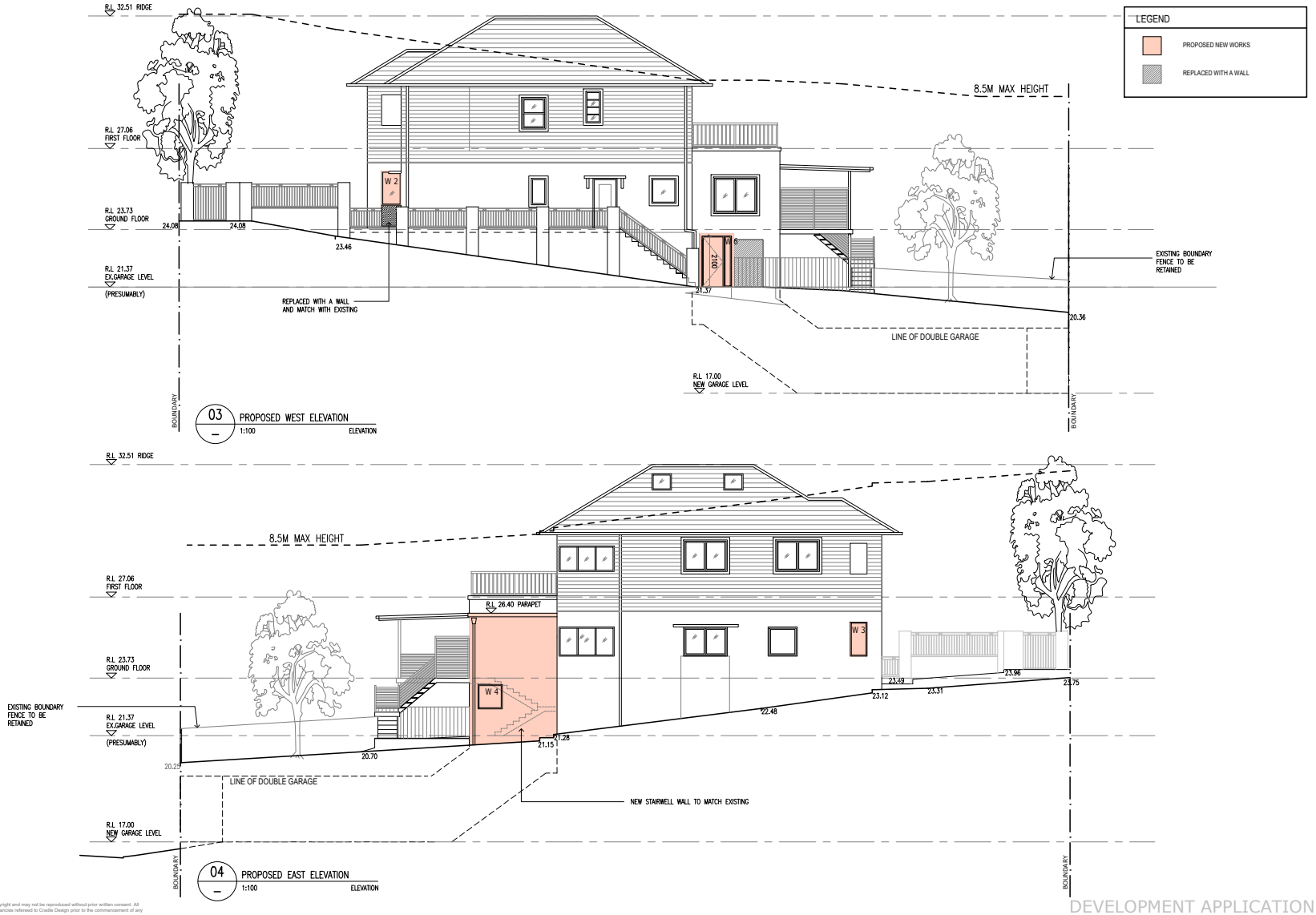
REVISION
REV. A - 28.10.21 - ISSUED FOR DEVELOPMENT APPROVAL
REV. B - 21.03.22 - RE-ISSUED FOR DEVELOPMENT APPROVAL
REV. C - 13.05.22 - RE-ISSUED FOR DEVELOPMENT APPROVAL

DETAILS
CLIENT
PAUL AND ELIZABETH EASTWOOD

ADDRESS
LOT 1, DP 64165
21 WHITE STREET, BALGOWAH, NSW 2093

PROJECT
DRAWING TITLE
PROPOSED NORTH & SOUTH ELEVATIONS
REFERENCE
556 - 21 WHITE STREET
SCALE 1:100@A2
DRAWN PL

DA| 15 C
DRAWING ISSUE



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DEVELOPMENT APPLICATION

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REV. C - 13.05.22 - RE-ISSUED FOR DEVELOPMENT APPROVAL

DETAILS
CLIENT
PAUL AND ELIZABETH EASTWOOD
ADDRESS
LOT 1, DP 64165
21 WHITE STREET, BALGOWAH, NSW 2093

PROJECT
DRAWING TITLE
PROPOSED WEST & EAST ELEVATIONS
REFERENCE
556 - 21 WHITE STREET
SCALE
1:100@A2
DRAWN
PL
DA| 16 C
DRAWING ISSUE

Alterations & Additions to:
Lot 1 DP64165
21 White Street
Balgowlah
NSW 2093

Clause 4.6 – Exception to a Development Standard in relation to;
Clause 4.4 – Floor Space Ratio of the Manly Local Environmental Plan 2013.



Prepared by:
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Nominated architects – **Regan VanderWert-Walsh – 7904**
Paul Lucas – 8786

RevA - March 2022

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Introduction

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP). A variation is sought in relation to the Floor Space Ratio development standard of Clause 4.4 of the LEP, in relation to alterations and additions to 21 White Street, Manly.

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 Director-General has been obtained.

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.

6. (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

   (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

   (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

   Note. When this Plan was made it did not include 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 E3 Environmental Management or Zone E4 Environmental Living.

7. (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. (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.

An exception to a development standard is required because the proposal will exceed the Floor Space Ratio development standard of Clause 4.4 of the LEP.

The Development Standard and the Variation Sought.

Manly Local Environmental Plan 2013 Clause 4.4 – Floor Space Ratio

The allowable Floor Space Ratio (FSR) map makes recommendation for a 0.50:1 FSR.

The surveyed site area is 367.9m2 on lot 1 DP 64165.

PERMISSIBLE FLOOR AREA - 0.50:1 (367.9m2 x 0.50) = 183.5m2

*EXISTING FLOOR AREA = approx. 206m2 (6% over permissible)

*PROPOSED FLOOR AREA = 229.5m2 (12% over permissible)

VARIATION BETWEEN PERMISSIBLE & PROPOSED = 12% (23.5m2)

*Note – above areas excluded the proposed garage & associated access

This exception statement is looking for dispensation from FSR of 0.50:1 to 0.62:1 on grounds that it meets the objectives of LEP Clause 4.4 FSR .

The Objectives of the Development Standard.

The purpose of the Floor Space Ratio standard is stated in the objectives in Clause 4.4 of the LEP as follows:

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

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

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

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

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

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

Why the objectives of the standard are achieved

This departure from the standards is consistent with the objectives of the FSR Standards because:

- The bulk and scale of proposed design is in keeping with the neighbouring property. The built form of the property is remaining relatively as-is with the majority of the floor area increase by way of enclosing the existing entry porch

area and re-purposing the existing garage. The only built increase to the FSR is the garage access stair which equates to an increase of 3m2.

- The development will have minimal adverse environmental impact on the adjoining neighbours due to the minor nature of the works.

How is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is unreasonable or unnecessary in this case due to;

- The FSR of the existing building being over the current zoned FSR (0.5:1). The proposal for additional FSR has negligible impact on neighbours or streetscape of the locality.
- The proposed increase in FSR to the property will have only a small increase (3m2) to the building envelope as the majority of the increase to the FSR will be gained from the re-use of the existing entry porch and garage.
- The proposal is in keeping with the locality and surrounding buildings and will have limited impact to the adjacent properties.
- The development does not impact any important Landscape and townscape features

Are there sufficient environmental planning grounds to justify variation of the development standard(s)?

Yes.

The proposal is consistent with the relevant aims/ objectives of the LEP and the objectives for R1 General residential zone.

- It will have no negative impact on the adjoining neighbours and the immediate surrounds.
- No additional overshadowing will be created by the proposal.
- Privacy and overlooking of neighbouring properties have been considered and only one new window to the stairwell has been introduced at ground level which will be obscured by the garden fence.
- It will have no impact on any views that may be enjoyed by neighbouring properties and public land.
- The alterations and additions will be of a height, scale and design that complement's the design and character of the original and surrounding buildings.

Is there any other relevant information to be considered to justify variation of the development standard(s)?

- The bulk and scale of proposed design is in keeping with the neighbouring property.

- This application seeks dispensation from FSR of 0.50:1 to 0.62:1 on grounds that it meets the objectives of LEP Clause 4.4 Floor Space Ration and fits into its local context without adversely affecting neighbouring properties.

The exception to the Floor Space Ratio is considered to be well founded. Council as the consent authority can be satisfied for the reasons outlined, that the proposed

development will be in the public interest because it is consistent with the objectives of the standards and the objectives of the R1 General residential zoning.

ITEM 3.8	**DA2022/0340 - 21 PARKVIEW ROAD FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING**
REPORTING MANAGER	**PHIL LANE**
TRIM FILE REF	**2022/328768**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0340 for alterations and additions to a semi-detached dwelling on land at Lot 361 DP 700858, 21 Parkview Road FAIRLIGHT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0340

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 361 DP 700858, 21 Parkview Road FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anthony Gavin Moss Kathleen May Moss
Applicant:	Laura Jane Robinson

Application Lodged:	21/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/03/2022 to 11/04/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 18.05%
Recommendation:	Approval

Estimated Cost of Works:	$ 528,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2022/0340 for alterations and additions to an existing semi-detached dwelling. The works largely pertain to a first floor addition and new car parking hardstand and vehicle crossing.

The maximum floor space ratio (FSR) permitted on the site is 0.6:1 (150.78sqm). The proposed development results in a FSR of 0.708:1 (178sqm), which represents an 18.05% (27.22sqm) variation to Clause 4.4 - Floor Space Ratio of Manly LEP 2013. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Despite the FSR breach, the overall height, bulk and scale of the development is commensurate with the surrounding built environment, including recently approved developments directly adjoining the site to the north and south. Furthermore, the FSR breach does not result in any unacceptable amenity impacts for surrounding properties, specifically with regards to solar access, view sharing, visual bulk or privacy. The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 - Floor Space Ratio of the Manly LEP 2013.

The proposed development involves variations to the numerical requirements entail within Clause - 4.1.4 Setbacks (front, side and rear) and Building Separation, Clause 4.1.5 - Open Space and Landscaping and Clause 4.1.6 - Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly DCP 2013. However, these variations do not result in a development that is incompatible with the established and desired future character of the area and the proposal provides a net increase of off-street parking on the site.

Throughout the assessment process amended plans were submitted to increase the total open space on the site, reduced the FSR on the site and increase the depth of the hardstand parking space to ensure compliance with the Australian Standard. The amendments have been assessed and are considered to have adequately address to Council's preliminary concerns.

The application was notified for 14 days and received one (1) submission. The issues raised include visual bulk, solar access and privacy. A detailed assessment of these issues has been conducted and the application has been found to be satisfactory.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing semi-detached dwelling including a new single car hardstand parking space. The works consist of:

Ground Floor

- Internal alterations to modify the floor plan.
- Window changes.
- Small rear extension to provide a larger living area with rear decking.
- Internal staircase to access the proposed first floor addition.

First Floor Addition

- Main bedroom with ensuite and balcony on rear elevation.
- Additional bathroom.
- Home office.
- Second living room with door to storage in existing roof cavity.

Ancillary Works

- New vehicle crossing and driveway.
- Removal of one small shrub/tree within the road reserve.

- Single car hardstand parking space.
- Sliding gate.

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 - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 361 DP 700858 , 21 Parkview Road FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one allotment located on the western side of Parkview Road, Fairlight. The site is rectangular in shape with a frontage of 6.8m and a depth of 37.01m. The site has a surveyed area of 251.3sqm. The site is located within the R1 General Residential zone pursuant to Manly LEP 2013 and accommodates a single storey semi-detached dwelling. The site is devoid of off-street parking and currently does not have vehicular access.

	The site is generally flat with a gentle slope from the front eastern boundary to the rear western boundary. The site contains existing lawn areas and is devoid of any significant vegetation. **Description of Surrounding Development** Adjoining and surrounding development is characterised by semi-detached dwellings, detached dwelling houses, and residential flat buildings. The scale of nearby development ranges from 1-3 storeys in height.

Map:



SITE HISTORY

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

- Complying Development Certificate No. CD03/08 for alterations and additions to dwelling approved by Manly Council on 8 August 2008.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 27 April 2022.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant raising concern of the following aspects of the proposal:

- **Off-Street Parking:** The proposed hardstand parking space was only 4.8m in depth, whereas the Australian Standard requires single off-street car parking spaces to be 2.4m (width) x 5.4m

(depth) in dimension.

- **Total Open Space:** The application only proposed 19.9% (50sqm) of the site as total open space, which is a significant departure from the numeric requirement of 55%. Council requested that the total open space be increased to reduce the extent of the non-compliance.

- **Front Gate/Fence:** The plans did not depict the height of the proposed front fence. Council requested clarification on the height of the fence.

Subsequently, the applicant submitted revised plans and documentation to demonstrate the following:

- Increase the parking hardstand platform dimensions to 2.4m (width) x 5.4m (depth). This was achieved by encroaching into the existing front porch.

- Increase the total open space on the site to 32.51% (81.7sqm), which is considered reasonable in the context of the narrow site. This was achieved through increasing the rear setback to the ground floor façade and re-locating the hardstand parking space to provide additional total open space within the front yard (noting that parking/access is excluded from total open space and that open space areas must be 3m x 3m in dimension with an unbroken area of at least 12sqm to be included in the calculations).

- Confirm that the front fence and gate is 1.5m in height, which complies with the Manly DCP 2013 front fencing provision for partially transparent/open fences.

- New Clause 4.6 written request for the FSR non-compliance to reflect the amended FSR calculations, which was reduced from 0.73:1 (184sqm) to 0.708:1 (178sqm).

The amended plans constitute an overall reduced impact when compared to the original proposal. Hence, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed

Section 4.15 Matters for Consideration	Comments
	development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and a revised Clause 4.6 written request. The additional information was received and assessed accordingly. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
with the EPA Act or EPA Regs	
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 28/03/2022 to 11/04/2022 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 Malcolm Peter Kindred	17 Parkview Road FAIRLIGHT NSW 2094

One (1) submission was received following the public exhibition period. The submission was prepared by the owner of 17 Parkview Street, which is located two properties to the south of the subject site. The following issues were raised in the submission:

- **Solar Access**

  The submission raised concern that the proposed development will result in unacceptable overshadowing of the nearby property.

  Comment:

  The proposal does not result in unreasonable overshadowing of adjacent properties, with the additional shadowing being largely confined to the roofline of the semi-detached dwelling to the south (No. 19 Parkview Road). Furthermore, as the height and footprint of the second storey component corresponds with the recently approved first floor addition for the adjoining semi-detached dwelling to the south, the proposal will not result in additional overshadowing of No. 17 Parkview Road when compared to what will currently be experienced from the approved development at No. 19 Parkview Road to the south.

- **Bulk and Scale**

  The submission raised concern that the bulk and scale of the proposal will be excessive.

  Comment:

The proposed development respects the two storey built form on surrounding and adjacent sites, with the upper floor stepped back from the front, rear and side facades to negate the bulk and scale of the development. The proposal also complies with the 8.5m height of buildings development standard and Manly DCP 2013 wall height provision, thereby demonstrating an acceptable height for the site. Whilst the proposal contravenes the FSR development standard, the overall density of the proposal is commensurate with recent approvals immediately to the north and south of the site. Thus, the bulk and scale of the proposal is considered to be acceptable in the context of the surrounding area.

- **Privacy**

  The submission raised concerns that the proposed development would have an unacceptable privacy impacts on the nearby property.

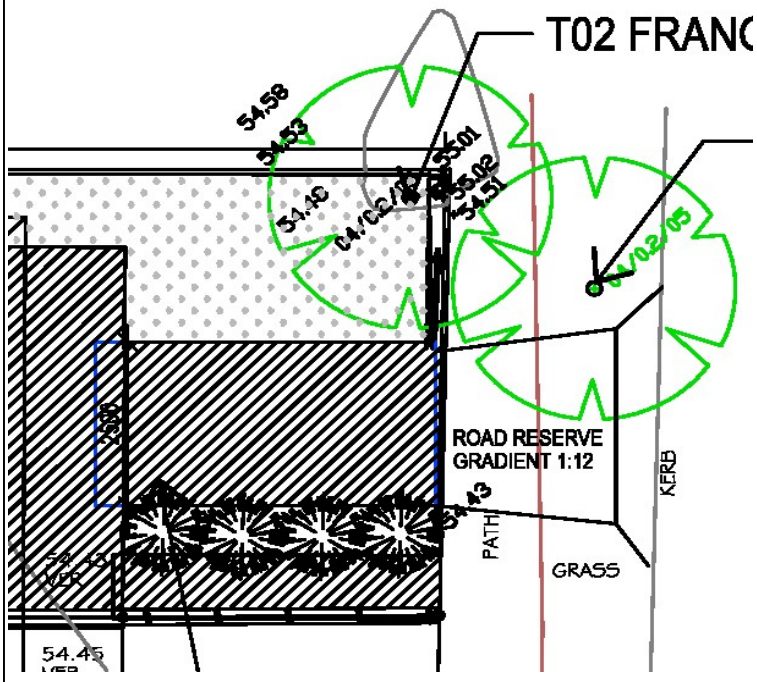
  Comment:

  The balcony has a trafficable area of 2.9sqm and adjoins a bedroom (i.e. low trafficable room). These factors mean that the area is not conducive for numerous occupants to utilise the area. In addition, as the area adjoins a low trafficable area it will not receive high volumes of pedestrian movement, noting that the ground floor rear decking and lawn adjacent to the living area will serve as the private open space on the site. Therefore, any overlooking would be infrequent and therefore reasonable. This argument is supported within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that *"overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time"*.
  Conclusion

  The concerns raised within the submission have been appropriately addressed above. The concerns for not warrant refusal of the application or amendments to the design.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Amended plans Comment 11/05/2022 Amended plans relocating the driveway are noted. It is understood that due to engineering requirements, the amendment has been required. An improved soft landscape outcome in the front setback is considered to have been achieved with the amendment. The relocation will require removal of one small street tree in average condition, which can be replaced within the road reserve. No objections are raised with regard to landscape issues, subject conditions including to replanting. Original Comment

Internal Referral Body	Comments
	The application seeks consent for alterations and additions to a semi-detached dwelling. 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): l 3.1.1 Streetscape (Residential areas) l 3.1.1.4 Garages, Carports and Hardstand Areas l 3.3.1 Landscaping Design l 3.3.2 Preservation of Trees or Bushland Vegetation The plans indicate that the new driveway crossover is to be located adjacent to an existing street tree, though the tree is indicated for retention. Concern is raised regarding the proximity of the crossover to the tree and it is recommended that the crossover be relocated further south of the tree and butt up to the entry path to the dwelling. This would require deletion of a small planted area indicated on the plans between the path and the drive, which seems to serve little purpose, particularly in relation to exit from a vehicle from the passenger side (if car is parked front first).  Subject to relocation of the crossover further away from the street tree, no objections are raised with regard to landscape issues subject to conditions.

Internal Referral Body	Comments
NECC (Development Engineering)	1st Engineering referral The applicant proposed a hardstand parking space. However, the marked parking space is only 4.8 m long in the submitted plan. The minimum length of the parking is 5.4 m in accordance with Council's specification and Australia Standard. As such, Development Engineering cannot support the application due to clause 4.1.6 of Council's Manly DCP 2013. The applicant may need to consider to utilise the space under the covered verandah to extend the parking space. Note: stormwater design is acceptable. 2nd engineering referral response A 5.4 m long parking space is proposed in the amended drawing. Development Engineering has no objection to the application subject to the following conditions of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

The application is accompanied by a BASIX Certificate (see BASIX Certificate No. A448563, dated 2 March 2022). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.71m	-	Yes
Floor Space Ratio	0.6:1 (150.78sqm)	0.708:1 (178sqm)	18.05%	**No**

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
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
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (150.78sqm)
Proposed:	0.708:1 (178sqm)
Percentage variation to requirement:	18.05% (27.22sqm)

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 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 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 primary issue is whether or not there are sufficient environmental planning grounds particular to the site to allow the variation to the floor space ratio development standard.

Accordingly in regards to the proposed development at 21 Parkview Road, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:-

- *The proposal does not result in any loss of privacy nor an unreasonable loss of solar access to the adjoining properties.*
- *The existing surrounding development comprises a mixture of single detached dwellings, semi-detached dwellings and large residential flat buildings. The resultant development is compatible with the existing surrounding development.*

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

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the numerical variation to the floor space ratio standard".

Development Assessment Planner Comment:

The Development Assessment Planner agrees generally with the applicant's justification to contravene the FSR development standard.

It is accepted that the FSR breach does not contribute to unreasonable privacy impacts, noting that the upper floor has been adequately separated from the side boundary to avoid unacceptable acoustical privacy impacts, whilst the north-facing windows do not encourage direct overlooking into habitable rooms on the northern adjacent building (No. 23 Parkview Road) due to the south-facing windows on the first floor at No. 23 being highline windows.

Furthermore, it is also agreed that the FSR breach does not result in unreasonable overshadowing of adjacent properties, with the additional shadowing being largely confined to the roofline of the semi-detached dwelling to the south (No. 19 Parkview Road). In this instance, full compliance with the FSR standard would not achieve a greater amenity outcome for the occupants of the neighbouring residential development to the south (i.e. No. 19 and 17).

Additionally, it is accepted that the overall height, scale and intensity of the resulting development corresponds with nearby development within the visual catchment of the site, notwithstanding the FSR breach. The proposed development respects the two storey built form on surrounding and adjacent sites, with the upper floor stepped back from the front, rear and side facades to negate the bulk and scale of the development. It is also important to note that the northern adjacent semi-detached dwelling at No. 23 Parkview Road, which has recently been developed and approved by the Northern Beaches DDP, contains a gross floor area of 181.92sqm, which exceeds what is currently proposed on the subject site.

Overall, in the absence of recognisable streetscape and amenity impacts, it is considered that a fully compliant FSR would not result in an improved environmental planning outcome.

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 R1 General 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 resulting two storey built form is commensurate with the scale of surrounding residential development within the visual catchment of the site and consistent with the general scale of development envisaged for the locality. The upper floor has been recessed back from the ground, northern side, and front facades to alleviate the perceived height and bulk.

Additionally, it is important to note that Council has recently approved FSR breaches of a similar extent on the northern (No. 23 Parkview Road) and southern (No. 19 Parkview Road) adjacent sites for two storey semi-detached dwellings. The northern adjacent development has already been constructed. These approvals inform the general scale of development anticipated for the locality, notwithstanding the FSR breaches. It is noted that the density of the proposal generally corresponds with these developments.

Overall, it is considered that the proposal achieves this objective.

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

Comment:

The building density and bulk corresponds generally with approved developments directly to the north and south of the subject site and the overall height and bulk of the proposed development has been alleviated through compliance with the height of buildings development standard and recessing the upper floor back from the ground floor walls. In addition, the FSR breach does not obscure any important landscape or townscape features.

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

Comment:

The area currently comprises of a variety of building forms including detached dwelling houses, semi-detached dwelling houses, and residential flat buildings. Therefore, it is considered that the proposal is consistent with maintaining the visual 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:

As discussed above, the FSR non-compliance does not result in unacceptable amenity impacts to adjacent properties, specifically with regard to privacy, solar access, view sharing and visual bulk. Thus, the FSR breach will not preclude the use or enjoyment of surrounding private properties and the public domain.

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

Comment:

The site is not located within a local centre. Therefore, this objective is not relevant.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

- *To provide for the housing needs of the community.*

Comment:

The proposal provides for a greater number of bedrooms and larger living area to meet the needs of the residents.

- *To provide for a variety of housing types and densities*.

Comment:

The proposal involves alterations and additions to an existing medium density land use within an area characterised by low and medium density housing.

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

Comment:

The proposal does not alter the existing residential land use.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone and the objectives of 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: 251.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm of site area	1 dwelling on 251.3sqm site	-	Yes
	Dwelling Size: minimum 100sqm (based off 3 bedrooms and 3 bathrooms)	178sqm	-	Yes
4.1.2.1 Wall Height	North: 6.5m (based on flat gradient)	6.3m	-	Yes
	South: N/A - party wall	N/A	N/A	N/A
4.1.2.2 Number of Storeys	2 storeys	2 storeys	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.33m	-	Yes
	Pitch: maximum 35 degrees	< 35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing Building Line (0m for hardstands and 6m for facade)	0m (hardstand) - 10.53m (1st floor addition)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.1m (1/3 of wall height)	1.13m (ground floor) - 2m (1st floor)	4.76% - 46.19%	**No**
	Windows: no windows within 3m of side boundaries	11x windows within 3m of northern side boundary	up to 62.33%	**No**
4.1.4.4 Rear Setbacks	8m	5.15m (ground floor rear deck) - 9.35m (1st floor)	35.63%	**No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (must be 3x3m in dimension)	32.51% (81.7sqm)	40.89%	**No**
	Open space above ground 25% of total open space	nil	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	102.33% (83.6sqm)	-	Yes
	1 native tree	no native trees	100%	**No***
4.1.5.3 Private Open Space	18sqm	50sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	3.4m (50% of lot width)	2.4m	-	Yes
Schedule 3 Parking and Access	2 spaces	1 space	50%	**No**

*** A condition will be applied for the planting of one (1) native tree**

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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The control states as follows:

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

The proposed development includes an elevated juliet balcony on the rear elevation of the first floor adjacent to the main bedroom. The balcony is partially recessed into the building and protrudes approximately 400mm beyond the rear façade. Whilst the balcony is devoid of privacy screening, this element is not considered to unreasonably affect the privacy of adjacent residencies.

The balcony has a trafficable area of only 2.9sqm and adjoins a bedroom (i.e. low trafficable room). These factors mean that the area is not conducive for numerous occupants to utilise the area. In addition, as the area adjoins a low trafficable area it will not receive high volumes of pedestrian movement, noting that the ground floor rear decking and lawn adjacent to the living area will serve as the private open space on the site. Therefore, any overlooking would be infrequent and therefore reasonable. This argument is supported within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that *"overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time"*.

For the reasons detailed above, it is concluded that the inclusion of a privacy screen on the first floor rear balcony is not required and that the balcony is appropriately scaled and sited to prevent adverse privacy impacts. Thus, the proposal is consistent with the intent of this control.

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.

Furthermore, it is noted that the site is not an 'undersized allotment, as defined by the Manly DCP 2013.

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

Description of non-compliance

Side Setback

The control requires development to be setback at least 1/3 of the adjacent wall height from side boundaries. In applying this principle, development must be setback at least 2.1m from the northern side boundary.

The minor rear extension to the ground floor is setback 1.13m from the northern side boundary, which does not meet the numeric requirement. It is noted that the ground floor rear extension does not further decrease the existing northern side setback.

The first floor addition is setback 2m from the northern side boundary, which does not satisfy the prerequisite of 2.1m.

The side setback provision also stipulates that windows to habitable rooms shall not be located within 3m of side boundaries. The proposal includes 11 new windows on the northern elevation within 3m of the side boundary, which does not meet this requirement.

Rear Setback

The control requires development to be setback at least 8m from the rear boundary. The rear decking on the ground floor is setback 5.16m from the rear boundary, which does not meet the numeric requirement. It is noted that the façade of the building is setback 8.5m from the rear boundary on the ground floor.

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 first floor addition is generally centrally positioned within the existing building footprint and adequately setback from the front, side and rear boundaries to negate unreasonable visual impacts upon the streetscape and surrounding properties. The upper floor is recessed back from the ground floor facades and employs a 2m side setback, which is consistent with the southern side setback of the approved first floor addition on the southern adjoining semi-detached dwelling to the south (No. 19 Parkview Road). This will ensure the development maintains an appropriate visual relationship with the adjoining semi-detached dwelling at No. 19 Parkview Road and the surrounding built environment. The proposal also complies with the height of buildings development standard and Manly DCP 2013 wall height provision, thereby demonstrating consistency with the desired height of development envisaged for the area. In addition, the proposal integrates soft landscaping areas within the front and rear yards to maintain the desired landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The north-facing windows on the ground floor are generally off-set from existing south-facing windows on the northern adjacent building (No. 23 Parkview Road), whilst the first floor north-facing windows do not encourage direct overlooking into habitable rooms on the northern adjacent building due to the south-facing windows on the first floor at No. 23 Parkview Road being highline windows.

In regards to solar access, it is noted that the proposal does not result in unreasonable overshadowing of adjacent properties, with the additional shadowing being largely confined to the roofline of the semi-detached dwelling to the south (No. 19 Parkview Road).

In relation to view sharing, an examination of the site and the surrounds has concluded that the proposed development will not unreasonably compromise significant view lines from surrounding private and public land.

Furthermore, the northern elevation of the first floor is stepped in from the ground floor and employs a 2m upper floor setback, consistent to what was recently approved on the adjoining semi-detached dwelling to the south (No. 19 Parkview Road). This will ensure that the development does not disrupt the rhythm or pattern of development. This will also ensure that adequate separation is provided between buildings. The numeric non-compliant decking on the ground floor is sited near ground level and will not disrupt the pattern of development or create adverse amenity impacts to neighbouring properties.

The works are also appropriately sited in a manner to facilitate safe and adequate traffic conditions.

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

Comment:

Flexibility is afforded with regards to the side and rear setback non-compliance as the proposed development does not result in unacceptable 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 quantum of total open space proposed is generally consistent with neighbouring properties, notwithstanding the numeric non-compliance. Moreover, Council's Landscape Officer has reviewed the application and found the proposal to be satisfactory from a landscaping perspective.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 55% (138.22sqm) of the site to consist of total open space (TOS). To be included as TOS open space areas must be at least 3m x 3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway and hardstand parking space is excluded).

The application proposes 32.51% (81.7sqm) of the site as TOS, which does not satisfy the prerequisite.

The application also does not incorporate a native canopy tree on the site, which does not meet the prescribed requirement.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposed development results in the removal of one small shrub/tree within the road reserve to accommodate the vehicle crossing. Nevertheless, Council's Landscape Officer has reviewed the proposal and raised no objections, subject to a condition for replanting.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposed development includes deep soil landscaped areas within the front and rear yards to ensure an appropriate landscaping outcome on the context of the small narrow site. Moreover, the proposed TOS exceeds that of what was approved next door to the north (No. 23 Parkview Road).

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

Comment:

The proposed development includes 57.5sqm of total open space within the rear yard to meet the recreational needs of the occupants. The rear yard of the site also receives approximately 3 hours of direct sunlight to ensure an appropriate internal amenity outcome, whilst the additional shadows cast by the development are largely confined to the roofline of the adjoining semi-detached dwelling to the south (No. 19 Parkview Road). As discussed earlier, the proposal is also considered to be satisfactory from a view sharing and privacy standpoint.

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

Comment:

The site contains sufficient pervious areas to assist in water infiltration, in turn minimising stormwater runoff. Furthermore, suitable conditions have been included with this consent to ensure that stormwater is managed and disposed of in an acceptable manner (i.e. conveyed to Parkview Road).

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

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)

Description of non-compliance

The proposal provides 1 off-street parking space, whereas the Manly DCP 2013 requires semi-detached dwelling houses to have 2 off-street parking spaces. It is important to note that the current site provides no off-street parking space.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed off-street parking space provides for one car parking space that is accessible for residents.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal reduces the demand for on-street parking by providing the addition of one off-street parking space.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed location and design of the driveway and parking space has been reviewed by Council's Development Engineer Officer. The vehicular access is considered to be safe and convenient for the

residents. Whilst, the off-street parking space is located within the front setback area, it is considered to be consistent with surrounding development with driveways and off-street parking located forward of the existing building.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed off-street car space will not result in an unreasonable amount of excavation and therefore will not unreasonably impact ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

A new vehicle crossing is proposed and the provision of one vehicular crossover is consistent with surrounding development.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

Sufficient deep soil landscaping has been provided within the front setback area to limit the amount of impervious surfaces.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The site not located within a local centre. Therefore this objective is not relevant. Notwithstanding, the site is located in proximity to public transport services.

Conclusion

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $5,280 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $528,000.

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 4.4 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 semi-detached dwelling, largely to provide a first floor addition and off-street hardstand car parking space and vehicle crossing.

The proposed development results in a FSR of 0.708:1 (178sqm), which represents an 18.05%

(27.22sqm) variation to the 0.6:1 (150.78sqm) FSR development standard that is applied to the site. Despite this, the proposed development will not result in any unacceptable streetscape or amenity impacts.

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/0340 for Alterations and additions to a semi-detached dwelling on land at Lot 361 DP 700858, 21 Parkview Road, FAIRLIGHT, 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**
A-01 (Revision 2) - Site Analysis + Waste Plan	10 May 2022	Robinson Jolly
A-02 (Revision 2) - GA Ground Floor Layout	10 May 2022	Robinson Jolly
A-03 (Revision 2) - GA Proposed Plan New 1st Storey	10 May 2022	Robinson Jolly
A-04 (Revision 2) - Side Elevations	10 May 2022	Robinson Jolly
A-05 (Revision 2) - Front + Rear Elevations	10 May 2022	Robinson Jolly
A-05 (Revision 1) - Front Fence Elevation	10 May 2022	Robinson Jolly
A-06 (Revision 2) - Longitudinal Section	10 May 2022	Robinson Jolly

A-13 (Revision 2) - Demolition Plan	10 May 2022	Robinson Jolly

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
SW-1	14 February 2022	Michael Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A448563	2 March 2022	Laura Robinson

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	15 February 2022	Laura Robinson

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	not dated

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

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

3. **Prescribed Conditions**

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

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

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

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

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

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $5,280.00 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 $528,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Stormwater 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 Parkview Road.

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. **Vehicle Crossings Application**
The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

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

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

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

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

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

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

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

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

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

a) This consent approves the removal of the following tree(s) within the road reserve::

i) 1 x *Callistemon* sp. forward of the property to accommodate the new driveway crossover

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

Reason: Public liability.

13. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **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 exem legislation, (1 x*Plumeria* sp. (Frangipani) may be transplanted)

ii) all trees and vegetation located on adjoining private properties,

b) Tree protection shall be undertaken as follows:

i) tree protection shall be in accordance with Australian Standard 4970-2009 Prote temporary fencing to protect existing trees within 5 metres of development,

ii) existing ground levels shall be maintained within the tree protection zone of tree Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape m vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by

vi) excavation for stormwater lines and all other utility services is not permitted with minimum AQF Level 5 in arboriculture including advice on root protection measu

vii) should either or all of v), vi) and vii) occur during site establishment and construc shall provide recommendations for tree protection measures. Details including p Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zon construction works is to be undertaken using the protection measures specified

Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection o 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% Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before during the construction period, and iii) remain in place for the duration of the cor

Reason: Tree and vegetation protection.

15. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

16. **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.

17. **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.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

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

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

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

20. **Street Tree Planting**
a) Street trees shall be planted in accordance with the following:
i) 1 x *Callistemon* sp. (Bottlebrush) capable of attaining a minimum height of 5m at maturit located forward of the property, clear from driveway sightlines.

b) All street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.

c) 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.

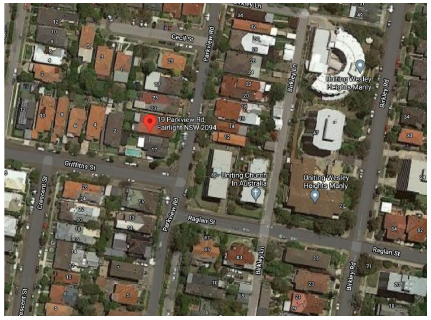
d) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain 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 any interim / final Occupation Certificate.

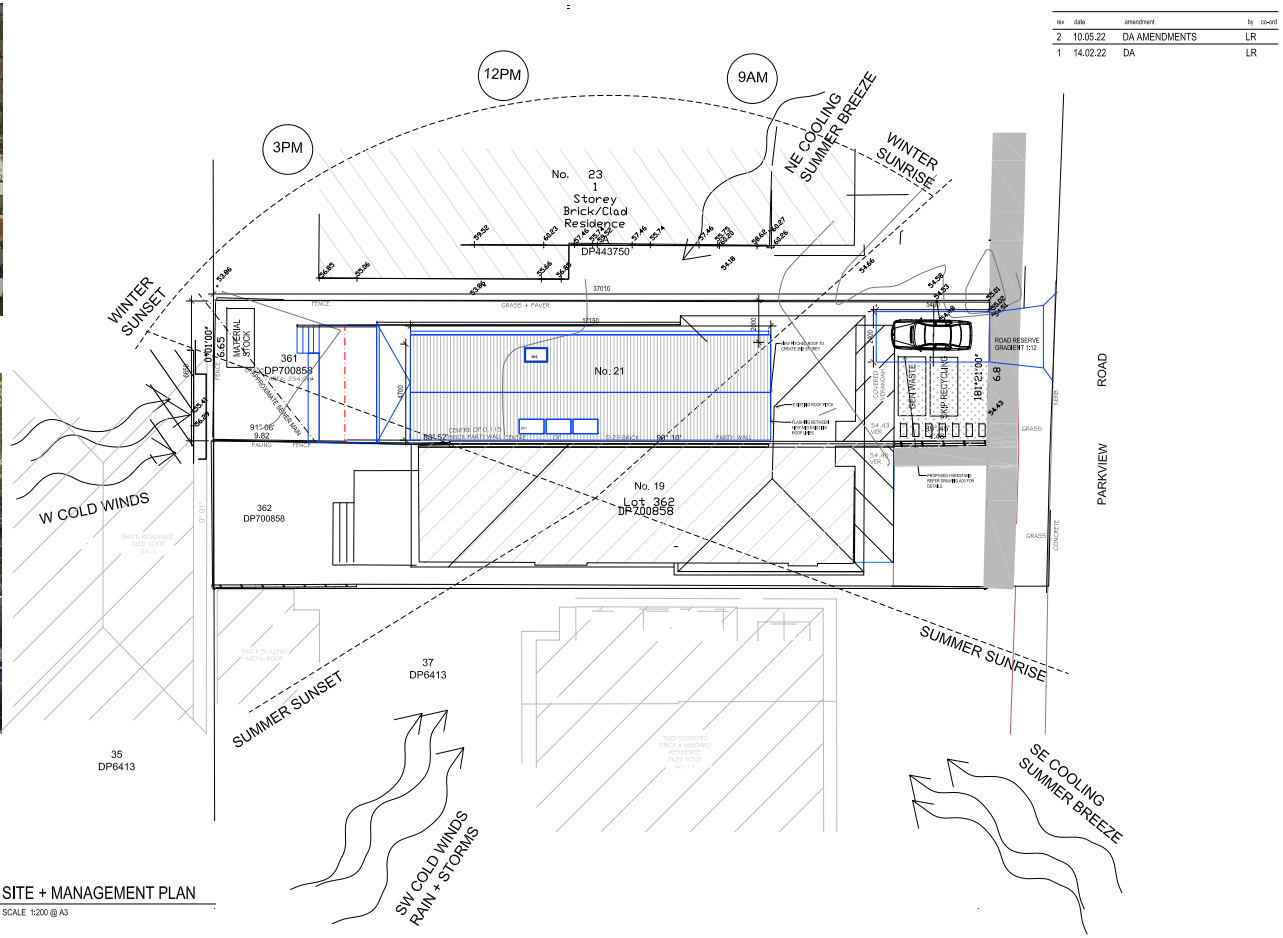
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.



LOCATION_AERIAL VIEW



FRONT VIEW



01 SITE + MANAGEMENT PLAN
SCALE 1:200 @ A3

rev	date	amendment	by co-ord
2	10.05.22	DA AMENDMENTS	LR
1	14.02.22	DA	LR

Robinson Jolly.

All dimensions are in millimetres. Verify all dimensions on site prior to commencement of any work. Do not scale off drawing.
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TRUE NTH

PROJECT
21 Parkview Road
Fairlight NSW 2094
Client: Anthony + Kathleen Moss

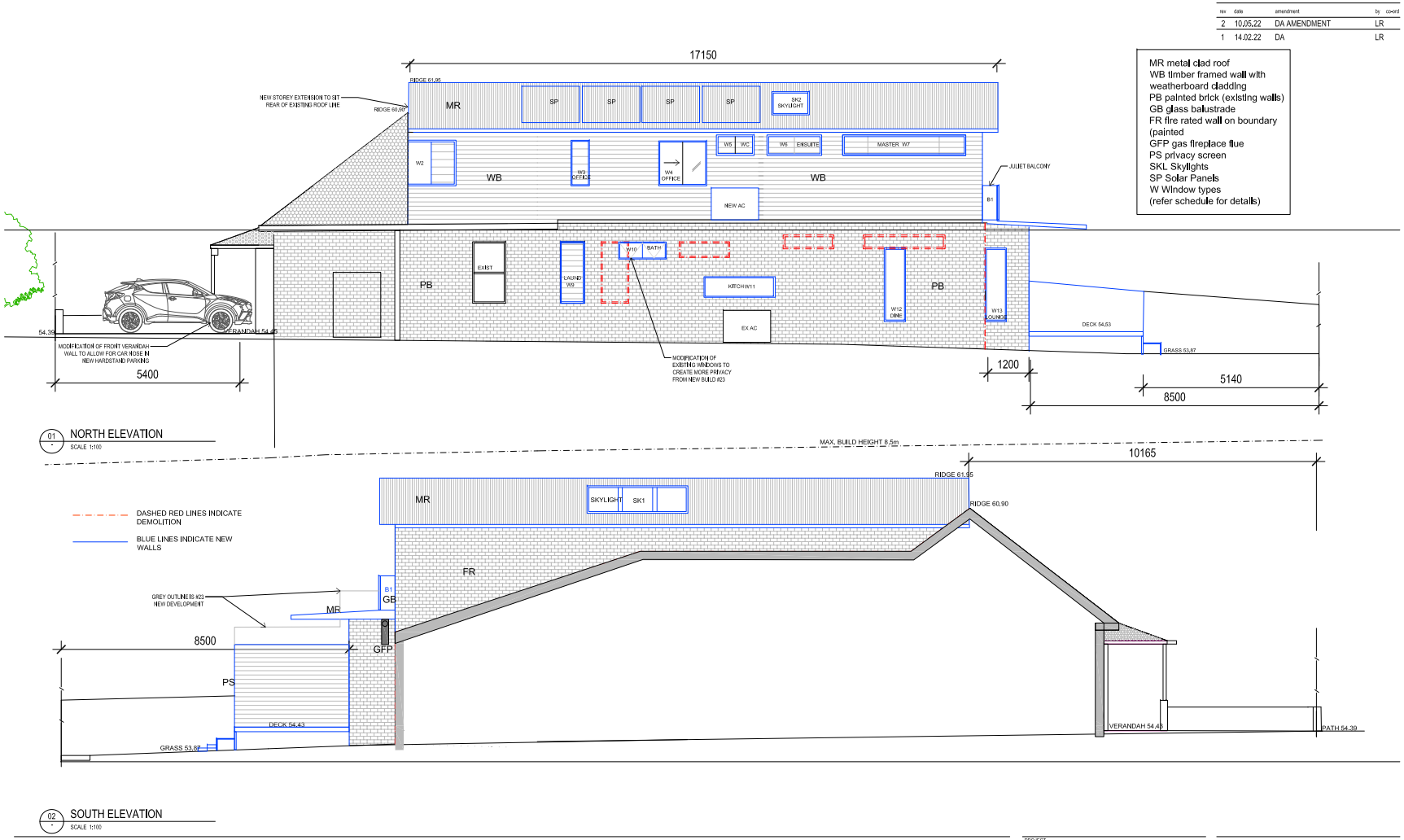
DATE	DRAWN	PROJECT CO-ORDINATOR
FEB 2022	LR	LR

NORTH

SCALE 1:200 (A3)

DRAWING
SITE ANALYSIS + WASTE PLAN

PROJECT NUMBER	DRAWING NUMBER	REVISION
RJD2021.10	A-01	2



rev	date	amendment	by co-ord
2	10.05.22	DA AMENDMENT	LR
1	14.02.22	DA	LR

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TRUE NTH

PROJECT
21 Parkview Road
Fairlight NSW 2094
Client: Anthony + Kathleen Moss

DATE	DRAWN	PROJECT CO-ORDINATOR
FEB 2022	LR	LR

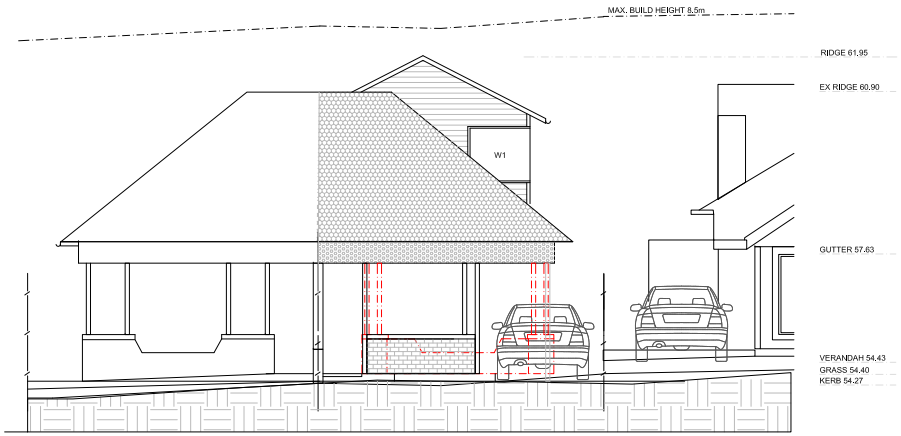
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SCALE 1:100 (A3)

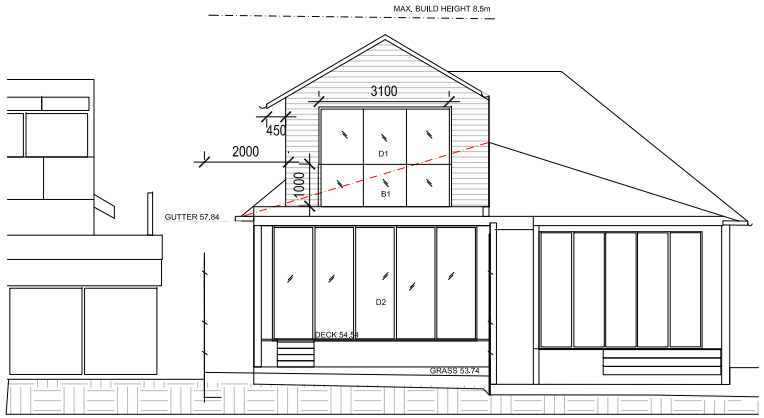
DRAWING
SIDE ELEVATIONS

PROJECT NUMBER	DRAWING NUMBER	REVISION
RJD2021.10	A-04	2_

rev	date	amendment	by co-ord
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1	14.02.22	DA	LR

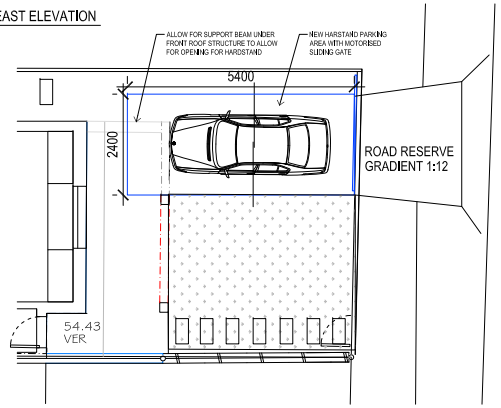


01 PROPOSED EAST ELEVATION
SCALE 1:100

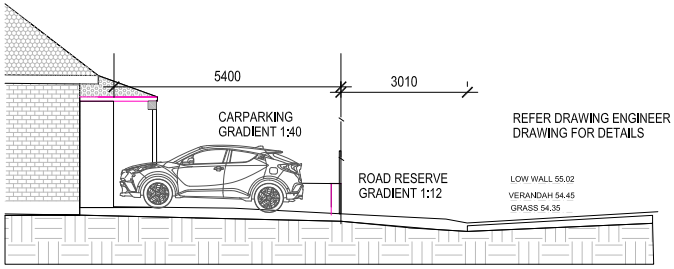


RED DASHED LINE
INDICATES DEMOLITION

02 PROPOSED WEST ELEVATION
SCALE 1:100



03 PROPOSED HARDSTAND PARKING
SCALE 1:100



04 ELEVATION PARKING
SCALE 1:100

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TRUE NTH

PROJECT
21 Parkview Road
Fairlight NSW 2094
Client: Anthony + Kathleen Moss

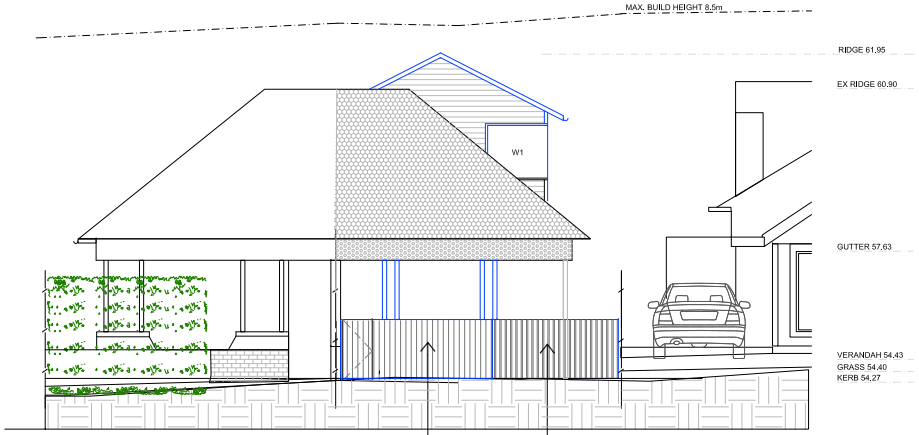
DATE	DRAWN	PROJECT CO-ORDINATOR
FEB 2022	LR	LR

NORTH
SCALE 1:100(A3)

DRAWING
FRONT + REAR ELEVATIONS

PROJECT NUMBER	DRAWING NUMBER	REVISION
RJD2021.10	A-05	2

rev	date	amendment	by co-ord
1	10.05.22	DA AMEND	LR



PROPOSED FRONT FENCE ELEVATION

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TRUE NTH

PROJECT
21 Parkview Road
Fairlight NSW 2094
Client: Anthony + Kathleen Moss

DATE	DRAWN	PROJECT CO-ORDINATOR
FEB 2022	LR	LR

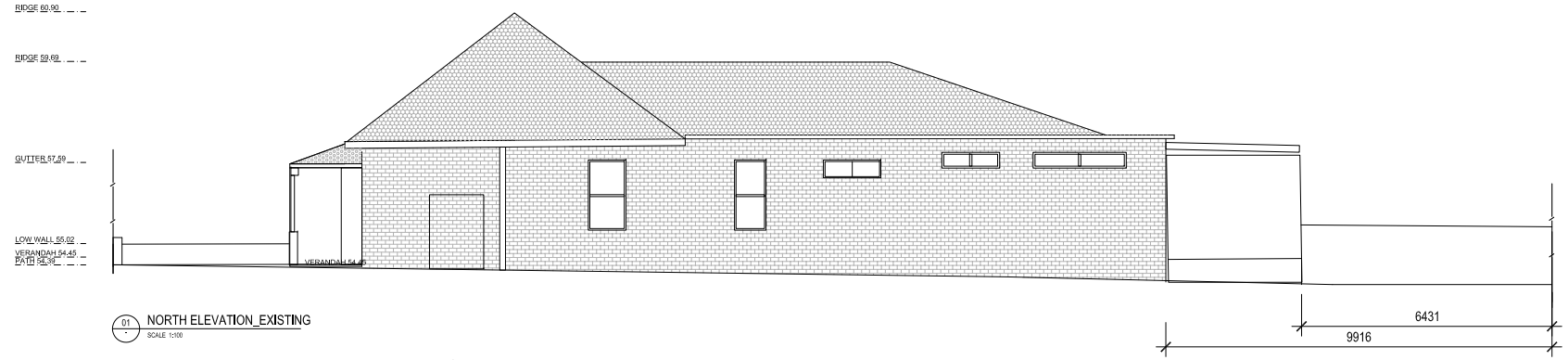
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SCALE 1:100(A3)

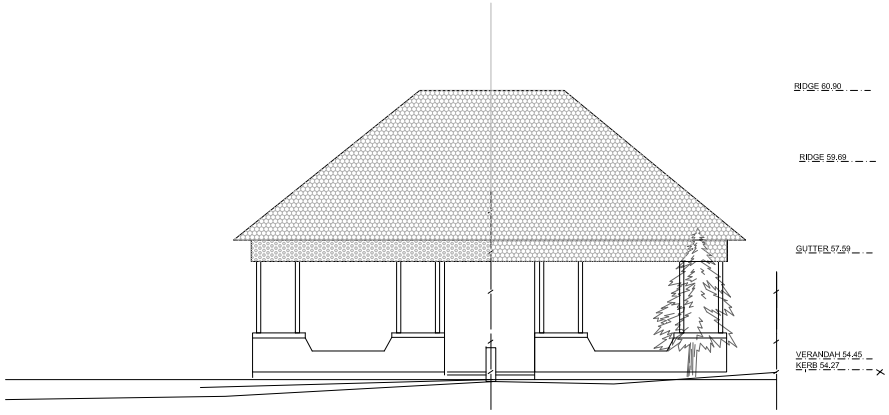
DRAWING
FRONT FENCE ELEVATION

PROJECT NUMBER	DRAWING NUMBER	REVISION
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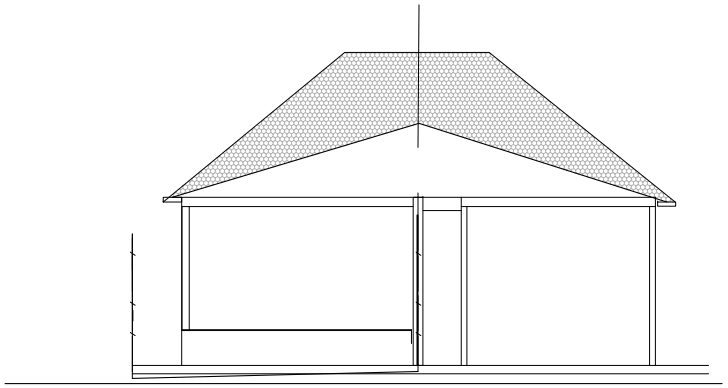
rev	date	amendment	by co-ord
1	10.02.22	DA	LR



01 NORTH ELEVATION_EXISTING
SCALE 1:100



02 WEST ELEVATION_EXISTING
SCALE 1:100



03 SOUTH ELEVATION_EXISTING
SCALE 1:100

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PROJECT
21 Parkview Road
Fairlight NSW 2094
Client: Anthony + Kathleen Moss

DATE	DRAWN	PROJECT CO-ORDINATOR
FEB 2022	LR	LR

NORTH | SCALE (A3)

DRAWING
EXISTING ELEVATIONS

PROJECT NUMBER	DRAWING NUMBER	REVISION
RJD2021.10	A-EX 02	1

APPENDIX B – CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO

SUBMISSION PURSUANT TO CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO PRESCRIBED BY CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For: Alterations/Additions to existing Semi-Detached Dwellings
At: 21 Parkview Road, Fairlight
Applicant: Robinson Jolly (Laura Robinson)

Introduction

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of alterations and additions to an existing semi-detached dwelling at **21 Parkview Road, Fairlight**.

The specified maximum floor space ratio under Clause 4.4 of the Manly Local Environmental Plan 2013 (the LEP) is 0.6:1. The development proposes a departure from this numerical standard and proposes a maximum floor space of **178m² or 0.70:1**.

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

PURPOSE OF CLAUSE 4.6

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

OBJECTIVES OF CLAUSE 4.6

The objectives of Clause 4.6 are as follows: -

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

ONUS ON APPLICANT

Clause 4.6(3) provides that:-

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 ofthe 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.

JUSTIFICATION OF PROPOSED VARIANCE

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney[2014]* NSWLEC 1199.

Paragraph 27 of the judgement states:-

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development.

1. *Requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).*
2. *Requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl4.6(4)(a)(ii)).*
3. *Requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).*
4. *Requires the Court to consider 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)).*

1. Consistency with zone objectives

The land is located in the R1 General Residential Zone. The objectives of the R1 zone are:-

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comments

The development proposal includes the construction of alterations and additions to an existing semi-detached dwelling. The proposal is considered to meet the objectives of the R1 zone for the following reasons:

- The proposal provides for additions/alterations to an existing semi-detached detached dwelling to meet the needs of the owners.
- The additions/alterations retain the semi-detached dwelling and does not result in unreasonable bulk or scale when viewed from the street or the adjoining property.

2. Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4(1):-

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

Comments

The proposal provides for additions to the existing semi- dwelling. The proposed additions are located at the rear of the dwelling and designed to retain the single storey façade. As a result there is minimal impact on the streetscape. The pitched roof compliments the dwelling at number 17 and new development on the corner of Parkview and Cecil street, along with the other cottage style dwellings along Parkview Road.
The existing streetscape along Parkview towards Griffith provides for large variety of building forms, including single dwellings, semi-detached dwellings and large residential flat buildings. The proposal achieves compliance with this objective. This section of Parkview (only 2 houses away) has a FSR of 0.75:1.
Both 6 Cecil street and neighbouring 23 Parkview both have an FSR of 0.73:1, setting a precedent of the area.

(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,*

Comments

The proposed additions are located at the rear of the existing dwelling and do not obstruct/obscure any important landscape or townscape features. The proposal achieves compliance with this objective.

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

Comments

The existing surrounding development comprises a variety of building forms and heights. The location of the additions at the rear of the existing dwelling ensures the existing single storey presentation to the street is retained. The proposal provides for appropriate setbacks to the southern side boundary, with the new upper level setback of 2m to ensure visual separation and minimise bulk and scale as viewed from the adjoining property.

The proposal retains soft landscaping where feasible and allows for new hardstand parking to reduce the pressure of street parking.

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

Comments

The proposal will not adversely impact on the enjoyment of the adjoining land or the public domain. The proposed additions are designed and orientated to ensure there is very little overlooking of the adjoining southern property. Shadow diagrams depicted with the application indicate that the adjoining southern property will continue to receive at least 3 hours solar access to at least 50% of its private open space on the winter solstice (no change to the existing in the rear yard).There are no adverse impacts on the use/enjoyment of the public domain. The proposal complies with this objective.

(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.*

Comments

This objective does not apply.

3. To a consider written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard given the limited site area and the existing surrounding development which includes a number of large dwellings and residential flat buildings.

The additions are located at the rear of the existing dwelling and retains the single storey front facade. The proposal does not result in any unreasonable impacts on the adjoining properties or the character of locality as depicted and detailed in this submission and the Statement of Environmental Effects.

For the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

4. To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding thatthe matters required to be demonstrated have been adequately addressed

The primary issue is whether or not there are sufficient environmental planning grounds particular to the site to allow the variation to the floor space ratio development standard.

The appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (bothin terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

The appeal of *Grundy v Waverley Council [2016] NSWLEC 1526 (2016) is also to be considered.* Due to the site, the design of the proposal demonstrates compliance of accommodating a residential building of the height, bulk and scale proposed without being, in any way, inconsistent with the existing streetscape or existing character of the locality. The proposal therefore satisfies objective (c) of cl 4.4. Even though the proposal seeks a variation of the maximum FSR development standard, the proposed development is now fully compliant with the front and side boundary setback controls, as well as the minimum landscaped area requirements. Depending on the adopted interpretation of the definition of ground level (existing), the proposed development may also be compliant with the height control.

The proposed development is consistent with cl 4.6(4)(a)(ii) and consequently 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.

Accordingly in regards to the proposed development at 21 Parkview Road, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:-

- The proposal does not result in any loss of privacy nor an unreasonable loss of solar access to the adjoining properties.
- The existing surrounding development comprises a mixture of single detached dwellings, semi-detached dwellings and large residential flat buildings. The resultant development is compatible with the existing surrounding development.

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

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the numerical variation to the floor space ratio standard.

In the Wehbe judgment (*Wehbe v Pittwater Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with theaims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved not withstanding non- compliance with the standard;*

   Comment: Yes. Refer to comments under 'Justification of Proposed Variance' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

   Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

   Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

   Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b)

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;*

   Comment: Not applicable.

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 compliancewith the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

   Comment: The development standard is applicable to and appropriate to the zone.

CONCLUSION

The development proposes a departure from the maximum floor space ratio. The proposal produces an appropriate development outcome. The variation to the floorspace ratio is this location is considered appropriate given the existing surrounding development including large dwellings and residential flat buildings, and the recent development at number 23 Parkview exceeding FSR, sitting at 0.70:1. Furthermore, the additions satisfy the zone objectives and the objectives of the development standard.

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

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

Thank you for your consideration.

Laura Robinson
Robinson Jolly