AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 22 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 22 June 2022 via teleconference Commencing at 10:00am

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 JUNE 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 8 June 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	**DA2021/1824 - 23 HAY STREET COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL AND CABANA**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/362266**
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 WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2021/1824 for alterations and additions to a dwelling house including a swimming pool and cabana on land at Lot 36 DP 10648, 23 Hay Street COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1824

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 36 DP 10648, 23 Hay Street COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool and cabana
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Charles Parisi Anna Maria Parisi
Applicant:	Anna Maria Parisi

Application Lodged:	08/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/05/2022 to 30/05/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 10.58%
Recommendation:	Approval

Estimated Cost of Works:	$ 933,900.00

EXECUTIVE SUMMARY
This application seeks consent for alterations and additions to a dwelling house, including a swimming pool and outbuilding.

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling.
The maximum height of the proposed development has been measured at 9.4m (worse case scenario) which represents a variation of 10.58% to the prescribed 8.5m building height limit.

Public exhibition of the proposal resulted in two (2) submissions. The submissions raised concern with whether or not the application can be considered Alterations and Additions or a New Dwelling due to

the level of work, the accuracy of the survey and plans, building bulk and scale, the non-compliant building height and the clause 4.6, acoustic and visual privacy, overshadowing, view loss, impact of earthworks, non-compliance with built from controls, stormwater drainage and the removal of trees.

The matters raised in the submission are detailed in this report, and in summary it was found that several of the concerns would warrant the refusal of the application. The applicant was requested to provide amended plans addressing the side boundary envelope non-compliance, landscaped open space, privacy concerns, building bulk and the Planning Principle - Demolition, in particular addressing the geotechnical report which stated that the southern elevation could not be retained. Amended plans were submitted increasing the side boundary setback of the Lower Ground, Ground and First floor, privacy screens to the north and south elevation windows that directly overlooked the private open space or were within 9m of a window of the adjoining properties, increased landscaping within the site and a engineers report stating that the south elevation of the existing dwelling could be retained. The application was re-notified and an additional submission was received from the adjoining property reiterating many of the concerns that were already raised and and raising new concerns regarding the validity of the clause 4.6, several Planning Principles and view loss from the public domain.

As a result of concern with the accuracy of the building height and side boundary envelope on the plans, an extrapolated northern boundary line taken from survey points at the front of the property to middle of the site have been used to determined the level of encroachment into the side boundary envelope. In regards to building height, the site has been heavily disturbed and the lower level of the dwelling significantly excavated. Therefore, for the purpose of this assessment, the assessment officer has determined their own extrapolated ground levels based on contour points and surveyors from adjoining properties as it shows the possible worse case scenario in regards to building height. The areas of the development that exceed the building height standard are considered supportable and will not result in unreasonable visual bulk, amenity impact or view loss from the adjoining dwellings or within the street and have been adequately addressed via the clause 4.6.

Due to the slope of the site, unique topography at the front of the site which and the siting and form of the existing dwelling, the non-compliant elements of the proposal will not impact upon the desired character of the locality or unreasonably impact on the amenity of the adjoining properties. When assessed on its merits, it is concluded that the built form of the proposal will be commensurate with the existing dwelling on the site and the surrounding built environment and that the height breach will not result in unreasonable amenity impacts to adjoining neighbours. It is considered that many of the planning concerns raised have been addressed via the amended plans and dealt with via conditions of consent.

This report concludes with a recommendation that the DDP should grant **APPROVAL** to the application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to an existing dwelling, including a swimming pool and outbuilding. The proposal includes the following:

Lower Ground Floor Level

- Excavation of undercroft area to include - Internal access stairs, Gym store, study, cellar, storage, rumpus with wet-bar, laundry and bathroom
- Patio with fireplace and BBQ

Ground Floor Level:

- New entry patio, mud room and bathroom
- Double garage to replace the existing single garage
- Bedroom with ensuite
- Kitchen, pantry and meals
- Retention of Living Room
- A new deck along the rear elevation which incorporates stairs and access to the rear yard

First Floor Level:

- Bedrooms 1, 2 and 3 with WIR, ensuite and balconies to the front and rear

Other External Elements:

- Swimming pool
- Detached outbuilding
- Landscaping

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C8 Demolition and Construction
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 36 DP 10648 , 23 Hay Street COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Hay Street. The site is regular in shape with a frontage of 15.24m along Hay Street and a depth of 46.34m. The site has a surveyed area of 687.5m². The site is located within the R2 Low Density Residential zone and accommodates one and three storey dwelling with attached garage. The site is located on the low side of the road and has a North-east aspect. The sites slopes down from the front boundary to the rear. The font yard is retained by the driveway/boundary wall and garage. The site has lawn area at the front and small trees and shrubs. The rear of the site has several large trees along the northern boundary and extensive lawn area. The site has no known threatened species. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one to two storey dwellings of varying architectural styles. **Site Inspection** A site inspection was conducted 21 January 2022.

Map:



SITE HISTORY

A search of Council's records has revealed the following:

Application 559/50
Brick Dwelling

Application - B10/74
Swimming pool
Determined - 3 January 1974

Application DA2018/0087
Removal/Pruning of 1-2 Trees
Determined - 1 February 2018

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

Section 4.15 Matters for Consideration	Comments
	an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	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 the building height, privacy impacts, whether the proposal was a new dwelling or alterations and additions. 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 Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance	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 23/05/2022 to 30/05/2022 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 2 submission/s from:

Name:	Address:
Simon James Burns Emilie Kate Burns	25 Hay Street COLLAROY NSW 2097
Mr Keith Douglas Henry Jennifer Henry	21 Hay Street COLLAROY NSW 2097

The following issues were raised in the submissions:

- Alterations and Additions versus New Dwelling
- Clause 4.6 and Building Height
- Non-compliance with Front Setback and Side boundary envelope
- Removal of Landscaping and reduction in landscaped area
- Excessive, unnecessarily large and Floor Space Ratio
- Privacy
- Incorrect ground lines
- Bulk and scale
- Overshadowing
- Earthworks
- Landscaping plan
- View loss
- Drainage and runoff
- Elevated garage

The matters raised within the submissions are addressed as follows:

- **Alterations and Additions versus New Dwelling**

The submission raised concern that the proposed development should be considered as a new dwelling, as (according to the objector) no part of the existing dwelling is to be retained. The submission also did not agree with the Quantitative Issues within Statement of Environmental Effects addressing the relevant principles of the Demolition Planning Principle cited in Coorey v Municipality of Hunters Hill [2013] NSW LEC 1187.

Comment:
The Planning Principle *Coorey v Municipality of Hunters Hill [2013] NSW LEC 1187* has been addressed under Part C8 Demolition and Construction of this report. In summary, when assessed against the Qualitative and Quantitative criteria, the proposal retains a large proportion of the existing dwelling; including part of the front wall, the southern elevation and the rear wall. The proposal also retains the floor plates and floor to ceiling heights of the lower ground, ground and first floor. It is considered that proposal meets the Qualitative and Quantitative issues of the Planning Principle and can be considered as *Alterations and Additions.*

- **Clause 4.6 and Building Height**
  The submission has raised concern with the non-compliant building height and that Council cannot approve a development that contravenes a development standard. The submissions address Clause 4.6 and how the proposal does not satisfy the requirements to warrant a variation to the building height requirement.

  A submission also requested height poles for the dwelling and the outbuilding to determine the overall height, bulk and scale of the proposal.
  Comment:
  The non-compliance with the Building Height has been addressed under Part 4.6 Exceptions to Development Standards in this report. In summary, the areas of the development that exceed the building height standard are considered supportable and will not result in unreasonable visual bulk, amenity impact or view loss from the adjoining dwellings or within the street.

  Height poles are generally used to determine the level of view loss as a result of a development. In the case of this proposal, the potential view loss from No. 25 Hay Street could be determined without height poles, and there is unlikely to be view loss from No. 21 Hay Street as a result of the proposed works and outbuilding. In this case, height poles are not considered necessary to adequately assess the proposal.

- **Non-compliance with Front Setback and Side Boundary Envelope**
  The submissions raised concern that the proposal includes numerical non-compliances with the front setback and side boundary envelope controls. The submission also stated that the plans had not be drawn correctly and that the side boundary envelope was incorrectly depicted on the plans.

  Comment:
  Council undertakes its own assessment of the plans, which includes; measuring the height, setbacks and determining if there are any encroachments into the side boundary envelope. During the assessment of this application, the applicant submitted amended plans which increased the side setback and reduced the building envelope non-compliance on the northern elevation.

  For each of the numerical non-compliances, a merit assessment has been carried out against the objectives of that control. The assessment has found that the proposed non-compliances are reasonable due to the topography of the site and location of the existing dwelling.

  The WDCP 2011 allows for consideration on merit for variations to numerical controls and the

overall planning controls are not intended to be rigid and inflexible. Overall, the variations sought to building height, wall height and side boundary envelope are minor, with no unreasonable impacts and these matters are addressed within this report under the relevant heading.

- **Removal of Landscaping and Reduction in Landscaped Area**
  The submission raised the following concerns: 'The character of 23 Hay Street was of canopy tress, both to the frontage to Hay Street, and to the rear. The two trees to the front were removed by the current owners and, in breach of the consent conditions, never replaced (as further detailed in our prior objections). The trees to the rear are now also proposed to be removed, and the landscaping plan makes no provision for the replacement of either the newly removed trees nor the replacement of the two trees previously removed and not replaced in breach of council's conditions. We also query whether the new frontage properly provides the opportunity to the required planting of these trees'.

  The submission also raises concern with the reduction of overall landscaped open space (LOS) on the site.
  Comment:
  Two trees at the rear of the site have been requested to be removed as part of the proposal. The application has been reviewed by Council's Landscape Officer who has raised no issue with the proposal subject to replacement planting. The replacement planting requires one tree at the front of the site and another at the rear. While concern has been raised that replacement planting was never undertaken as part of the tree removal application DA2018/0087, the current application overrides the previous consent. The replacement trees and the additional landscaping within the front and rear yard is considered acceptable to maintain the landscaped setting of the site.

  The proposed development does reduce the LOS on the site. However, the WDCP requires a minimum of 40% landscaped open space on the site, which the proposal provides. The reduction in LOS is considered acceptable for the site.

- **Excessive, Unnecessarily Large and Floor Space Ratio**
  The submission raised the following concern: 'It is excessively and unnecessarily large – with a floor space of approximately 800m^2, and the floor space ratio of approximately 1.15:1 is substantially higher the planning principle for retention of open suburban character in low density residential areas of 0.5:1 expressed in Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366.'
  Comment:
  The Planning Principle - FSR - *Salanitro-Chafei v Ashfield Council[2005] NSWLEC 366* discusses Floor Space Ratio and compatibly in a suburban context. Development Applications that fall within the former Warrringah Local Government Area are assessed under the WLEP 2011 and are not subject to a Floor Space Ratio control. The combination of development controls; such as building height, setbacks and side boundary envelope combine with the site's physical features to determine the amount of development that can be undertaken.

  The development is not considered an overdevelopment of the site and has a Gross Floor Area of approximately 580sqm. The proposal is 'low density' in nature, as it comprises of alterations and addition to an existing dwelling. In addition, the proposal complies with the LOS requirements and the side and rear setback requirements of the WDCP.

  The proposal does not comply with the front setback, side boundary envelope on the north and south (existing) elevation and exceeds the building height requirement of the WLEP (existing and new). These non-compliances are detailed in the relevant sections of the report. In

summary, the non-compliances are considered acceptable due to the slope of the site, location of the existing dwelling and the minimal environmental impact. Overall, it is considered that the proposal is compatible with other large residential developments commonly found within the locality.

- **Privacy**
  Two submissions were received from the adjoining neighbours at Nos. 21 and 25 Hay Street, each raising concern that the development would result in unreasonable privacy impacts, both visually and acoustically. The submission from No. 21 Hay Street had concerns with the location of the proposed south facing windows and the height and location of swimming pool and outbuilding. The submission from No. 25 Hay Street raised concerns with the proposed windows on the north elevation, balcony, external stairs and that the breaches of the development controls and planning principles contribute to the privacy issues. The submission also requested that additional privacy measures be placed on the window privacy screens.
  Comment:
  Privacy has been addressed in detail under Part D8 Privacy of this report. In summary, the applicant has submitted amended plans providing privacy screens to the living room windows that directly overlook the private open space of the adjoining dwellings or are opposite windows of the adjoining dwellings (subject to conditions discussed below).

  The windows of the development located on the northern elevation that are within the side boundary envelope encroachment are discussed in Part B3 Side Boundary Envelope of this report.

  The requirement for privacy screens, requires consideration towards longevity, maintenance requirements and treatment of screens and windows. The submission from No. 25 Hay Street has requested that the *Bahama Shutters* have deep blades (at least 10cm long), and are angled 60 degrees upwards. The submission also requested that a shelf be provided below windows W6 and W7 (which was previously proposed) and that the shutters not be opened more than 30cm at the base. In regards to longevity and maintenance, having the shutter blades with an upwards angle would make them more susceptible to the elements and will reduce their longevity.

  A condition is recommended requiring the Bahama Shutters to have a 45 degree angle facing downwards and that a 600mm wide shelf below windows W6 and W7 be installed. The standard requirement for privacy screening is to have a minimum height of 1.7m, which is below standard eye level when standing and below sitting height. The 45 degree angle of the blades of the Bahama Shutters, along with the 600mm wide shelf will restrict views from the northern elevation windows W6 and W7 of the private open space of the adjoining property at No. 25 Hay Street from a height of 1.7m from Finished Floor Level (FFL). Figure 1 below shows the recommended privacy shelf in red and the 45 degree angle of the Bahama Shutter Blades (shown in pink) which will restrict views from the windows W6 and W7 of the private open space of No. 25 Hay Street.

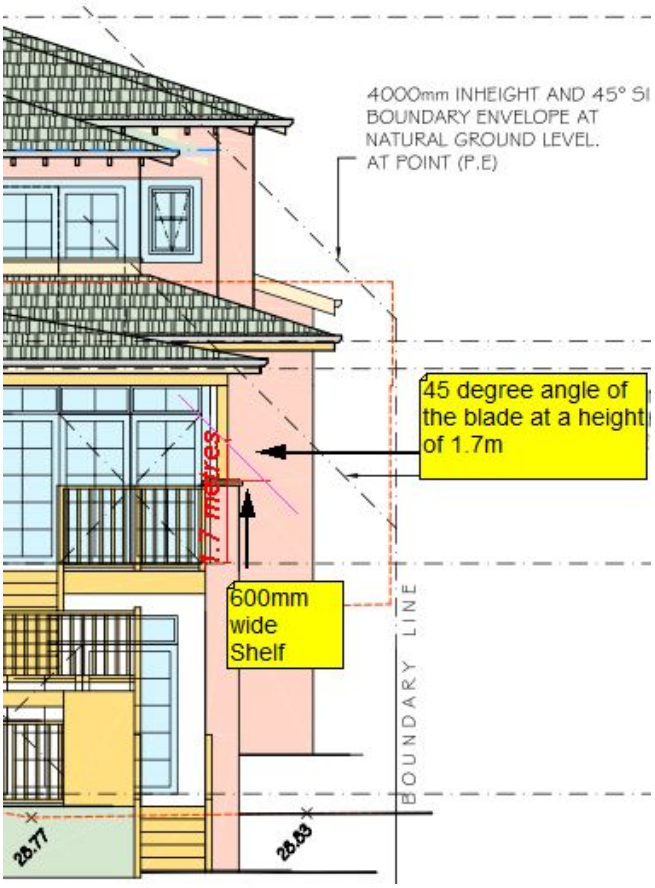


Figure 1: *Location of recommended privacy shelf below windows W6 and W7 shown in red and the 45 degree angle of the Bahama Shutter Blade (shown in pink) showing that views from 1.7m and below will be restrict by the location of the privacy shelf*

- **Incorrect Ground Lines**

  The submission raised concerns that the natural ground level and lines drawn in the Master Plans are incorrect and higher than they actually are and that the survey does not show the existing ground level at the northern boundary line. There is concern that when used for the purposes of calculating the building height and the side boundary envelope, the extent of the non-compliance will be misrepresented. The submission also requested that a new survey be submitted as the one provided did not meet Councils lodgement requirements, as it does not indicate levels at the perimeter of the site, inside and outside the boundary. Also, that the plans be redrawn with the correct side boundary levels.

  Comment:

  At the front of the site, a retaining wall/fence, driveway and garage run along the northern boundary. From the survey plan provided with the application, the retaining wall/fence, driveway and garage are approximately 0.1 - 0.2m from the northern boundary. The survey points shown along northern boundary and used as existing ground levels on the plans are taken from the the driveway and garage. No survey points are shown directly on the boundary at the front of the site.



Photo 2: *View of retaining wall/ boundary fence of no. 23 Hay Street from the front yard of no. 25 Hay Street*



Photo 3*: Boundary between nos. 23 and 25 Hay Street*

The driveway, northern side boundary wall and garage retain the front yard of the site. A review of Councils building cards show that the dwelling was built around the early 1950s and plans of the house from 1974 show the garage and driveway in place. The southern boundary shared

with No. 21 Hay Street shows a retaining wall located within the boundary of the site, with varying heights along the boundary. The ground level at the front of the site and at the driveway have been in situ for 50 - 70 years. It is not unreasonable to consider these levels to be the existing ground level. The survey submitted with the application meets the survey requirements of the current lodgement requirements (Revised Nov 2021) and a new survey is not considered necessary. However, due to the concern raised by the adjoining neighbour at No. 25 Hay Street, an extrapolated northern boundary line taken from survey points at the front of the property to the middle of the site have been used to determined the level of encroachment into the side boundary envelope. The assessment of the side boundary envelope encroachment later in this report discusses both the extrapolated side boundary envelope and the envelope based off the levels from the driveway and garage.

In regards to building height, the site has been heavily disturbed and the lower level of the dwelling significantly excavated. In determining the height of the proposal, caselaw in the Land and Environment Court, including the case *Bettar V Council of the City of Sydney [2014] NSWLEC 1070* and *Stamford Property Services Pty Ltd V City of Sydney & Anor [2015] NSWLEC 1189* has assisted in the measurement of existing building height, in that it should relate to the levels and natural topography of the site, and not relate to artificially modified levels such as those made through excavation and fill. Therefore, for the purpose of this assessment, the applicant has provided amended plans showing natural ground level extrapolated from survey points at the front and rear of the site. The assessment officer has also determined their own extrapolated ground levels based on contour points and surveyors from adjoining properties. For the assessment of this application, Council is using its own extrapolated ground level as it shows the possible worse case scenario in regards to building height.

- **Building Bulk and Scale**
  The submissions raised concern that the proposal was inconsistent with Clause D9 Building Bulk of the WDCP 2011.
  Comment:
  Building Bulk has been addressed under Part D9 Building Bulk of this report. In summary, the applicants have provided amended plans increasing the side setback of part of the Lower Ground Floor, Ground Floor and First Floor on the Northern Elevation. This along with a condition increasing the setback of Bedroom 3 and ensuite by an additional 0.5m, reduces the building envelope breach. The amended plans also included additional landscaping along the northern boundary which will soften the appearance of the dwelling when viewed from the adjoining properties. The proposed dwelling (as amended) is considered appropriate in the context of the site with the proposed development having the appearance of being a two storey building when viewed from street and three storey dwelling from the rear. The design and appearance of the proposed dwelling is consistent with the sloping topography of the site and other larger residential dwelling houses located on Hay Street with similar topography (see Nos. 21, 19, 17 and 15). The proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape, when viewed from the street and adjoining properties.

  The proposed stairs from the Ground Floor Level to the rear yard meet the rear and side setback requirements of the WDCP 2011 and are not considered to cause unreasonable bulk and scale.

- **Overshadowing**
  The submission raised concern that the proposed development would result in unreasonable overshadowing.

Comment:
The proposed development will result in additional overshadowing to No. 21 Hay Street, the location and design of the proposal and orientation of the site will provide the required three (3) hours of sunlight to the private open space of No. 21 Hay Street and meets the requirements of the control.

- **Earthworks**
  The submission raised the concerns regarding the earthworks on the site and impact that this would have on the stability and maintenance of existing buildings, current retaining walls, and the impact on the subterranean flow path. The submission also asked what material the retaining the wall on the southern boundary will be constructed from.

  Comment:
  The application has provided a Geotechnical Report and has been reviewed by Councils Development Engineers who has raised no issues with the proposal subject to conditions. The Geotechnical Report has stated that there is no evidence of significant surface flow and that normal sheet wash from the slope above will be intercepted by the street drainage system.

  Due to the level of excavation on the site, a condition is recommended requiring a pre and post dilapidation survey to be conducted on the adjoining properties at Nos. 21 and 25 Hay Street.

  No new retaining walls are shown on the plans along the southern elevation. However, directly opposite the swimming pool a notation states that the 'Boundary Pool Fence must be in accordance with the Australian Standards for fence and gates for private swimming pools (AS1926.1-2021)". No details have been provided of the potential fence materials. Compliance with the requirements for pool fences is determined by the Certifying Authority.

- **Landscape Plan**
  The submissions requested a review of the landscape plan to determine if the potential landscaping would further overshadow No. 21 Hay Street.
  Comment:
  The proposed landscape plan was provided and emailed to the adjoining property at No. 21 Hay Street. The application was also re-notified with all amended plans and landscape plan being made available. No additional submissions were made from the occupants of No. 21 Hay Street.

- **View Loss**
  A submission raised concern that the proposal would result in view loss from no. 25 Hay Street and block public views from the Hay Street.
  Comment:
  The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to View Sharing of the WDCP 2011. The requirements of this clause and the view sharing principles of Tenacity Consulting vs Warringah Council [2004] NSWLEC 140 and Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046 have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

- **Drainage and Runoff**
  A submission raised concern that the proposal had not appropriately addressed drainage and runoff to ensure there was no adverse impacts on the adjoining properties.
  Comment:
  The application has been reviewed by Councils Development Engineers, who have raised on

objections to the proposal subject to conditions. The proposed development is located on the low side of the road and as such the disposal of stormwater is to be in accordance with the Low Level Requirements of Council's Water Management Policy.

- **Elevated Garage**
  The submission raised concern with the proposed location, height and bulk of the garage.
  Comment:
  The proposed double garage will be replacing the existing single garage. At the front northern boundary shared with No. 25 Hay Street the garage complies with the front setback, wall height and side boundary setback requirement of the WDCP. The existing garage and driveway is setback 0.1m from the side boundary and proposed garage has an increased setback to the boundary of 1.0m and the driveway 2.0m.The proposal also includes landscaping between the driveway and northern boundary which will help to soften the visual impact of the garage. Councils Development Engineers have confirmed that the driveway and garage levels are required to meet transition grades from the road to garage entrance. The proposed design and location is supported.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to an existing dwelling, including a new swimming pool and cabana. 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 • D16 Swimming Pools and Spa Pools The proposal requires the removal of two trees in the rear yard, whilst one large canopy native tree in the rear yard is to be retained. The development as proposed maintains at least 40% of the site as landscaped area. A Concept Landscape Plan is submitted with limited information on any enhanced landscape treatments, and conditions shall be imposed including the requirement for replacement tree planting, screen planting along the extent of the pool and spa along the common boundary with adjoining property at 23 Hay Street, and all existing gardens and vegetation planting shall be retained where not impacted by development. A Arboricultural Impact Assessment titled Arboriculture Assessment & Construction Impact Statement is submitted. The site contains three native Bangalay Gums (Eucalyptus botryoides) that are prescribed under the DCP (ie. protected) and thus require approval for removal, and as reported in the Arboricultural Impact Assessment, two are recommended for removal due to development impacts without an alternative for retention. The Arboricultural Impact Assessment

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>provides a recommendations for two replacement trees.

The architectural plans DA01 and DA16 show all existing trees, and some that do not exist, to be removed and these plans shall not be referenced for tree removal, and the Arboricultural Impact Assessment recommendations apply.</td></tr>
<tr><td>NECC (Development Engineering)</td><td>The proposed development is located on the low side of the road and as such the disposal of stormwater is to be in accordance with the low level requirements of Council's Water Management Policy. The proposed driveway crossing and internal grade is satisfactory subject to conditions.

No objection to the proposal, subject to conditions as recommended.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>HERITAGE COMMENTS
Discussion of reason for referral

This application has been referred as the site is within the vicinity of a heritage item, being Item I133 - House - 971 Pittwater Road, Collaroy. The rear south-eastern corner of the subject site adjoins the heritage item, which faces Pittwater Road.

Details of heritage items affected

Details of the heritage item in the vicinity, as contained within the Warringah Heritage Inventory, are:
Item I133 - House - 971 Pittwater Road, Collaroy.
<u>Statement of Significance</u>
A very fine example of a small beach holiday cottage, constructed carefully of simple economic materials and well-maintained. An increasingly rare exemplar of a building type that is disappearing within the municipality, the house is distinctive for its design, presentation, and condition.
<u>Physical Description</u>
A single storey timber framed cottage, set elevated upon brick piers and clad in weatherboard and fibrous cement (asbestos cement) sheeting with cover battens. Jerkin head roof clad in asbestos cement shingles with terracotta ridging. Roughcast plastered brick chimney. Timber double hung and sliding sash windows. Side entrance off driveway with front verandah accessed from front rooms. Matching garage to rear with concrete wheel-strips beside the house. Later picket fence, minimal garden.

Other relevant heritage listings
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage</td><td>No</td><td></td></tr>
</table>
</td></tr>
</table>

Internal Referral Body	Comments
	Register National Trust of Aust (NSW) Register: No RAIA Register of 20th Century Buildings of Significance: No Other: No **Consideration of Application** This application is for extensive alterations and additions to the existing dwelling, including a new swimming pool and cabana. The alterations and additions are wholly contained within the subject site and while extensive do not increase the height of the building when viewed from the east. The heritage item in the vicinity is located on Pittwater Road with an orientation to the north and east. It is considered that the proposed alterations, while extensive, will not have an adverse impact upon the identified significance of the heritage item at 971 Pittwater Road. **Therefore no objections are raised on heritage grounds and no conditions required.** Consider against the provisions of CL5.10 of WLEP 2011 - Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A **Further Comments** COMPLETED BY: Janine Formica, Heritage Planner DATE: 28 October 2021

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A422366_02 dated 18 August 2021).

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

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

SEPP (Resilience and Hazards) 2021

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.

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	Applicants existing ground level - 9.0m Assessment Officers calculation - 9.4m	5.88% 10.58%	***No** **No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development Standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.4m
Percentage variation to requirement:	**10.98%**

The site has been heavily disturbed and the lower level of the dwelling excavated. In determining the height of the proposal, relevant caselaw in the Land and Environment Court, including the case *Bettar V Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd V City of Sydney & Anor* [2015] NSWLEC 1189 has been applied in that the measure of building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels such as those made through excavation or landfill. Therefore, for the purpose of this assessment, the applicant has provided 'natural' ground levels to determine the height of the building extrapolated from survey points around the perimeter of the site. The assessment officer has also determined their own extrapolated ground level based on contour points and surveyors from adjoining properties. For the assessment of this application, the assessment officer will be using their own extrapolated natural ground level, as it shows the possible worse case scenario in regards to building height.

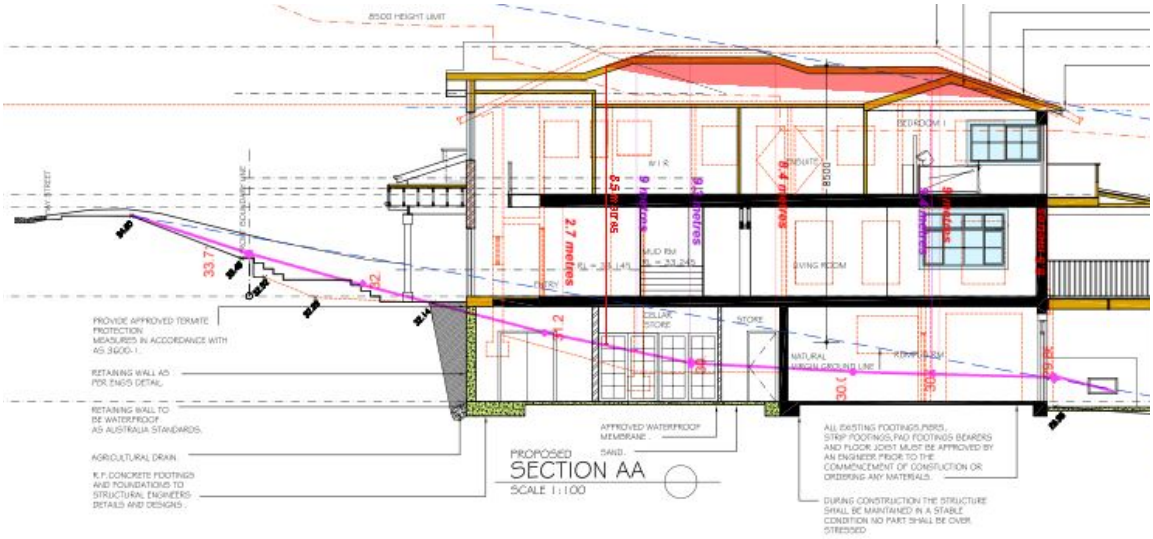


Figure 2 *: Section through proposed development showing building height non-compliance. Councils extrapolated ground level shown in pink and the applicants shown in dashed blue line*

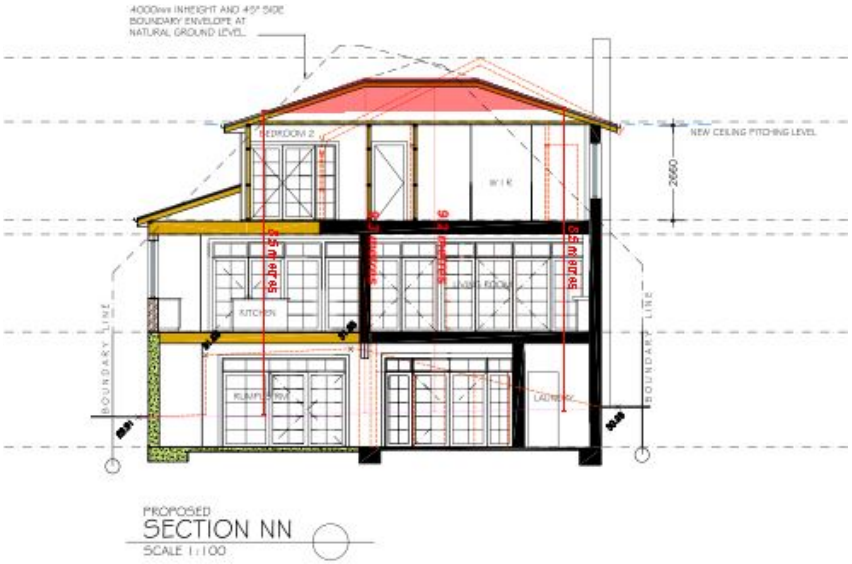


Figure 3 - *Section NN through proposed development, showing building height non-compliance. Councils extrapolated ground level shown in pink and the applicants shown in dashed blue line*

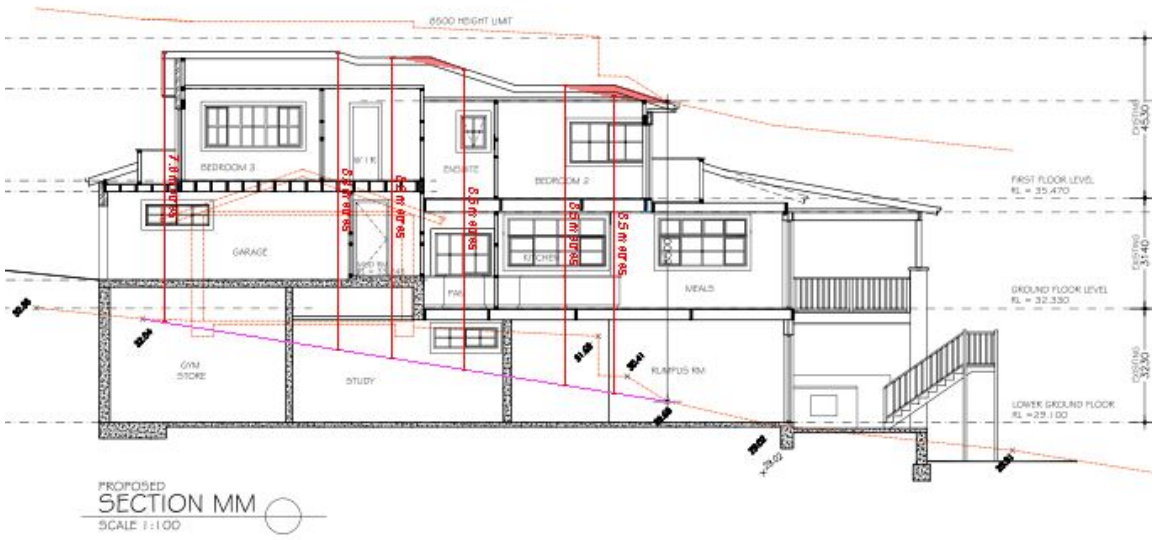


Figure 4 - *Section MM through proposed new addition to the dwelling showing building height non-compliance. Councils extrapolated ground level shown in pink and the applicants shown in dashed blue line*

Assessment of Request to Vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development

standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
Comment:
The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:
In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that 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.

Applicants Written Request

The applicants written request argues, in part:

- *The proposal presents as a two storey dwelling when viewed from Hay Street. This is compatible with the existing locality and the desired future character.*
- *The proposed additions provide for a roof form of the same pitch as the existing dwelling which results in a non-compliance with the height standard.*
- *The proposed additions do not result in any significant overshadowing.*
- *The proposed additions provide for an appropriate visual outcome and it is considered that the presentation to the street frontage is improved, with this elevation provided with greater articulation and increased setbacks to the northern side boundary.*
- *The proposal will not disrupt existing views from the surrounding properties.*
- *The additions to the ground and upper levels do not extend beyond the existing rear setback.*
- *Those properties on the opposite side of Hay Street are significantly elevated and the proposal will not obstruct existing views from these properties.*
- *The proposed additions will not be visible from the coast or bushland areas.*
- *The non-compliance with the height controls is a result of steep slope and the existing dwelling on site. The site has a significant slope with a change in levels of approximately 4.2m across the building envelope.*
- *The site is constrained by the existing dwelling and the adopted floor levels. The proposed additions reduce the extent of the existing non-compliance.*
- *A complying addition would locate the additions towards the rear of the site which would reduce landscaped area and potentially obstruct views from the adjoining properties.*

Council generally agrees with the applicant, that the area of non-compliant building height does not result in unreasonable amenity impact when considered against the WLEP 2011 and WDCP 2011. The area of non-compliant building height does not have a direct view impact . A view assessment is carried out elsewhere within this report. The proposal will be lower than the existing roof height.

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 development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Objectives of Development Standard
The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
Comment:
The building height is considered to be visually compatible with other larger dwellings to the south of the site along Hay Street and within the immediate locality. There is a prevalence for three story dwellings in the vicinity of the site and would not visually different from them. The proposal will also be generally the height of the existing dwelling when viewed from the street and surrounding properties.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
Comment:
The areas of the development that are non-compliant with the building height do not have a direct consequence in terms of views. Privacy is reasonably retained for the adjoining properties and has been discussed in detail later in the report. The proposal complies with the requirements for solar access.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
Comment:
The proposed development is not considered to be visually dominant or excessive when viewed from Warringah's coastal and bush environments.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,
Comment:
The building will not be visually dominant when viewed from the road as it will present as a two storey dwelling that is consistent with other two storey developments in the area.

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

- *To provide for the housing needs of the community within a low density residential environment.*
  Comment:
  The proposal provides a new dwelling low density residential development.

  It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  Comment:
  Not applicable to the proposal.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
  Comment:
  The proposal provides a reasonable area to establish landscaping within the development site.

  It is considered that the development satisfies this objective.

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	North - 6.6m South - 9.0m	N/A	Yes No change
B3 Side Boundary Envelope	North - 4.0m	Outside of envelope	N/A	**No**
	South - 4.0m	Outside of envelope	N/A	No change
B5 Side Boundary Setbacks	North - 0.9m	Lower ground floor - 1.0m Ground floor - 1.0m First Floor - 2.0m	N/A	Yes

	South - 0.9m	Lower Ground floor - 1.2m Ground floor - 1.2m First Floor - 1.2m	N/A	No change
B7 Front Boundary Setbacks	6.5m	Garage - 5.4m	16.93%	**No**
B9 Rear Boundary Setbacks	6.0m	Dwelling - 14.2m Out House - 3.6 - 5.0m	N/A 40 - 16.67%	Yes **No**
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	40.72% (280m^2)	N/A	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-compliance
The control limits the external height of walls to 7.2m above the existing ground level. The existing southern and eastern elevation have a maximum wall height of 9.0m taken from existing ground level.

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*
  Comment:
  The non-compliance is a result of the fall of the site from west to east and location and design of the existing three level dwelling. The proposal will be maintaining the existing height and setbacks to the southern side boundary as well as reducing the height of the roof which will help to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

- *To ensure development is generally beneath the existing tree canopy level*
  Comment:
  The proposed development will be maintaining and in some places reducing the height of the existing building height which is below the canopy tree height as viewed from the street.

- *To provide a reasonable sharing of views to and from public and private properties.*
  Comment:
  The proposed development will not result in an unreasonable view impacts, as discussed in greater detailed under Part D7 Views of this report.

- *To minimise the impact of development on adjoining or nearby properties.*
  Comment:
  As discussed, the development will be be maintaining the existing height and setbacks to the southern side boundary as well as reducing the height of the roof which will help to minimise the impact on adjoining and nearby properties

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*
  Comment:
  The southern elevation wall does not require any excavation as it will be maintaining the established setbacks, location, design and height of the existing wall.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*
  Comment:
  The proposed low-profile skillion roof form is an example of modern architectural design and is considered to demonstrate roof form diversity in the locality.

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

B3 Side Boundary Envelope

Description of Non-compliance
The control requires development to be sited within a building envelope which is determined by projecting planes at 45 degrees from a height of 4.0m above the existing ground level at the side boundaries.

Concern was raised in a submission that the plans submitted with the application did not accurately show the ground level along the northern boundary between Nos. 23 and 25 Hays Street. The survey points taken along northern boundary, forward of the garage are taken on the driveway which is approximately 0.10m from the side boundary. No survey points are shown directly on the boundary at the front of the site.

The driveway, northern side boundary wall and garage retain the front yard of the site. A review of Councils building cards show that the dwelling was built around the early 1950s and plans of the house from 1974 show the garage and driveway in place.

Due to the concern raised by the adjoining neighbour at No. 25 Hay Street an extrapolated northern boundary line taken from survey points at the front of the property to middle of the site have been used to determined the level of encroachment into the side boundary envelope. The assessment of the side boundary envelope encroachment will discuss both the extrapolated side boundary envelope and the envelope based off the levels from the driveway and garage.

A review of the plans when first submitted raised issue of the encroachment of the additions to the dwelling along the northern boundary. The applicant was requested to step-in part of the Lower Ground Floor, Ground Floor and First floor. The applicant provided amended plans stepping in the Rumpus and Patio of the Lower Ground Floor 2.4 - 2.2m, the Balcony and Meals of the Ground floor 2.2 - 2.4m and Bedroom 2 and Balcony and ensuite of the First Floor 3.6m and 2.5m. The applicant was also requested to step in Bedroom 3 and the ensuite from the northern boundary. The applicant choose to retain the proposed 2.0m set back from the northern boundary in the amended plans. It is considered that the overall bulk and scale of the additions can be further reduced at the front of the site without impeding on the development potential of the proposal and a condition increasing the setback of the First Floor Bedroom 1 and ensuite 2.5m from the northern boundary is recommended.

Figure 5 shows the northern side boundary envelope encroachment from the levels taken off the driveway survey points and Image 6. shows the side envelope encroachment with a extrapolated ground line taken from the survey points on road reserve and from the middle of the site. Both measures show what the side boundary envelope encroachment will be with Bedroom 3 and ensuite conditioned to be setback 2.5m from the northern boundary.

The proposed development encroaches into the northern elevation on both the Ground and First Floor levels. The southern elevation will maintain the existing side boundary envelope non-compliance.

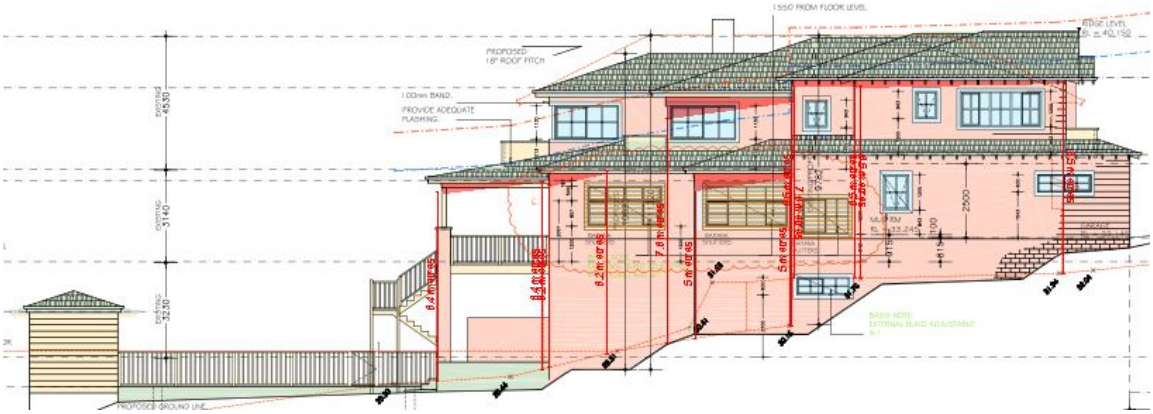


Figure *5:* *North elevation side boundary envelope non-compliance from the survey levels*

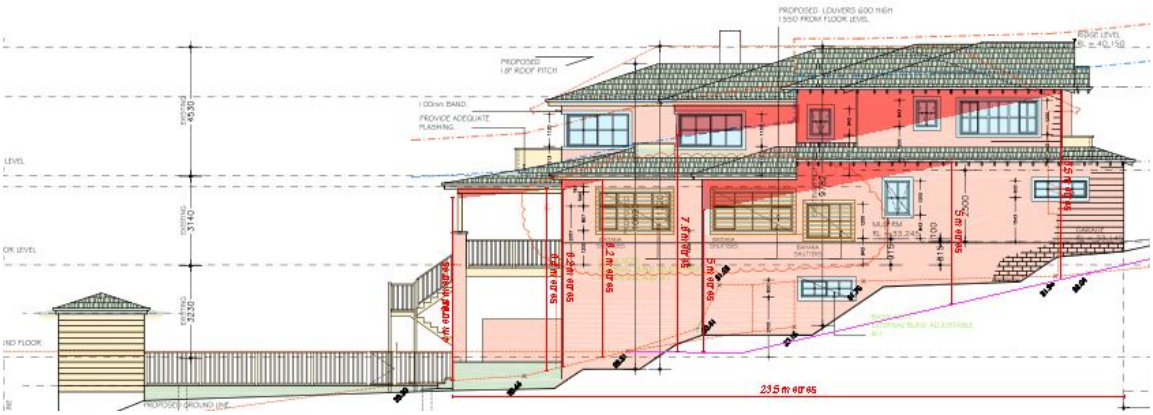


Figure 6*:* *North elevation side boundary non-compliance with extrapolated ground level*

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

- ***To ensure that development does not become visually dominant by virtue of its height and bulk.***
  Comment:
  On the northern elevation, the proposed non-compliance is greatest at the front of the site due to the slope, existing ground levels and the need to increase the height of the garage floor level to make the transition grades from the street into the garage.

  The proposed non-compliance with the building envelope control is not found to cause any unreasonable visual impacts. The areas of non-compliance along the northern elevation are generally within the building height control. Those areas of the development that do not comply with the building height requirement, new and existing, are considered acceptable, as detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the WLEP 2011.

  The overall built form is generally consistent with that of surrounding development on the eastern side of Hay Street. When viewed from the street, the proposal presents as a two storey dwelling. The dwelling is appropriately setback from the side boundary and is sufficiently articulated to satisfy the objective. The existing garage is 0.1m from the northern boundary and

the proposal will be increasing this to 1.0m. The setback of the lower ground floor, ground floor and first floor increases with the slope of the site.



Photo 1*: View of Nos. 21, 19 and 17 Hay Street to the south of the site*



Photo: 2 *Nos. 25 and 27 Hay Street from the rear yard of No. 25 Hay Street*

The proposal uses a floor to ceiling height of 2.6m, which is suitable in the residential context of

the site, and employs a low-pitch skillion roof. As such, the proposed development is not unreasonable in relation to bulk and scale and is not visually dominant, despite the proposed non-compliance with the side boundary envelope control.

The proposed landscaping along the northern boundary at the front and rear of the site will help to screen the dwelling when viewed from the adjoining property.

- ***To ensure adequate light, solar access and privacy by providing spatial separation between buildings.***
  Comment:
  The proposed development ensures adequate light, solar access and privacy is obtained between dwellings. The proposal provides adequate and compliant setbacks to the rear and side boundaries. The proposal complies with the requirements of the D6 - Access to Sunlight control, with the non-compliance located on the northern elevation of the dwelling, so does not result in any unreasonable overshadowing to the subject site or adjoining sites. The proposal also includes moving the garage 1m from the side boundary shared with No. 25 Hay Street which will allow for more light between the dwellings.

  Privacy concerns were raised by Council and in the submissions regrading the locations of windows along the side boundaries. The applicant was requested to provide amended plans demonstrating compliance with the Part D8 Privacy of the WDCP. The applicant submitted amended plans removing a window on the southern elevation and placing privacy screens on the windows that directly overlook the private open space or are directly opposite the windows of the adjoining properties. Further, privacy conditions to the Bahama Shutters are recommended to maintain privacy between the sites.

  Adequate physical separation along with proposed and conditioned privacy measures between the proposed development and habitable areas of the adjoining properties will protect privacy and amenity of the site and adjoining properties.

- ***To ensure that development responds to the topography of the site.***
  Comment:
  When reviewed against the plans, with the survey points taken from the driveway and garage, the proposal steps in as the with the slope of the land. The proposal responds appropriately to the topography of the site with a two storey element to the street frontage on the high side and three stories on the low side. The proposal is consistent with other dwellings along eastern side of Hay Street.

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

B7 Front Boundary Setbacks

Description of Non-compliance
The proposed front patio and a portion of the Double Garage encroach into the front boundary setback area. The patio has a minimum setback of 4.4m and the double garage 5.3m. Figure 7 below shows the front setback area marked in green. The first floor of the dwelling is outside of the front setback area and complies with the requirement.

The control requires development to be setback 6.5m from the front boundary.

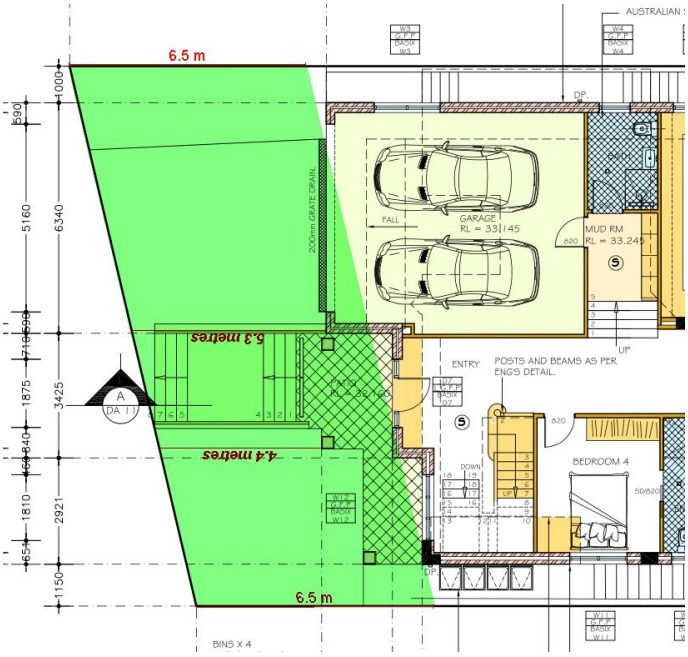


Figure 7*: Front setback non-compliance*

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

- *To create a sense of openness.*
  Comment:
  The proposed patio is an open structure that will not reduce the sense of openness at the front of the site. The double garage will be replacing the single car garage that is setback 0.1m to the northern side boundary with a compliant setback of 1.0m. The proposed double garage will provide a better car parking outcome for the residents of site, while maintaining landscaping. Only part of the garage encroaches into the front setback as a result of the splayed front boundary. At the northern boundary, the garage has a compliant setback of 6.9m. Due to the small non-compliance, it is considered that the garage will not unreasonably impact on the sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*
  Comment:
  Hay Street does not have a consistent visual continuity or pattern of buildings with varying setbacks to the front boundary. Development within the vicinity of the subject site consists of dwellings, car parking, and carports and garages located within the front setback. The proposed development will maintain landscaping at the front of the site which is consistent with streetscape.

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

The site is located on the low side of Hay Street and will not be visually dominant. The proposed development will modernise the existing dwelling and provide safe accessible covered car parking for two vehicles on the site. The proposed development will enhance the visual quality of streetscapes and public spaces.

- *To achieve reasonable view sharing.*
  Comment:
  View loss has been assessed under part D7 Views of this report. The non-compliance with the front setback will not result in any unreasonable loss of views from adjoining or surrounding properties or from the streetscape.

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

B9 Rear Boundary Setbacks

Description of Non-compliance
The proposed swimming pool and cabana are situated 3.489m from the rear boundary, representing a non-compliance with the minimum 6.0m rear setback control.

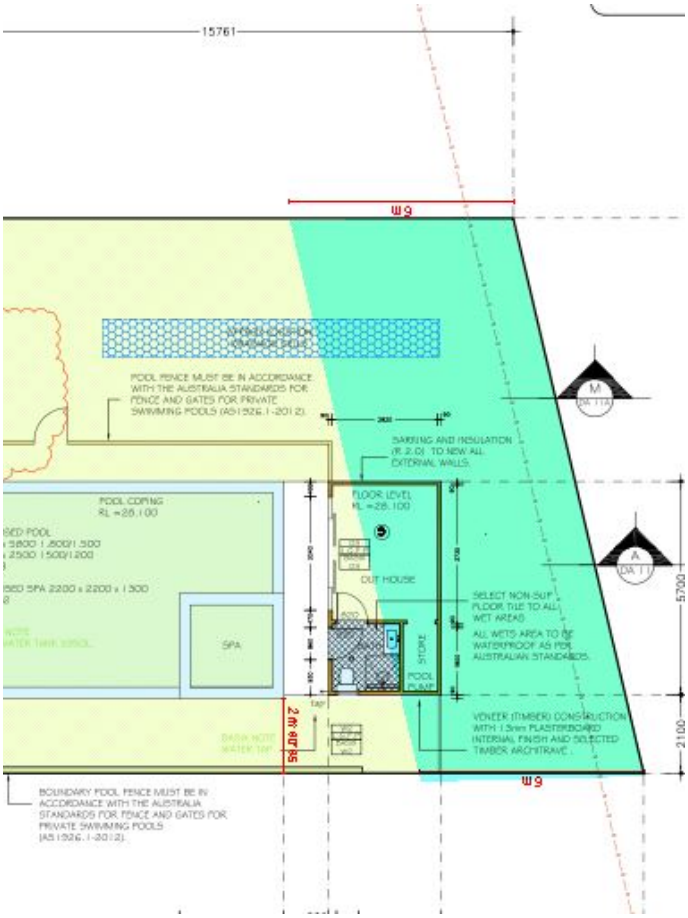


Figure 8*: Rear setback non-compliance*

Notwithstanding, the control permits an exception to the minimum rear setback control in the following instance:

On land zoned R2 Low Density Residential, and land zoned RU4 Rural Small Holdings that has frontage to "The Greenway", Duffy's Forest, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met.

The proposed Outbuilding takes up 11.7% of the rear setback and meets the requirement for a variation to the control. The following is a merit assessment of the proposal against the objectives of the control.

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

- *To ensure opportunities for deep soil landscape areas are maintained.*
  Comment:
  The proposal provides a sufficient setback to accommodate future landscaping and deep soil zones.

- *To create a sense of openness in rear yards.*
  Comment:
  The proposed outbuilding comprise a small area of the rear setback area with the remaining area being undeveloped and maintaining a sense of openness.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*
  Comment:
  The amenity and privacy impact of the proposed development on adjacent properties is not considered to be unreasonable in the context of the site and surrounds. Due to the slope of the land the out building is raised to be the same height as the swimming pool, which is partially excavated at the western end. Concern was raised in the submissions that the raised nature of the outbuilding and swimming pool would result in unreasonable privacy impacts to the neighbouring properties at Nos. 21 and 25 Hay Street. However, the proposal provides adequate spatial separation between the outbuilding and the private open space of the adjoining properties and the proposed screen planting along the boundaries will help to preserve the amenity of the adjacent land.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*
  Comment:
  Review of nearby development finds a consistent pattern of development within the rear setback comprising swimming pools and other similar works. The proposal therefore maintains the existing visual continuity and pattern of buildings, rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*
  Comment:
  As discussed above, adequate levels of privacy between dwellings and the proposed out building is considered to be maintained.

The proposal is considered to satisfy the outcomes of the control, thereby allowing for a variation to the control.

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

C8 Demolition and Construction

Demolition Planning Principle cited in *Coorey v Municipality of Hunters Hill [2013] NSW LEC 1187*
The question has been raised as to whether the application is "Alterations and Additions to a dwelling" or a "New Dwelling". The application has been assessed against the Planning Principle Demolition cited in *Coorey v Municipality of Hunters Hill [2013] NSW LEC 1187.*

What is the purpose for determining whether this application should be characterised as being for additions and/or alterations to an existing structure rather than an application for a new structure?
To determine how any new and existing non-compliance to the dwelling such as the building height,

side boundary envelope encroachments can be assessed against the relevant planning legislation.

Qualitative issues

- *How is the appearance of the existing building to be changed when viewed from public places?*
  Comment:
  When viewed from public spaces, overall the proposal will present as a larger and more modern dwelling, with a formal entrance and the first floor extending over the garage. There will also be changes to the external finishes and window openings. However, the proposal retains the predominant two storey scale of the existing dwelling and the southern elevation when viewed from the street and adjoining public spaces.

- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*
  Comment:
  The majority of the landscaping at the front of the site will be removed to facilitate the development. Additional landscaping is proposed along the side boundaries, as well as one tree within the front yard. The proposal will maintain the landscaped setting of the existing dwelling, as viewed from neighbouring properties and the public domain.

- *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*
  Comment:
  The site is not a heritage item nor is it located within the vicinity of any heritage items.

- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*
  Comment:
  No existing structures, separate from the dwelling are to be demolished.

- *What is the extent, if any, of any proposed change to the use of the building?*
  Comment:
  The proposal maintains the existing use as a detached residential dwelling.

- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*
  Comment:
  The proposal will improve the streetscape by providing two accessible and safe off street car parking spaces as well as modernising the existing dwelling.

- *To what extent, if any, are the existing access arrangements for the building proposed to be altered?*
  Comment:
  The existing vehicular access is to be replaced with a double garage and new driveway that complies with the Australian standards. Pedestrian access via the front of the site will be retained with new patio and entrance.

- *To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*
  Comment:
  The outlook from within the existing building will be improved through the use of decks and location of windows and doors.

- *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*
  Comment:
  The general form of the existing dwelling will be retained. When viewed from the street, the proposal will present as a two storey dwelling and the rear as three storeys.

Quantitative issues

- *To what extent is the site coverage proposed to be changed?*
  Comment:
  The proposal will increased the site coverage on the site from 42.7% to 58.6%, which is an increase of 27.4%.

- *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*
  Comment:
  The non-compliance with the overall building height is reduced in one respect as the roof height is reduced at the rear of the dwelling. However, the new extension to the first floor creates an new building height non-compliance to accommodate the roof. The non-compliance with the front boundary setback is increased to accommodate the double garage and front entry. The side boundary envelope encroachment along the southern elevation will not change.

- *To what extent is the building envelope proposed to be changed?*
  Comment:
  The non-compliance with the southern elevation will be retained and the addition will create a new non-compliance on the northern elevation on both the ground and first floor.

- *To what extent are boundary setbacks proposed to be changed?*
  Comment:
  The proposal will retain the existing setback to the southern boundary and will retain part of the front and rear setback of the dwelling. The existing garage which has a 0.1m setback to the boundary will be stepped back 1.0m and the remainder of the lower ground floor and ground floor will be moved closer to the northern side boundary 1.0m to 2.2m.

- *To what extent will the present numerical degree of landscaping on the site be changed?*
  Comment:
  The proposal will reduce the numerical degree of landscaping on the site from 56.43% (388m^2) down to 40.72% (280m^2) which complies with the Landscaped Open Space requirements of the WDCP.

- *To what extent will the existing floor space ratio be altered?*
  Comment:
  Residential development which falls under the WLEP is not assessed against an FSR.

- *To what extent will there be changes in the roof form?*
  Comment:
  The proposal will maintain a conventional pitched roof. The additions will replace the roof at the rear of the dwelling and reduce the overall height and non-compliance with the height of building.

- *To what extent will there be alterations to car parking/garaging on the site and/or within the building?*
  Comment:
  The proposal will replace the existing single car garage with a double garage and driveway access to comply with the Part C3 Parking Facilities and Australian Standards.

- *To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*
  Comment:
  Excavation is proposed to increase floor area to the lower level, however this is contained within the envelope of the building, is setback from the boundaries of the site and not visible from the street or adjoining properties.

- *What relationship does the proportion of the retained building bear to the proposed new development?*
  Comment:
  The proposal retains significant portions of the existing structure. The proposal retains the southern elevation wall, part of the front wall and the rear wall of the dwelling. The proposal also retains the floor plates and the floor to ceiling height of the Lower Ground, Ground and First Floor. While the general look of the dwelling will change somewhat, the proposal retains a large portion of the existing structure.

An assessment against the Planning Principles demonstrates that a large portion of the existing dwelling will remain and that the essential elements of the dwelling, being the the floor plates, floor to ceiling heights and external walls of the southern, rear and part of the front elevations are to be retained. It is concluded that proposal when assessed against the planning principles can be considered as *Alterations and Additions*.

D7 Views

One submission was received from No. 25 Hay Street, which included concerns regarding view loss from No. 25 Hay Street and from the streetscape as a result of the proposal.

No. 24 Hay Street to the west of the site has views of Long Reef Headland, Long Reef Beach south-east and east and Fisherman's Beach and up the coast to the north/north-east. No submission has been received objecting to view loss from No. 24 Hay Street. It is highly unlikely that the proposal will result in unreasonable view loss as from No. 24 Hay Street, as it is located on the high side of Hay

Street. The east facing balconies and living areas located off the Middle level (FFL 40.5) and Top Level (FFL 43.5) are generally located higher than that of the proposal additions roof (RL 40) and views will be retained over the dwelling. Views from the Bottom level (FFL 37.5) which are likely to be affected by the proposal are from the Bed and Ensuite located directly off the Family room. The Ensuite has frosted glass and the views from the Bedroom windows that are likely to be affected by the development are heavily filtered by vegetation (see photo 4. below). Views from the Bottom Level Bedroom windows to the east and north-east direction will be retained. It is considered that the proposal development will not result in unreasonable view loss from No. 24 Hay Street and no further assessment is required.



Photo 3*: View from the front of No. 24 Hay Street from the Bottom Level in front of the Bedroom*

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

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

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

  Comment to Principle 1:
  An inspection by the assessing officer established that ocean views towards the south-east over the side boundary, rear yard and roof tops will be affected by the proposed development from no. 25 Hay Street, Collaroy.



Photo 4*: View from east facing window of the Master Bedroom of No. 25 Hay Street towards the south-east*

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

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

Comment to Principle 2:

The views available from No. 25 Hay Street are obtained from the eastern elevation window of the Master Bedroom. The orientation of the views affected are over the southern side boundary in both a sitting and standing position.

3. Extent of impact

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

Comment to Principle 3:

The proposed works will result in the loss of ocean views to the south-east. Partially obstructed views of Long Reef Headland, Long Reef Aquatic Reserve, Fishermans Beach including the interface between land and water, ocean views towards the north-east and distant headlands will be retained. The proposal includes the removal of several trees along the shared northern boundary. The removal of the trees will result in greater views towards Long Reef Headland

and potential ocean views. Views from the kitchen and dining room of Long Reef Headland, Long Reef Aquatic Reserve, Fishermans Beach including the interface between land and water, ocean views towards the north-east and distant headlands will be retained from the north and east facing windows. Obstructed ocean views to the south-east shall also be retained. View loss is considered **moderate**.



Photo 5: *View from east facing window of the Master Bedroom of No. 25 Hay Street towards the east*



Photo 6: *View from east facing window of the Master Bedroom of no. 25 Hay Street towards the north-east*



Photo 7*: View from east facing window of the Master Bedroom of No. 25 Hay Street towards the North-east*

4. Reasonableness of the proposal that is causing the impact

"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A*

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

Comment to Principle 4:
The proposed development does not comply with the side boundary envelope on the northern elevation. While the proposal will result in the loss of ocean views from the master bedroom west facing window of No. 25 Hay Street, significant ocean views to the north/north-east will be retained from the master bedroom east facing windows and from the kitchen and dining north and east facing windows as well. The non-compliance with the side boundary envelope has been judged to be consistent with the objectives of the WDCP. Full compliance with the side boundary envelope control is unlikely to improve the view that would be lost as a result of the proposed development due to the angle of the view from the east facing master bedroom window. Whilst it is noted that the view impact on the adjoining property is moderate, however, given that the view is obtained across a side boundary, the view is difficult to maintain. In this regard, the proposal is considered to be reasonable in its context and will allow for a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*
  Comment:
  The proposal meets the objectives of the built form controls of the WDCP and allows for the modernised and enlargement of the dwelling. The design does not result in an unreasonable impact upon view sharing from the adjoining properties or from the street.

  In determining the extent of the potential view loss from the public domain, the planning principles outline within the Land and Environment Court Case of *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* are applied to the proposal.

  1. Nature and Scope of Views The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:
  - Any existing obstructions of the view;
  - Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);
  - Are existing obstructions permanent or temporary;
  - The cartilages of important elements within the view.
  Comment:
  The existing views obtained from the public domain, in this case being the footpath on the eastern side of Hay Street, consists of filtered views of the ocean in easterly/north-easterly direction. Existing obstructions to the views include vegetation. The vegetation obstructions are large, well established trees located within the site and spread across multiple properties. Two of these trees on the site are to be removed as part of the development and the trees located on other properties are relatively permanent in nature as they are unlikely to be removed in the foreseeable future. The change to the available outlook from the road will be permanent, assuming the application is approved and the proposal is maintained for the life of the development.



Photo 8*: View from the footpath of Hay Street in a north-easterly direction*

2. Locations of View Interruptions

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment:

The affected view is available from the road and footpath of Hay Street. Hay Street has one formal footpath on the eastern side of the road. It is noted that Hay Street is not classified as a major road, thus traffic frequency is not considered to be significant.

3. Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location. The impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment from many positions by all people.

Comment:

The location where views are obtained are from the footpath and road. Views are currently obtained from a seated position in a car travelling along Hay Street, or from a standing position on the footpath. The proposed development will obstruct filtered ocean views and the horizon.

4. Intensity of the use of the Relevant Public Spaces

The fourth step is to identify the intensity of public use of those locations where enjoyment of the view will be obscured, in whole or in part, by the proposed development.

Comment:

Hay Street is a secondary road, used to gain access to the residential properties along the road. The nature of the street does not encourage people to stop and gather and views are maintained over and between other properties along the street.

5. Documentation of the View

The final step to identified is whether there is any document that identifies the importance of the view to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection

of public domain views.
Comment:
Hay Street does not have any international, national, state or local heritage recognition The WDCP does not specifically require the retention or protection of public domain views.

- *To ensure existing canopy trees have priority over views.*
  Comment:
  The proposed development will result in the removal of the majority of the trees at the rear of the site to facilitate the development. The removal of the trees will improve the view from the master bed room towards Long Reef Headland from No. 25 Hay Street and will potentially provide greater ocean views in a south-east/east direction.

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

D8 Privacy

Description of Non-compliance
Clause D8 Privacy requires habitable rooms and outdoor living areas of dwellings to optimise visual privacy through an appropriate design outcome. Private open space areas and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking and the windows of one dwelling are to be located so they do not provide direct or close views (i.e. from less than 9.0 metres away) into the windows of other dwellings.

The Ground Floor northern elevation windows of the Meals, Kitchen and Pantry labelled W5, W6 and W7 and the northern edge of the Ground Floor Balcony will provide direct and close views of the private open space of no. 25 Hay Street. Furthermore, the windows are within 9m of the east and south facing windows of the Master Bedroom of No. 25 Hay Street. After concerns were raised with the applicant regarding the potential privacy impact of the ground floor northern elevation windows, the applicant provided amended plans with privacy screens (Bahama Shutters) on windows W5 located off the Pantry, W6 from the Kitchen and W7 Meals.

A condition is recommended requiring the privacy screens on the windows to only be able to be open a maximum of 30cm at the bottom, the blades at a 45 degree angle facing down and 600mm shelf be installed below windows W6 and W7 to limit the overlooking and perception of the private open space of No. 25 Hay Street being overlooked. A privacy screen is also recommended on the northern edge of the Ground Floor Balcony with a minimum height of 1.7m. It is noted that the existing Ground Floor of the dwelling currently over looks the private open space of No. 25 Hay Street from the sunroom, living room and rear patio and the first floor, however, the north facing windows of these rooms are setback 7m from the side boundary and the north edge of the patio has substantial vegetation which screens the private open space of No. 25 Hay Street.

Several of the new windows located on the southern elevation are located directly opposite or provide direct and close views of the south facing windows of no. 21 Hay Street. Window W8 located off the Ground Floor Living room is opposite the Living Room widow of No. 21 Hay Street and separated by a distance of 2.3m. The south facing First Floor windows W24 located off Bedroom 1, W25 located of the WIR are opposite the south facing bathroom window of no. 21 Hay Street. The amended plans include Bahama Shutters or frosted glass which will minimise the potential for direct and close views into the north facing windows of No. 21 Hay Street.

Other aspects of the development will be reviewed below regarding potential privacy impacts to the site and adjoining dwellings.

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

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

  Comment:
  The first floor windows located on the northern elevation are located off Bedrooms and ensuites. These areas receive low volumes of pedestrian activity on a daily basis, as opposed to living rooms and kitchen areas. As such, the overlooking impacts are not deemed to be unacceptable in this circumstance. This notion is outlined within the N*SW 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".

  This assessment has also considered the potential privacy impacts arising from the uppermost floor rear balconies adjacent to the Bedroom 1 and Bedroom 2. It is considered that due to the low use of the area, being located adjacent to a bedroom on the uppermost floor, and the central positing of the balcony within the site, the privacy impacts are deemed to be minor and acceptable.

  The amenity and privacy impact of the proposed development on adjacent properties is not considered to be unreasonable in the context of the site and surrounds. Due to the slope of the land the Outbuilding is raised to be the same height as the swimming pool, which is partially excavated at the western end. Concern was raised in the submissions that the raised nature of the Outbuilding and swimming pool would result in unreasonable privacy impacts to the neighbouring properties at Nos. 21 and 25 Hay Street. However, it is considered that privacy is sufficiently maintained between the sites. The proposal provides adequate spatial separation between the swimming pool and outbuilding to the private open space of the adjoining properties, the northern edge of the swimming pool which is closest to No. 21 Hay Street, is non-trafficable as there is screen planting proposed between the swimming pool and boundary and the proposed screen planting along the boundaries will help to screen the swimming pool and outbuilding from direct over looking to or from the site.

  In addition to the above, it is noted that overlooking may also occur from the Ground Floor balcony external stairs to Lower Ground Floor Patio. However, noting that the stairwell is merely used for movement between the uppermost and lower floors, the privacy impacts are not deemed to be unreasonable.

  For the reasons outlined above, it is considered that the proposal meets this objective.

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

  Comment:
  The proposed development and recommended privacy conditions provide a satisfactory design that will have an acceptable impact upon the surrounding built environment.

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

  Comment:

It is assumed that a sense of person and property security will be maintained.

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

D9 Building Bulk

Description of Non-compliance
The control requires side and rear setbacks to progressively increase as the wall height increases. The submission raises concern that the ground and first floor element of the proposed dwelling does not step in as the height increases.

Merit consideration
The development is considered against the underlying objectives of the control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*
  Comment:
  The proposed additions to the dwelling are both consistent and compatible with the height and scale of other adjoining and nearby dwellings, specifically the dwelling to the south of the site Nos. 21, 19 and 17 (see photo 2.) and to the north No. 27. The proposal presents as a two storey dwelling to the street and a three storey dwelling to the rear. While inconsistent with a number of built form numeric controls under the WDCP including front, side boundary envelope and wall height, the proposal presents as a dwelling that has been sited and designed to sympathetically follow the streetscape, without unreasonably compromising the amenity of adjoining properties.

  The proposed development will be improving the urban environment as it will be providing a modernised dwelling, with two compliant off street car parking space and an enhanced streetscape appearance. The north, south and western elevations of the dwelling house, which are visible from Hay Street, consist of varied wall planes and other articulated elements which alleviates the building mass and adds visual interest to the streetscape.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*
  Comment:
  When viewed from the street the proposal presents as a two storey dwelling with a ground level accessed via the the street frontage and a lower ground floor, directly below this which is visible from the rear and a sides of the dwelling. This is consistent with the many of the properties on the eastern side of Hay Street. The development is adequately separated from property boundaries and incorporates an appropriate design, which minimises the visual impact of the development when viewed from the public domain or adjoining properties. Furthermore, there is sufficient landscaping incorporated with the development to enhance the natural amenity of the streetscape and soften the visual impacts of the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this control. 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 $9,339 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $933,900.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

Overall Planning Conclusions
The assessment of this application has found that notwithstanding the numerical non-compliances, the proposal overall is worthy of conditional approval.

The applicant responded to issues identified in the initial assessment with amended plans which are the basis of this assessment report.

The revised development is not found to have any unreasonable or adverse impacts on the amenity of adjoining land owners that cannot be appropriately mitigated by conditions of consent.

The submitted clause 4.6 appropriately addresses the requirement of the clause and the non-compliance with the building height is found to be reasonable within the geographical context. As outlined within the response to the Planning Principle - Demolition, the proposed works can be considered Alterations and Additions as a large proportion of the existing dwelling is to be retained and the proposal will maintain the characteristics of the existing built form. As a result of concerns raised with the accuracy of the plans and survey, Council has undertaken their own assessment of the plans and provided extrapolated ground levels for the height and side boundary envelope. The extrapolated and existing ground levels at the front of the site stratifies the planning controls and reasonable within its context. The view loss assessment taken from no. 25 Hay Street, Hay Street and no. 24 Hay Street, has determined that while there will be some view loss from the adjoining properties and the streetscape, the view loss is reasonable and meets objectives of the Clause D7 Views. The proposal is supported, notwithstanding the non-compliances, as it satisfies the planning controls and addresses the issues raised by Council and the residents to a reasonable extent.

On the balance of all relevant matters and after a comprehensive assessment of all materials submitted by the applicant and issues from objectors, including a detailed analysis of views and amenity impacts, this report concludes that the DDP, as the consent authority, should **APPROVE** the development application, subject to the attached conditions.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1824 for Alterations and additions to a dwelling house including a swimming pool and cabana on land at Lot 36

DP 10648, 23 Hay Street, COLLAROY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA01 - Rev: B - Sediment control/ soil and waste management / and site plan	13.4.2022	Sammy Fedele Architectural Drafting Services
DA04 - Rev: B - Plan - Lower Ground Floor Plan	13.4.2022	Sammy Fedele Architectural Drafting Services
DA05 - Rev: B - Plan - Ground Floor Plan	13.4.2022	Sammy Fedele Architectural Drafting Services
DA06 - Rev: B - Plan - First Floor Plan	13.4.2022	Sammy Fedele Architectural Drafting Services
DA07 - Rev: B - Plan - Roof Plan	13.4.2022	Sammy Fedele Architectural Drafting Services
DA08 - Rev: B - Elevation - South Elevation	13.4.2022	Sammy Fedele Architectural Drafting Services
DA09 - Rev: B - Elevation - North Elevation	13.4.2022	Sammy Fedele Architectural Drafting Services
DA10 - Rev: B - Elevation - West Elevation and East Elevation	13.4.2022	Sammy Fedele Architectural Drafting Services
DA11 - Rev: B - Section and BASIX - Section AA and Section NN	13.4.2022	Sammy Fedele Architectural Drafting Services
DA11A - Rev: B - Section and BASIX - Section MM	13.4.2022	Sammy Fedele Architectural Drafting Services
DA17 - Rev: B - External Colours and Finishes	10.06.2021	Sammy Fedele Architectural Drafting Services

Reports / Documentation – All recommendations and requirements contained

within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Investigation: New House (Alts & Adds) & Pool at 23 Hay Street, Collaroy Plateau J3451	5th July, 2021	White Geotechnical Group
INFILTRATION TESTING: For Proposed Infiltration Trench at 23 Hay Street, Collaroy J3451A	6th July, 2021	White Geotechnical Group
BASIX Certificate Certificate number: A422366_02	18 August 2021	Sammy Fedele Architectural Drafting Services
Arboricultural Assessment & Construction Impact Statement	July 2021	Aura Tree Services Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
DA18 - Rev: B - Plan - Concept Landscaping Plan	10.06.2021	Sammy Fedele Architectural Drafting Services

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 $9,339.00 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 $933,900.00.

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 $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

6. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular the Section 5.5 Stormwater Drainage from Low Level Properties.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy 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.

7. **Amendments to the approved plans**

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

1. A 600mm privacy shelf is to project outwards below the windows W6 and W7 on the northern elevation,
2. The 'Bahama Shutters' shown on Sheet Nos. DA08 and DA09 of the stamped plans are to have fixed louvers (with a maximum spacing of 20mm), in a 45 degree angle facing downwards, in a material that complements the design of the approved development. The 'Bahama Shutters' are to only be able to open outwards at the base 15cm.
3. The northern elevation of BEDROOM 3 and Ensuite located on the First Floor and shown on Sheet no. DA06 are to be set back a minimum of 2.5m from the northern boundary.

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.

8. **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.

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

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

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

Reason: To provide public and private safety.

10. **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.

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

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

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

12. **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.

13. **Privacy Screen**
A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern eastern edge of the Ground Floor balcony located off the Meals Room as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):
• Eucalyptus botryoides (Bangalay Gum) identified as T1, subject to tree replacement
• Eucalyptus botryoides (Bangalay Gum) identified as T2, subject to tree replacement

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

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised development works.

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

Property / Properties: No. 21 Hay Street and No. 25 Hay Street, Collaroy.

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Tree and Vegetation Protection**

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

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 5 Discussion
ii) section 6 Site Specific 'Tree Plan of Management'

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.

19. **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.

20. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- 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.

21. **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.

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. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EL 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 kerb, 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.

24. **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

25. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Concept Landscaping Plan, and inclusive of the following conditions:
i) two (2) replacement trees shall be planted within one each to the front and rear setbacks; and shall be selected from the following list as provided by the recommendations of the Arboricultural Impact Assessment: Eucalyptus botryoides (Bangalay Gum), Angophora hispida (Dwarf Apple), Hymenospermum flavum (Native Frangipani), or Tristaniopsis laurina (Watergum), with at least one Eucalyptus botryoides to be planted and preferably within the rear of the property.
ii) tree planting shall be installed at a pre-ordered minimum 75 litre container size and shall meet the requirements of Natspec - Specifying Trees, and shall be located within a 9m2 deep soil area wholly within the site and be located a minimum of 3 to 5 metres from existing and the

proposed building, 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) screen shrub planting to achieve 3 metres in height at maturity shall be planted along the boundary common with 23 Hay Street from the alignment of the pool and spa to the rear boundary, whilst preserving any existing screen plants in the garden area,
iv) all planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
v) all proposed tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

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.

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

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

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

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

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

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

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

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

28. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

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.

30. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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 2008
(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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life (DACPLF09)

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

31. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent. All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

32. **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.

33. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

DESIGN DATA

LANDSCAPE AREA

SITE AREA = 687.5m2

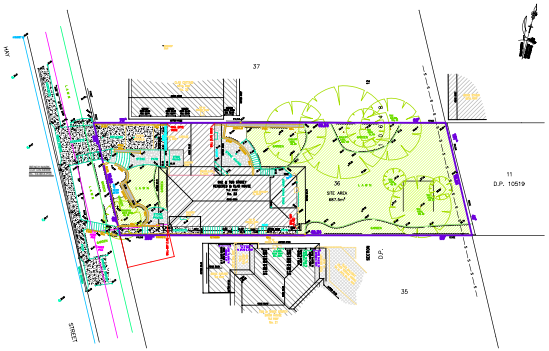
EXISTING = 388m2 = 56.43%

LEGEND:

LANDSCAPE AREA

EXISTING
SITE PLAN

SCALE 1:400



DESIGN DATA

LANDSCAPE AREA

SITE AREA = 687.5m2

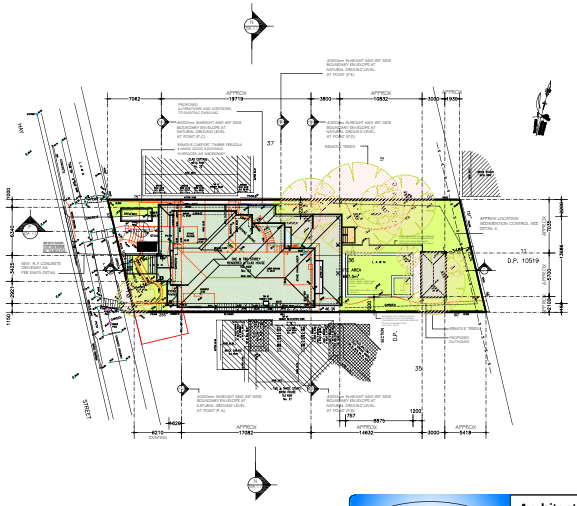
PROPOSED = 277.27m2 = 40.33%

LEGEND:

LANDSCAPE AREA

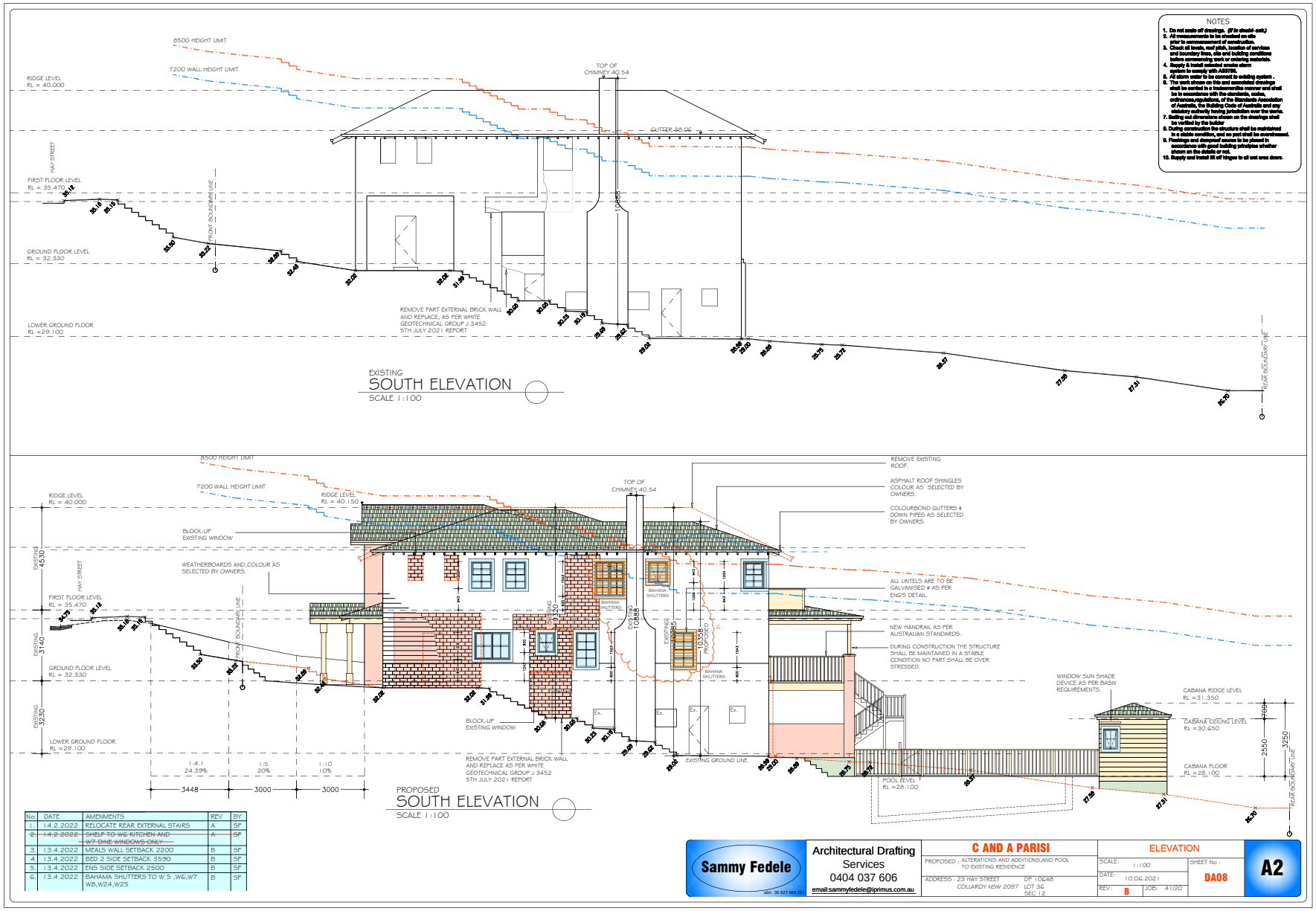
PROPOSED
SITE PLAN

SCALE 1:400



No.	DATE	AMENMENTS	REV	BY
1.	14.2.2022	RELOCATE REAR EXTERNAL STAIRS	A	SF
2.	14.2.2022	~~SHELF TO W6 KITCHEN AND W7 DINE WINDOWS ONLY~~	A	SF
3.	13.4.2022	MEALS WALL SETBACK 2200	B	SF
4.	13.4.2022	BED 2 SIDE SETBACK 3590	B	SF
5.	13.4.2022	ENS SIDE SETBACK 2500	B	SF
6.	13.4.2022	BAHAMA SHUTTERS TO W 5 ,W6,W7 W8,W24,W25	B	SF

Sammy Fedele abn 36 827 664 323	Architectural Drafting Services 0404 037 606 email:sammyfedele@primus.com.au	C AND A PARISI PROPOSED : ALTERATIONS AND ADDITIONS,AND POOL TO EXISTING RESIDENCE ADDRESS : 23 HAY STREET COLLAROY N5W 2097 DP 10648 LOT 36 SEC 12	SITE CALCULATION SCALE: 1:200 SHEET No : DA16 DATE: 10.06.2021 REV: B JOB: 41/20	A2

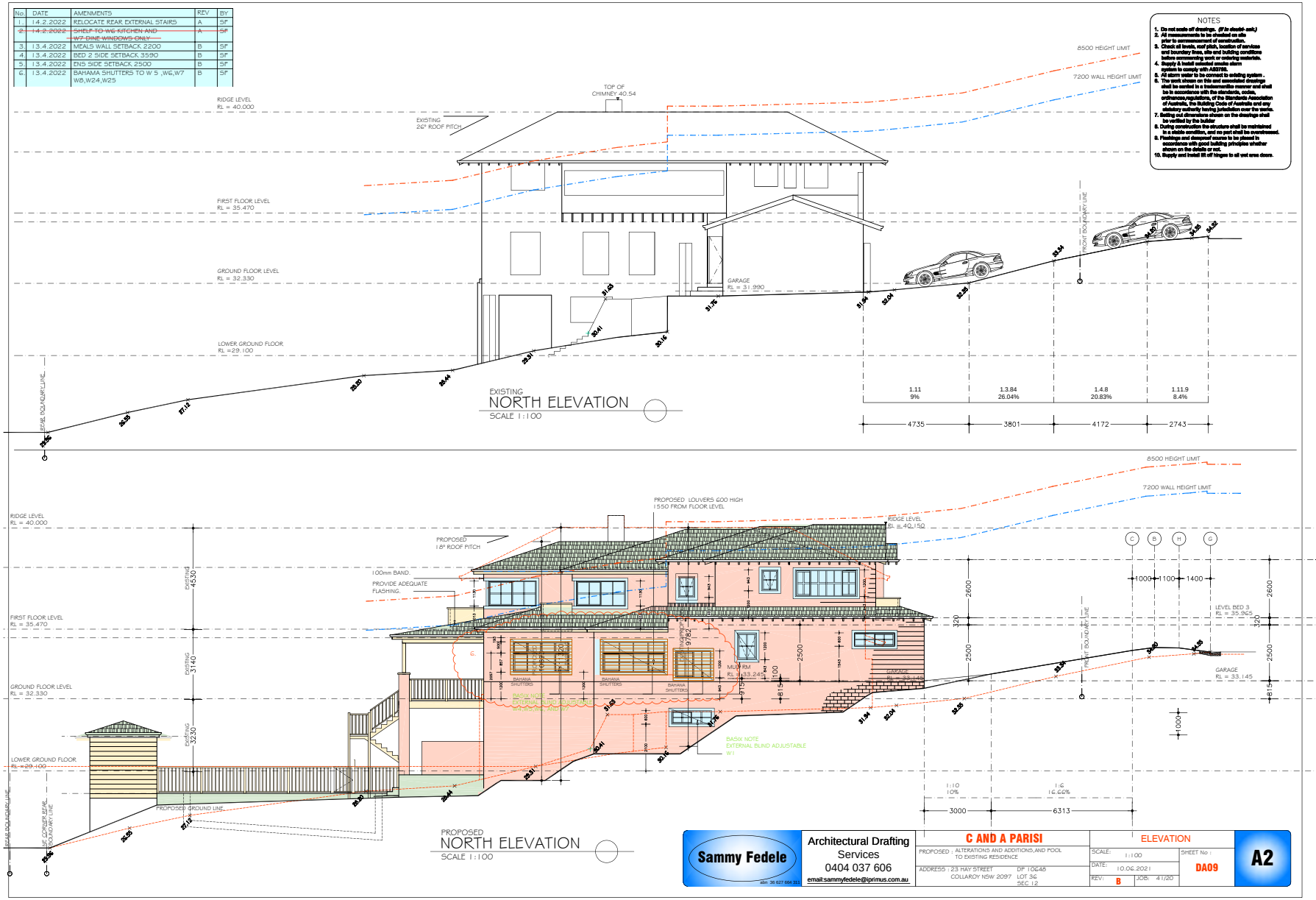


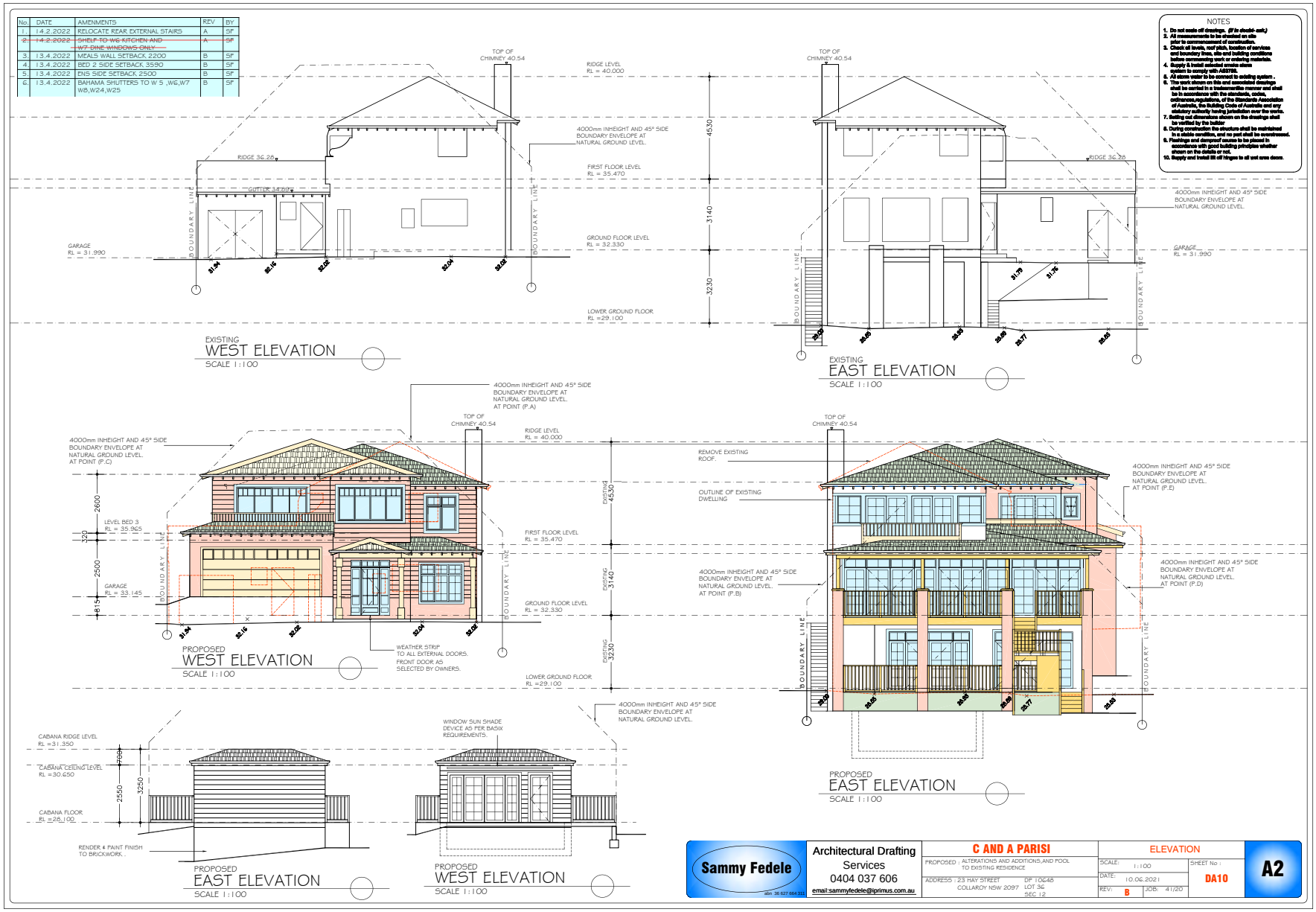
No.	DATE	AMENDMENTS	REV	BY
1.	14.2.2022	RELOCATE REAR EXTERNAL STAIRS	A	SF
2.	~~14.2.2022~~	~~SHELF TO W6 KITCHEN AND W7 DINE WINDOWS ONLY~~	~~A~~	~~SF~~
3.	13.4.2022	MEALS WALL SETBACK 2200	B	SF
4.	13.4.2022	BED 2 SIDE SETBACK 3590	B	SF
5.	13.4.2022	ENS SIDE SETBACK 2500	B	SF
6.	13.4.2022	BAHAMA SHUTTERS TO W 5 ,W6,W7 W8,W24,W25	B	SF

Sammy Fedele
abn 36 627 664 931
Architectural Drafting Services
0404 037 606
email:sammyfedele@iprimus.com.au

C AND A PARISI
PROPOSED : ALTERATIONS AND ADDITIONS,AND POOL TO EXISTING RESIDENCE
ADDRESS : 23 HAY STREET COLLAROY NSW 2097
DP 10248 LOT 36 SEC 12

ELEVATION
SCALE: 1:100
DATE: 10.06.2021
REV: B
JOB: 4120
SHEET No : DA08
A2


No. DATE AMENDMENTS REV BY
1. 14.2.2022 RELOCATE REAR EXTERNAL STAIRS A SF
2. 14.2.2022 SHELF TO W6 KITCHEN AND W7 DINE WINDOWS ONLY A SF
3. 13.4.2022 MEALS WALL SETBACK 2200 B SF
4. 13.4.2022 BED 2 SIDE SETBACK 3590 B SF
5. 13.4.2022 EN5 SIDE SETBACK 2500 B SF
6. 13.4.2022 BAHAMA SHUTTERS TO W 5 ,W6,W7 W8,W24,W25 B SF
NOTES
8500 HEIGHT LIMIT
7200 WALL HEIGHT LIMIT
RIDGE LEVEL RL = 40.000
TOP OF CHIMNEY 40.54
EXISTING 26° ROOF PITCH
FIRST FLOOR LEVEL RL = 35.470
GROUND FLOOR LEVEL RL = 32.330
LOWER GROUND FLOOR RL =29.100
GARAGE RL = 31.990
FRONT BOUNDARY LINE
REAR BOUNDARY LINE
EXISTING NORTH ELEVATION
SCALE 1:100
1.11 9%
1.3.84 26.04%
1.4.8 20.83%
1.11.9 8.4%
4735
3801
4172
2743
PROPOSED LOUVERS 600 HIGH 1550 FROM FLOOR LEVEL
PROPOSED 18° ROOF PITCH
100mm BAND
PROVIDE ADEQUATE FLASHING
RIDGE LEVEL RL = 40.150
MUD RM RL = 33.245
GARAGE RL = 33.145
LEVEL BED 3 RL = 35.965
BAHAMA SHUTTERS
BASIX NOTE EXTERNAL BLIND ADJUSTABLE W1
EXISTING 4530
EXISTING 3140
EXISTING 3230
PROPOSED GROUND LINE
PROPOSED NORTH ELEVATION
SCALE 1:100
1:10 10%
1:6 16.66%
3000
6313
Sammy Fedele
Architectural Drafting Services
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email:sammyfedele@iprimus.com.au
C AND A PARISI
PROPOSED : ALTERATIONS AND ADDITIONS,AND POOL TO EXISTING RESIDENCE
ADDRESS : 23 HAY STREET COLLAROY NSW 2097 DP 10648 LOT 36 SEC 12
ELEVATION
SCALE: 1:100
DATE: 10.06.2021
REV: B
JOB: 41/20
SHEET No : DA09
A2


No. DATE AMENDMENTS REV BY
1. 14.2.2022 RELOCATE REAR EXTERNAL STAIRS A SF
2. 14.2.2022 SHELF TO WG KITCHEN AND +W7 DINE WINDOWS ONLY A SF
3. 13.4.2022 MEALS WALL SETBACK 2200 B SF
4. 13.4.2022 BED 2 SIDE SETBACK 3590 B SF
5. 13.4.2022 ENS SIDE SETBACK 2500 B SF
6. 13.4.2022 BAHAMA SHUTTERS TO W 5 ,W6,W7 W8,W24,W25 B SF
NOTES
1. Do not scale off drawings. (If in doubt ask)
2. All measurements to be checked on site prior to commencement of construction.
3. Check all levels, roof pitch, location of services and boundary lines, site and building conditions before commencing work or ordering materials.
4. Supply & Install selected smoke alarm system to comply with AS3786.
5. All storm water to be connect to existing system .
6. The work shown on this and associated drawings shall be carried in a trademanlike manner and shall be in accordance with the standards, codes, ordinances,regulations, of the Standards Association of Australia, the Building Code of Australia and any statutory authority having jurisdiction over the works.
7. Setting out dimensions shown on the drawings shall be verified by the bolder
8. During construction the structure shall be maintained in a stable condition, and no part shall be overstressed.
9. Footings and dampcourse course to be placed in accordance with good building principles whether shown on the details or not.
10. Supply and Install lift off hinges to all wet area doors.
TOP OF CHIMNEY 40.54
RIDGE LEVEL RL = 40.000
4000mm INHEIGHT AND 45° SIDE BOUNDARY ENVELOPE AT NATURAL GROUND LEVEL.
RIDGE 36.26
GUTTER 34.89
FIRST FLOOR LEVEL RL = 35.470
GROUND FLOOR LEVEL RL = 32.330
LOWER GROUND FLOOR RL =29.100
GARAGE RL = 31.990
BOUNDARY LINE
4530
3140
3230
EXISTING WEST ELEVATION
SCALE 1:100
EXISTING EAST ELEVATION
SCALE 1:100
4000mm INHEIGHT AND 45° SIDE BOUNDARY ENVELOPE AT NATURAL GROUND LEVEL. AT POINT (P.A)
4000mm INHEIGHT AND 45° SIDE BOUNDARY ENVELOPE AT NATURAL GROUND LEVEL. AT POINT (P.C)
2600
320
2500
815
LEVEL BED 3 RL = 35.965
GARAGE RL = 33.145
WEATHER STRIP TO ALL EXTERNAL DOORS. FRONT DOOR AS SELECTED BY OWNERS.
PROPOSED WEST ELEVATION
SCALE 1:100
REMOVE EXISTING ROOF.
OUTLINE OF EXISTING DWELLING
4000mm INHEIGHT AND 45° SIDE BOUNDARY ENVELOPE AT NATURAL GROUND LEVEL. AT POINT (P.B)
4000mm INHEIGHT AND 45° SIDE BOUNDARY ENVELOPE AT NATURAL GROUND LEVEL. AT POINT (P.D)
4000mm INHEIGHT AND 45° SIDE BOUNDARY ENVELOPE AT NATURAL GROUND LEVEL. AT POINT (P.E)
PROPOSED EAST ELEVATION
SCALE 1:100
CABANA RIDGE LEVEL RL =31.350
CABANA CEILING LEVEL RL =30.650
CABANA FLOOR RL =28.100
700
2550
3250
RENDER & PAINT FINISH TO BRICKWORK .
PROPOSED EAST ELEVATION
SCALE 1:100
WINDOW SUN SHADE DEVICE AS PER BASIX REQUIREMENTS.
PROPOSED WEST ELEVATION
SCALE 1:100
Sammy Fedele
Architectural Drafting Services
0404 037 606
email:sammyfedele@iprimus.com.au
C AND A PARISI
PROPOSED : ALTERATIONS AND ADDITIONS,AND POOL TO EXISTING RESIDENCE
ADDRESS : 23 HAY STREET COLLAROY NSW 2097 DP 10248 LOT 36 SEC 12
ELEVATION
SCALE: 1:100
DATE: 10.06.2021
REV: B
JOB: 41/20
SHEET No : DA10
A2

NOLAN PLANNING CONSULTANTS

Clause 4.6 – Exception to Maximum Height of Buildings Development Standard
Proposed Dwelling Alterations/Additions
23 Hay Street, Collaroy

Introduction

The subject site is identified as Lot 36, Section 12 in DP 10648 which is known as 23 Hay Street, Collaroy. The site is located on the eastern side of Hay Street to the south of its intersection with Anzac Avenue. The site is generally a regular shaped allotment with an area of 687.5m², a street frontage of 15.24m and a depth of 46.34m.

The non-compliance with the height of building development standard is a direct result of the previous excavation on site and the slope of the site. The non-compliance does not result in any detrimental impacts to the adjoining properties and not discernible from the street.

The proposal seeks approval for a variation to the maximum height of building (Height of Buildings) development standard in clause 4.3 of the Warringah Local Environmental Plan 2011.

4.3 Height of Buildings

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Buildings Map indicates that the maximum building that applies to the Site is 8.5m.

The proposal results in a maximum building height of 9.782m, a non-compliance of 1.2m or 15% variation. It is noted that the proposal does not exceed the height of the existing dwelling on site.

This clause 4.6 written request has been prepared having regard to clauses 4.3 and 4.6 of the Warringah Environmental Plan 2011 and recent judgments of the Land and

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Email: natalie@nolanplanning.com.au

Environment Court. It is concluded that the variation is well founded.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP are:

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

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

Clause 4.3 of the Warringah Local Environmental Plan 2011 is contained within Part 4 and is titled Development Standards to be complied with. I am of the opinion that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

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

I consider that clause 4.3 is a development standard to which clause 4.6 applies.

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

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

> *(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
>
> *(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
>
> *(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

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

The proposal results in a dwelling that presents as two storeys when viewed from the streetscape and public domain. This is comparable with the existing surrounding development in the immediate vicinity. The proposed height is appropriate for the scale of the Collaroy locality, with the front portion of the dwelling complying with the height controls. It is only the rear portion of the additions that do not comply and it is noted that this replaces an existing non-complying portion of the dwelling. The proposed additions do not result in an existing of the existing building height, rather, the new roof form will reduce the extent of the current non-compliance. The plan clearly depicts the existing and proposed roof form and which is clarified in the sections and elevations below:



Extract of Architectural Plans – section



Extract of Architectural Plans – Existing and Proposed Elevations

The proposed additions have been carefully designed to present as a two storey dwelling with the non-complying component of the roof form behind the front facade.

The objectives of the Height of Buildings standard are set out in clause 4.3(1) of Warringah Local Environmental Plan 2011:

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The objectives of the building height standard is achieved notwithstanding and because of the non-compliance, in light of the following:

a. The proposal presents as a two storey dwelling when viewed from Hay Street. This is compatible with the existing locality and the desired future character. The proposed additions provide for a roof form of the same pitch as the existing dwelling which results in a non-compliance with the height standard. The proposal complies with objective (a).
b. Shadow diagrams have been prepared and submitted with the application. The proposed additions do not result in any significant overshadowing. The proposed additions provide for an appropriate visual outcome and it is considered that the presentation to the street frontage is improved, with this elevation provided with greater articulation and increased setbacks to the northern side boundary. The proposal will not disrupt existing views from the surrounding properties. The additions to the ground and upper levels do not extend beyond the existing rear setback. Further the additions reduce the height at the rear of the dwelling. Those properties on the opposite side of Hay Street are significantly elevated and the proposal will not obstruct existing views from these properties. The proposal achieves objective (b).
c. The proposed additions will not be visible from the coast or bushland areas. The proposal complies with objective (c)
d. When viewed from the street the proposal improves the presentation with this elevation provided with greater articulation and increased setbacks to the northern side boundary. The proposal complies with objective (d).

Compliance with the standard is unreasonable because, the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

The non-compliance with the height controls is a result of steep slope and the existing dwelling on site. The proposal will reduce the overall height of the rear portion of the existing dwelling. A complying addition would locate the additions towards the rear of the site which would reduce landscaped area and potentially obstruct views from the adjoining properties.

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

The non-compliance is a direct result of the slope of the site and the need to provide a roof to complement the existing dwelling. The proposal is constrained by the existing dwelling on site which is non-compliant with the height of building development standard. The proposal reduces the extent of the existing non-compliance. Relocating the additions further to the rear to ensure compliance with the

height control would have an impact on the landscaped area and possibly obstruct views from surrounding properties.

The area of non-compliance is very minor and is not discernible from the public domain.

No unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy or overshadowing result from the non-compliant height of building.

The amended design promotes an objective of the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the "good design and amenity of the built environment".

The contravention is justified by the following environmental planning grounds:

- The site has a significant slope with a change in levels of approximately 4.2m across the building envelope.
- The site is constrained by the existing dwelling and the adopted floor levels. The proposed additions reduce the extent of the existing non-compliance.
- The proposal improves presentation to the street through the use of varied setbacks, architectural relief and external finishes.

5. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

The proposed development is also consistent with the R2 Low Density Residential Zone objectives in Warringah Local Environmental Plan 2011.

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

Objective 2 and 3 are not applicable. The proposal is consistent with the first objective given that:

1. The proposal provides for the housing needs of the community within a low density residential environment via the provision of additions to an existing detached dwelling house.

As the proposal is consistent with the relevant objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

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

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

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

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

Natalie Nolan
Graduate Diploma (Urban & Regional Planning), Ba App Sci (Env. Health & Building).
NOLAN PLANNING CONSULTANTS
August 2021

ITEM 3.2	**DA2021/2224 - 64 PRESCOTT AVENUE DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/364034**
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 DA2021/2224 for demolition works and construction of a dwelling house including a swimming pool on land at Lot 2 DP 23018, 64 Prescott Avenue DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2224

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 2 DP 23018, 64 Prescott Avenue DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jessica Lee Chiha Daniel Chiha
Applicant:	Jessica Lee Chiha Daniel Chiha Future Flip Pty Ltd

Application Lodged:	25/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/06/2022 to 18/06/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,287,660.00

EXECUTIVE SUMMARY

The development proposal relates to the demolition and construction of a dwelling house and is referred to the Development Determination Panel (DDP) as the proposal has three (3) unresolved objections and a cost of development greater than $1,000,000.

The original notification of the development application was notified for fourteen (14) days, and attracted two (2) separate submissions. Those submissions raised concern with the developments

ability to achieve the clause requirements under the Warringah Development Control Plan 2011, in relation to side building envelope, wall heights, side setbacks, landscape open space, and the general bulk and scale of the building. Concerns were also raised regarding view loss, overshadowing, loss of privacy, extent of excavation and impacts to the existing streetscape.

Council requested amended plans in light of the concerns listed above and were re-notified for a period of seven (7) days, which attracted one (1) additional submission, as well as further comments received from the original two (2) objectors. The amended plans only addressed the view loss impacts, neglecting other planning issues raised. Therefore, it was determined that the first set of amended plans received did not adequately address Council's initial concerns.

Amended plans were requested for the second time, which sufficiently reduced the extent of impact to privacy, view loss, building bulk and an increase to the eastern side setback. The second amended plans were notified for a period of five (5) days, with notification ending on the 18th June 2022, no new submissions or additional comments from the original three (3) objectors have been received up until the date of this report.

All matters raised in the submissions are detailed within this report, in summary it is found that there are no issues to the extent of solar access provided to the adjoining properties or non-compliance to the proposed wall heights. View loss, side setbacks, privacy and impacts to the streetscape and excavation have been addressed via amended plans and/or conditions of consent.

Generally, the proposal is compliant with all relevant built form controls, with the exception of three variations, to the front building line (Max: 13.8%), landscaped open space (1.8%) and the building envelope on the western elevation (Max: 46.3%). These variations are not found to have any unreasonable impacts on the natural environment or overall amenity of neighbouring property owners and has been determined to meet the objectives of the relevant clauses.

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

Accordingly, it is recommended that the application be approved subject to the conditions of consent as detailed in the recommendations of this report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks development consent for demolition works and the construction of a 2-3 storey dwelling house, including a basement level and swimming pool.

Specifically, the works comprise of:

- Demolition of existing dwelling house and associated structures
- Excavation and construction of a new two-three storey dwelling house with basement level and attached garage
- Excavation to accommodate a swimming pool and associated landscaping works

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 - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D12 Glare and Reflection

SITE DESCRIPTION

Property Description:	Lot 2 DP 23018 , 64 Prescott Avenue DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Prescott Avenue. The site is legally identified as Lot 2 in Deposited Plan 23018, No. 64 Prescott Avenue, Dee Why. The site is rectangular in shape with a frontage of 18.29m and a depth of 30.425m. The site has a surveyed area of 557.4m². The site is located within the R2 Low Residential zone under the Warringah Local Environmental Plan 2011 and accommodates a single dwelling house and detached garage. The site topography slopes from the south-west to the north-east by approximately 3m. The subject site consists of various native trees and shrubs both to the front and rear of the property with well-maintained lawn areas.

	Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one (1) and two (2) storey dwellings of various architectural designs.

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

The development application was initially notified for A period of fourteen (14) days and attracted two (2) submissions. In light of the concerns raised, Council requested amended plans to address the following concerns:

- Reduce the side boundary envelope encroachment to the western elevation.
- Delete bin storage area located on the eastern adjoining boundary.
- Address privacy concerns in relation to rear elevated balconies.
- Reduce amount of fill and lower entire building by at least 0.5m.
- Erection of height poles, to analyse the extent of view impact to No. 66 Prescott Avenue.
- Increase rear setback of dwelling from 6m to 9m, to open the view corridor obtained from No. 66 Prescott Avenue.

The first set of Amended Plans were received on 5 May 2022, and were notified for a period of seven (7) days. One (1) new submission was received, with the addition of further comments made by the original two (2) objectors, as a result of the first amended set of plans not adequately addressing initial

concerns raised.

Council requested a second set of amended plans to satisfactorily address the above listed concerns by making the following amendments:

- Reducing the dimensions of first floor balcony and increasing the side setbacks to adjoining boundary lines
- Addition of planter box to the eastern edge of the ground floor balcony and extension of planter box to eastern edge of first floor balcony to address privacy concerns.
- Amendments to windows along both the eastern and western elevations (highlight windows and/or frosting where necessary).
- The lowering of the garage by 0.5m, to reduce the amount of additional fill and visual dominance of the built form to both the streetscape and adjoining neighbour No. 62 Prescott Avenue.
- Increase side setback from the garage to the eastern boundary line.

Amended Plans were received on 6 June 2022, and have been re-notified for an additional five (5) days. Notification ends of the 18th June 2022. No new submissions or additional comments have been made, up until the date of this report. The second set of amended plans are the basis of this report and have been assessed accordingly.

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 2011 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. 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

Section 4.15 Matters for Consideration	Comments
	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 amended plans and further stormwater requirements. 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 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 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 Warringah Development Control Plan 2011 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 13/06/2022 to 18/06/2022 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:
Mrs Nicola Jayne Coates Precise Planning Mr Adam Robert Coates	66 Prescott Avenue DEE WHY NSW 2099
Mr Lyndon Robert Clive Marceau	71 Prescott Avenue DEE WHY NSW 2099
Tomas Severa	62 Prescott Avenue DEE WHY NSW 2099

The following issues were raised in the submissions:

- **Built Form Compliance - Side Boundary Envelope, Side Setbacks and Wall Heights**
- **Building Bulk - Height and Scale of the garage**
- **Landscaped Open Space and Tree Removal**
- **Amenity Impacts - View Loss, Visual Privacy and Overshadowing**
- **Impacts caused by level of excavation/storage area**

The above issues are addressed as follows:

- **Built Form Compliance - Side Boundary Envelope, Side Setbacks, Wall Heights and Building Bulk**

  Comment
  During the assessment of this application, amended plans were received which increased the side setbacks and reduced the building envelope non-compliance.

  The side setbacks and wall height are compliant with the numerical requirements of the relevant clause under the Warringah Development Control Plan 2011. The building does however, encroach the prescribed side boundary envelope on the western elevation, presenting non-compliance with the numerical requirements of the clause.

  Where the proposal seeks to vary a built form control, a merit assessment is conducted against the objectives of that clause within the relevant section of this report. Refer to *Clause B3 Side Boundary Envelope* for further detail.

- **Building Bulk - Height and Scale of the Garage**

  Comment
  Concerns were raised in relation to the elevated nature of the garage and associated driveway, relative to the natural ground levels and the adjoining property to the east (No. 62 Prescott Avenue, Dee Why). Council concurred with the issues raised, with the design lacking a site responsive solution, which was contributing to a visually dominant built form.

  Council requested that the entirety of the garage was to be reduced in height and lowered by 0.5m, to minimise the visual impact. Amended plans were received, adhering to Council's request and additionally including an increased side setback to the eastern adjoining boundary from the proposed garage. This in turn, also reduced the amount of fill underneath the proposed driveway, presenting a proposal that was considered a more site responsive design, in way of site topography and streetscape character.

- **Landscaped Open Space and Tree Removal**

  Comment
  Concerns were raised regarding the numerical non-compliance of landscape open space and the amount of tree removal taking place within the proposal.

  As mentioned above, where the proposal seeks to vary a built form control, a merit assessment is conducted against the objectives of that clause within the relevant section of this report. Refer to *Clause D1 Landscaped Open Space* for further detail. It is noted that the variation of the numerical requirement is deemed minor, presenting a 1.8% shortfall.

  The proposal has been reviewed by Councils Landscape Officer who has raised no objection to the proposal, subject to conditions of consent. The conditions imposed will ensure compliance with the landscape plan and ongoing vegetation maintenance. This includes the replacement of two native trees proposed for removal, as per the submitted Landscape Plan. The Arboricultural Impact Assessment reports that all other existing vegetation within the property are Exempt Species, thus Council consent for management or removal is not required.

- **Amenity Impacts - View Loss, Visual Privacy and Overshadowing**

  Comment
  Concerns were raised in the submissions received that the development will give rise to amenity impacts to adjoining residences, which are addressed below:

  - A view loss analysis has been conducted in relation to the loss of views at No. 66 Prescott Avenue, Dee Why, and has been addressed in detail elsewhere in this report. Refer to *Clause D7 Views* for further detail.

  - Visual privacy has also be addressed in detail elsewhere in this report. Amended plans were received addressing a myriad of concerns involving the positioning of the proposed windows and balconies. Conditions of consent have been additionally imposed to further ensure privacy to adjoining neighbours and the residents to minimise any unreasonable privacy impacts. Refer to *Clause D8 Privacy* for further detail.

  - No unreasonable overshadowing is caused by the development and is considered compliant under *Clause D6 Access to Sunlight.* All adjoining properties will receive sunlight to at least 50% of their private open space areas, receiving a minimum of 3 hours of sunlight between 9am and

3pm on June 21.

- **Impacts Caused by Level of Excavation/Storage Area**

  Comment
  Concern has been raised due to the amount of excavation to accommodate for a basement level storage area and living spaces. Particular concern in relation to the potential property damage to No. 62 and No. 66 Prescott Avenue, Dee Why, during excavation phase.

  The proposed works include a maximum excavation of approximately 3.0m within close proximity to the above mentioned properties. It is noted that a Geotechnical Assessment was undertaken with the relevant documents received.

  Therefore, to address the concerns a Dilapidation Report has been conditioned to be undertaken prior to commencement of works and prior to Occupation Certificate.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for the demolition of an existing dwelling and the construction of a new dwelling, and associated works. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. 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 • D16 Swimming Pools and Spa Pools • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation The Arboricultural Impact Assessment reports that all existing vegetation within the property are Exempt Species by height or by species type and thus Council consent for management or removal is not required. Of these trees two are native species (Bottlebrush) and replacement native trees shall be provided within the property. A large Brushbox located within the road reserve verge is assessed as retainable and shall be protected, and tree protection measures as recommended shall be imposed. The Landscape Plan proposes an adequate landscape outcome with provisions for landscape surface treatments, structures and planting including a mixed range of planting including trees and shrubs, and conditions shall be imposed to ensure that all new tree planting is set at a distance from buildings to allow for establishment. The first floor planter shall be subject to conditions to support the proposed planting.

Internal Referral Body	Comments
NECC (Development Engineering)	Applicant seeks approved to construct a new dwelling. Stormwater management for the developed site is reliant on an OSD management system with a Level spreader method for disposal onto lower properties. SDS Engineering has suggested that procurement of drainage easements over couple of properties is not feasible. No documentations have been submitted showing that the properties below have not agreed to provide drainage easements rights as required by Council's Water Management for Development Policy in particular Stormwater Drainage from Low Level Properties clause 5.1.1.1. The submitted stormwater cannot be assessed since the proposal does not comply with Council's Warringah DCP C4 Controls. DATED 15/06/2022 Applicant provided evidence for not being able to negotiate a down drainage easement required above. No Development Engineering objection subject to recommended conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable without conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1232629S dated 26 October 2021).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass

Energy	50	66

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

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

SEPP (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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.4m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	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 an 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 an 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.

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.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	Western: 5.5m Eastern: 5.5m	-	Yes
B3 Side Boundary Envelope	4.0m (Western Envelope)	Outside Envelope	≈ Max: 46.3%	**No**
	4.0m (Eastern Envelope)	Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (Western Boundary)	Ground Floor: 1.3m First Floor: 3.4m	-	Yes
	0.9m (Eastern Boundary)	Ground Floor: 1.25m - 2.45m First Floor: 4.1m - 4.65m	-	Yes
B7 Front Boundary Setbacks	6.5m (Southern Boundary)	Entry Stairs: 5.6m Dwelling House: 6.4m-6.9m	13.8%	**No**
B9 Rear Boundary Setbacks	6.0m (Northern Boundary)	Dwelling House: 6.0m-9.0m Swimming Pool: 2.8m	- 53.3%	Yes **No**
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (223m²)	39.3% (219.2m²)	1.8% (3.8m²)	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	No	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	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

B3 Side Boundary Envelope

Description of Non-Compliance
Clause B3 Side Boundary Envelope requires development to be sited within a 4.0m building envelope to ensure the bulk and scale of the built form is minimised.

The proposed development encroaches the side building envelope on the western elevation, presenting a maximum variation of 46.3% (Figure 1).

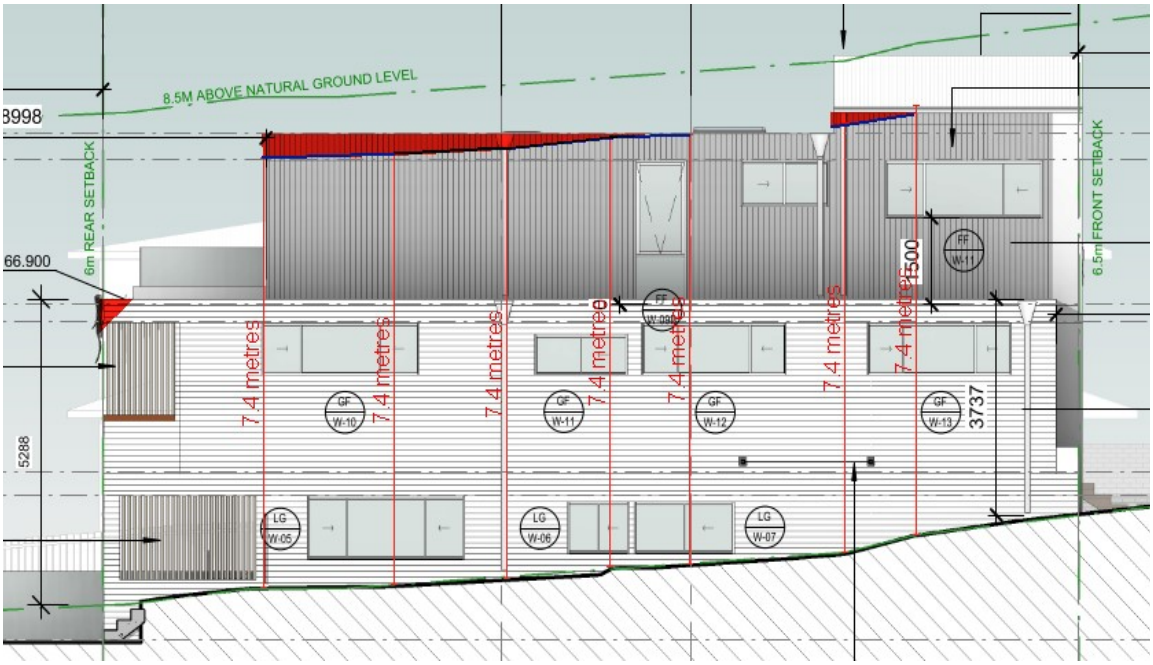


***Figure 1**: Side Building Envelope Encroachment - Western Elevation*

Merit Consideration

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

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

  Comment
  The envelope breach occurs specifically on the western building wall towards the rear, and will not visually impact the streetscape character. The proposed development exhibits compliance with the numerical requirements for side boundary setbacks, which will accommodate for the use of screen planting, resulting in adequate spatial separation between adjoining properties. In addition, the proposed design keeps within the height of the natural environment by sitting below tree canopy height and provides a compliant Building Height Standard of 8.5m with no significant vegetation removal required to facilitate the works. Therefore, it is considered that the overall design aids in the mitigation of bulk and scale at a reasonable level when viewed from adjoining properties and the public domain.

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

between buildings.

Comment
The encroachment to the side boundary envelope ton the western elevation does not unreasonably impact the level of amenity currently enjoyed by neighbouring properties by virtue of solar access. Shadow diagrams have been received presenting compliance by way of depicting each adjacent property to maintain at least 3 hours of direct sunlight to more than 50% of private open space on June 21st, as per *Clause D6 Access to Sunlight* requirements. No windows and/or balconies are located within the side building envelope encroachment, subject to recommended conditions of consent, privacy impacts are considered to be reasonable within a residential environment (Refer to *Clause D8 Privacy* for further detail).

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

  Comment
  The building height descends in height with the slope of the land to ensure an appropriate response to the site topography.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

B7 Front Boundary Setbacks

Description of Non-Compliance
Clause B7 Front Boundary Setbacks prescribes a front boundary setback requirement of 6.5m for all built structures, other than driveways and fencing.

The proposed development provides a varied front setback of 5.6m - 6.9m, presenting a partial non-compliance with a maximum variation of 13.8%.

The non-compliance to the street frontage arises due to the inclusion of an entry porch and stairway, which is roofed but open in construction. The remainder of the dwelling house and associated garage is compliant with the 6.5m minimum front boundary setback.

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

- ***To create a sense of openness.***

  Comment
  The front setback non-compliance is not considered to impinge upon the sense of openness along streetscape. The proposed varied front setbacks, with the incorporation of a balcony, front porch and landscaped front yard is likely to contribute to the sense of openness and compliment the surrounding properties in way of spatial proportions and visual consistency.

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

  Comment
  The proposed development is consistent with the visual continuity and front setbacks of the immediate properties, adjoining the subject site which contain a variation design consisting of

front porches and entry stairways. The majority of the build presents compliance with the clause requirements, in exception of a lightweight entry porch. The encroachment is unlikely to cause a detrimental impact to the overall building line pattern of the streetscape, with the proposed development incorporating a landscaped front façade to alleviate the perception of any visual dominance.

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

  Comment
  As mentioned above, the proposed design consists of a front porch accompanied by a quality landscaped front yard, presenting an attractive front façade to Prescott Avenue. The utilisation of building elements such as planter boxes, variation in building materials, modulation and a diversified roof style offers an enhanced visual aesthetic to the streetscape character. In addition, pedestrian amenity is seen to be improved through the use of a landscaped pathway and stairway to the entrance of the dwelling, creating an easy and practicable access point.

- ***To achieve reasonable view sharing.***

  Comment
  The encroachment into the front setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain, and is likely to retain a reasonable sense of view sharing (Refer to *Clause D7 Views* for further detail).

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

B9 Rear Boundary Setbacks

Description of Non-Compliance
Clause B9 Rear Boundary Setbacks requires development to comply with a rear setback of 6.0m.

An exception is provided within the Clause for land zoned R2 Low Density Residential, where the minimum rear building setback is 6.0 metres, exempt development such as swimming pools that in total, do not exceed 50% of the rear setback area can be supported, provided that the objectives of this provision are met.

The proposed development consists of a swimming pool located 2.8m from the norther rear boundary line, and does not exceed 50% of the rear setback area. It is also noted that the majority of the built form provides a compliant rear setback of at least 6m.

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

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

  Comment
  The dimensions of the landscaped open space area is sufficient in accommodating for the new proposed vegetation as noted within the submitted landscape plan (By R+M Landscape Architecture), and is capable of providing future deep soil landscaping opportunities.

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

  Comment
  The non-conforming element of the proposal is an in-ground swimming pool situated below existing ground level within a landscaped rear garden. There is no above-ground rear setback encroachments cause by the remainder of the design, on this basis the presence of a swimming pool does not detract from a sense of openness within the rear yard.

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

  Comment
  In relation to the swimming pool, privacy is likely to be ensured through the proposed screen planting along the northern and eastern boundary perimeter which will act as a landscaped privacy buffer for both the residents and adjoining neighbours. In addition the erection of a standard 1.8m boundary fence will provide for the preservation of amenity at a considerate level within a residential setting (Refer to *Clause D8 Privacy* for further detail).

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

  Comment
  The proposed swimming pool will not disrupt or compromise the existing visual continuity of the area, in relation to rear setbacks. This is primarily due to the the minor scale of the development that encroaches the rear setback area, and the significantly varied rear boundary lines that are existing within the immediate vicinity of Prescott Avenue.

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

  Comment
  As mentioned above, the proposed development provides appropriate opportunities to maintain privacy between dwellings.

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

D1 Landscaped Open Space and Bushland Setting

Description of Non-Compliance
Clause D1 Landscape Open Space and Bushland Setting requires a minimum of 40% of the subject site to be landscaped open space, which equates to 223m². Any open space areas with a dimension of less than 2.0 metres are excluded from this calculation.

The proposed development provides a landscaped area of 219.2m² or 39.3%, therefore presenting a variation of 1.8% or 3.8m² to the requirements of this clause.

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

- ***To enable planting to maintain and enhance the streetscape.***

  Comment
  Notwithstanding the minor shortfall in the landscape calculation, the development provides an overall satisfactory landscape presentation to Prescott Avenue. The dimensions within the front setback will accommodate the additional proposed landscaping and supplementary native trees imposed via condition of consent, which in turn will compliment the natural environment within the immediate vicinity

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

  Comment
  The majority of the vegetation subject for removal is considered exempt species under the submitted Arboricultural Impact Assessment. Two native trees proposed for removal will be replaced by supplementary native species as per a condition of consent provided by Council's Landscape Officer. It is therefore considered that the works will not disable the conservation and enhancement of indigenous vegetation, topographical features and habitat for wildlife.

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

  Comment
  The development provides sufficient dimensions both within the front and rear yard of the site that enables opportunities for the plantation of various vegetation (i.e. shrubs and hedging), this can be reflected through the submitted Landscape Plan (By R+M Landscape Architecture). In terms of canopy trees, conditions have been imposed to ensure the proposed replacement of two native trees and to ensure the protection of the street canopy tree. All vegetation on site is considered to, over time, aid in the screening of the building to mitigate the bulk and scale when viewed from the public domain and neighbouring properties.

- ***To enhance privacy between buildings.***

  Comment
  Privacy and amenity is considered to be protected by the proposed vegetation and screen planting located to the rear and side setback areas. However, whilst wholly not relied upon for sufficient visual privacy the development is considered to achieve adequate building separation and modulation within the design (Refer to *Clause D8 Privacy* for further detail).

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

  Comment
  Notwithstanding the non-compliance, it is likely that the subject site, particularly the rear open space area can accommodate by way of dimensions and orientation for outdoor recreational activities, enhancing the amenity for the occupants.

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

  Comment
  The site will retain an adequate level of soft landscaped areas and impervious areas of appropriate proportions to accommodate service functions, including clothes drying.

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

  Comment
  The proposal has been reviewed by Council's Development Engineer, having regard to provisions for Stormwater management and has raised no objections subject to conditions included in the recommendation of this report. Stormwater runoff is not expected result in any unreasonable impacts to soil erosion and siltation of natural drainage channels.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D7 Views

Merit Consideration
Two (2) submissions were received which included concerns regarding view loss to the following property:

- 66 Prescott Avenue, Dee Why

An initial site inspection was conducted to the affected property on 14 February 2022 to ascertain the extent of views enjoyed from that property. After the initial site inspection, a request was made to erect height poles to determine the impact of the development on views. Two (2) further view loss inspections occurred involving height poles. The first on 30 March 2022 to determine the view impact caused by the proposal in the original set of plans. A significant view loss impact was evident, this triggered the requirement for amended plans to give consideration to reasonable view sharing. Once the amended plans were received, a second view loss inspection took place on 4 May 2022, with the impacts to be addressed in the below view loss analysis.

Note: The height poles in the images below are based on the original set of architectural plans. The rear setback was then increased to the half way mark between each of the two height poles in the amended plans. The view loss was considered to be determinable in this regard, thus not requiring a further height pole to be marked.

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

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

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

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

Comment on Principle 1
The affected view to No. 66 Prescott Avenue, is achieved primarily in an easterly and north-easterly direction over the subject site's (64 Prescott Avenue) side and rear boundaries. The views currently obtained consist of a partial view of Dee Why Lagoon and Long Reef Headland. In addition to an extensive view of the ocean (water views) and district view of Collaroy Plateau. These views are highly valued by the affected occupants.

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

Comment on Principle 2
The views as mentioned above, are primarily obtained from the first floor level, which includes the kitchen, dining room and living area windows, leading onto the balcony (outdoor living space) situated towards the rear and side of the dwelling house. Views can also be obtained from the upper ground floor level secondary living space window. All views obtained are achieved in both a sitting and standing position, with the exception of the living room window which is only achieved at a standing point of view, due to the presence of a highlight window. As noted in the planning principle, views over the side boundary are more difficult to protect than those from a front and rear boundary and the expectation to maintain sitting views are even more difficult to retain.

Photos from First Floor Level

Photo 1: *Views obtained from kitchen northern facing window of Long Reef Headland, Dee Why Lagoon, district and ocean views*



Photo 2: *Views obtained from Kitchen eastern facing window of Long Reef Headland, Dee Why Lagoon, district and ocean views*



Photo 3*: Views obtained from Dining Room of Long Reef Headland, Dee Why Lagoon, district and ocean views*



Photo 4: *Views obtained from Living Room of Long Reef Headland, Dee Why Lagoon, district and ocean views*



Photo 5: *Views obtained from eastern side of Balcony of Long Reef Headland, Dee Why Lagoon, district and ocean views*



Photo 6: *Views obtained from northern side of Balcony of Long Reef Headland, Dee Why Lagoon, district and ocean views*



Photo 7: *Views obtained from western side portion of rear balcony of Long Reef Headland, Dee Why Lagoon, district and ocean views*

Photo from Ground Floor Level



Photo 8: *Views obtained from ground floor secondary living space of Long Reef Headland, Dee Why Lagoon and ocean views*

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

Comment to Principle 3
The proposed development will reduce the extent of views to the high usage areas such as the kitchen, living and dining area and rear balcony. Reduced views to the low usage room being the secondary living space will also occur.

The affected view from the upper ground floor secondary living space towards the north-east consists of a partial ocean view and Long Reef Headland, which will be completely lost as a result of the proposed development. However, it is noted that the view obtained over the side boundary is more difficult to maintain. In addition, the location and orientation of the secondary living space window is extremely susceptible to view loss. In this regard, the extent of the view loss is considered to be **devastating.**

The views obtained from the first floor level, consist of a partial view of Dee Why Lagoon and Long Reef Headland and an extensive view of the ocean (water views) and district view of

Collaroy Plateau. The extent of the impact is as follows:

- KITCHEN **(Moderate):** Loss of Long Reef Headland, Dee Why Lagoon and ocean views from easterly window from kitchen area. However, it is considered that approximately 50% of the view obtained form the northern window (towards the north-east) will be maintained consisting of Long Reef Headland, Dee Why Lagoon, district and ocean views.

- DINING ROOM **(Severe)**: Views of Long Reef Headland and Dee Why Lagoon will be entirely lost. The majority of the ocean views will also be lost, however a fragment of ocean view will be maintained over the Collaroy Plateau District View. The Collaroy Plateau District View, is unlikely to be impacted upon when viewed from the dining room area.

- LIVING ROOM **(Severe)**: Views of Long Reef Headland and ocean views are considered to be entirely lost, with the potential retention of the Collaroy Plateau District View. The view impact is not considered "devastating", as the views obtained from the living room consisted only from a standing point of view through a highlight window.

- REAR AND SIDE BALCONY **(Minor):** Views from Long Reef Headland, Dee Why Lagoon, Collaroy Plateau should be retained both from a sitting and standing position. A fragment of ocean view located directly over the eastern boundary is likely to be lost (view directly over No. 62 Prescott Avenue). The view loss is considered minor due to the significant retention of views listed above. These views improve substantially when obtained at the western portions of the rear balcony.

Therefore, the overall view loss is considered to be **moderate to severe**, based on the extent of view corridors and types of views to be impacted (as mentioned in detail above). It is also noted, that the majority of the view corridors will be retained in particular from the rear and side first floor balcony.

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

Comment to Principle 4
The development area that impacts the main view lines is compliant with the Building Height Standard of 8.5m and exhibits a flat roof form. The proposal has been found to exhibit non-compliance with the Front Boundary Setback and the Side Boundary Envelope built form controls. Both elements of non-compliance have been found to be acceptable, achieve consistency with the objectives of the control and have subsequently been supported.

In relation to the Side Boundary Envelope, the non-compliance along the western elevation, is primary caused by the sloping topography towards the northern and eastern portion of the site. As the non-compliance is not considered a significant breach, to provide a fully compliant side boundary envelope would generally result in a similar view loss outcome.

The question of a more skilful design which provides the applicant with a similar development

potential and amenity whilst reducing the extent of impact on the views obtained from the affected property, in this case No. 66 Prescott Avenue, was considered. A close analysis of the architectural plans determined that the only opportunity to fully retain all existing view lines, would be to limit the built form of No. 64 Prescott Avenue at the rear of the subject site, increasing the rear setback significantly when compared to the rear setbacks of adjoining properties. This is considered unreasonable in this instance, resulting in a minimum 12.0m rear setback, double that of No. 62 and 66 Prescott Avenue, or alternatively limit the proposed design to a single storey building (ground floor level on top of the basement).

It was recognised that by increasing the rear setback on the first floor level, from 6.0m to 9.0m (with the exception of the rear balcony and planter boxes) would significantly reduce the amount of view loss compared to the impacts from the original architectural plans. The amended plans received on 5 May 2022 determined that this was possible, with the extent of impacts detailed within this view loss analysis. This can be seen on the height pole images above, the rear setback was increased to the halfway mark between the two height poles. The diagrams below demonstrates this, for ease of viewing and understanding the difference.

Therefore, the proposed dwelling house is considered reasonable in the circumstances of this application and demonstrates a reasonable sharing of views, particularly considering the views are across a side boundary.

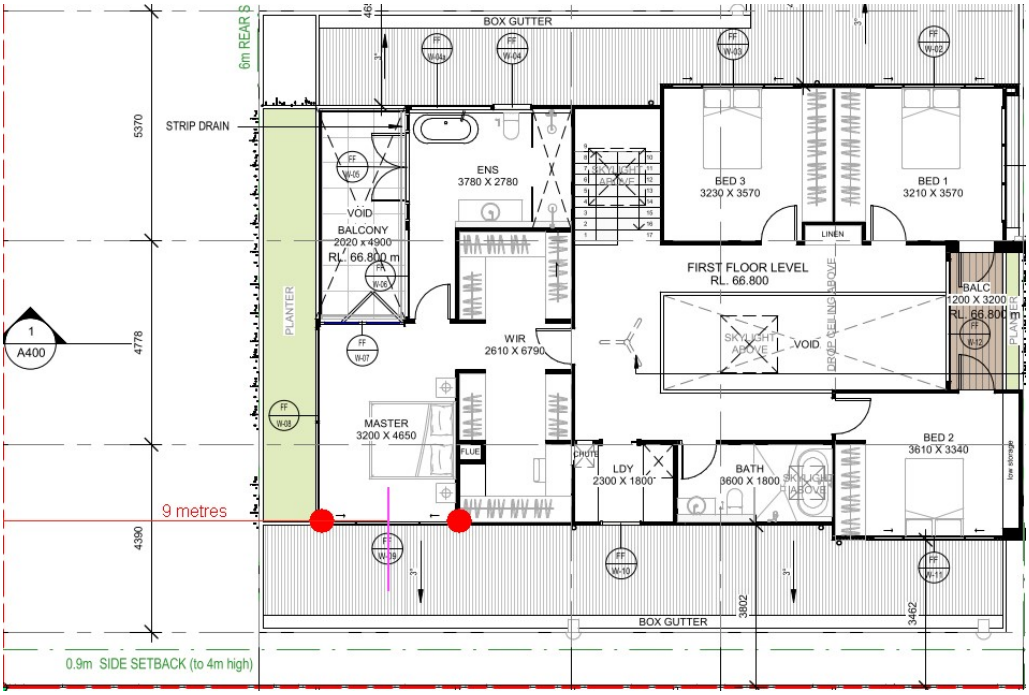


Diagram 1: *Height Pole Locations Aerial View - Red dots are the height poles, pink line is the new rear setback of first floor*

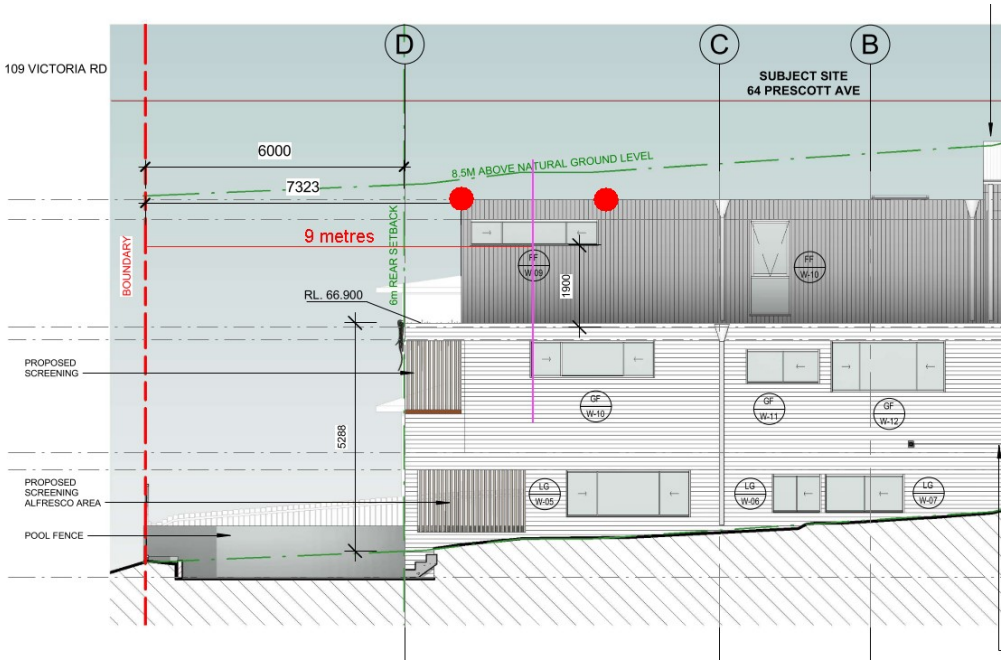


Diagram 2: *Height Pole Locations Western Elevation View - Red dots are the height poles, pink line is the new rear setback of first floor*

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

  Comment
  The proposed flat roof plane and extensive side and rear setbacks provide larger view lines for adjoining and/or affected properties, improving surrounding amenity. As a result, the proposal demonstrates adequate design solutions in an attempt to develop a proposal that incorporates modern and contemporary architecture that is responsive to the natural and urban environment of the vicinity.

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

  Comment
  Any trees proposed to be removed, will have to be subsequently replaced via an included condition of consent, ensuring that any existing canopy
  trees have priority over views.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D8 Privacy

Merit Consideration
Clause D8 requires that habitable rooms and outdoor living areas of dwellings optimise visual privacy through an appropriate design outcome. Private open space areas including swimming pools and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking within 9.0 metres, through the use of privacy screens, planter boxes or another similar design element.

Proposed Windows - Eastern Elevation
Concerns have been raised in relation to the first floor bedrooms, lower ground floor living, and kitchen/butlers pantry windows. The privacy concerns were taken into consideration with particular windows amended at Council's request. The following amendments were made:

- Master Bedroom (en-suite) window presents a window sill height of 1.7m
- Deletion of the upper ground floor kitchen window

These changes are considered to adequately address the privacy impacts through the use of window elements or complete removal.

Bedroom 1 and Bedroom 3 windows, have maintained a reasonable sill height of 1.5m. In addition, the NSW Land and Environment Court (*Meriton v Sydney City Council [2004] NSWLEC 313*), established a planning principle for the protection of visual privacy. Which stipulates the use of a space will determine the level of privacy achieved. It can be considered that the privacy of living areas which is most frequently used, is more objectionable than that of a bedroom where people tend to spend less time. Therefore, combined with an approximate 7.0m window to window separation, it is unlikely that the proposed bedroom windows will cause any unreasonable impacts to the easterly adjoining neighbour (No. 62 Prescott Avenue).

In this respect, it is considered appropriate to then impose a condition of consent requiring the butlers pantry window to install either privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), an increased sill height (i.e. containing a sill height of 1.65m from the FFL) or obscured glazing. It is noted that the easterly lower ground floor living window is unlikely to further impact the adjoining neighbour, as it would be obscured by a standard 1.8m height boundary fence.

Proposed Windows - Western Elevation
It is considered that the majority of the proposed windows on the western elevation within the development have been appropriately designed to ensure the privacy of the adjoining neighbours through the use high windows sill designs (1.7m) to all living room and bathroom windows. Due to the close proximity of proposed Bedroom 2 window to the westerly adjoining neighbour (No. 66 Prescott Avenue) Bedroom 1 window, it is appropriate to also impose a condition of consent requiring this window to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), an increased sill height (i.e. containing a sill height of 1.65m from the FFL) or obscured glazing.

Proposed Balconies
The proposed upper ground floor balcony is situated to the rear (north) elevation, and extends the entire width of the dwelling house. The balcony exhibits a setback of 1.3m to the western boundary line and 2.45m to the eastern boundary line, therefore within 9m of both adjoining neighbours. To ensure a reasonable level of visual privacy is maintained between the subject site and adjoining neighbours, the design has incorporated a privacy screen to the west and a planter box to the eastern edge of the balcony.

The proposed first floor balcony is also situated to the rear (north) elevation, and has been amended to appropriately minimise the potential for direct overlooking into adjoining properties, with the consideration of maintaining view sharing to the westerly neighbour (No. 66 Prescott Avenue). This has been achieved through the increased side setback from the balcony to all adjoining neighbours (ranging from 5.7m - 6.5m), with the addition of planter boxes that wrap around the entirety of the balcony. It is noted that a similar element was used to reduce privacy impacts caused by the development at No. 66 Prescott Avenue. Privacy screens, were not considered reasonable in this instance, as it was determined to result in unreasonable view loss to No. 66 Prescott Avenue. A condition of consent has been imposed that requires the ongoing maintenance of the vegetation within the planter boxes.

No. 109 Victor Road, privacy is considered to be protected by appropriate spatial separation and the use of screen planting including the plantation of a water gum tree within the rear yard of the subject site. Limited windows are present along the northern property's adjacent elevation, with a balcony that is located in an excess of 9m when measured to the subject site's rear balcony. No submissions have been received from No. 109 Victor Road in relation to privacy impacts.

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

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D12 Glare and Reflection

The light colour range in particular 'Surfmist' being proposed does not meet the requirements of Clause D12. To present a compliant development, the proposed roof has been conditioned to provide a medium to dark colour range. This will ensure that the objectives of the clause can be met and will reduce potential solar reflectivity.

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 $12,877 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,287,660.

CONCLUSION

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

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

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

conditions contained within the recommendation.

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

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

PLANNING CONCLUSIONS

The assessment of the proposed development has identified the non-compliances to the requirements of the applicable controls related to the side boundary envelope, front and rear setback, landscaped open space, view loss and visual privacy under the Warringah Development Control Plan 2011.

It is determined that these non-compliances however meet the relevant objectives and would not result in unreasonable amenity impacts to surrounding properties or detrimentally impact the existing streetscape character by virtue of its architectural style and scale.

A total of two (2) submissions where received in response to the notification of the original development application. The issues raised in these submissions have been addressed in the “Public Notification Section” of this report. Critical issues raised by the submissions were also concurred with by Council. The first amended set of plans requested by Council attracted one (1) additional submission, and further comments made by the original two (2) objectors, as a result of the applicant not sufficiently addressing the initial planning concerns raised, in exception of view loss. The second amended set of plans requested by Council are still currently on notification until the 18th June 2022, and have not received any new additional submissions or further comments from the three (3) objectors up until the date of this report.

Council believes, the applicant responded to the planning issues identified in the initial assessment with the second set of amended plans which are the basis of this report.

On balance, and considering the preceding detailed assessment of the application, addressing the concerns raised by resident objectors, including a detailed analysis of views and privacy impacts, it is considered that the 'second amended' proposal, subject to the recommended conditions will result in a development that is reasonable in design and scale and is sufficiently compatible with the existing dwelling houses on adjoining properties and in the surrounding area.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2224 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 2 DP 23018, 64 Prescott Avenue, DEE WHY, 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**
A100 - Site Plan (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A200 - Basement Floor (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A210 - Ground Floor (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A220 - First Floor (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A230 - Roof Plan (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A300 - Elevations (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A310 - Elevations (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A320 - Elevations (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A330 - Elevations (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A400 - Section (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A410 - Section (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A420 - Section (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A430 - Driveway Plan and Section (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A610 - Pool Details (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction
A840 - Construction Management Plan (Issue G)	1 June 2022	Future Flip - Innovative Design & Construction

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
C001- Concept Stormwater Drainage Plan/Details	29 October 2021	SDS Engineering

Reports / Documentation – All recommendations and requirements contained

within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (#1232629S)	26 October 2021	SDS Engineering
Arboricultural Report	22 November 2021	Tree Management Strategies
Geotechnical Risk Management Form No. 1 + No. 1(a)	9 August 2021	Geotechnical Consultants Australia Pty Ltd.
Geotechnical Investigation Report (#G21439-1)	9 August 2021	Geotechnical Consultants Australia Pty Ltd.
Stormwater Report - Investigation of Inter-allotment Drainage Easement	11 November 2021	SDS Engineering

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
LP02 - Landscape Plan 01 (Issue B)	October 2021	R+M Landscape Architecture
LP03 - Landscape Plan 02 (Issue B)	October 2021	R+M Landscape Architecture

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	10 November 2021	Future Flip - Innovative Design & Construction

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

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

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

A dwelling house is defined as:
"dwelling house means a building containing only one dwelling."
(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

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

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

3. **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 $12,876.60 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 $1,287,660.00.

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. **On Slab Landscape Works**
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed: 300mm for groundcovers and/or 600mm for shrub planting.
Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

For all new residential works with two or more dwellings and mixed use developments the maintenance activity schedule shall incorporate an on-going maintenance plan that shall be submitted to the Certifying Authority outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

8. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- **First Floor Window (W-11)** - A privacy screen is to be installed on the "first floor" western window to "Bedroom 2" (W-11) as shown on the approved plans. The privacy screen shall be of louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

- **First Floor Window (W-09B) -** A privacy screen is to be installed on the "first floor" western window to "LDY" (W-09B) as shown on the approved plans. The privacy screen shall be of louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

- **Ground Floor Window (W-05)** - A privacy screen is to be installed on the " ground floor" eastern window to "Butlers" (W-05) as shown on the approved plans. The privacy screen shall be of louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Ground

Floor Level.

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

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

9. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's "WATER MANAGEMENT for Development POLICY", and generally in accordance with the concept drainage plans prepared by SDS Engineering drawing number C001 (210536), dated 29/10/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

10. **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.

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

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

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

12. **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.

13. **A Construction Traffic Management Plan (CTMP)**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to the Certifying Authority prior to the issue of a Construction Certificate.

The CTMP must address following:

• The proposed phases of construction works on the site, and the expected duration of each construction phase;
• Make provision for all construction materials to be stored on site, at all times;
• The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
• The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
• Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety;
• The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure;
• Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council Street trees;
• The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
• Specify that the roadway and road reserve (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments at no cost to Council; and
• The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Properties: No. 62 Prescott Avenue, Dee Why and No. 66 Prescott Avenue, Dee Why.

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner,

the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages and the Brushbox street tree fronting the development site shall be protected in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment, including:
i) section 3 - Tree Management Plan
ii) section 5 - Conclusions & Recommendations

A qualified Arborist with minimum AQF Level 5 in arboriculture shall supervise the works listed above and shall provide certification to the Certifying Authority including photographic evidence and reports that works within the tree protection zone of the Brushbox street tree comply to the requirements of Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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

Reason: Street tree protection.

16. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist

with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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.

Reason: Tree and vegetation protection.

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

Reason: Public safety.

18. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- 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.

19. **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.

20. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

21. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 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.

22. **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

23. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3 metres from buildings or more, and at least 1.5 metres from common boundaries.

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

Reason: Environmental amenity.

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

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

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

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

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

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

25. **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.

26. **Reinstatement of Kerb**
The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

27. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

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

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

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

28. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

29. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management.

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

30. **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.

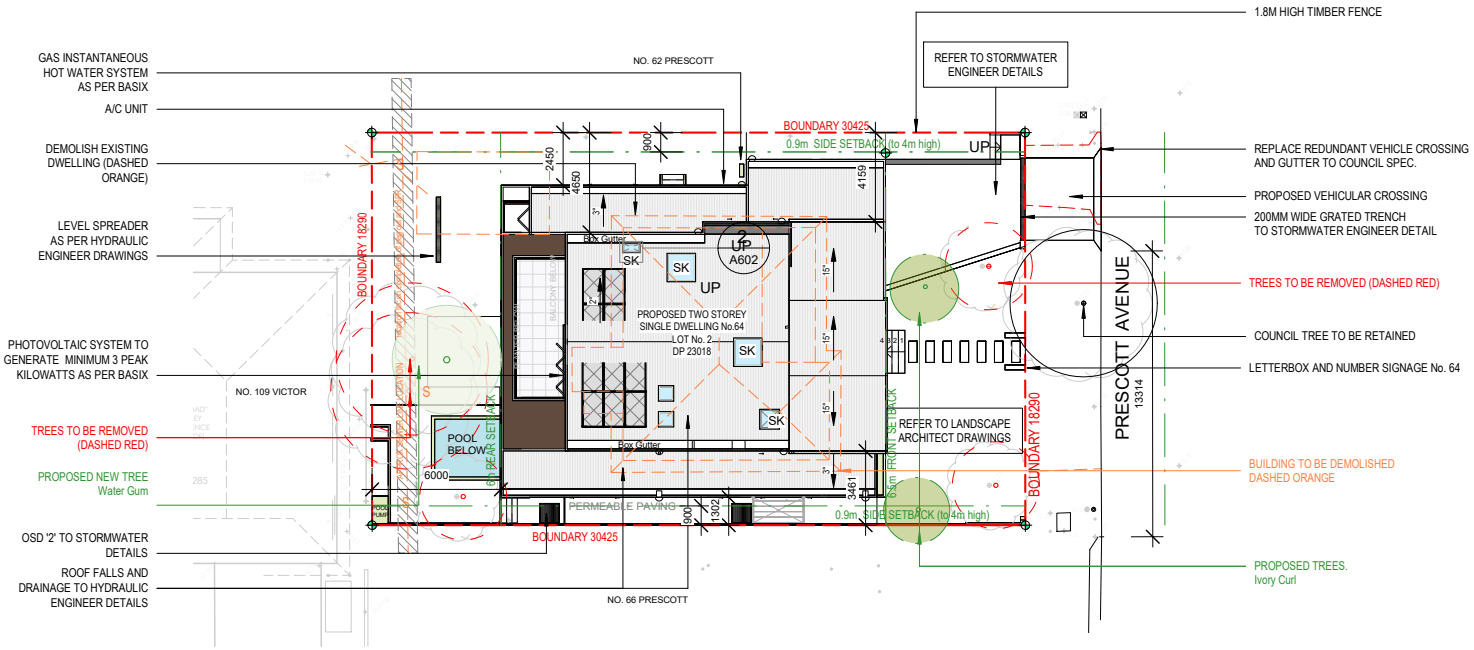
Reason: To maintain local environmental amenity.

31. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

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

DESIGN PLANS ONLY - NOT FOR CONSTRUCTION



SITE PLAN
1 : 200

FUTUREFLIP
INNOVATIVE DESIGN & CONSTRUCTION

Project: Proposed New Dwelling & Swimming Pool
Client: Jessica & Daniel Chiha
64 Prescott Ave, 2099, Dee Why, NSW

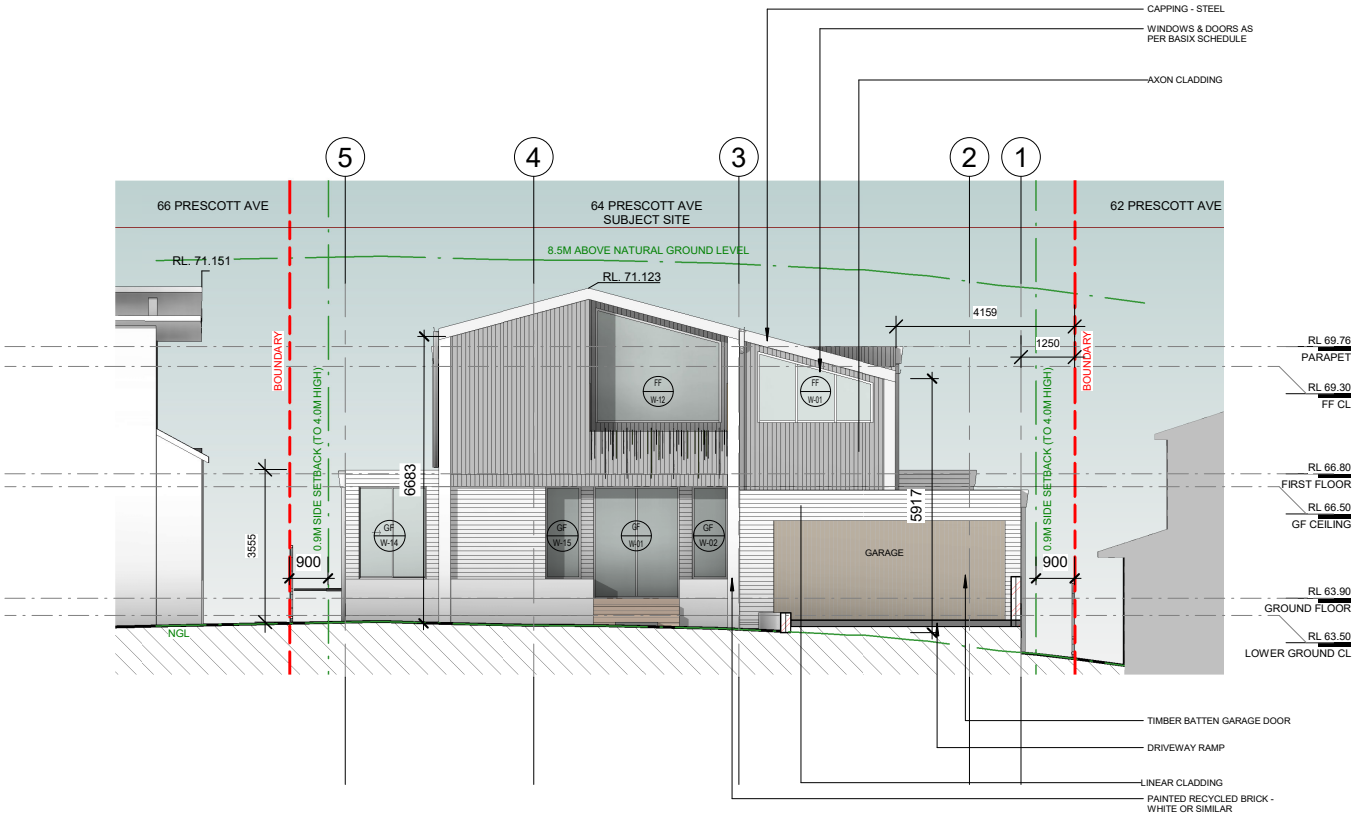
No.	Issue Description	Date
B	Issue to Consultants	25/05/21
C	Issue to Consultants	08/07/21
D	To Consultants	29/10/21
E	DA ISSUE	12/11/21
F	COUNCIL RFI 01	05/05/22
G	COUNCIL RFI 02	01/06/22

Drawing: Site Plan

Drawn:	LF	Project No:	Drawing No:	Issue:
Date:	11/2021	20-99	A100	G
Scale:	1 : 200			

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DESIGN PLANS ONLY - NOT FOR CONSTRUCTION



SOUTH ELEVATION
1 : 100

FUTUREFLIP
INNOVATIVE DESIGN & CONSTRUCTION

Project: Proposed New Dwelling & Swimming Pool
Client: Jessica & Daniel Chiha
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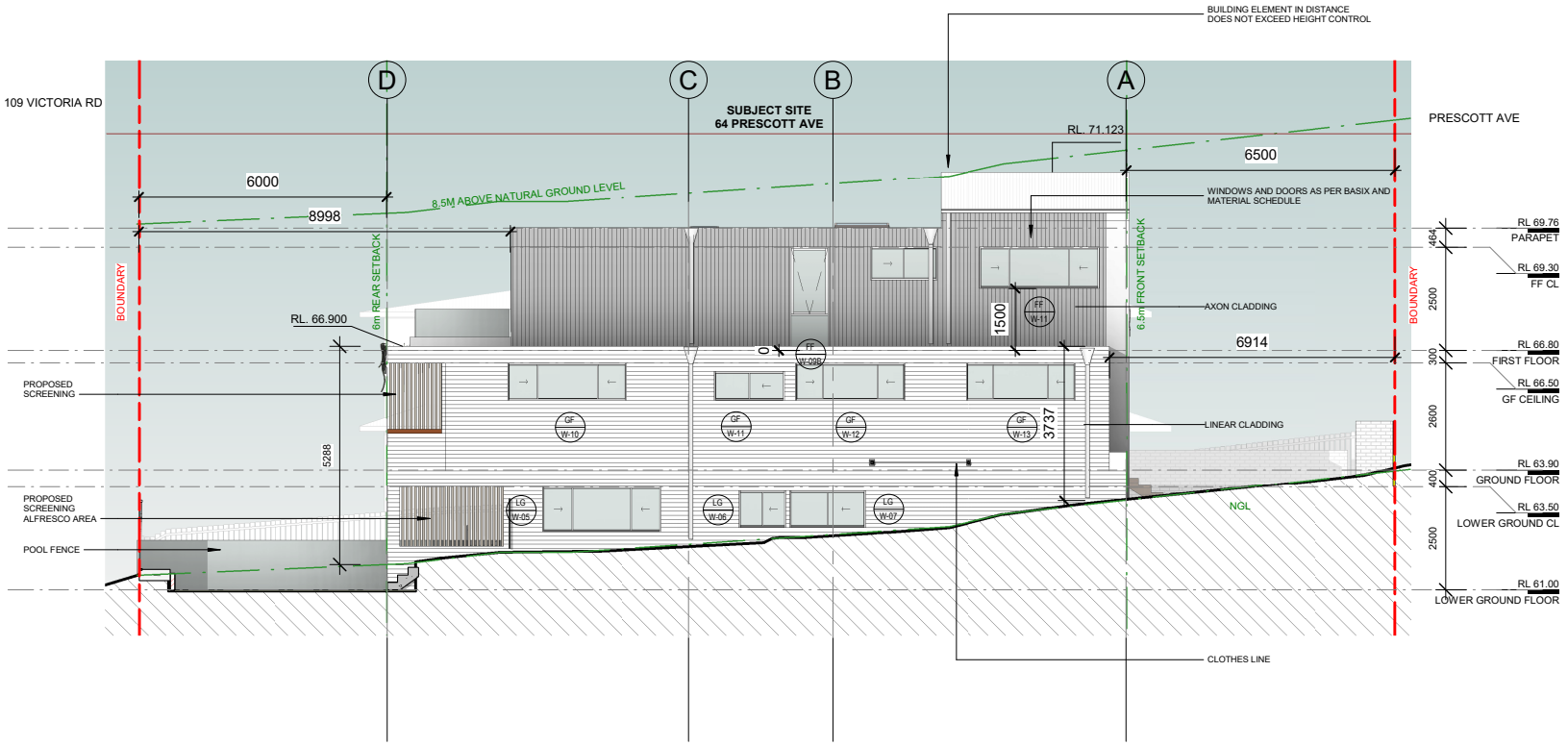
No.	Issue Description	Date
A	Concept 2 Draft Issue to Client	23/04/21
B	Issue to Consultants	25/05/21
C	Issue to Consultants	08/07/21
D	To Consultants	29/10/21
E	DA ISSUE	12/11/21
F	COUNCIL RFI 01	05/05/22
G	COUNCIL RFI 02	01/06/22

Drawing: Elevations

Drawn:	LF	Project No:	Drawing No:	Issue:
Date:	11/2021	20-99	A300	G
Scale:	1 : 100			

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DESIGN PLANS ONLY - NOT FOR CONSTRUCTION



WEST ELEVATION
1 : 100

FUTUREFLIP
INNOVATIVE DESIGN & CONSTRUCTION

Project: Proposed New Dwelling & Swimming Pool
Client: Jessica & Daniel Chiha
64 Prescott Ave, 2099, Dee Why, NSW

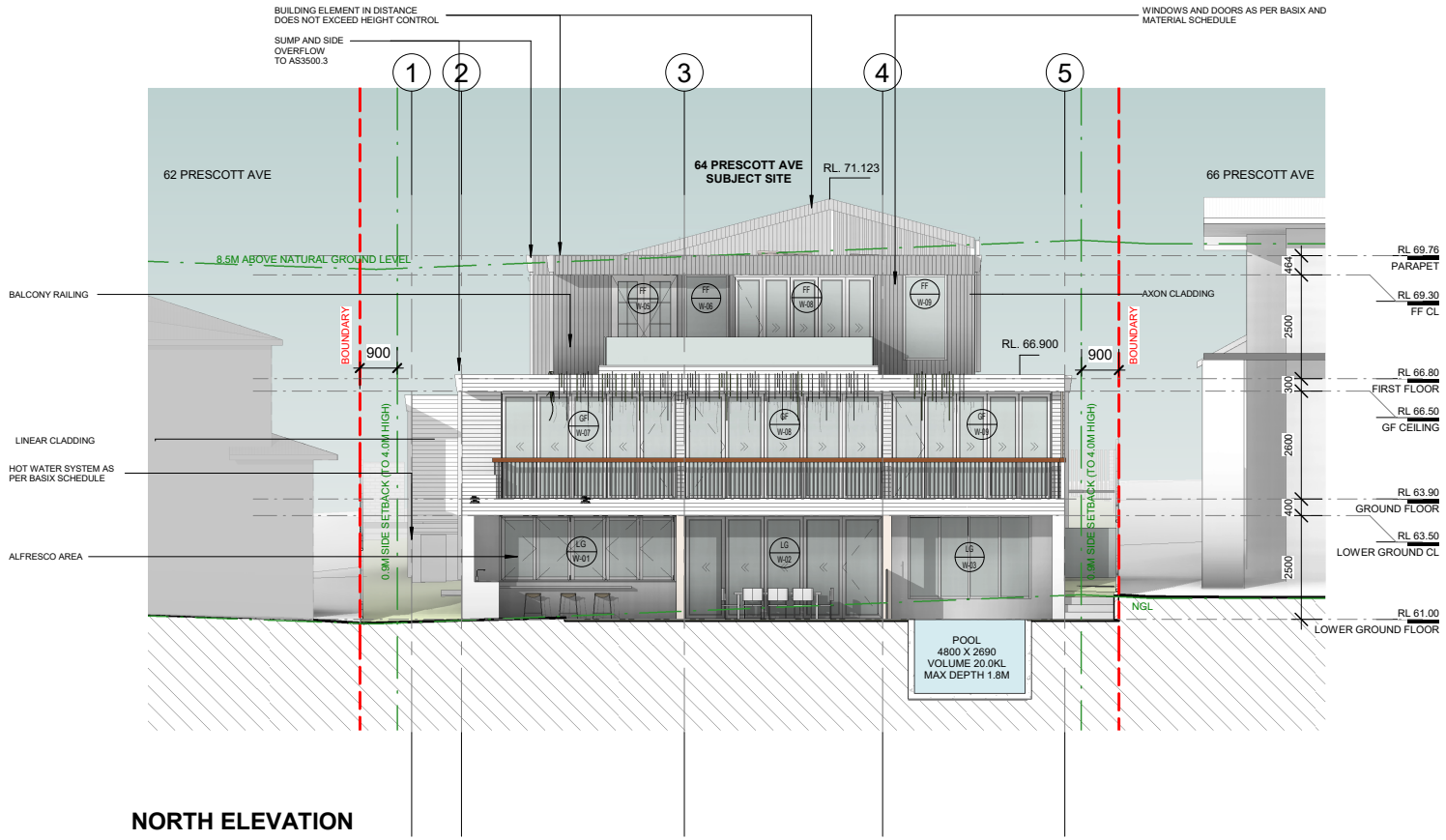
No.	Issue Description	Date
B	Issue to Consultants	25/05/21
C	Issue to Consultants	08/07/21
D	To Consultants	29/10/21
E	DA ISSUE	12/11/21
F	COUNCIL RFI 01	05/05/22
G	COUNCIL RFI 02	01/06/22

Drawing: Elevations

Drawn:	DM	Project No:	Drawing No:	Issue:
Date:	11/2021	20-99	A310	G
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DESIGN PLANS ONLY - NOT FOR CONSTRUCTION



NORTH ELEVATION
1 : 100

FUTUREFLIP
INNOVATIVE DESIGN & CONSTRUCTION

Project: Proposed New Dwelling & Swimming Pool
Client: Jessica & Daniel Chiha
64 Prescott Ave, 2099, Dee Why, NSW

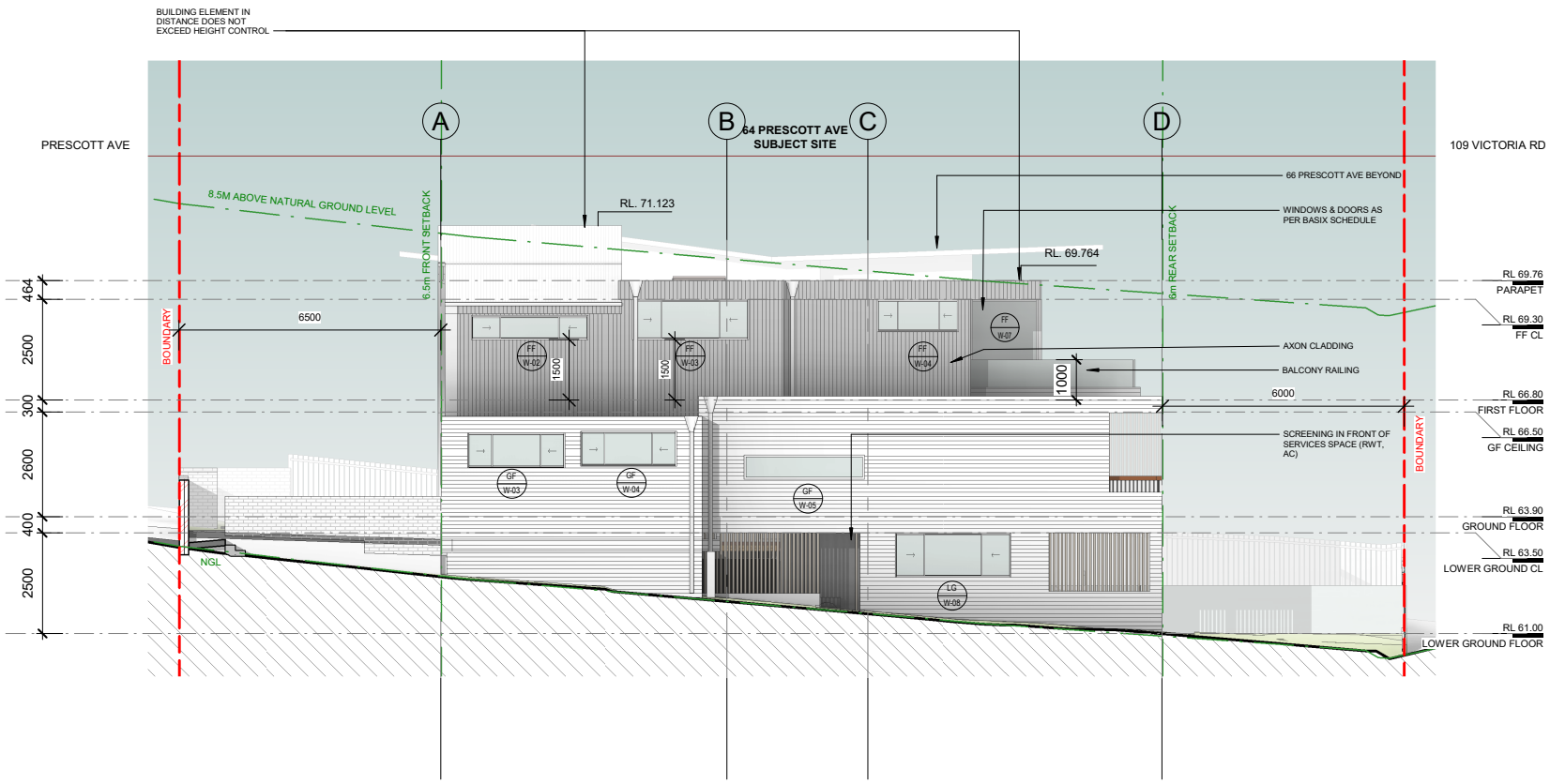
No.	Issue Description	Date
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D	To Consultants	29/10/21
E	DA ISSUE	12/11/21
F	COUNCIL RFI 01	05/05/22
G	COUNCIL RFI 02	01/06/22

Drawing: Elevations

Drawn:	LF	Project No:	Drawing No:	Issue:
Date:	11/2021	20-99	A320	G
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DESIGN PLANS ONLY - NOT FOR CONSTRUCTION



EAST ELEVATION
1 : 100

FUTUREFLIP
INNOVATIVE DESIGN & CONSTRUCTION

Project: Proposed New Dwelling & Swimming Pool
Client: Jessica & Daniel Chiha
64 Prescott Ave, 2099, Dee Why, NSW

No.	Issue Description	Date
B	Issue to Consultants	25/05/21
C	Issue to Consultants	08/07/21
D	To Consultants	29/10/21
E	DA ISSUE	12/11/21
F	COUNCIL RFI 01	05/05/22
G	COUNCIL RFI 02	01/06/22

Drawing: Elevations

Drawn:	LF	Project No:	Drawing No:	Issue:
Date:	11/2021	20-99	A330	G
Scale:	1 : 100			

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ITEM 3.3	**DA2021/2564 - 20 LEINSTER AVENUE KILLARNEY HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2022/364160**
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 DA2021/2564 for alterations and additions to a dwelling house including a swimming pool on land at Lot 526 DP 218576, 20 Leinster Avenue KILLARNEY HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2564

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 526 DP 218576, 20 Leinster Avenue KILLARNEY HEIGHTS NSW 2087
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kimberley Richard Harold Manns Clare Christina Margaret Manns
Applicant:	Kimberley Richard Harold Manns

Application Lodged:	07/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/01/2022 to 03/02/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,369,169.00

EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to the existing dwelling.

As the proposal attracted four (4) submissions in objection to the development with a cost of works greater than $1million, the application is referred to the Development Determination Panel.

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

- Swimming pool setbacks, privacy and visual impact

- Stormwater drainage
- Geotechnical and bushfire impacts
- Garage side setback

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

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

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

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

PROPOSED DEVELOPMENT IN DETAIL

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

Ground floor

- Reconfigured entry and stair
- Kitchen, dining & living
- Bed 1 with ensuite
- Study
- New roof, BBQ/store, balustrades and planter to refurbished terrace
- New single garage over hardstand
- New driveway

Lower ground floor

- Rumpus
- Beds 2 & 3
- Bath
- Laundry
- New rear terrace/drying court
- New stair access to ground floor

External

- Changes to windows and skylights
- New swimming pool and deck
- Landscaping works including new and re-located planting, paving and seating to front and rear yards
- Refurbished rear access stair
- New boundary fencing

<u>Amendments to proposal</u>

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

- Relocated garage to increase side setback
- Increased swimming pool rear setback
- Amended stormwater design

The amendments made to the proposal are considered to result in lesser/reduced environmental impact to surrounding properties and were not re-notified, in accordance with the Northern Beaches 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

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 526 DP 218576 , 20 Leinster Avenue KILLARNEY HEIGHTS NSW 2087
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Leinster Avenue. The site is irregular in shape with a frontage of 24.08m along Leinster Avenue and a depth of 38.15m. The site has a

	surveyed area of 705.5m². The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house The site slopes 8.9m from front (south) to rear (north). The site contains seven significant trees and a variety of smaller planted vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by detached dwellings.

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	See discussion on "Environmental Planning Instruments" in this report.

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

Section 4.15 Matters for Consideration	Comments
	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 Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/01/2022 to 03/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Raffaele Agostino	5 Meath Place KILLARNEY HEIGHTS NSW 2087

Name:	Address:
Mrs Kay Patricia Fell	22 Leinster Avenue KILLARNEY HEIGHTS NSW 2087
Steven Mark Ward	21 Ballyshannon Road KILLARNEY HEIGHTS NSW 2087
Mr Jeremy David Zeitlyn Georgina Frances Zeitlyn Planning Progress	6 Meath Place KILLARNEY HEIGHTS NSW 2087

The issues raised in the submissions are addressed as follows:

- **Swimming pool setbacks, privacy and visual impact**

  The submissions raised concerns that the proposed swimming pool is non-compliant and will give rise to adverse visual and privacy impacts. The submission also raised concerns that the siting and scale of the proposed swimming pool are inconsistent with the zoning of the site

  Comment:

  The proposed swimming pool located within the rear setback but does not exceed 50% of the rear setback area, taking up approximately 21.7% of the total rear setback area. As such, the proposal is compliant with the rear setback control. The amended proposal is considered to provide adequate setbacks to the swimming pool to minimise visual impact. The proposed boundary fencing and landscape planting will provide supplementary screening.

  With regard to the potential privacy impacts, the trafficable pool terrace is set back a minimum of 7m from the rear boundary and 1.5m from the western side boundary. Survey information available to Council places the rear elevations of Nos. 5 and 6 Meath Place approximately 3.5m and 10m from the rear boundary of the subject site, respectively. Adequate physical separation is provided to the rear boundary and privacy screening is conditioned to be provided at the western edge of the pool terrace. The use of the pool itself is not considered to give rise to adverse privacy impacts as the eye level of a person in the pool would not be substantially higher than the proposed boundary fence or a person standing at the existing ground level.

  The proposed swimming pool equipment is located centrally within the site and a condition is imposed in relation to noise generation from plant equipment.

- **Stormwater drainage**

  The submissions raised concerns that the proposed stormwater design will adversely impact the adjoining properties. It was also requested that a hydrological assessment of the site be provided.

  Comment:

  The proposal results in an overall reduction in the impervious areas of the site, and includes a new stormwater management incorporating on site detention. The proposal was referred to Council's Development Engineers who confirmed that the design complies with the Water Management for Development Policy. Given the nature and extent of the proposed new works, a hydrological assessment is not considered necessary, noting that the proposed works are largely within the existing building footprint and reduce the impervious site areas.

- **Survey detail**

  The submissions raised concerns that the survey plan submitted does not provide adequate detail of adjoining properties.

  Comment:

  The topography of the site and adjoining properties, including the location existing retaining wall at the northern boundary, is apparent from the details included on the survey plan. A physical inspection of the site was also completed as part of the assessment in order to understand the context of the locality.
- **Geotechnical / landslip impacts**

  The submissions raised concerns that the proposal may result in landslip risk.

  Comment:

  The site is mapped as Landslip Risk Area B, requiring the preparation of of a preliminary geotechnical assessment. The submitted preliminary landslip risk assessment advises that there is no evidence of slope instability on the site and that a detailed geotechnical assessment is not required.
- **Bushfire impacts**

  The submissions raised concerns that the proposal may result in increased bushfire risk.

  Comment:

  The recommendations of the Bushfire Risk Assessment are incorporated into the conditions of consent, including a requirement that any new fencing be constructed in accordance with the relevant standards.
- **Garage side setback**

  The submissions raised concerns in relation to the proposed non-compliant garage side setback.

  Comment:

  The amended proposed provides an eastern side setback of 0m at the northern end of the garage to 1.3m at the southern end. Given the single-storey height of the garage, the lack of a suitable alternate location and the minimal amenity impact to the adjoining property, the side setback non-compliance is supportable.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing dwelling, and associated works, as described and illustrated in the reports and plans. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral. The application is assessed by Landscape Referral against Warringah

Internal Referral Body	Comments
	Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • D16 Swimming Pools and Spa Pools • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation • E6 Retaining unique environmental features The site contains established landscaped areas, numerous natural sandstone features, and a mix of native and exotic trees and other understorey planting. Established mature vegetation and hedge and screen planting is maintained. Additional landscape works are proposed within and adjacent to existing and proposed front and rear private open space areas. External landscape works proposed include: retention of existing natural sandstone outcrops, retaining walls, vegetation and established landscaping; new plantings, screen planting, groundcovers, lawn, relocation of a Frangipani tree, seating wall, and repair existing sandstone access stairs in the rear yard; swimming pool and paved surrounds; new concrete deck and drying court; new tile entry paving along western side accessway; new stepping stone steppers, sandstone boulder steps and sandstone seating within front yard; and new driveway comprising varied size concrete slabs with gravel and groundcovers in between. No existing prescribed trees (protected by the DCP) are proposed for removal as demonstrated on the plans, and all trees as shown on the Site Analysis plan number 026-DA-101 shall be retained and protected, and any additional tree not shown shall likewise be retained and protected. The submitted Landscape Plans provide augmentation of the existing landscape setting and no concerns are raised subject to imposed conditions, including providing additional screening planting along the side and rear boundaries to the extent of the swimming pool.
NECC (Bushland and Biodiversity)	The application seeks approval for alterations and additions to an existing dwelling, including the construction of a new swimming pool and associated landscaping. In addition, the application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity. 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)** **State Environmental Planning Policy (Coastal Management) 2018** • Coastal Environment Area

Internal Referral Body	Comments
	Warringah Development Control Plan (WDCP) • Clause E2 Prescribed Vegetation • Clause E6 Retaining unique environmental features The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. No objection is raised to the proposed translocation or removal of a single *Plumeria spp*. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 13, 14 & 15); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. The application is supported without conditions
NECC (Development Engineering)	The proposed alterations and additions storm water management plan does not comply with section 5.5.1.2 -"Alterations and additions to a single dwelling and granny flats" of Councils water management for development policy. The applicant is to provide evidence the stepped out process has been followed and a suitable stormwater management system in accordance with the policy has been selected. DATED 15/06/2022 itm design consultant has provided a refusal letter to obtain drainage easement rights from the adjoining property owner. The stormwater management submitted complies with Councils water management for development policy. No Development Engineering objection subject to recommended conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	The application was referred to the Aboriginal Heritage Office with no objections raised, subject to the recommended conditions 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. A428168 dated 17 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- *(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- *(b) coastal environmental values and natural coastal processes,*
- *(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- *(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- *(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- *(f) Aboriginal cultural heritage, practices and places,*
- *(g) the use of the surf zone.*

Comment:
The proposal is for alterations and additions to an existing dwelling house and is not anticipated to have any adverse impacts in relation to the above matters.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- *(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- *(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- *(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:
The proposed development is appropriately designed and sited to avoid adverse impacts referred to in subclause (1).

14 Development on land within the coastal use area

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

foreshores,
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) cultural and built environment heritage, and

(b) is satisfied that:
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:
The proposed alterations and additions are not considered likely to cause any adverse impacts in relation to the above matters, subject to compliance with the recommended conditions of consent.

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

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

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

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

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	6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

The proposal includes minimal excavation works and will not adversely impact adjoining properties or the natural environment. A Geotechnical Report has been provided with suitable recommendations included.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.6m	N/A	Yes
B3 Side Boundary Envelope	4m	E: Within envelope	N/A	Yes
		W: Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	E: 0m - 1.3m	100%	No
		1.4m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	10.7m	N/A	Yes
B9 Rear Boundary Setbacks	6m	Pool: 2.5m	N/A	Yes (see comment)
		Dwelling: 8.8	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 282.2m²	46.2% 326.1m²	N/A	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	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Easements		
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
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	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

B5 Side Boundary Setbacks

Description of non-compliance

The proposed garage eastern side setback of 0m to 1.3m is partially non-compliant with the 0.9m control.

Merit consideration

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

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

  Comment:

The proposed setback breach occurs above an existing hardstand and does not reduce the deep soil area of the site.

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

  Comment:

  The proposed setback breach is not immediately visible from the street frontage and the amended garage design is considered to minimise the visual impact to the adjoining property. .

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

  Comment:

  The length of the non-compliant section of the proposed garage wall is limited to 5m and a maximum height of 3.3m at the property boundary. As such, the non-compliance will not give rise to an excessive or unreasonable level of bulk and scale.

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

  Comment:

  The proposed garage wall does not contain any windows and will not result in any unreasonable impacts in relation to privacy, amenity or solar access.

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

  Comment:

  The proposed setback breach will not impact any views to and from public and private properties.

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

B9 Rear Boundary Setbacks

Compliance with control

The proposed 8.8m rear setback complies with the 6m control.

The proposed swimming pool encroaches within the 6m rear setback. However, this structure does not exceed 50% of the rear setback area and therefore complies with the control.

Notwithstanding the compliance with the control, the development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The development provides a compliant deep soil area and includes adequate landscaping and planting within the rear setback area.

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

  Comment:

  The proposal maintains a sense of openness within the rear yard.

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

  Comment:

  The amended swimming pool location will not unreasonably impact the amenity or privacy of the adjoining properties, noting the minimum 7m setback to the trafficable swimming pool deck.

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

  Comment:

  The proposal maintains the existing pattern of buildings, rear gardens and landscape elements. The proposed swimming pool location is consistent with those of existing pools in the vicinity of the site.

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

  Comment:

  The amended proposal maintains sufficient privacy for the occupants of the subject site and adjoining properties.

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

C3 Parking Facilities

Description of non-compliance

The proposal provides a single garage resulting in a shortfall of one car parking space.

Merit consideration

The existing development provides a hardstand parking space for one car. Given the positioning of the existing dwelling and the lack of an alternative car parking location on the site, the provision of one space is acceptable in this case. Further, the 11m front setback to the proposed garage allow ample

space for an additional informal parking space on the driveway with minimal encroachment into the front setback area.

Based on the above considerations, the proposal achieves the objectives of the control and is supportable on merit.

D6 Access to Sunlight

Compliance with control

The submitted shadow diagrams do not provide significant detail of the solar access impacts resulting from the development. However, based on the built form proposed outside of the existing building envelope - the proposed single garage, new terrace roof and swimming pool - it is apparent that the proposal will not result in substantial additional overshadowing.

At 9am there is anticipated to be overshadowing of the eastern side setback and eastern and northern elevations of the dwelling of 18 Leinster Avenue. At 12pm the additional impact is generally limited to the subject site, with minimal impact to the western side setback of 22 Leinster Avenue. At 3pm there is anticipated to be overshadowing of the western wall and side setback of No. 22.

Given the siting of the proposed works and the northern orientation of the sites, the proposal will maintain a compliant level of solar access to the private open spaces of the subject site and adjoining properties in accordance with the control.

D8 Privacy

Compliance with control

The proposal, as conditioned, complies with the requirements of the control as discussed below.

The proposed design and location of windows is acceptable and will not result in adverse privacy impacts. The proposal retains the existing location of the ground floor terrace, with the inclusion of a new planter/garden at the eastern elevation. As the proposed roof over the terrace will increase the usability of the area, a condition is recommended to include a privacy screen at the western elevation to mitigate overlooking of the adjoining property. As the proposed ground floor drying court adequately set back from the eastern boundary and is limited in size adjacent to the western boundary, no screening of this area is necessary.

A condition is recommended to include a privacy screen at the western elevation of the swimming pool deck to limit privacy impacts between the site and the adjoining property. The 7m rear setback to the trafficable pool deck provides sufficient physical separation from the adjoining properties to the rear and the proposed landscape screening and fencing at the northern boundary offer supplementary screening. The maximum height of the proposed pool (approximately 2m above natural ground level) would not allow a person using the pool to be substantially higher than a person standing at the natural ground level of the rear yard. Further, the anticipated frequency of use of the pool lower than that of the trafficable deck and terrace areas located further away from the rear boundary. As such, the pool location is not considered to result in adverse privacy impacts.

E10 Landslip Risk

The site is mapped as Landslip Risk Area B and a preliminary Geotechnical Report has been prepared in relation to the development, the recommendations of which are incorporated into the conditions of consent. The report advises that a detailed geotechnical investigation is not required in this case.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $13,692 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,369,169.

CONCLUSION

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

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

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

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

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

The application seeks consent for alterations and additions to the existing dwelling.

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

Three (3) submissions were received in relation to the development, and are addressed within the

report with suitable conditions imposed were necessary.

Assessment of the application against the Warringah LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2564 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 526 DP 218576, 20 Leinster Avenue, KILLARNEY 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**
106 Proposed Ground Floor Plan	Rev. J, 7 April 2022	Atelier M
107 Proposed Lower Ground Floor Plan	Rev. H, 7 April 2022	Atelier M
108 Proposed Roof Plan	Rev. E, 7 April 2022	Atelier M
109 Proposed Street/South Elevation	Rev. C, 7 April 2022	Atelier M
110 Proposed East Elevation	Rev. C, 7 April 2022	Atelier M
111 Proposed North Elevation	Rev. C, 7 April 2022	Atelier M
112 Proposed West Elevation	Rev. C, 7 April 2022	Atelier M
113 Proposed Section	Rev. D, 7 April 2022	Atelier M
114 External Materials and Finished	Rev. B, 17 December 2021	Atelier M
119 Easter Boundary Elevation	Rev. B, 7 April 2022	Atelier M

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A428168	17 December 2021	Atelier M
Geotechnical Report	2 September 2021	Greywacke Geotechnics
Bushfire Risk Assessment	3 November 2021	Bushfire Planning Services

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
LA01 Site Plan	Issue B, 28 September 2021	Emily Simpson Landscape Architecture
LA02 Front Landscape Plan	Issue B, 28 September 2021	Emily Simpson Landscape Architecture
LA3 Front Planting Plan	Issue B, 28 September 2021	Emily Simpson Landscape Architecture
LA05 Terrace Landscape Plan	Issue B, 28 September 2021	Emily Simpson Landscape Architecture
LA06 Rear Landscape Plan	Issue B, 28 September 2021	Emily Simpson Landscape Architecture
LA07 Rear Planting Plan	Issue B, 28 September 2021	Emily Simpson Landscape Architecture

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 $13,691.69 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 $1,369,169.00.

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

contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- Privacy screening shall be provided along the western elevation of the swimming pool deck and the ground floor terrace. The screening is to be a minimum height of 1.65m above FFL and have a maximum transparency of 30%.

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.

7. **Geotechnical Report Recommendations have been Incorporated into Designs and**

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

8. **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.

9. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT for DEVELOPMENT POLICY, and generally in accordance with the concept drainage plans prepared by itm design, drawing number H-DA-00, 01 and 02, dated 08/06/22. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

10. **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.

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. **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.

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

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

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

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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

17. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

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

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

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

(s) is prohibited.

Reason: Tree and vegetation protection.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

21. **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.

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. **Vehicle Crossings**
The Applicant is to reconstruct one vehicle crossing 3.0 metres wide in accordance with

Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. The existing vehicular crossing is to be removed and new lay backs and kerb are to be constructed, including lay back for the adjoining property. 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.

24. **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.

25. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

26. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plans LA01 to LA07 inclusive, and consistent with the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 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,
iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size and density, and at 4 plants per metre square for groundcovers and accents of a minimum 140mm container size at planting or as otherwise scheduled if greater in size and density, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
iv) screen planting to achieve at least 3 metres in height at maturity shall be planted along the northern and western boundary to the extent of the swimming pool, installed at a minimum 1

metre interval, and planted at a minimum 300mm pot size and at a desirable 75 litre size,
v) selected planting in proximity to the swimming pool shall comply with the requirement of Australian Standard AS 1926.1 for a Non Climbable Zone,
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 (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.

27. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

29. **Reinstatement of Kerb**
The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

30. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

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

Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

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

31. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

32. **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.

33. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

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

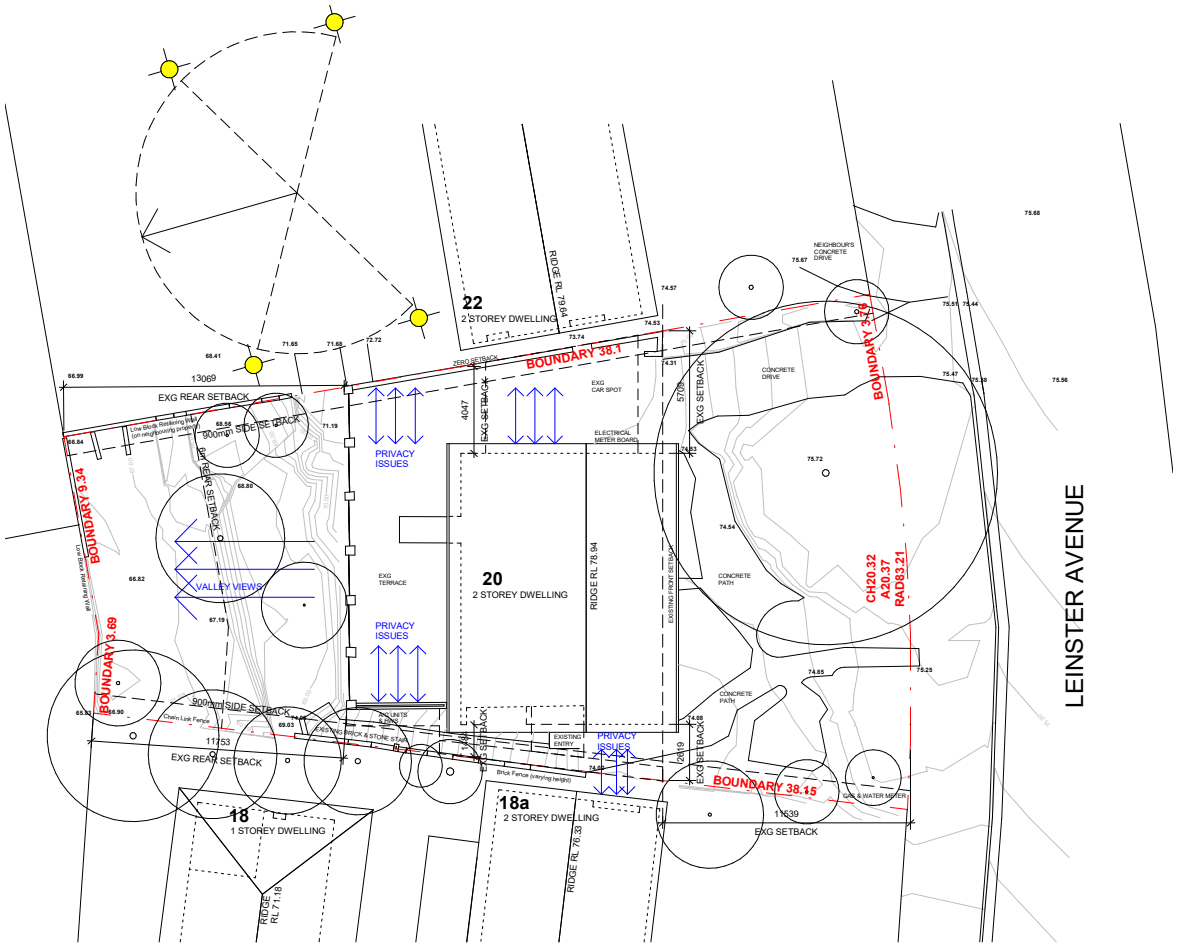
Signed



Rodney Piggott, Manager Development Assessments

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

Rodney Piggott, Manager Development Assessments



SITE ANALYSIS



22 LEINSTER AVE: Street Elevation



20 LEINSTER AVE - SUBJECT SITE : Street Elevation



18a LEINSTER AVE : Street Elevation

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GLASS
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TIMBER - PAINTED
MASONRY - FACE BRICK
ROOF TILE - TO MATCH EXISTING

28.52 EXISTING LEVELS RETAINED
28.54 EXISTING LEVELS MODIFIED
28.54 PROPOSED LEVELS

LINE OF PROPOSED BUILDING
LINE OF EXISTING BUILDING TO BE DEMOLISHED
ROOF LINE OVER

BT BRICK TILE
CPT CARPET
CT CERAMIC TILE
DP DOWN PIPE
FB FACE BRICKWORK
FBSC FACE BRICKWORK SCREEN
GL GL
GJ GUTTER
MDF METAL DECK ROOF
MSC METAL SCREENMESH
MBAL Metal Balustrade/Pool Fence
PAV PAVERS
RM RENDERED MASONRY
SB STEEL BEAM
SC STEEL COLUMM
SP STEEL PLATE
TC TIMBER CLADDING
TD TIMBER DOOR
TSF TIMBER FLOOR

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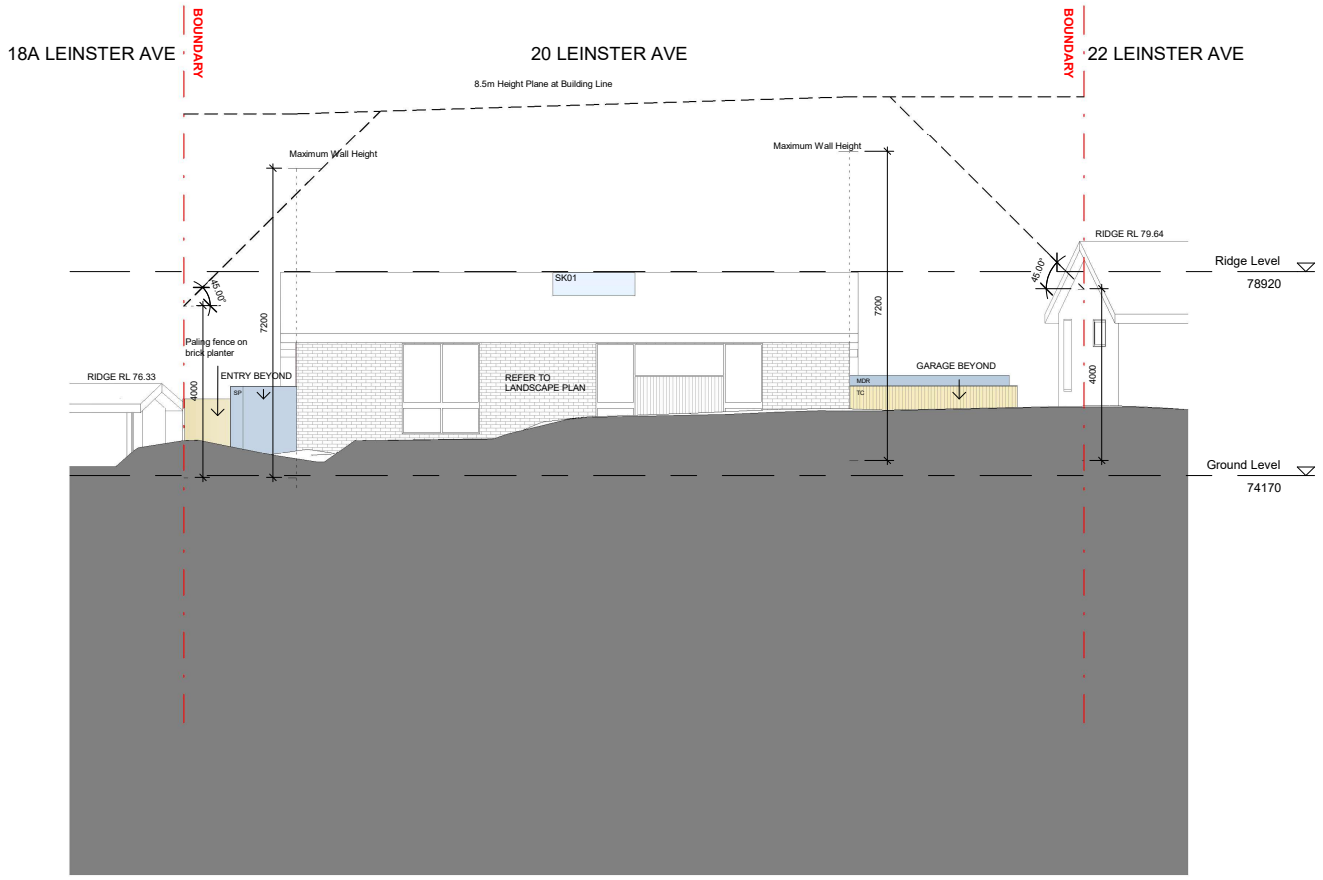
House Manns

Clare & Kim Manns
20 Leinster Avenue
Killarney Heights 2087

Site Analysis

Project number	026
Date	June 2021
Drawn by	MG
Scale	As indicated

026_DA_101



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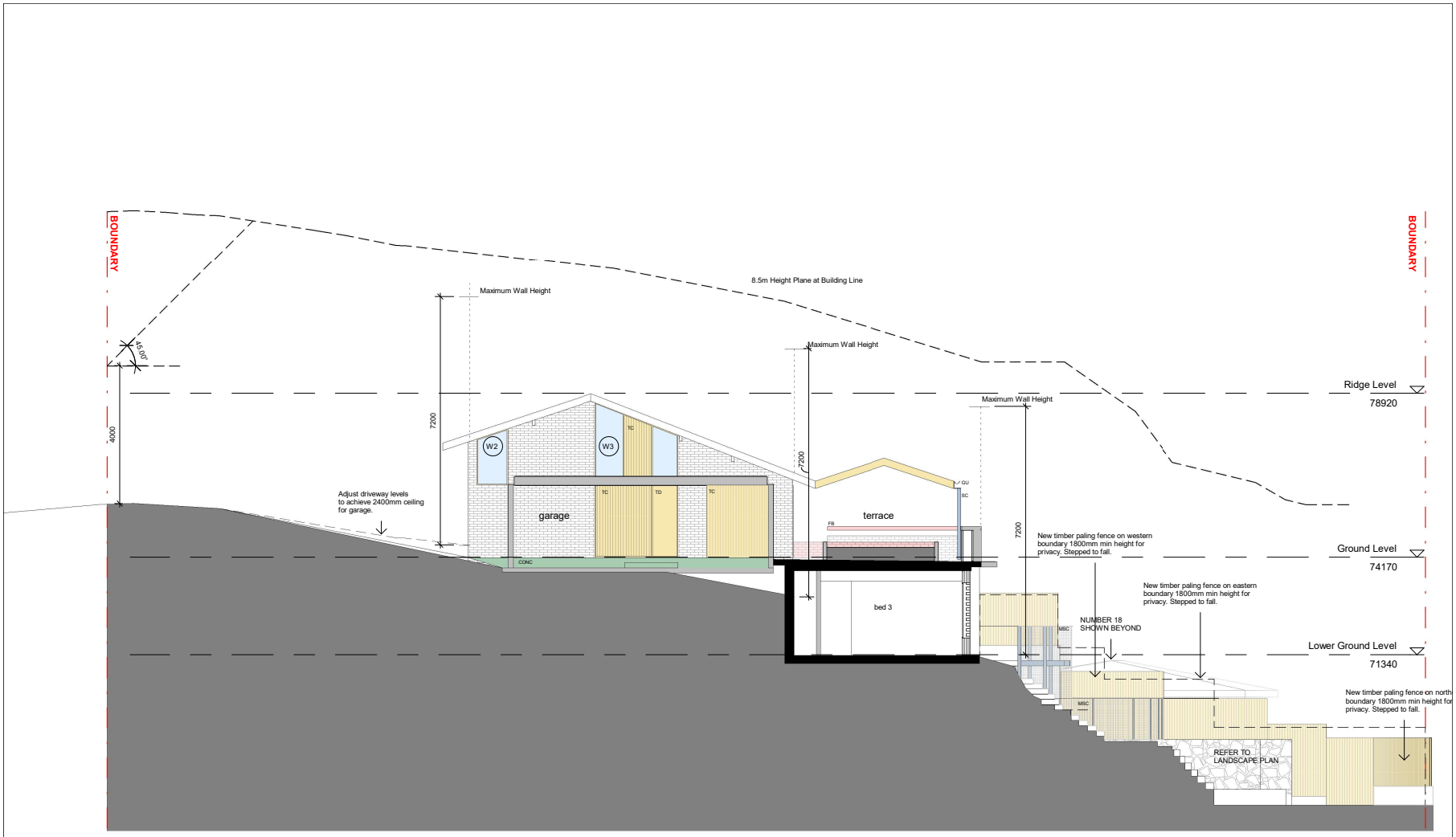
House Manns

Clare & Kim Manns
20 Leinster Avenue
Killarney Heights 2087

Proposed Street/South Elevation

026_DA_109

Project number 026
Date June 2021
Drawn by MG
Scale 1 : 100



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MASONRY - FACE BRICK		
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BT	BRICK TILE
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DP	DOWN PIPE
FB	FACE BRICKWORK
FBSC	FACE BRICKWORK SCREEN
GL	GLASS
GU	GUTTER
MDF	METAL DECK ROOF
MSC	METAL SCREEN/MESH
MBAL	Metal Balustrade/Pool Fence
PAV	PAVERS
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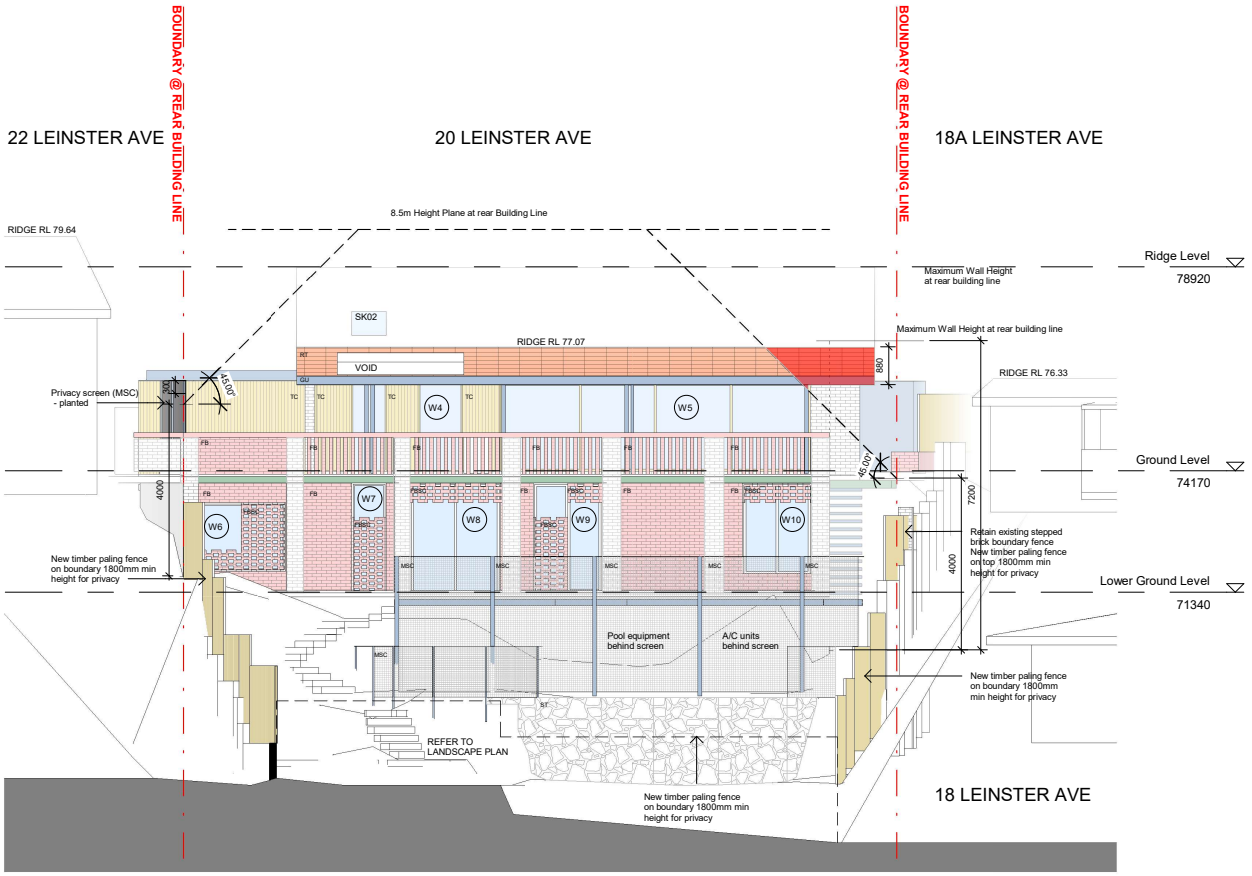
House Manns

Clare & Kim Manns
20 Leinster Avenue
Killarney Heights 2087

Proposed East Elevation

Project number	026
Date	June 2021
Drawn by	MG
Scale	1 : 100

026_DA_110



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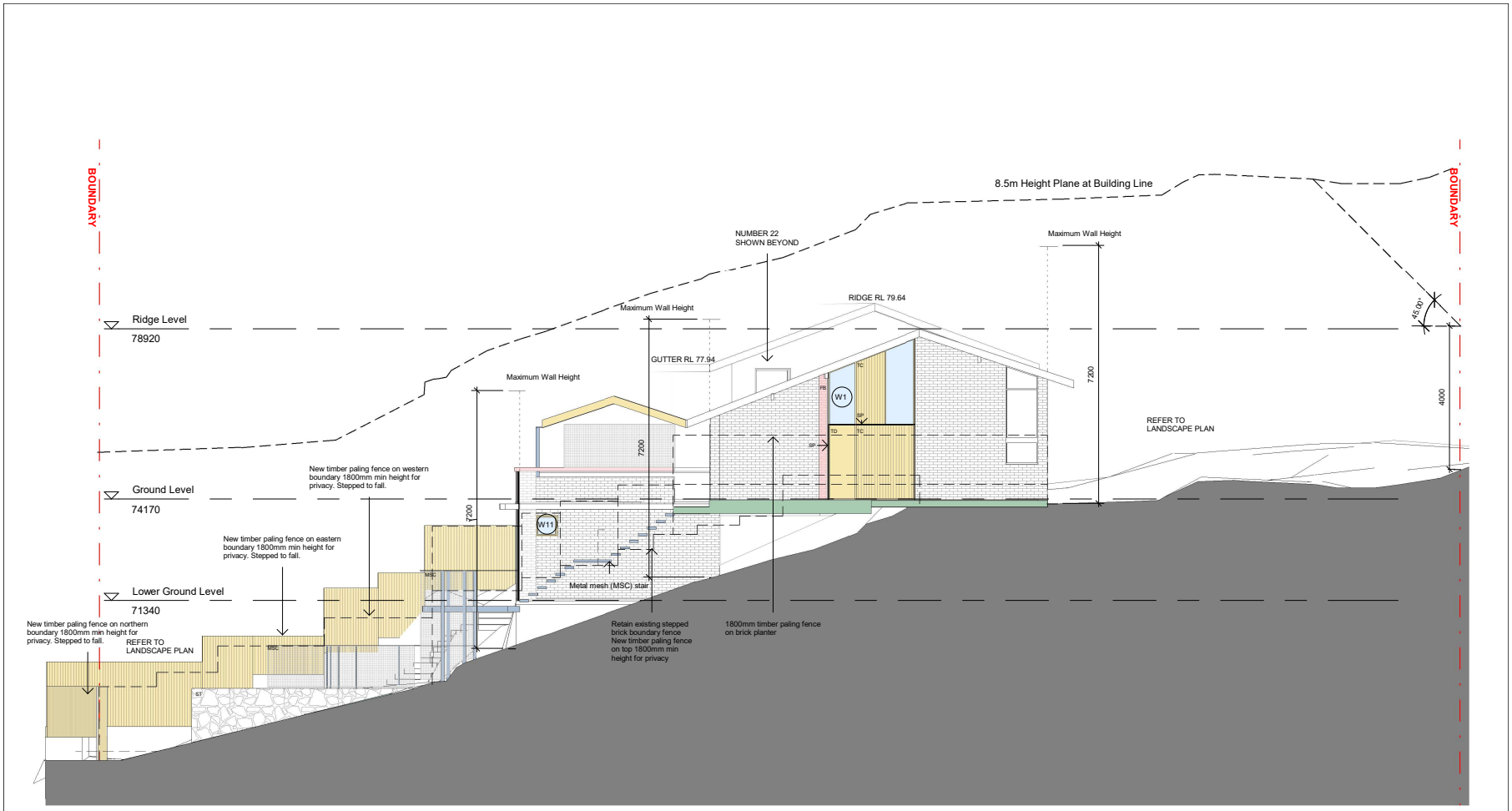
House Manns

Clare & Kim Manns
20 Leinster Avenue
Killarney Heights 2087

Proposed North Elevation

Project number 026
Date June 2021
Drawn by MG
Scale 1 : 100

026_DA_111



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House Manns

Clare & Kim Manns
20 Leinster Avenue
Killarney Heights 2087

Proposed West Elevation

Project number	026
Date	June 2021
Drawn by	MG
Scale	1 : 100

026_DA_112

ITEM 3.4	**DA2021/1964 - 51 PEACOCK STREET SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**
REPORTING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2022/362570**
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 DA2021/1964 for demolition works and construction of a dwelling house on land at Lot 8 DP 7836, 51 Peacock Street SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1964

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 8 DP 7836, 51 Peacock Street SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gabriella Mattea Rogers
Applicant:	Ursino Architects

Application Lodged:	22/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/11/2021 to 17/11/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,850,000.00

EXECUTIVE SUMMARY

The application seeks consent for demolition works and the construction of a new dwelling-house.

As the proposal attracted four (4) submissions in objection to the development with a cost of works greater than $1million, the application is referred to the Development Determination Panel.

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

- The proposed building height, third storey, bulk and scale
- Setback non-compliances
- Streetscape character impacts
- Amenity impacts including overshadowing and privacy
- Stormwater management

- Landscaping, fences and retaining walls

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

In response to concerns raised by Council, the proposal was amended to reduce the size and presentation of the attic level to maintain the two-storey character of the area. The amended proposal also provided for increased front and side setbacks to the dwelling and garage, amendment of the dwelling entry and front courtyard design, revised screening to the rear balcony and the inclusion of a planter box on the attic level balcony. The proposed stormwater design was also amended to the satisfaction of Council's Development Engineer. The amendments made to the proposal are considered to result in lesser/reduced environmental impact to surrounding properties and were not re-notified, in accordance with the Northern Beaches Community Participation Plan.

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

The proposal does not seek any variations to the development standards under the MLEP 2013.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and the construction of a new dwelling-house as follows:

Ground Floor Level

- Double garage with green roof over
- Patio & entry foyer
- Laundry
- Guest bed
- Bath
- Media
- Kitchen & pantry
- Living & dining
- Rear terrace

First Floor Level

- Retreat
- Balcony & spiral stair
- Bed 02 with ensuite
- Bath
- Beds 03 & 04

Attic Level

- Bed 01 with balcony, ensuite & WIR

Other External Elements

- Existing swimming pool & deck
- Landscape works including new planting, paving & seating
- Retention of existing eastern boundary fence/wall
- Stormwater works

Amendments to Proposal

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

- Increased eastern and western side wall setbacks
- Relocated dwelling entry
- Retention of existing eastern boundary wall
- Amended rear balcony screening
- Amended garage design with increased front and eastern side setbacks
- Amended front courtyard design
- Amended attic design including deletion of two dormers and planter box added to balcony
- Amended stormwater 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

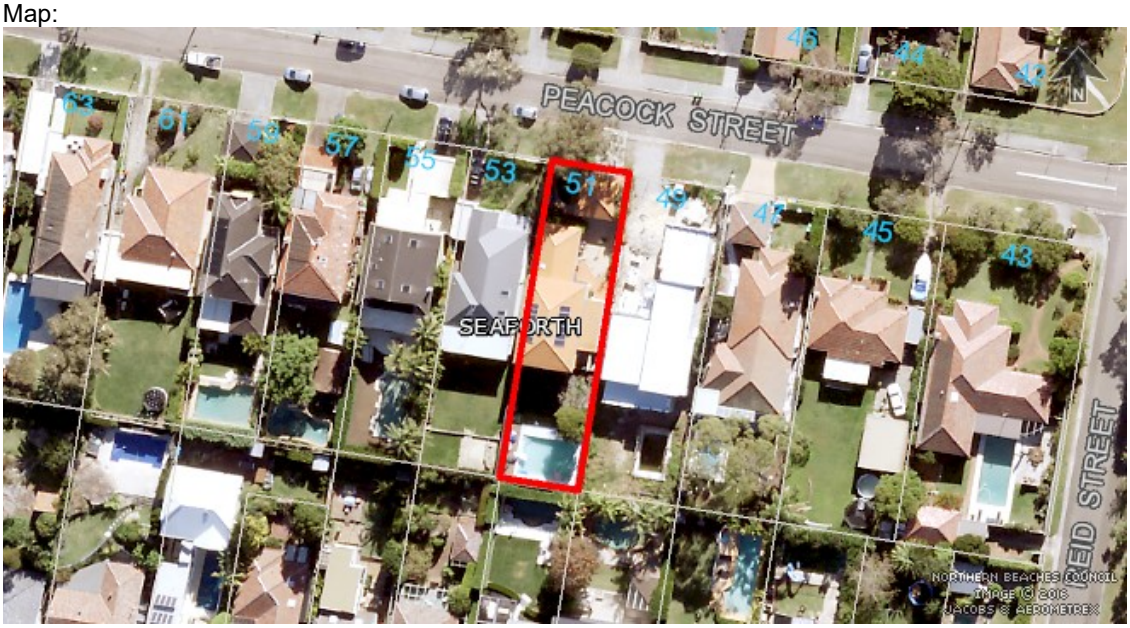
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 8 DP 7836 , 51 Peacock Street SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Peacock Street. The site is regular in shape with a frontage of 12.19m along Peacock Street and a depth of 48.16m. The site has a surveyed area of 587.1m². The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house. The site slopes approximately 1.6m from front (north) to rear (south). The site contains three small trees and a variety of smaller planted vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by 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:

DA505/2006 - Alterations & Additions to an existing Dwelling and new front carport - Approved 13 March 2007.

CDC2018/0343 - Construction of a swimming pool - Approved 14 April 2018.

DA2021/1964 - Current Development Application:

- The application was lodged on 22 October 2021.
- On 17 December 2021, Council requested amendment of the application to address concerns in relation to FSR non-compliance, front setback/streetscape, side setbacks, attic level presentation, privacy and stormwater design.
- On 28 April 2022, amended architectural plans were received in response to Council's request.
- On 24 May 2022, Council requested further amendment of the application to address concern in relation to the presentation of the attic level as viewed from the street frontage and adjoining properties.
- On 2 June 2022, amended architectural plans were received in response to Council's request.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	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. No additional information was requested in this case. 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. (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 Matters for Consideration	Comments
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 03/11/2021 to 17/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Ms Sasha Michelle Huljich	49 Peacock Street SEAFORTH NSW 2092
Mr Stuart Lachlan Bruce Bird	42 Ellery Parade SEAFORTH NSW 2092
Mr Patrick Amate Mrs Gemille Allison Amate	44 Ellery Parade SEAFORTH NSW 2092
Mr Adam Giles Taylor Mrs Tania Raiha Taylor	53 Peacock Street SEAFORTH NSW 2092

The amendments made to the proposal during the assessment process are considered to result in lesser/reduced environmental impact to surrounding properties and were not re-notified, in accordance with the Northern Beaches Community Participation Plan.

The issues raised in the submissions are addressed as follows:

- **Building Height**

  The submissions raised concerns that the proposal does not comply with the 8.5m building height control.

  Comment:

  The proposal maintains compliance with the height of buildings development standard, with a maximum height of 8.45m. Building heights are measured to the natural ground level of the site, rather than the excavated level of the development.

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

- **Habitable Third Level**

The submissions raised concerns that the proposed third level is non-compliant with the number of storeys control, and will cause privacy and visual bulk impacts. Concerns were also raised regarding the proposed roof pitch and the precedent set by approval of a three-storey dwelling.

Comment:

The proposed attic level is not considered to result in adverse visual bulk or amenity impacts, being contained wholly within the roof form with the exception of the two dormer windows. Notwithstanding the roof pitch non-compliance and subsequent attic wall height breach, the dwelling maintains compliance with the first floor wall height, 2.5m roof height and 8.5m building height controls. The non-compliances associated with the proposed third level are assessed in Section 4.1.2 of this report. The dwelling design ensures that the proposed attic level presents to the streetscape and adjoining properties as rooms within a roof. The potential overlooking opportunities from the attic level balcony are appropriately addressed by the recommended conditions.

The proposed attic level is not considered to set a precedent for new development in the locality. Development applications are assessed on their individual merits, and the inclusion of an attic level is this case is supportable for the reasons outlined in this report.

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

- **Setbacks**

The submissions raised concerns that the proposal is non-compliant with the front and side setback controls.

Comment:

The proposed front and side setback breaches will not adversely impact on the streetscape or the amenity of adjoining properties and are found to achieve the objectives of the setback controls, as assessed in Section 4.1.4 of this report.

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

- **Garage Location**

The submissions raised concerns that the garage location within the front setback is inconsistent with the streetscape.

Comment:

The proposed garage is non-compliant with the front setback control, but remains consistent with the existing garage location and the locations of other existing garages forward of the building line within the streetscape. The provision of internal access between the proposed garage and dwelling does not cause any impacts to the streetscape or adjoining properties, and is not a determinative in defining a structure as a carport or garage. Manly DCP 4.1.6 states that carports must be open at the front and sides. By this definition, each of the non-compliant car parking structures identified in the immediate vicinity of the site are garages regardless of the provision of direct dwelling access. A full assessment of the front setback non-compliance is completed in Section 4.1.4 of this report.

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

- **Privacy Impacts**

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

  Comment:

  The proposal, as conditioned, will not result in unreasonable privacy impacts to adjoining properties. The proposed front courtyard is not a principal area of private open space, is not in proximity to any private open space on the adjoining property and is offset from the windows of that property. The proposed first floor balcony provides full height screening at the eastern and western elevations, and the spiral stair is not considered to give rise to privacy impacts as it is a means of access only. The proposed green roof above the garage is not accessible from the dwelling and the lack of any formal access or balustrading precludes its use as a private open space or entertaining area. The proposed attic level balcony is conditioned to be reduced in size such that the surrounding roof form will largely prevent any sight lines to adjoining properties. Further, the balcony is not anticipated to be used frequently or for entertaining based on its location off a bedroom and reduction in size.

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

- **Overshadowing Impacts**

  The submissions raised concerns that the proposal will adversely impact sunlight access to surrounding properties.

  Comment:

  The proposal maintains a compliant level of sunlight access to adjoining properties in accordance with the control, as assessed in Section 3.4.1 of this report. The northerly orientation of the properties provides substantial sunlight throughout the middle of the day, and the proposed minimum 9.7m first floor front setback minimises overshadowing impacts during the morning and afternoon.

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

- **Trees and Vegetation**

  The submissions raised concerns that the removal of existing trees and vegetation on the subject site would allow direct viewing to surrounding properties. Concerns were also raised regarding the potential impact to vegetation on adjoining properties.

  Comment:

  It is noted that several small trees on the site provide some privacy screening to surrounding properties and are proposed for retention. Although this vegetation is not solely relied upon for privacy, a condition is recommended that these trees be replaced with a similar species should they fail or be removed in order to maintain supplementary screening. A condition is recommended requiring the retention and protection of all trees and vegetation located on adjoining properties.

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

- **Stormwater Design**

  The submissions raised concerns that the proposed stormwater design is inadequate and will adversely impact surrounding properties.

  Comment:

  The amended stormwater design incorporates OSD and a level spreader adjacent to the rear terrace of the dwelling. Council's Development Engineer advised that the proposed design is acceptable as there was no opportunity to install a drainage easement through the downstream property or to discharge to the kerb and gutter without the overflow flooding the adjacent properties. The proposed design will reduce the existing surface discharge rate and prevent any concentrated flow to the downstream properties.

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

- **Dividing Fences and Retaining Walls**

  The submissions raised concerns that the proposal lacks adequate details in relation to fences and retaining walls.

  Comment:

  Section BB in the set of plans shows the construction of a retaining wall at the eastern boundary and the proposed levels shown through the eastern setback on the Site Plan and Excavation Plan indicate excavation to a maximum depth of approximately 500mm. A condition is recommended requiring that all retaining walls be adequately engineered and located wholly within the subject site, and that details of the wall/s be incorporated into the plans. The existing wall on the eastern boundary is not permitted to form part of any retaining wall. No new boundary fencing is proposed as part of the development, and would be subject to the NSW Dividing Fences Act.

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

- **Plant Equipment Noise**

  The submissions raised concerns that noise generated by plant equipment will adversely impact the amenity of surrounding properties.

  Comment:

  Conditions are recommended in relation to noise generation by plant equipment on the subject site.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported with conditions.**

Internal Referral Body	Comments
	The development application proposes the demolition of the existing dwelling and the construction of new dwelling with integrated garage accommodation. The existing swimming pool is retained and incorporated into an enhanced landscape setting. 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 A Landscape Plan and a Arboricultural Impact Assessment are submitted with the application. The site contains three small trees along the side eastern boundary that are not impacted by the development works, and additionally a large Eucalyptus street tree is located in proximity to development works. The proposed new driveway and garage in proximity to the Eucalyptus includes works within the footprint of the existing driveway and garage, and is assessed as viable for retention in the Arboricultural Impact Assessment, and conditions of consent shall be imposed. The Landscape Plan provides an enhanced landscape setting for the property and includes landscape works and ground level as well as on slab over the garage. Conditions shall be imposed that at least 3 native trees (existing or proposed) shall occupy the site to comply with DCP control 4.1.5.2 (c) iii) and it is noted that one native Tea Tree is proposed for retention. Additionally conditions shall be imposed to ensure the construction of the roof garden is structurally adequate to support the intended landscape treatment proposed, and that any proposed self-seeding species is deleted from the schedule and replaced with an alternative. Landscape Referral raise no concerns subject to conditions of consent for tree and vegetation protection and completion of landscape works.
NECC (Development Engineering)	**Supported with conditions.** The proposal is for demolition and construction of a new dwelling. The submitted stormwater plan is not satisfactory. As the site falls to the rear the stormwater disposal shall be in accordance with Clause 5.5 of Council's Water Management for Development Policy. All stages of the Clause are to be addressed. If an interallotment easement to the rear is not viable evidence of easement refusal shall be provided. Additionally the site is located in Manly Stormwater Zone 1 hence OSD shall be provided in accordance with Council's Water Management for Development Policy.

Internal Referral Body	Comments
	Amended plans provided on 10/5/2022 During correspondence between Development Engineering and the Applicant's Consultant a list of recommendations were provided via email in early March. Amended plans have been received on 10/5/2022. However the recommendations have not been implemented. The submitted plans have been assessed. The amended stormwater plan proposes to discharge to the level spreader located upstream of the existing pool and is unacceptable due to the following: • The proposed discharge to the level spreader will direct flow to the neighbouring property due to the fall of the site • The surface water from the driveway is connected to the combined RWT tank which is not acceptable. • The OSD calculations are not correct as it assumes a 35% impervious area but for a level spreader design the site discharge must be calculated on the 20% AEP with 0% impervious area as per Appendix 3 of Council's Water Management for Development Policy. **Amended plans provided on 16/5/2022** The amended stormwater plan with the provision of OSD discharging to a level spreader adjacent to the terrace is satisfactory. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections.

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. 123141S_02 dated 6 May 2022).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	61

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.45m	N/A	Yes
Floor Space Ratio	0.45:1 264.195m2	0.445:1 261.5m2	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

The proposed excavation is less than 1.0m in depth, with the exception of the OSD/rainwater tank, and is limited to the building footprint and immediate surrounds. The proposed earthworks are not anticipated to adversely impact the natural environment or adjoining properties.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 587.1m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.7m (gradient 1:30)	GF dwelling: 3.1m	N/A	Yes
		GF garage: 3.9m	N/A	Yes
		FF bed 4/void: 6.3m	N/A	Yes
		FF retreat/balcony: 6.5m	N/A	Yes
		2F/roof: 8.2m	22.4%	**No**
	W: 6.8m (gradient 1:20)	FF: 6.8m	N/A	Yes
		2F/roof: 8.3m	22.1%	**No**
4.1.2.2 Number of Storeys	2	3	50%	**No**
4.1.2.3 Roof Height	Height: 2.5m	2.5m	N/A	Yes
	Pitch: maximum 35 degrees	29.5 - 44 degrees	25.7%	**No**
4.1.4.1 Street Front Setbacks	Prevailing building line/6.0m	Garage: 0.5m	91.7%	**No**
		Dwelling: 5.95m	0.8%	**No**

4.1.4.2 Side Setbacks and Secondary Street Frontages (East)	GF dwelling: 1.03m	1.3m - 2.1m	N/A	Yes
	GF garage: 1.3m	0.25m	80.8%	**No**
	FF bed 4/void: 2.1m	2.1m	N/A	Yes
	FF retreat/balcony: 2.17m	2.3m	N/A	Yes
	2F/roof: 2.77m	Dormer: 3.94m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (West)	FF: 2.27m	1.32m	41.85%	**No**
	2F/roof: 2.77m	Dormer: 3.16m	N/A	Yes
4.1.4.4 Rear Setbacks	8.0m	9.65m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 322.9m²	63.5% 372.8m²	N/A	Yes
	Open space above ground 25% of total open space	11%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 130.45m²	37.1% 138.4m²	N/A	Yes
4.1.5.3 Private Open Space	18m² per dwelling	> 18m²	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	5.8m	N/A	Yes
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Compliance with Control

The proposal is found to comply with the relevant requirements of this control as assessed below.

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:
i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;
ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;
iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;
iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;
v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;
vi) visually improve existing streetscapes through innovative design solutions; and
vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

Comment:

The proposed pitched roof design and two-storey presentation at the building alignment complements the predominant built form, character, materials and architectural style of surrounding development. The bulk, scale and design of the development is appropriate in the context and will not detract from the scenic amenity of the area. Despite the non-compliances in relation to number of storeys and roof pitch, and the resulting technical wall height breach, the proposed building height is compatible with that of two-storey dwellings within the visual catchment and maintains compliance with the LEP height standard and DCP roof height control. The proposed materials and finishes complement those of surrounding development.

3.1.1.2 Front Fences and Gates

a) Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall

landscape character and the general appearance of the building and the streetscape.
b) Boundary fences or walls must not be erected where they would conflict with the local character.
c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.
d) Gates must not encroach on public land when opening or closing.

Comment:

The existing streetscape includes a range of fencing types, including low walls, semi-transparent paling fences and masonry walls. The proposed front fence consisting of masonry and timber panels is compatible with the overall landscape character and appearance of the streetscape.

3.1.1.3 Roofs and Dormer Windows

a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.
b) Roofs should be designed to avoid or minimise view loss and reflectivity.
c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.

Comment:

The pitch of the proposed roof is higher than surrounding development and does not replicate roof forms in the surrounding locality. However, the proposal complies with the 2.5m roof height control and the roof design complements the predominantly pitched roof forms of the locality. The proposal will not result in adverse view loss or reflectivity impacts. The proposed dormer windows are located towards the rear of the roof form and are consistent with the character of the dwelling. No dormers are proposed on the street frontage.

3.1.1.4 Garages, Carports and Hardstand Areas

a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:
i) its roof form, material choice and detailing by being subservient to the associated dwelling; and
ii) being compatible with the streetscape and the location in relation to front setback criteria.
b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.

Comment:

The proposed garage location is compatible with existing examples of garages within the front setback in the streetscape. The garage design and materials are consistent with the proposed dwelling and the flat roof design minimise the visual bulk of the structure within the streetscape.

3.4.1 Sunlight Access and Overshadowing

Compliance with control

3.4.1.1 Overshadowing Adjoining Open Space

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

The rear private open space of 53 Peacock Street currently receives 301.5m² of sunlight access throughout the day. The proposal results in a reduction of 17.6m² of sunlight at 9.00am, which is less than one third of the existing.

The rear private open space of 49 Peacock Street currently receives 259.9m² of sunlight access throughout the day. The proposal results in an increase of 7.4m² of sunlight at 3.00pm. It is noted that the proposal will overshadow part of the front patio and 14.8m² of the front yard at 3.00pm. However, this area is unaffected until mid-afternoon and retains adequate sunlight throughout the middle of the day.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:
b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June).

Comment:

At 9.00am, there is partial overshadowing of a study/bedroom window at the eastern elevation of No. 53. No living room windows are affected.

At 3.00pm, the ground floor living room windows at the western elevation of No. 49 are overshadowed by the existing dwelling on the subject site and there will be no additional impact to these windows as a result of the development. It is not anticipated that the first floor rumpus windows of No. 49 will be affected by the proposal.

3.4.1.3 Overshadowing Solar Collector Systems

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

Comment:

The shadow cast by the proposed dwelling will not reach the roof of No. 49 between 9.00am and 3.00pm, and the roof top solar collectors will retain the current level of sunlight access during this time.

3.4.2 Privacy and Security

Compliance with control

The proposal, as conditioned, complies with the requirements of the control as discussed below.

3.4.2.1 Window Design and Orientation

a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.
b) When building close to boundaries, windows must be off-set from those in the adjacent building to

restrict direct viewing and to mitigate impacts on privacy.

Comment:

The proposed ground floor windows on the eastern and western elevations are located below the height of the adjacent boundary fences. On the eastern elevation, the proposed retreat and Bed 04 windows, W40, W26 and W28, are narrow and do not permit any unreasonable direct viewing to windows or private open spaces of the adjoining property. Window W27 is over a void and also incorporates an external blind. The recommended conditions require the provision of fixed external screens to W27 and to the stair window, W13, noting the size of the windows and their proximity to the dwelling entry of the adjoining property. The proposed first floor and attic level windows are highlight and will not adversely impact the privacy of the adjoining property.

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

The proposed rear terrace is located at natural ground level, is suitably set back from the side and rear boundaries and incorporates a privacy screen at the western elevation. The proposed first floor balcony location is generally consistent with the existing balcony of the subject dwelling and incorporates privacy screening for the full height and length of the eastern and western elevations. Conditions are recommended to ensure the effectiveness of these screens. The proposed spiral stair is used for access and is not considered to give rise to adverse privacy impacts.

The proposed attic level balcony is accessed via a bedroom and is considered to have a lesser potential for privacy impacts than one accessed via a living room. Even so, the size and elevation of the balcony lend themselves to overlooking of the adjoining properties. As such, a condition is recommended to reposition and increase the depth of the planter box and reduce the size of the balcony. In doing so, the usability of the balcony is reduced and the trafficable area is limited to that where the surrounding roof structure is a minimum height of 1.4m above FFL and will largely obscure sight lines to adjoining properties.

In addition to the proposed and conditioned physical screening measures to the first floor and attic level balconies, the rear setbacks to these areas provide substantial separation to the adjoining properties (18.5m to the first floor and 21.5m to the attic level).

The proposed northern courtyard is not a principal private open space area and is adjacent to the front yard of the adjoining property, No. 53. The bedroom window of No. 53 is adjacent to the proposed stepped side path and is offset from the courtyard itself. Given the anticipated frequency of use of the courtyard and the impact resulting from it, the proposed landscape screening is considered to be sufficient. However, further screening could be provided in the form of a higher dividing fence if desired by the owners of the properties in the future.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

a) Consideration must be given to the protection of acoustical privacy in the design and management of development.

b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.

Comment:

The proposal is compatible with surrounding residential development and is not anticipated to result in adverse acoustic privacy impacts. Conditions are recommended regarding noise generation from mechanical plant equipment.

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

Description of Non-compliance

4.1.2.1 Wall Height

The proposed ground and first floor wall heights comply with the control. As the proposed roof pitch exceeds 35 degrees, the roof must be calculated as part of the wall height, in accordance with 4.1.2.3 (c) discussed below. When including the parts of the roof with a pitch greater than 35 degrees, the proposed wall heights of 8.2m at the eastern elevation and 8.3m at the western elevation are non-compliant with the 6.7m and 6.8m controls.

Note: In order to obtain the most accurate ground level below the walls, the eastern elevation wall height was measured at Section CC and the western elevation wall height was measured at Section BB.

4.1.2.2 Number of Storeys

The proposed attic level is non-compliant with the two-storey control.

4.1.2.3 Roof Height

The proposed roof pitch of 29.5 to 44 degrees is non-compliant with the 35 degree control.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

(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 proposal responds appropriately to the topography of the site, as demonstrated by the compliance with the height of buildings development standard. The proposed building height and pitched roof form are compatible with the desired future streetscape of the locality. In this regard, the amendments to the attic level deleting the forward dormers at the eastern and western sides ensure that the proposal presents within the streetscape as a two-storey dwelling with rooms within the roof, rather than as a three-storey dwelling .

b) to control the bulk and scale of buildings,

Comment:

The proposed breaches of this control will not result in excessive bulk or scale as viewed from adjoining properties or the streetscape. The proposed first floor and attic level are adequately set back from the street frontage and despite the non-compliant pitch, the roof is recessive and complies with the setback requirement of 1/3 wall height and the 2.5m roof height control. The amended proposal includes a reduction in GFA at the attic level of 4m² and a reduces the dormer length at each side elevation from 8.6m to 2.9m. The inclusion of the proposed habitable attic level allows for a well-articulated dwelling that achieves the allowable gross floor area within the 8.5m height limit, without siting floor area within the front setback or beyond the rear building line of the adjoining properties. The proposal, as amended, minimises the presentation of the attic level and overall building bulk, and maintains a predominantly two-storey appearance and character.

c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal will not result in any unreasonable view impacts to, from or between residential development and public spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal maintains a compliant level of solar access to the private open spaces and living rooms of the surrounding properties.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

N/A

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

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

Description of Non-compliance

The proposed 0.5 front setback to the garage is non-compliant with the 6.0m control. The proposed 5.95m dwelling entry front setback is also marginally non-compliant.

The proposed 0.25m eastern side setback to the garage is non-compliant with the 1.3m control and the

proposed 1.32m western side setback to the first floor level is non-compliant with the 2.27m control.

Merit Consideration:

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

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

Comment:

The proposed garage setback is generally consistent with the existing garage on the subject site and other examples of garages within the surrounding visual catchment, including at Nos. 46, 47, 52, 55 and 59 Peacock Street. The proposed flat roof design of the garage minimises the resulting height and bulk and the green roof will improve the visual appearance of the structure. The breach relating to the dwelling entry is minor and the adjacent flat roof does not cause adverse visual impact. The proposal is compatible with the surrounding streetscape and landscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed setback breaches will not unreasonably impact privacy, sunlight access, views, streetscape character or traffic conditions. A full assessment of amenity impacts is completed under Section 3.4 in this report.

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

Comment:

The proposed garage location remains consistent with the existing garage on the subject site and with nearby examples of garages within the front setback. The proposal also maintains the existing first floor western side setback; the height of the wall is increased by 280mm and the length is increased by 4.2m, but will not cause unreasonable overshadowing or visual bulk impacts in comparison to the existing dwelling.

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 includes compliant total open space and landscaped areas to accommodate planting.

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

Comment:

N/A

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

4.1.8 Development on Sloping Sites

The site is mapped as Geotechnical Area G4. The proposal includes excavation to a maximum depth of approximately 1m, with the exception of the proposed OSD/rainwater tank, and no further geotechnical investigation is considered necessary in this case.

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The proposal includes excavation to a maximum depth of 0.45m adjacent to the eastern boundary and to a depth of 0.5m adjacent to the western boundary, contrary to 4.4.5.1(b).

Merit Consideration

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:

The proposed excavation within the side setbacks is minor in extent, being limited to a depth of 0.5m, and is not anticipated to alter the natural flow of water or cause sedimentation to enter drainage lines. Given the lack of certainty regarding its structural stability, a condition is recommended that the existing wall on eastern boundary not be used as a retaining wall, and that any required retaining wall be a new structure that is adequately engineered. The proposed excavation within the western side boundary is consistent with the existing levels of the adjoining property to the west and will not require the construction of any retaining walls.

Given the proximity of the excavation works to the property boundaries, conditions are recommended requiring the preparation of pre and post-construction dilapidation reports for the adjoining properties.

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

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 $18,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,850,000.

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

The application seeks consent for demolition works and the construction of a new dwelling-house.

The key planning issues considered within the assessment are the proposed wall height, number of storeys, roof pitch and side setback breaches, and associated amenity impacts in relation to streetscape impacts, building bulk, privacy and overshadowing.

In response to concerns raised by Council, the proposal was amended to reduce the size of the attic level and dormers, increase the front and side setbacks to the garage and dwelling, amend the dwelling entry and front courtyard design, revise the privacy screening to the rear balcony and include a planter box to the attic level balcony. The proposed stormwater design was also amended to the satisfaction of Council's Development Engineer. These amendments to the proposal are considered to result in lesser/reduced environmental impact to surrounding properties and were not re-notified, in accordance with the Northern Beaches Community Participation Plan.

Four (4) submissions were received in relation to the development, and are addressed within the report with suitable conditions imposed were necessary.

To address concerns raised in the submissions, the recommended conditions require the following:

- Further amendment of the attic level balcony to reduce its size and usability, and ensure that the surrounding roof form provides physical screening of adjoining properties.
- Additional privacy screening to windows at the eastern elevation.
- Maintenance/replacement of existing vegetation on the subject site, and maintenance of existing vegetation on adjoining properties.
- Details of suitably engineered retaining walls to accommodate the proposed development.
- Preparation of pre and post-construction dilapidation reports of the adjoining properties to the east and west.
- Limitation on noise generation by plant equipment on the site.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1964 for Demolition works and construction of a dwelling house on land at Lot 8 DP 7836, 51 Peacock Street, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
   The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

   a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A202 Site Plan	Rev. C, 2 June 2022	Ursino Architects
A301 Ground Floor Plan	Rev. C, 27 April 2022	Ursino Architects
A302 First Floor Plan	Rev. C, 27 April 2022	Ursino Architects
A303 Attic Floor Plan	Rev. C, 2 June 2022	Ursino Architects
A304 Roof Plan	Rev. C, 2 June 2022	Ursino Architects
A401 Section AA	Rev. B, 27 April 2022	Ursino Architects
A402 Section BB	Rev. C, 2 June 2022	Ursino Architects
A403 Section CC	Rev. C, 2 June 2022	Ursino Architects
A501 North Elevation	Rev. C, 2 June 2022	Ursino Architects
A502 South Elevation	Rev. B, 27 April 2022	Ursino Architects
A503 West Elevation	Rev. C, 2 June 2022	Ursino Architects
A504 East Elevation	Rev. C, 2 June 2022	Ursino Architects
A902 Demolition and Excavation Plan	Rev. B, 27 April 2022	Ursino Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIC Certificate No. 1231414S_02	6 May 2022	Certified Energy 1
Arboricultural Impact Assessment	Rev. A, 9 September 2021	Hugh The Arborist

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

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

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 $18,500.00 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 $1,850,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **On Slab Landscape Works**
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed: 300mm minimum.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

7. **Retaining Walls**
All new retaining walls shall be adequately engineered and located wholly within the subject property. The existing wall to be retained at the eastern boundary shall not be used as a retaining wall.

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.

8. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

(a) The planter box on the attic level balcony shall be relocated to the north so that the roof edge adjacent to the planter box is a minimum height of 1.4m above the FFL of the balcony. The internal dimension of the planter box shall also be increased to a minimum of 1m. The planter box is to have a minimum soil depth of 900mm and contain plantings to a minimum height of 1.4m above the FFL.
(b) Fixed external privacy screens shall be provided to windows W13 and W27.
(c) The privacy screening to the eastern and western elevations of the first floor balcony shall have a maximum transparency of 30%

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.

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. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by LMW Design Group Pty Ltd, job number 1931.21, drawing number D3, issue E, dated 16/5/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

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

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

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

Reason: To provide public and private safety.

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

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

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

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. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection to the existing street tree identified as tree 1 - Eucalyptus nicholii in the Arboricultural Impact Assessment.

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:
i) section 8.2 Tree Sensitive Construction Specification for trees, including 8.2.1 and 8.2.2.
ii) section 11 Arboricultural Work Method Statement and Tree Protection Requirements, and in particular 11.5 Site Specific Tree Protection Recommendations.
iii) section 12 Hold Points.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

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

works and at completion.

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

Reason: Tree protection.

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

Properties:
- 49 Peacock Street, Seaforth
- 53 Peacock Street, Seaforth

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

As a minimum, the tree protection fencing for street tree fronting the development site shall consist of standard 2.4m panel length to four sides, including alignment with the existing driveway, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

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

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

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.

17. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in

the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as 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 at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

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

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

22. **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

23. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:
i) at least two locally native trees shall be planted within the property, capable of attaining at least 6 metres in height maturity, and selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or Council's Tree Guide,
ii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
iii) 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 including driveways, kerbs, walling and paths, and at least 1.5 metres from common boundaries,
iv) the nominated Rhaphiolepis indica varities shall be deleted and replaced with a shrub species of similar size and form,
v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space or solar collectors, 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/

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

Reason: Tree protection.

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

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

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

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

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

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf

The form for the application can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-

authorisation-oct19.pdf

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

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

27. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

28. **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 Plans 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.

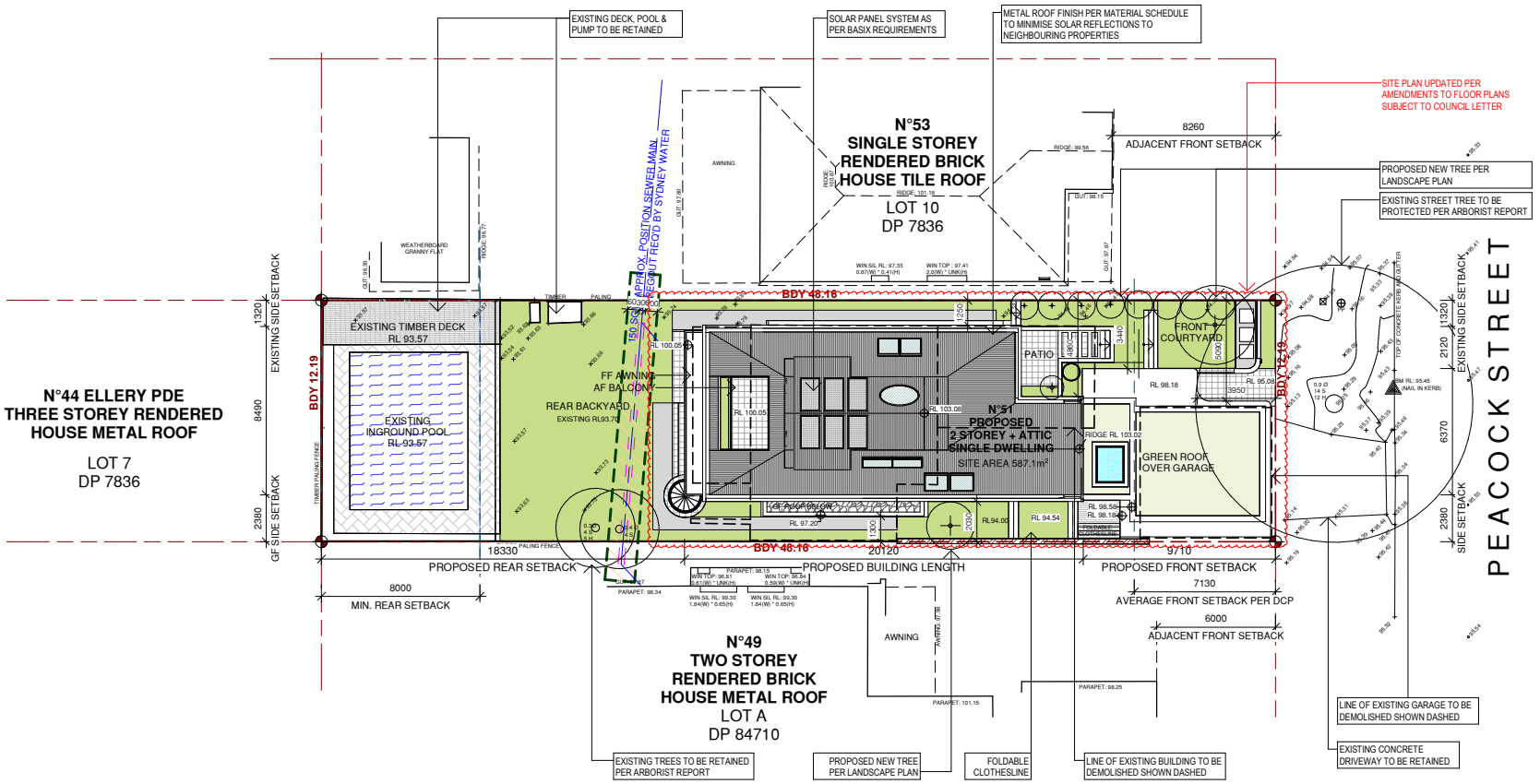
29. **Screen Planting**
If any of the three existing Magnolias located in the rear yard fail or be removed, they are to be replaced in their current locations with a similar species that is capable of reaching the same height.

Reason: To maintain local environmental amenity.

30. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the

background noise when measured from the nearest property boundary.

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



1 SITE PLAN
1 : 200

RESPONSE TO COUNCIL RFI - NOT FOR CONSTRUCTION

URSINO ARCHITECTS

Suite 313 , 49 Queens Road Five Dock NSW 2046
(02) 8570 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au
NOMINATED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	27.09.2021
B	DA - RESPONSE TO COUNCIL RFI	27.04.2022
C	DA - RESPONSE TO COUNCIL RFI	02.06.2022

LEGEND & NOTES
EXISTING TREE TO BE RETAINED
PROPOSED NEW TREE
EXISTING TREE TO BE REMOVED

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS // BOUNDARY DIMENSIONS & ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. USE FIGURED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS // ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS // ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA // ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.
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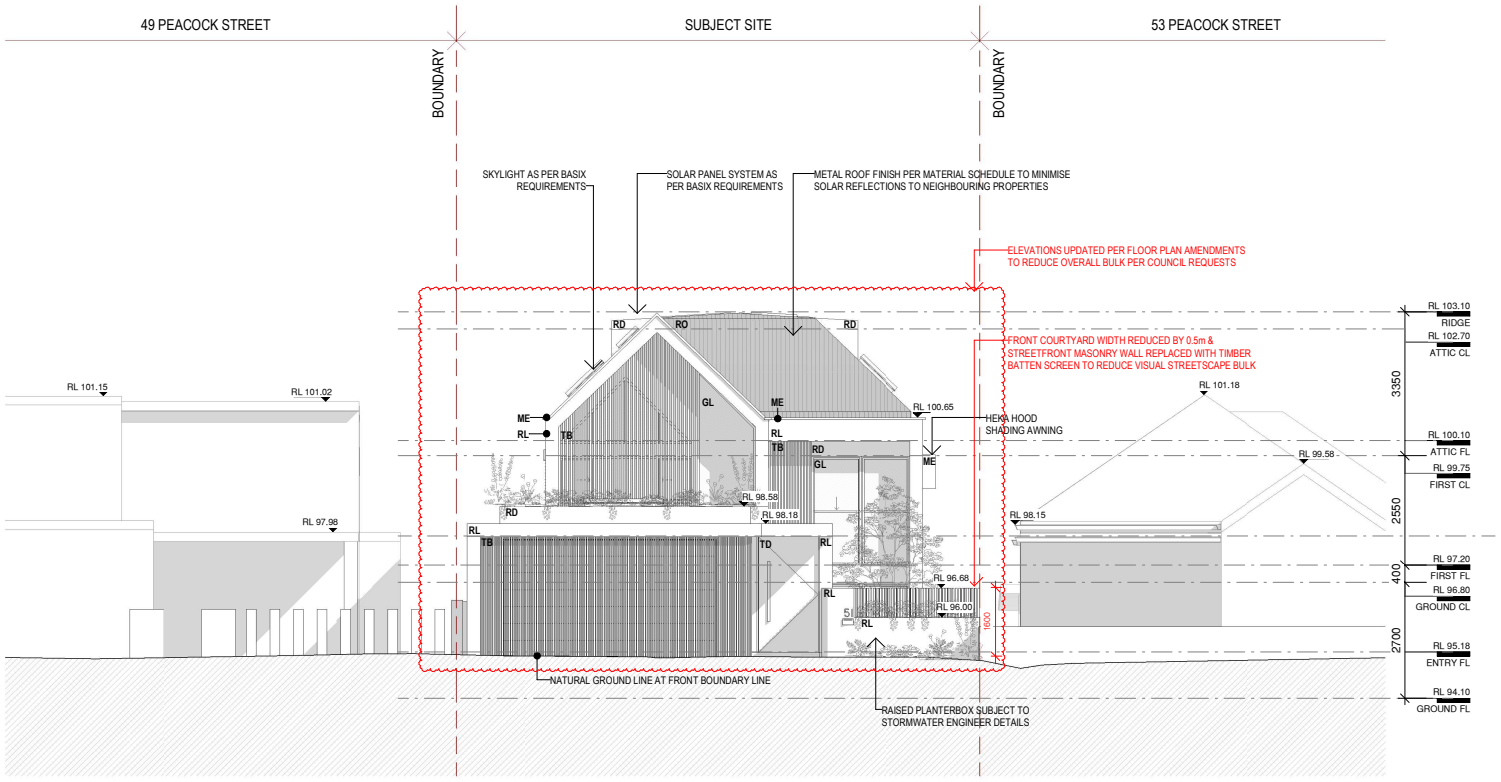
CLIENT: **Mark & Gabriella Rogers**

ADDRESS: **51 PEACOCK STREET, SEAFORTH NSW 2092 LOT 8 DP 7836**

SCALE: **1 : 200** @ A3

DRAWING TITLE: **SITE PLAN**

DRAWN BY: **SS**
DESIGNED BY: **RU**
PROJECT NO.: **20.11**
REV: **C**
TRUE NORTH
DATE: **02.06.2022**
DRAWING NO.: **A202**



1 NORTH ELEVATION
1 : 100

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RESPONSE TO COUNCIL RFI - NOT FOR CONSTRUCTION

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	27.09.2021
B	DA - RESPONSE TO COUNCIL RFI	27.04.2022
C	DA - RESPONSE TO COUNCIL RFI	02.06.2022

LEGEND & NOTES

MATERIALS LEGEND (REFER TO DA901)

RL - RENDER - LIGHT
RD - RENDER - DARK
BL - BRICK - LIGHT
TB - TIMBER SLATS SCREEN
ME - METALIC FINISH - DARK
VS - TIMBER VENITIAN SCREEN
WF - WINDOW FRAMES
GL - GLASS - CLEAR
LG - GLASS - LOUVRE
RO - ROOF
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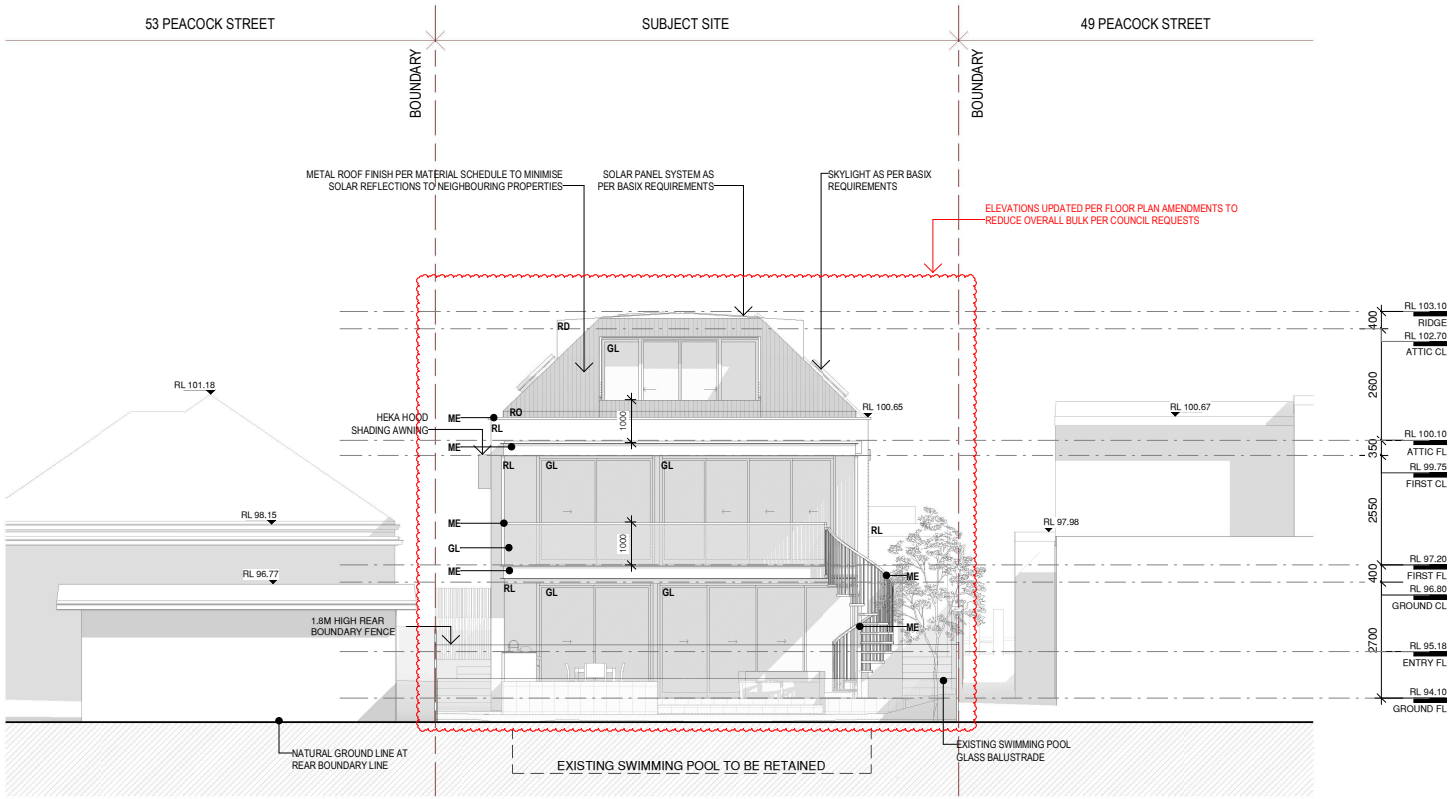
CLIENT
Mark & Gabriella Rogers

ADDRESS
51 PEACOCK STREET, SEAFORTH NSW 2092
LOT 8 DP 7836

SCALE @ A3
1 : 100

DRAWING TITLE
NORTH ELEVATION

DRAWN BY. **SS**
DESIGNED BY. **RU**
TRUE NORTH
DATE **02.06.2022**
PROJECT NO. **20.11**
REV **C**
DRAWING NO. **A501**



1 SOUTH ELEVATION
1 : 100

RESPONSE TO COUNCIL RFI - NOT FOR CONSTRUCTION

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	27.09.2021
B	DA - RESPONSE TO COUNCIL RFI	27.04.2022

LEGEND & NOTES

MATERIALS LEGEND (REFER TO DA901)

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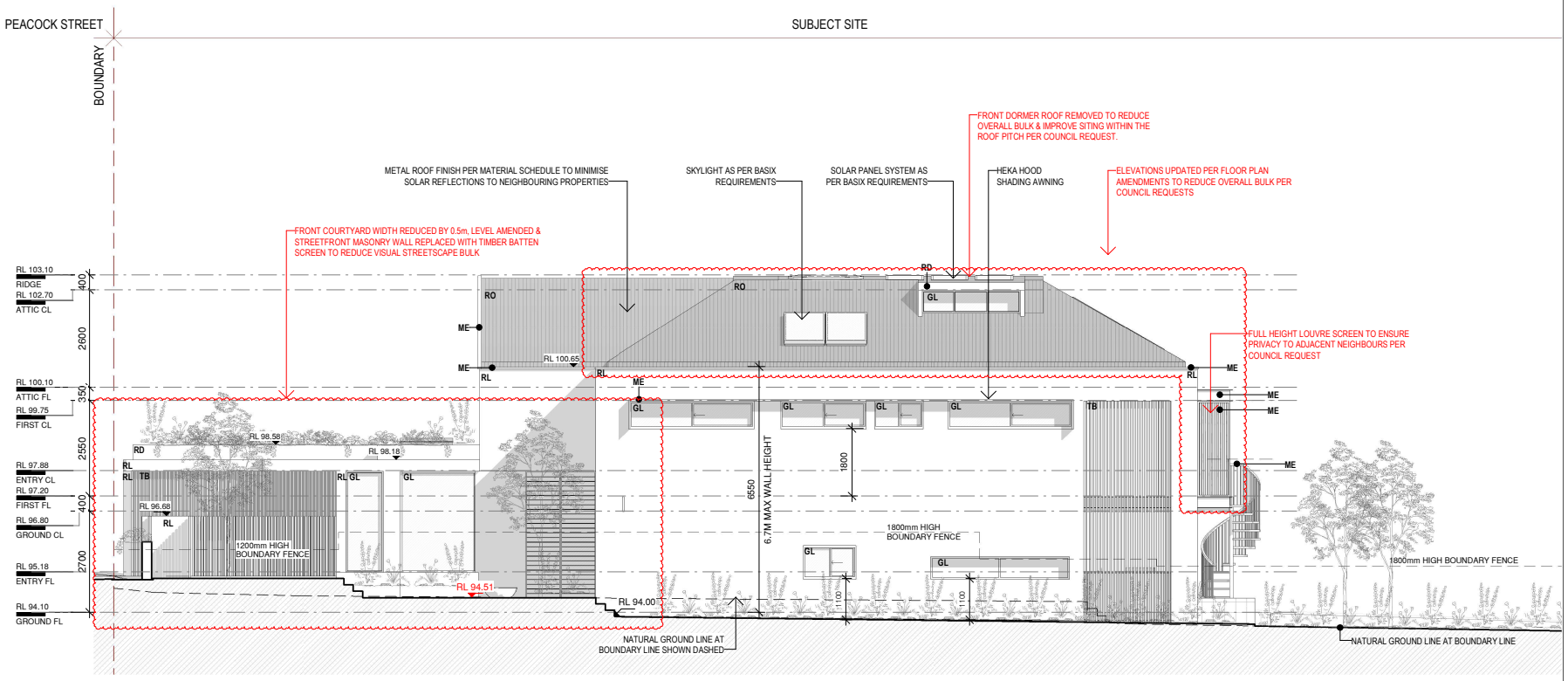
CLIENT: **Mark & Gabriella Rogers**

ADDRESS: **51 PEACOCK STREET, SEAFORTH NSW 2092 LOT 8 DP 7836**

SCALE @ A3: **1 : 100**

DRAWING TITLE: **SOUTH ELEVATION**

DRAWN BY: **SS**
DESIGNED BY: **RU**
TRUE NORTH:
DATE: **27.04.2022**
PROJECT NO.: **20.11**
REV: **B**
DRAWING NO.: **A502**



1 WEST ELEVATION
1 : 100

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RESPONSE TO COUNCIL RFI - NOT FOR CONSTRUCTION

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	27.09.2021
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LEGEND & NOTES

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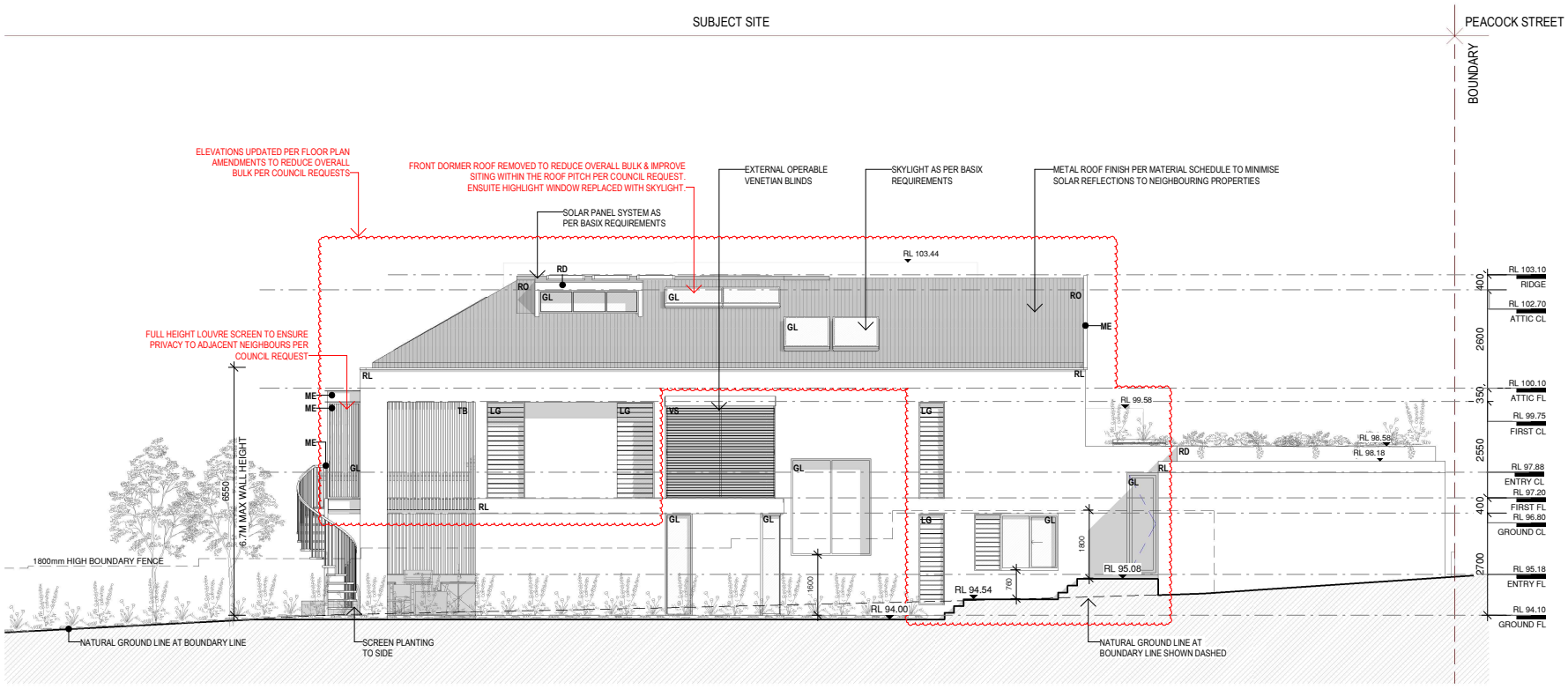
CLIENT: **Mark & Gabriella Rogers**

ADDRESS: **51 PEACOCK STREET, SEAFORTH NSW 2092 LOT 8 DP 7836**

SCALE @ A3: 1 : 100

DRAWING TITLE: **WEST ELEVATION**

DRAWN BY: SS
DESIGNED BY: RU
TRUE NORTH:
DATE: 02.06.2022
PROJECT NO.: 20.11
REV: C
DRAWING NO.: A503



1 EAST ELEVATION
1 : 100

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NOMINATED ARCHITECT: Robert Ursino NSW ARB No: 10565

RESPONSE TO COUNCIL RFI - NOT FOR CONSTRUCTION

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE - NOT FOR CONSTRUCTION	27.09.2021
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LEGEND & NOTES

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CLIENT: **Mark & Gabriella Rogers**

ADDRESS: **51 PEACOCK STREET, SEAFORTH NSW 2092 LOT 8 DP 7836**

SCALE @ A3: 1 : 100

DRAWING TITLE: **EAST ELEVATION**

DRAWN BY: **SS**
DESIGNED BY: **RU**
TRUE NORTH:
DATE: **02.06.2022**
PROJECT NO.: **20.11**
REV: **C**
DRAWING NO.: **A504**

ITEM 3.5	**DA2021/2262 - 14 OCEAN ROAD PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/364789**
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 DA2021/2262 for demolition works and construction of a dwelling house including a swimming pool on land at Lot 1 DP 412086, 14 Ocean Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2262

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 1 DP 412086, 14 Ocean Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Asia Digital Investments Pty Ltd
Applicant:	Reform Projects Pty Ltd

Application Lodged:	06/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/12/2021 to 18/01/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 4,204,631.90

EXECUTIVE SUMMARY

This development application seeks consent for the demolition of the existing dwelling and construction of a three level dwelling with garage, pool and associated landscaping and earthworks.

The application is referred to the Development Determination Panel (DDP) as 3 submissions have been received in response to the exhibition of the application and the cost of construction is greater than $1 Million. Concerns raised in the objections predominantly relate to impacts on amenity (overshadowing, privacy and view loss) as a result of the bulk and height of the development and non-compliances with the built form controls.

The proposal, as amended, will result in a maximum building height of 9.7m which is below the 10.0m

concessional building height limit for steeply sloping sites under the PLEP 2014. The majority of the building sits below the 8.5m building height with only a small section of the roof to Level 1 and 2 in the southern corner exceeding the 8.5m standard. The height, bulk, scale and massing is consistent with that of other recent residential developments in Ocean Road.

With the exception of the building envelope and landscaped area provisions, the proposal complies with all other built form controls. The extent of the envelope breach has been reduced with an increased setback to the upper floors from the southern boundary. Despite the breach, there are no unreasonable impacts on neighbouring amenity by virtue of overshadowing, overbearing and view loss and the dwelling steps down the site to respect the steeply sloping landform. The minor 4% breach of the required landscaped area is assessed, on merit, as acceptable as sufficient landscaping is proposed to ensure that the built form is softened and impacts ameliorated.

The proposal presents as a contemporary dwelling which is stepped, articulated and incorporates a palette of natural materials to respect the desired future character of the Palm Beach area.

This report concludes with a recommendation that the DDP should **APPROVE** the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of the existing dwelling and the construction of a new dwelling, integrated garage and pool. In detail, the proposal includes:

Lower Ground Floor RL5.05

- excavation to a max depth of 4.6m for the construction of a double garage, cellar, laundry, plant and bin store
- lobby, lift and stair access

Ground Level RL9.30- RL9.75

- pool and lower terrace (RL9.30)
- open plan kitchen, dining and living with adjoining terrace (RL9.75)
- lift and stair access

Level 1 RL13.28

- four bedrooms, bedroom 3 and 4 with ensuites
- rumpus
- study
- bathroom
- lift and stair access

Level 2 RL16.51

- master bedroom WIR and ensuite
- terrace
- lift and stair access

External

- 1.2m high masonry wall (to prevent wave inundation) clad in stone and rendered in part
- timber clad driveway gate
- removal of 2 clumps of strelitzia nicolai at the rear and new planting throughout the site

Materials

- Natural stone, rendered walls painted, vertical timber board cladding to garage door, metal deck roof, horizontal timber louvres, pebbled roofs, glass balustrades and aluminium windows and doors.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D12.3 Building colours and materials
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 1 DP 412086 , 14 Ocean Road PALM BEACH NSW 2108

Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Ocean Street located directly opposite Palm Beach. The site is irregular in shape with a frontage of 17.7m along Ocean Street and a depth of between 36.28m and 40.7m. The site has a surveyed area of 700.2m². The site is located within the C4 Environmental Living zone from the PLEP and accommodates a two (2) storey rendered and clad house (painted blue) with a metal roof with terracing over a garage accessed via a driveway at the front of the property. A detached cabana is located at the rear with a series of rough stone walls creating terracing at the rear The site is steeply sloping with a level difference of approximately 18m between the front (east) of the site and the rear (west). There are some palm tree clumps 2m - 3m in height located on the garden embankment to the rear. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mixture of one, and two storey dwellings. The property to the immediate north is a part one part two storey brick and tiled roof dwelling with a balcony to the front and side facing the ocean to the east. A further balcony / deck area is located to the south. The property to the north is a two storey clad and stone dwelling with a tiled roof. Two storey dwellings are located to the rear of the subject site on higher ground accessed via Sunrise Road. More recent developments include a number of large multi level dwellings to the north of the site including No. 6 Ocean Road which is four storeys. Palm Beach is located across the road to the immediate east.

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:

PLM2021/0195

On 24 August 2021, a pre-lodgement meeting took place between the applicant and Council Officers regarding demolition of the existing dwelling and the construction of a new dwelling and pool. The PLM notes concluded:

The proposed development is not supported in its current form, but may be supported subject to the following design amendments:

- *further articulation of the eastern wall to the lower ground floor of the dwelling house*
- *increase to the northern and southern side building lines to achieve compliance with the respective side building line requirement, with the exception of retaining walls required for the retention of land*
- *reduction to the extent of the terrace, lower terrace and sunken courtyard to eliminate any potential direct overlooking into the adjoining properties at Nos. 13 and 15 Ocean Road, with the inclusion of solid or vegetative screening where necessary*
- *reduction to the extent of the breach to the prescribed building envelope on the southern elevation to be a minor breach only; and*
- *increase to the provision of landscaped area on the site to achieve greater compliance with the 60% requirement when including the permitted variations.*

Note: *The proposal has since been amended to address the PLM design recommendations.

Current DA

On 14 March 2022, after a preliminary assessment was completed, a letter was sent to the applicant raising issues in relation to the building height, building envelope, landscape open space and potential

amenity impacts (solar access, privacy and view loss).

On 27 April 2022, amended plans were received which included the following changes:

Lower Ground Floor Plan

- A reduction in the width of the driveway where it crosses the property boundary to provide increased landscaped area at the front of the site.

Ground and Level 1

- A reduction in the width of the proposed dwelling and swimming pool to provide increased setbacks to the southern boundary at these levels and a corresponding reduction in building envelope breach.

Level 2

- A reduction in the width of the master bedroom to achieve an additional 1300mm setback to the southern boundary and a corresponding reduction in building envelope breach.
- A reduction in the trafficable area of the terrace to maintain appropriate visual privacy between adjoining development.
- A minor increase in the setback of the master bedroom to the front boundary to reduce the height of the development relative to ground level (existing).

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	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	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 issues raised regarding the height, bulk and scale, landscape open space and impacts ion neighbouring amenity. 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 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

Section 4.15 Matters for Consideration	Comments
	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 13/12/2021 to 18/01/2022 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 3 submission/s from:

Name:	Address:
Mr Avik Kalloghlian	15 Ocean Road PALM BEACH NSW 2108
Mrs Kathryn Louise Holland	28 Bilga Avenue BILGOLA PLATEAU NSW 2107
Mr Hugh Rodney Cooke	13 Ocean Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

- **Overshadowing**
- **Breach of Building Envelope**
- **View loss due to height, bulk and scale**

The above issues are addressed as follows:

- **Overshadowing**

  The submissions raised concerns that the proposal will overshadow the rear garden of the property to the immediate south.

  Comment:

The proposal will result in an increase in the shadow impact to the southern neighbour, including the area to the rear. Despite the increase in shadow, the proposal complies with the solar access controls in respect of solar impacts to the principle area of open space which is noted to be to the south and east of No. 15 Ocean Road, refer to detailed discussion under Clause C1.4.

- **View loss / building envelope breach / height bulk and scale**

  The submissions raised concerns that views from the top bedroom in the neighbouring property to the north will be blocked, and height poles were requested to assess the impacts on the neighbouring amenity. The submission stated that the proposal should be amended to comply with the building envelope.

  Comment:

  The proposal has been amended to increase the setback of the upper floors from the northern and eastern boundary which in turn has reduced the height of the development and the breach of the building envelope. The bulk and scale of the development is assessed as acceptable, refer to discussion under height and building envelope below.

  The top floor is stepped back to allow views across the site to be retained from the south facing bedroom window to No. 13 Ocean Road. The primary iconic eastern view of Palm Beach enjoyed from all east facing windows and the front elevated deck will not be impacted.

  Due to the elevated position of the dwellings to the rear (west) on Sunrise Road, views to the ocean and beach will be retained over the roof of the new dwelling. It is not reasonable to request height poles given that there view sharing will be maintained, refer to detailed discussion under view sharing below, refer to detailed discussion under Clause C1.3 below.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	**Supported, no conditions** General Comments Class 5 Recommendation supported - no conditions
Landscape Officer	**Supported, subject to conditions** This application is for the demolition of an existing residential dwelling, and the construction of a new residential dwelling including a new swimming pool and associated landscape works. Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP controls:



Internal Referral Body	Comments
	• B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12.10 Landscaped Area - Environmentally Sensitive Land • D12.14 Scenic Protection Category One Areas The Statement of Environmental Effects provided with the application notes that two trees are to be removed as a result of proposed works. This statement is largely supported by the Architectural Plans as it is evident only two trees are shown to be removed. For this reason, an Arboricultural Impact Assessment has been provided. This Arboricultural Impact Assessment has identified a total of five trees, two of which are within the site boundaries, with the remaining three trees located in the adjoining property to the south. The two trees within the site, Trees No. 2 and 3, have been proposed for removal as they fall within the footprint of proposed. These trees have been identified as palm like species, and are therefore considered to be exempt and as a result may be removed without Councils approval. The remaining three trees identified, Trees No. 1, 4 and 5, are clear of proposed works and are not anticipated to receive any Tree Protection Zone (TPZ) or Structural Root Zone (SRZ) encroachments as a result of proposed works. Considering this, no major concern is raised regarding the impacts of proposed works on existing trees, nor with the proposed tree removal. The retention and protection of those trees to be retained is vital to satisfy control B4.22 as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". A Landscape Plan is provided with the application with proposed works including the in-ground planting of trees, shrubs, accents, grasses and groundcovers, as well as the on-slab planting of trees, shrubs, grasses and groundcovers. Generally, the proposed landscape works are supported as they seek to increase the overall landscape amenity of the site, whilst also ensuring the built form is softened and mitigated particularly when viewed to from the adjoining road and beach reserve. Slight concern however is raised regarding the use of *Archontophoenix cunninghamiana* and *Rhaphiolepis indica*. *Archontophoenix cunninghamiana* is identified as an exempt species and as a result can be removed without approval in the future. For this reason, it is recommended that this be substituted with *Livistona australis* to ensure the ongoing retention of Pittwater's biodiversity by using locally native species. Furthermore, *Rhaphiolepis indica* has been identified as an environmental weed and is therefore an undesirable species. For this reason, it is recommended that this be substituted for a locally native alternative. The completion of these landscape works, inclusive of the required species changes, is necessary to satisfy controls C1.1 and D12.10, as key objectives of these controls seek to ensure "vegetation is retained and enhanced to visually reduce the built form", "landscaping results in the long-term retention of Pittwater's locally native tree canopy", as well as "landscaping enhances habitat and amenity value".

Internal Referral Body	Comments
	The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plan, inclusive of the required species changes.
NECC (Bushland and Biodiversity)	**Supported, subject to conditions** The application seeks approval for the demolition of the existing dwelling house and the construction of a new contemporary dwelling house with integrated car parking accommodation, swimming pool and an enhanced site landscape regime. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: <u>Biodiversity Conservation Act 2016 (BC Act)</u> <u>Pittwater Development Control Plan (PDCP)</u> • B4.3 Flora and Fauna Habitat Enhancement Category 2 The application seeks to remove two (2) 'clumps' of exotic trees (T.2 & 3 ; *Strelitzia nicholai*). No objection is raised by Natural Environment Unit - Biodiversity subject to their replacement with locally-native species per the landscaping provisions of B4.3: • Development shall ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plants for Your Garden available on the Pittwater Council website). Landscaping is to be outside areas of core bushland and not include environmental weeds. The species selection within the submitted Landscape Plan (Fifth Season Landscapes 2021) is currently non-compliant, and is to be amended accordingly to ensure consistency with B4.3 of the Pittwater DCP. Additionally, *Raphiolepis indica* is to be deleted from the planting list due to its former status as a Noxious Weed. The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values following amendment of the Landscape Plan. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	**Supported, subject to conditions** 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

Internal Referral Body	Comments
	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 'Coastal Use Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated November 2021 and Coastline Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 12 November 2021, the DA satisfies requirements under clauses 14 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* *Coastline (Beach) Hazard Management* The property is located within a “Wave inundation” hazard area designated on the Coastal Risk Planning Map that is referenced in Pittwater Local Environmental Plan 2014. The subject property is also mapped as being land identified under Coastline Beach Hazard Area on the Pittwater 21 Development Control Plan (DCP) Map MDCP016. As such, the Coastal Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 DCP) and the relevant B3.3 Coastline (Beach) Hazard controls in P21 DCP will apply to new development of the site. A Coastline Risk Management Report by Horton Coastal Engineering Pty. Ltd. dated 12 November 2021, has been submitted with this DA application.

Internal Referral Body	Comments
	The report assessed that erosion/recession from coastal processes is not considered to be a significant risk to the proposed development. Based on the Coastline Policy, it is theoretically required to define a Coastline Hazard Line (CHL) and Coastline Management Line (CML) 3, but these lines do not actually apply at the property due to the elevated bedrock. However, to reduce the risk of wave runup impacting the proposed development, the report recommended a number of measures to be adopted. Hence, the proposed development does comply with the requirements of Clause 7.5 of Pittwater Local Environmental Plan 2014, Section B3.3 of the Pittwater 21 DCP and the Coastline Risk Management Policy for Development in Pittwater for the matters considered herein.
NECC (Development Engineering)	**Supported, subject to conditions** The submitted drainage design including on-site stormwater detention (OSD) is satisfactory. The proposed driveway access and internal grades are acceptable for the proposal. The submitted Geotechnical report addresses the relevant DCP controls. Development Engineering support the proposal, subject to conditions as recommended.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS - **Supported, no conditions** Discussion of reason for referral The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item: **Item I270064 - House** - 2 Palm Beach Road Details of heritage items affected Details of the item, as contained within the Pittwater Heritage Inventory is as follows: **Item I270064 - House** Statement of Significance: The House at 2 Palm Beach Road in Palm Beach, built c1920s as a holiday house, has historic and aesthetic significance as a holiday house typical of the early Pittwater subdivisions. The architectural heritage of the area is characterised by this house form which, in Pittwater, evolved as a structure subordinate to the landscape and which utilised natural materials to harmonise with the surroundings and lessen their visual impact. The dwelling is representative of the popularity of cottage retreats in Pittwater built of local natural materials to simple designs with traditional construction techniques.



<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
The house is associated with the development of the northern beaches as a holiday destination. The listing includes the interiors of the house; however detailed analysis and assessment should be undertaken at the time of any future changes to the interior in order to ascertain the relative heritage significance.

<u>Physical Description:</u>
This house is located on an elevated site block. It is a symmetrical two-storey stone house with central faceted bay, stone basement and weatherboard upper level.

Other relevant heritage listings
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>N/A</td><td></td></tr>
</table>
Consideration of Application
The proposal seeks consent for the demolition of the existing dwelling and the construction of and new landscaping. The heritage item is located to the south of the subject site. Given the separation afforded by the two dwellings between the heritage item and the subject property, the impact of the proposal upon the significance of the heritage item is considered manageable.

Therefore, no objections are raised on heritage grounds and no conditions required.

<u>Consider against the provisions of CL5.10 of Pittwater LEP 2014.</u>
Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No
</td></tr>
</table>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that a decision was not required.
Aboriginal Heritage Office	**Supported, with conditions**

External Referral Body	Comments
	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 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. 1246606S dated 21 October 2021).
The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass

Energy	50	53%

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:

The site is located approximately 22m to the west of Palm Beach. The proposal is not likely to cause an adverse impact on the matters listed above.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

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

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

Comment:

Given the location of the development the proposal is not likely to impact on the matters listed under clause 13 (1).

14 Development on land within the coastal use area

(1) (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) cultural and built environment heritage, and

(b) is satisfied that:
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development will not result in any unreasonable impacts on the matters listed under Clause 14.

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

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

coastal hazards on that land or other land.

Comment:

Council is satisfied that the proposal is unlikely to cause an increased risk of coastal hazards, refer to comments from the Coastal Officer in the referral section of this report.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	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 *Clause 4.3(2D) allows for 10.0m	9.71m	N/A	Yes

*Note: Clause 4.3(2D) allows for a maximum height of 10.0m if the portion of the building above the 8.5m is minor, the building footprint is on a slope in excess of 16.7 degrees (30%) the building steps down the slope and the objectives of the clause are achieved. The development is consistent with these requirements, refer to discussion below.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.1 Land use zones	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The height of the proposed dwelling house, as amended, has been measured at 9.71m above ground level.

Despite the 8.5m development standard that applies to the subject site, a maximum building height of 10.0m is permitted on this site, but only if the proposed development satisfies the relevant requirements of Clause 4.3 (2D) of PLEP 2014.

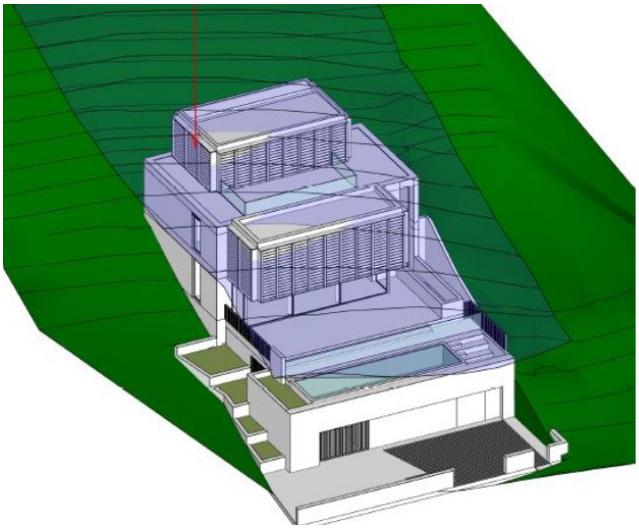
The proposal, as amended, satisfied the requirements of Clause 4.3(2D) as discussed below:

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

Comment:

The portion of the building that breaches the 8.5m height limit is limited to a small portion of the southern corner of the Level 1 and Level 2 roof as depicted in the 8.5m height diagram below.

*Note: The natural ground levels of the land have been modified to accommodate the existing dwelling. The applicant's height diagram interpolates the natural undisturbed ground level across the site.



8.5m height plane diagram *(source Matieson)*

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

Comment:

The proposal, as amended, generally satisfies the objectives of the height control

- it ensures that the dwelling, by virtue of its height and scale, is consistent with the desired character of the locality,
- it ensures that buildings are compatible with the height and scale of surrounding and nearby development,
- it limits overshadowing of neighbouring properties to a compliant level (see discussion under Clause x of the PDCP),
- it allows for the reasonable sharing of views,
- it ensures that the dwelling respond sensitively to the natural topography,
- it minimise the adverse visual impact of development on the natural environment, heritage

conservation areas and heritage items.

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

Comment:

The building footprint is situated on a slope in excess of 30%.

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

Comment:

The proposal will not require excessive cut and fill for the construction. The proposed dwelling steps down the site in response to the steep slope.

In summary, the proposal, as amended, significantly reduces the extent of non-compliance with the 8.5m height standard through the provision of an increase setback to the southern boundary and pulling back the upper floor away from the street frontage. The breaching element is assessed as minor and meets the criteria for the 10.0m concessional building height limit for steeply sloping sites. The building steps down the site and is an appropriate response to the desired character of the Locality. As such, the proposal satisfies clause 4.3 2(D) and a Clause 4.6 Variation Statement is not required.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Lower Ground and Ground Floor- min 7.4m	N/A	Yes
Rear building line	6.5m	Upper Floor - min 9.0m	N/A	Yes
Side building line	2.5m	South - min 2.5m to the wall of the dwelling (Note: Landscape features, planter beds and terraces, OSD and RWT within the 2.5m setback)	N/A	Yes
	1.0m	North - min 1m to stair / lobby 3.6m to the external wall of the dwelling	N/A	Yes
Building envelope	3.5m	South Outside envelope (refer to detailed discussion)	Refer to detailed discussion	**No**
	3.5m	Within envelope	N/A	Yes
Landscaped area	50%	56%	4%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
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	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	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The Desired Character of the Palm Beach Locality requires:

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Comment

The proposal has been amended to increase the setback of the development to the southern boundary in particular the upper level by an additional 1.3 metres. This amendment has had the effect of significantly reducing the building height and building envelope breach with the building appropriately articulated and modulated to step down the site in response to the topographical characteristics of the land. While the dwelling exceeds the recommended two storey limit, the height, bulk and scale are consistent with that established by recently approved and constructed development along this section of Ocean Road. The dwelling steps down the site and the bulk and scale of the development will be soften with landscaping to help integrate the built form with the landform.

In summary, it is assessed that the development is consistent with the desired future character of the Palm Beach Locality as outlined as it relates to the orderly and economic development of a steeply sloping site along this section of Ocean Road.

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

  Comment:

  In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting

Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

A submission has been received from the neighbour to the immediate north at No. 13 Ocean Road regarding views to the south from the top bedroom window. Height poles were requested to assess the impact. It is also noted that height poles were requested from the neighbour to the immediate west at No. 12 Sunrise Road.

A search of available photos taken from No. 13 Ocean Road on the internet confirms that the property enjoys extensive uninterrupted ocean views to the east from the primary living areas and area of private open space. Views are also enjoyed looking north towards the iconic Palm Beach light house and headland and to the southern headland towards the ocean pool.

A search of Council's records confirms that No. 12 Sunrise Road sits at a super-elevated position, approximately 8.0m or more above the height of the proposed dwelling. The views from the dwelling are currently over the roof of the existing dwelling towards the ocean to the east, although the views may be partially interrupted by the existing vegetation within the rear embankment of the subject site. Views are also be enjoyed looking towards the southern headland over the roof of No. 15 Ocean Road.

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

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

Comment to Principle 2:

As discussed above, the views from No. 13 Ocean Road are obtained from elevated decks and the east, north and south facing windows to primary living areas and bedrooms. The submission from No. 13 Ocean Road notes that the views from the upper floor bedroom may be impacted by the proposed development. The upper floor bedroom has a primary east facing window and a secondary south facing window.

3. Extent of impact

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

view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

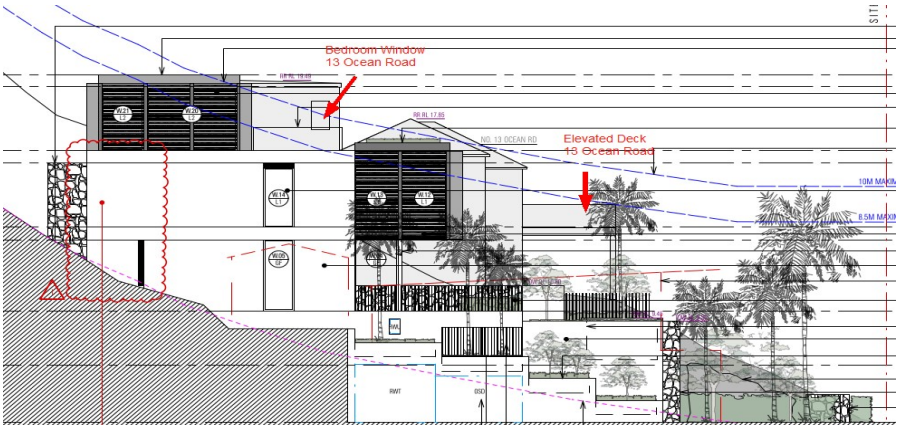
13 Ocean Road

No. 13 Ocean Road sits back from the street frontage in an elevated positioned. The lower ground and ground floor of the proposed dwelling are setback a minimum of 7.4m from the frontage at a lower level to the ground and first floor of No. 13 Ocean Road to the immediate north. The lower levels of the proposed dwelling will not result in any adverse impacts on views to the southern or northern headland or eastern views to the Ocean.

Level 1 of the proposed dwelling is setback from No. 13 Ocean Road (approximately 5.6m to the west of the frontage of the elevated deck, 2.2m to the west of the frontage of the east facing window to the open plan living area and 0.9m from the recessed eastern wall). Given the setback of Level 1 behind the frontage of No. 13 Ocean Road, there will be no unreasonable view loss to the neighbouring property to the immediate north.

Level 2 of the proposed dwelling is set back even further from the frontage of No. 13 Ocean Road, and as such there will be no view loss from this level.

Concern has been raised regarding the impact on views enjoyed from the upper floor bedroom window looking across the side boundary of the subject site looking towards the south. The bedroom in question has a corner window to the frontage which has a primary view to the east to the ocean. There will be no unreasonable view loss from the east facing bedroom window. The eastern external wall of Level 2 of the proposed dwelling is setback approximately 2.2m from the edge of the south facing bedroom window. The window will overlook the terrace of the master-bedroom to the southern headland beyond. As such, it is not envisaged that there will be any unreasonable loss of view from the south facing bedroom window.

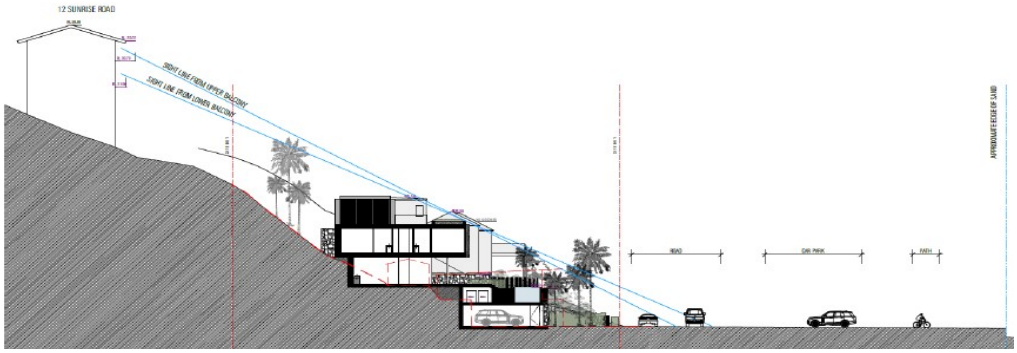


Southern Elevation *- showing relationship to windows and deck at No. 13 Ocean Road (source Mathieson Architects)*



***Subject Site** - shows in context to No. 13 Ocean Road and 12 Sunrise Road*

12 Sunrise Road
The applicant has submitted a View Analysis plan DA3(A) based on the available survey information which demonstrates that the proposed development will not obstruct the existing ocean views enjoyed from No. 12 Sunrise Road, refer to image below:



***View Analysis Plan** (source Mathieson Architects)*

It is Council's assessment that there will be no unreasonable view loss impacts on No. 12 Sunrise Road located directly to the west (rear) given its elevated location. Eastern ocean views will be retained over the roof of the proposed dwelling. Given the above assessment and information submitted by the applicant in response to the view loss concern it is not considered reasonable to request that height poles in this instance.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

With the exception of a minor breach in the building envelope to the southern elevation, the proposal is compliant with the relevant built form controls in respect of height, setbacks (front, side and rear). The southern corner of Level 1 that breaches the building envelope will not in itself give rise to any unreasonable view loss impacts.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

  Comment:

  There are no views or vistas from public places to water, headland or the beach that will be impacts by the proposed development.

- *Canopy trees take priority over views.*

  Comment:

  There are no canopy on the subject site that will be impacted by the development.

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

C1.4 Solar Access

Clause C1.4 requires:

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Comment:

Shadow diagrams, in plan and elevation, have been submitted by the applicant which demonstrate that additional shadow will be cast on the property to the south, No. 15 Ocean Road. A site inspection and a search of records confirm that the main area of private open space to No. 15 Ocean Road is the deck area located to the south and the east facing terrace that is located to the frontage and wraps around the north of the dwelling. The shadow diagrams confirm that additional shadow will not impact the principal area of private open space.

The principal living area is located to the front and southern side of No. 15 Ocean Road. The primary windows to the open plan living room face east with secondary windows to the north. The shadow diagrams confirm that the additional shadow will not impact the primary windows.

In summary, the proposal, as amended, complies with the requirements and outcome of the solar access control.

C1.5 Visual Privacy

Claus C1.5 requires:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Comment:

A site visit confirms that dwellings along Ocean Road are orientated to take advantage of the eastern ocean views with large areas of private open space provided to the frontages of dwellings generally with no privacy screens which may impede the quality of the ocean view. As such, a balance needs to be achieved in relation to the maintenance of cross views and reasonable privacy.

Level 2 Deck

The proposal has been amended to reduce the trafficable area of the Level 2 balcony. The amended proposal will result in a 7.5m separation between the northern edge of the deck and the south facing upper floor bedroom window to No. 13 Ocean Road. While this is less than 9.0m, it is assessed as acceptable given that the deck is associated with a bedroom which will be used infrequently, and the window to the adjoining property is a secondary window to a bedroom, again in a room infrequently used. In addition, in order to ensure that there is a balance between retaining the view from the south facing bedroom window to No.13, a privacy screen is not recommended in this instance.

The amended proposal is setback between 6.2m - 6.5m from the north facing window to the study in No. 15 Ocean Road, which sits at a lower than the proposed Level 2 deck to the master bedroom. In order to ensure that there is no overlooking from the elevated Level 2 deck to this window, a condition is recommended requiring that the trafficable area of the deck be set back an additional 2.0m from the southern boundary.

Privacy screens incorporated into the south facing Level 1 and Level 2 bedroom windows. In addition, the spatial separation combined with landscaping will ensure privacy is maintained between the proposed dwelling and adjoining properties.

D12.3 Building colours and materials

Cause D12.3 requires:

External colours and materials shall be dark and earthy tones

Comment:

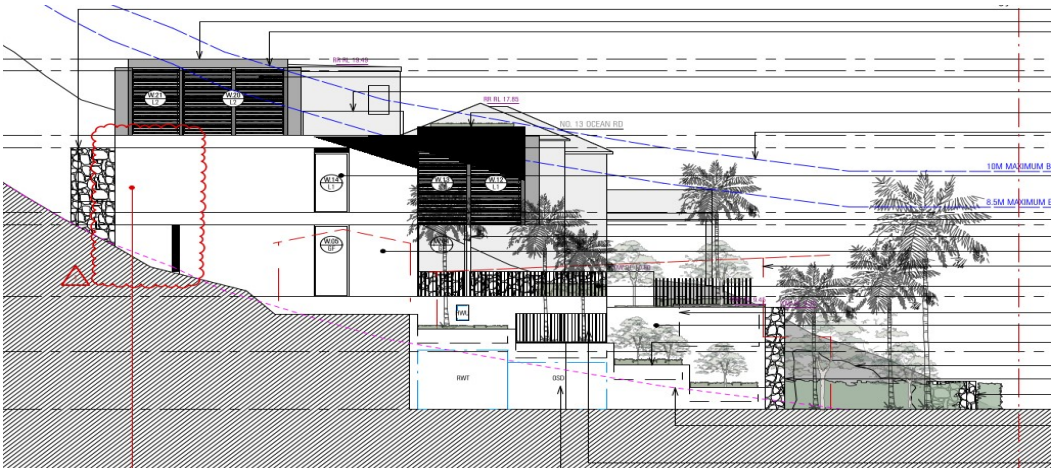
The external materials palette generally consists of dark earthy colours in compliance with the control. It is noted that some minor elements, including the southern external rendered masonry wall of the mid level (Level 1) is painted in a light colour. On merit, this is considered acceptable, as it is consistent

with light external colour scheme of the dwelling to the immediate south. The change in colour also helps break up the mass of the southern elevation.

D12.8 Building envelope

Clause D12. requires buildings to be contained within an envelope that measures 3.5m from the boundary and an angle of 45m.

The proposal breaches the side building envelope along Level 1 of the southern elevation for a height of 2.2m to 1.0m x 3.5m in length, which relates to the upper portion of the screens to the windows of Bedroom 3 and a small triangular area 1.3m in height x 3.2m in length which relates to the upper external wall of the ensuite, refer to image below.



Southern Elevation Envelope Breach - *marked black (source Mathieson Architects).*

A merit assessment of the application against the outcomes of the control is provided below.

To achieve the desired future character of the Locality.

Comment:

The breaching elements are confined to relatively small areas of building facade and result from a combination of the irregular southern boundary alignment and the topography of the site.
The breaching elements do not prevent the development from achieving the desired future character of the Palm Beach locality. The dwelling steps down the site and the is consistent with the height, scale and bulk of other developments along Ocean Road.

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

Comment:

The dwelling is well articulated and presents an attractive built form in the street. As noted above, the scale and density is consistent with that of other recent developments in Ocean Road and the proposed landscaping will help soften the built form.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of

the existing natural environment.

Comment:

Notwithstanding the breaching elements, the development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised.

Comment:

The amended proposal reduces the height and bulk of the development, landscaping will help soften the built form.

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

Comment:

The proposal will not result in any unreasonable impacts on view sharing, refer to detailed discussion below.

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

Subject to conditions, the proposal will not impact on privacy and the proposal complies with the solar access provisions, refer to detailed discussion above.

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

Comment:

There is no significant vegetation on the site. The proposed planting will reduce any visual impact on the built form.

D12.10 Landscaped Area - Environmentally Sensitive Land

Clause D12.10 requires:

The total landscaped area on land zoned R2 Low Density Residential or C4 Environmental Living shall be 60% of the site area.

The use of porous materials and finishes is encouraged where appropriate.

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

impervious areas less than 1 metre in width (e.g. pathways and the like);
for single dwellings on land zoned R2 Low Density Residential or C4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).

Comment:

The proposal, as amended, will provide a landscape area of 392sqm (56%), inclusive of the 6% allowance for hard landscaping. The proposal represents 28sqm (4%) breach of the control. A merit assessment of the proposal against the outcomes of the control is provided below:

Achieve the desired future character of the Locality.

Comment:

The minor 4% breach of the control will not result in unreasonable impacts on the desired future character of the Locality.

The bulk and scale of the built form is minimised.

Comment:

The bulk and scale of the development will be soften with new planting.

A reasonable level of amenity and solar access is provided and maintained.

Comment:

The proposal, as amended, maintains a reasonable level of amenity and solar access to neighbouring properties.

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

Comment:

The subject site is devoid of any significant existing vegetation. The application seeks to remove two (2) 'clumps' of exotic trees (T.2 & 3 ; Strelitzia nicholai). The proposed works including the in-ground planting of trees, shrubs, accents, grasses and groundcovers, as well as the on-slab planting of trees, shrubs, grasses and groundcovers. Generally, the proposed landscape works are supported, as they seek to increase the overall landscape amenity of the site, whilst also ensuring the built form is softened and mitigated particularly when viewed to from the adjoining road and beach reserve.

Conservation of natural vegetation and biodiversity.

Comment:

No objections, subject to conditons, are raised by Council's Biodiversity Unit, refer above.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment:

No objections, subject to conditions, are raised by Council's Development Engineer in respect of stormwater management.

To preserve and enhance the rural and bushland character of the area.

Comment:

The proposal preserves and enhances the character of the area.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment:

As noted above, Council's Development Engineer has no objections to the proposal subject to conditions.

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 $42,046 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,204,632.

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.

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 height, bulk and scale of the proposed dwelling, as amended, is consistent with the character of development along Ocean Road. The dwelling exhibits and high degree of stepping down the site to favourably relate the sloping landform and presents an attractive, well articulated contemporary dwelling to the street which incorporated natural materials in dark earthy tones. The proposed enhanced landscaping will soften the built form to ensure the development is suitable integrated into the topography.

With the exception of a minor breach of the building envelope and landscape area controls, the proposal complies with all other built form controls. The breaching elements will not result in unreasonable amenity impacts by virtue of overshadowing and view loss, and conditions are recommended to ensure privacy is maintained.

On balance, the proposal represents a good planning outcome on a constrained site in a sensitive coastal setting and is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2262 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 1 DP 412086, 14 Ocean Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA 00 Rev D Cover page location plan and BASIX commitments	25.10.2021	Mathieson Architects
DA 01 Rev I Site plan and site analysis	06.04.2022	Mathieson Architects
DA 02 Rev I Lower ground plan	06.04.2022	Mathieson Architects
DA 03 Rev I Ground Plan	06.04.2022	Mathieson Architects

DA 04 Rev I Level 1 Plan	06.04.2022	Mathieson Architects
DA 05 Rev I Level 2 Plan	06.04.2022	Mathieson Architects
DA 06 Rev I Roof Plan	06.04.2022	Mathieson Architects
DA 07 Rev J East and West Elevations	08.04.2022	Mathieson Architects
DA 08 Rev I North and South Elevations	08.04.2022	Mathieson Architects
DA 09 Rev G Sections	08.04.2022	Mathieson Architects
DA 13 Rev B Demolition Plan	15.10.2021	Mathieson Architects
DA 16 Rev B Excavation Plan	06.04.2022	Mathieson Architects
DA 17 Rev A Schedules and Finishes	22.10.2021	Mathieson Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
C-0001 Issue 02 General Notes and Legend	21.10.2021	Intrax Projects
C-1001 Issue 02 Erosion and Sediment Control Plan	21.10.2021	Intrax Projects
C-1011 Issue 02 Erosion and Sediment Control Detail and Notes	21.10.2021	Intrax Projects
C-4001 Issue 02 Stormwater Management Plan	21.10.2021	Intrax Projects
C-4101 Issue 02 Stormwater Catchment Plan	21.10.2021	Intrax Projects
C-4301 Issue 02 Stormwater Management Detail Sheet 1 of 2	21.10.2021	Intrax Projects
C-4302 Issue 2 Stormwater Management Detail Sheet 2 of 2	21.10.2021	Intrax Projects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Coastal Risk Management Report	12.11.2021	Horton Coastal Engineers
Geotechnical Investigation and Stability Assessment Ref 34272Jrpt	15.10.2021	JK Geotechnics
Building Services Rev A Ref NP649645	08.10.2021	Intrax Consulting Engineers Pty Ltd
Arboricultural Impact Assessment	25.10.2021	Jackson Nature Works
BASIX Certificate Number 1246606S	21.10.2021	BCA Energy

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**
LCP-01 Rev B Landscape Concept Pan	19.10.2021	Fifth Season

PLT-01 Rev A Planting Plan	19.10.2021	Fifth Season

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	-	Reform Projects

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 $42,046.32 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $4,204,631.90.

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

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

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

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

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

5. **Security Bond**

A bond (determined from cost of works) of $10,000 and an inspection fee in accordance with

Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **On Slab Landscape Works**
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:
i) 300mm for lawn
ii) 600mm for shrubs
iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the ‘wet’ weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

7. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JKGeotechnics reference 34272YJrpt dated 15 October 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

8. **Amendment of Landscape Plans**
The submitted Landscape Plan is to be amended in accordance with the following:
   - Deletion of *Raphiolepis indica* due to its former listing as a Noxious Weed within Greater Sydney
   - Provision of at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plants for Your Garden available on the Pittwater Council website).

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

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:

(a) The non-trafficable setback of the Level 2 deck to the southern boundary shall be increased by an additional 2m.
(b) The northern sides of the Level 2 terrace annotated with a reference to a pebbled roof (Drawing DA 5 Rev 1 dated 06.04.2022 prepared by Matieson) shall be non-trafficable.

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.

11. **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.

12. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy and generally in accordance with the concept drainage plans prepared by Intrax Projects, drawing number P649645 C-0000, C-0001, C-4001, C-4101, C-4301 and C-4302 Issue 2 dated 22/10/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

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

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

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

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

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

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

Reason: To provide public and private safety.

15. **Shoring of Council's Road Reserve (Temporary road anchors)**
Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

16. **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.

17. **Compliance with Coastal Risk Management Report**
The development is to comply with all recommendations of the approved Coastline Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 12 November 2021, and these recommendations are to be incorporated into construction plans and maintained over the life of the development.

Reason: To ensure coastal risk is addressed appropriately

18. **Low Level Coastal Inundation Risk Design**
All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

19. **Design Impact on Coastal Processes and Public/Private Amenity**
All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

20. **Construction Traffic Management Plan (CTMP)**
As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:
i) the implementation and installation of tree protection measures,
ii) all demolition, excavation and construction within the TPZ's and SRZ"s of trees to be retained.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

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

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

Reason: Tree protection.

22. **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.

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

13 Ocean Road, Palm Beach
15 Ocean Road, Palm Beach

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation 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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
i) Section 3 - Discussions,
ii) Section 4 - Recommendations,
iii) Annexure D - Tree Protection Details.

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

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

Reason: Tree and vegetation protection.

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

Reason: Public safety.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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 kerb 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.

33. **Waste / Recycling Requirements**
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan prepared by Reform Projects.

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

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

34. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:
i) substitute the proposed *Archontophoenix cunninghamiana* with a native, non-exempt alternative, minimum 75L pot size. Suggested species include: *Livistona australis,*
ii) substitute the proposed *Rhaphiolepis indica* with a native alternative, minimum 200mm pot size. Suggested species include: *Banksia spinulosa, Correa alba* (as proposed elsewhere on site), or *Westringia fruticosa*.

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.

35. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

36. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans (Fifth Season Landscapes 2021) and these conditions of consent.

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

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

37. **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.

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

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

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

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

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

39. **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.

40. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and Hydraulic engineers' certification.

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 disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment 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 is to be submitted.

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

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

41. **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.

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

(a) Coastal Risk Management Report, dated 12.11.2021, prepared by Horton Coastal Engineers
(b) Geotechnical Investigation and Stability Assessment Ref 34272Jrpt, dated 15.10.2021, prepared by JK Geotechnics
(c) Building Services Rev A Ref NP649645, dated 08.10.2021, prepared by Intrax Consulting Engineers Pty Ltd
(d) Arboricultural Impact Assessment, dated 25.10.2021, prepared by Jackson Nature Works
(e) BASIX Certificate Number 1246606S, dated 21.10.2021 prepared by BCA Energy

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

Reason: To ensure compliance with standards.

43. **Post Construction Coastal certificate**
Prior to the issue of the Occupation Certificate, a Post Construction Coastal Certificate shall be submitted to the Principal Certifying Authority (Form No. 3 of the Coastline Risk Management Policy for Development in Pittwater - Appendix 6 of P21 DCP) that has been prepared and signed by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.

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

44. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

45. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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 2008
(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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

46. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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 2008;

(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.

(b) A warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.

(c) All signage shall be located in a prominent position within the pool area.

Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

47. **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.

For all new on slab landscape works, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

48. **Undesirable Trees**

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

49. **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.

50. **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.

51. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

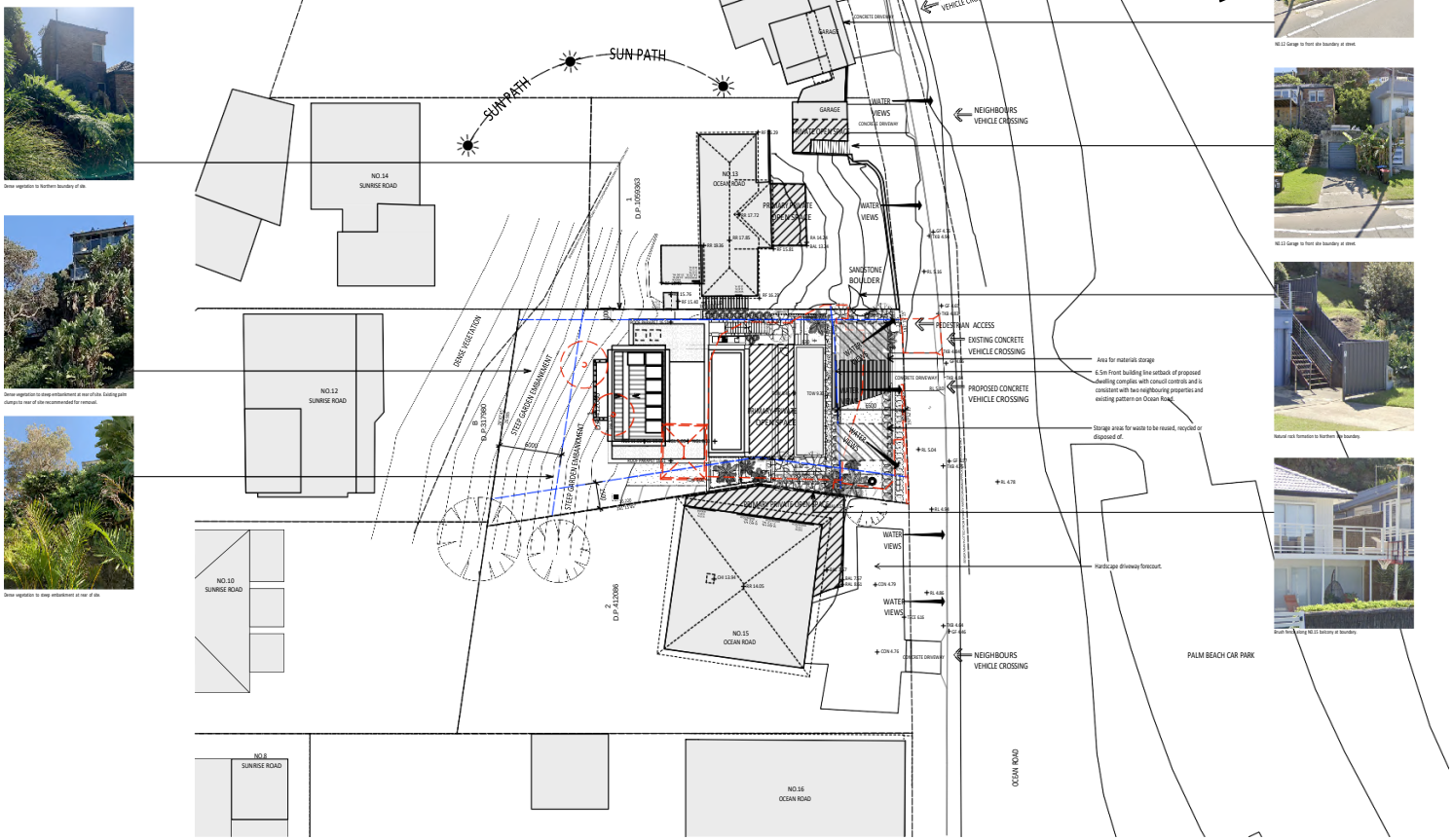
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Steven Findlay, Manager Development Assessments

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

Steven Findlay, Manager Development Assessments



Dense vegetation to Northern boundary of site.

Dense vegetation to steep embankment at rear of site. Existing palm clumps to rear of site recommended for removal.

Dense vegetation to steep embankment at rear of site.


NO.12 Garage to front site boundary at street.

NO.13 Garage to front site boundary at street.

Natural rock formation to Northern Site boundary.

Brush fence along NO.15 balcony at boundary.

01 PLAN
SITE PLAN / ANALYSIS
Scale 1:200

MATHIESON ARCHITECTS
1 KEY ELIZ 20 FOSTER ST BARRY WALLS NSW 2010 AUSTRALIA
T +61 2 9206 4100 INFO@MATHIESONARCHITECTS.COM

0006687636 19 Oct 2021
Assessor Robert Rennerous
Accreditation No. NH535
Address 14 Ocean Road , Palm Beach , NSW , 2108
5.1 STAR NATIONAL HOUSE 64.9 MJ/m²
www.nathers.gov.au
hstar.com.au

NOTES

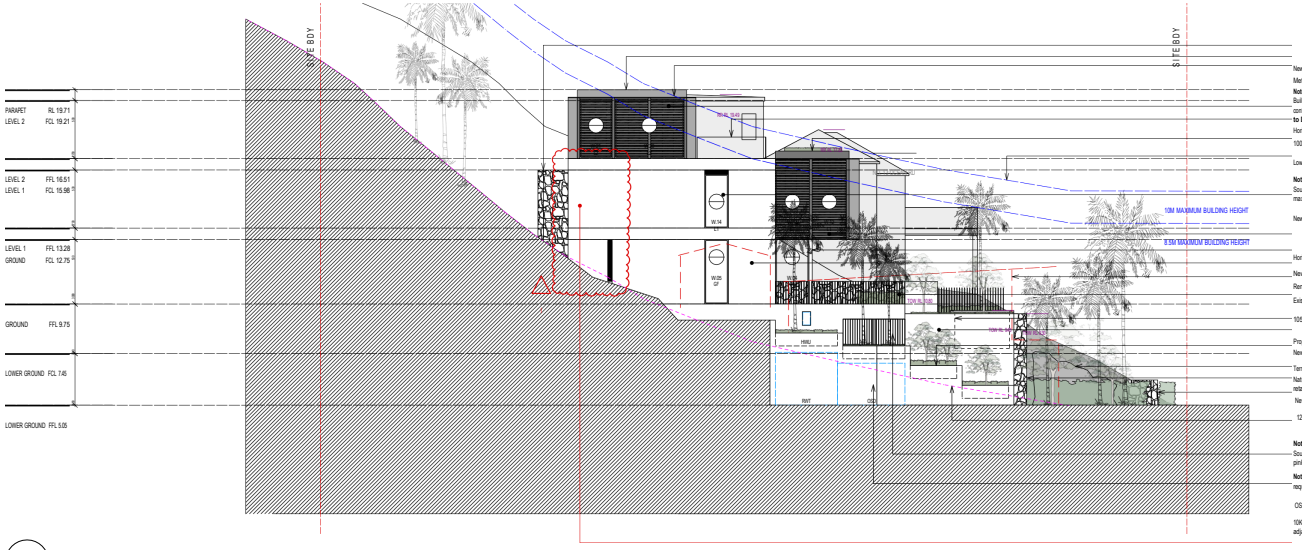
REV NO.	DATE	REVISIONS	BY	CHK
A	12.07.21	Issue for Consultant Coordination	ES	ES
B	16.07.21	Pre-DA Package	ES	ES
C	28.08.21	Issue for Consultant Coordination	ES	ES
D	22.09.21	Issue for Consultant Coordination	ES	ES
E	11.10.21	Issue for Consultant Coordination	DA	ES
F	15.10.21	DA Issue	DA	ES
G	18.10.21	DA Issue	DA	ES
H	22.10.21	DA Issue	DA	ES
I	06.04.22	DA Amendment	DA	ES

PROJECT OCEAN ROAD RESIDENCE
ADDRESS 14 OCEAN ROAD
PALM BEACH 2108
DOCUMENT DEVELOPMENT APPLICATION

DRAWING PLAN
SITE PLAN / ANALYSIS
DATE 06.04.22 SCALE 1:200
DRAWN ES PROJECT NO. 21006
DRAWING NO. DA.01 REV NO. I

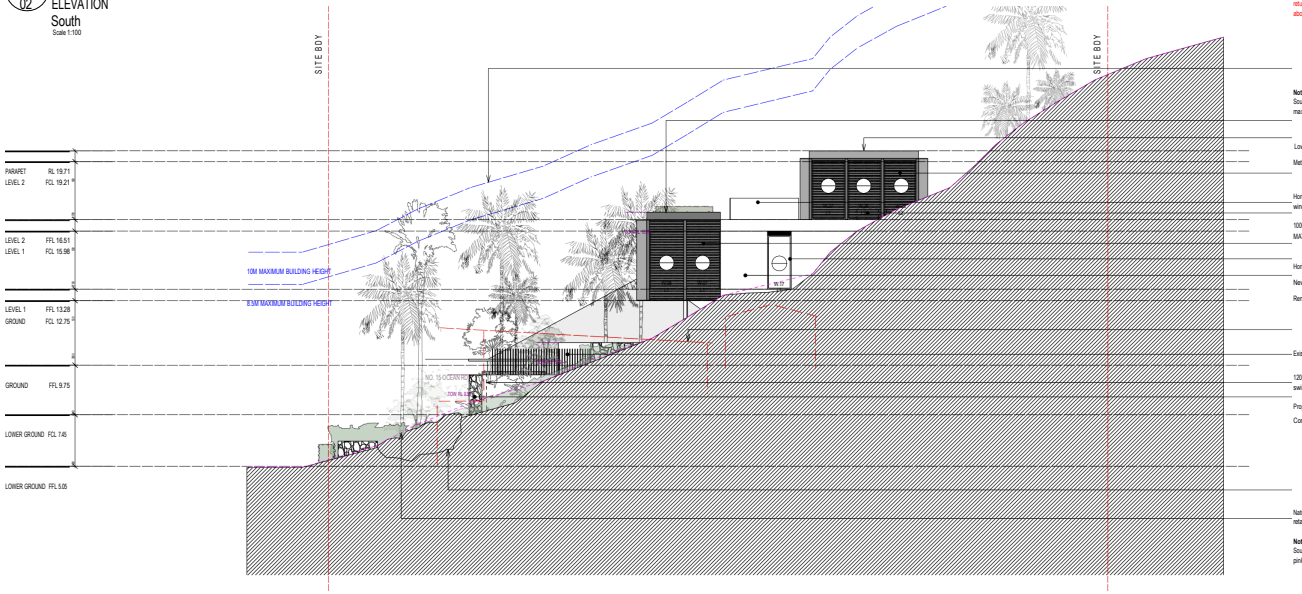
DISCLAIMER

MATHIESON ARCHITECTS



02 ELEVATION
South
Scale 1:100

Level 01 building envelope amended to allow masonry wall to return and catch glazing to suit changes to Level 02 and roof above.



01 ELEVATION
North
Scale 1:100

MATHIESON ARCHITECTS

LEGEND
Site Boundary
Architect's interpretation of natural ground line.
Council setbacks / Height requirements from Architect's interpretation of natural ground line.
Section cut taken from site contours modified for the existing house.

0006687636 19 Oct 2021
5.1 STAR
NATIONAL HOUSE
64.9 MJ/m²
Assessor: Robert Rondanous
Accreditation No. 101535
Address: 14 Ocean Road , Palm Beach , NSW , 2108
hstar.com.au
www.nathers.gov.au

0 1 2 3 4 5 6 M

NOTES

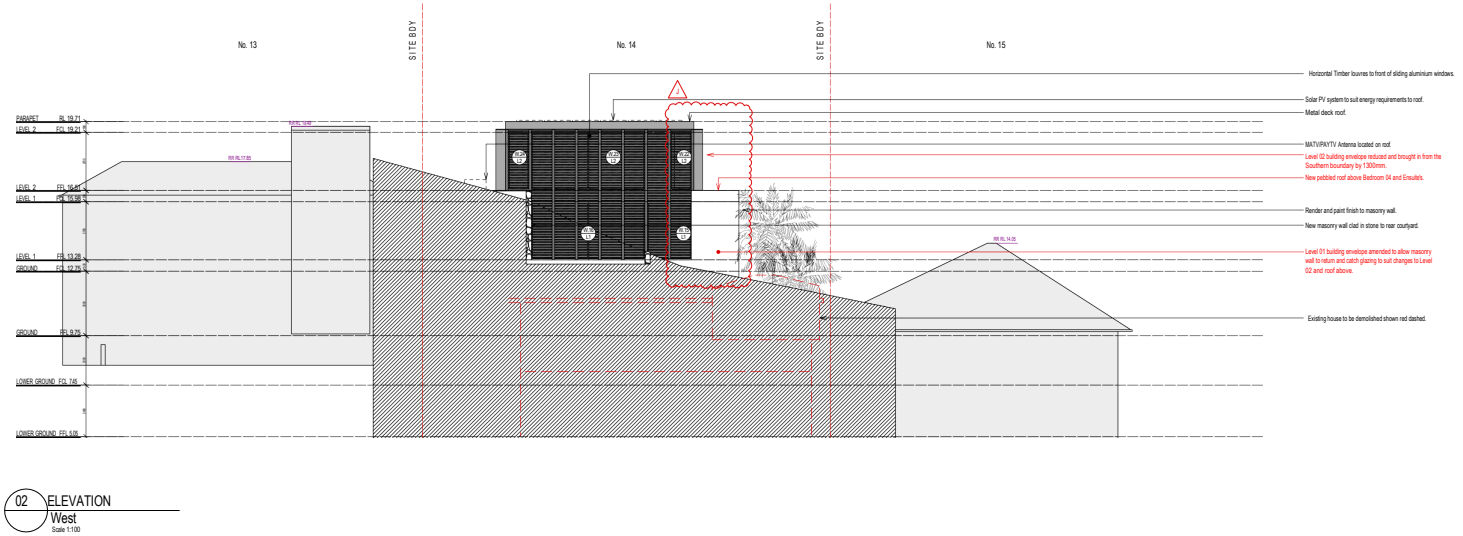
REV NO.	DATE	REVISIONS	BY	CHK
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B	16.07.21	Pre-DA Package	DB	ES
C	24.08.21	Issue for Consultant Coordination	DB	ES
D	22.09.21	Issue for Consultant Coordination	DB	ES
E	11.10.21	Issue for Consultant Coordination	DB	
F	15.10.21	DA Issue	DB	ES
G	22.10.21	DA Issue	DB	ES
H	30.03.22	DA Amendment	DB	ES
I	08.04.22	Revised DA Issue	ES	

PROJECT OCEAN ROAD RESIDENCE
ADDRESS 14 OCEAN ROAD
PALM BEACH 2108
DOCUMENT DEVELOPMENT APPLICATION

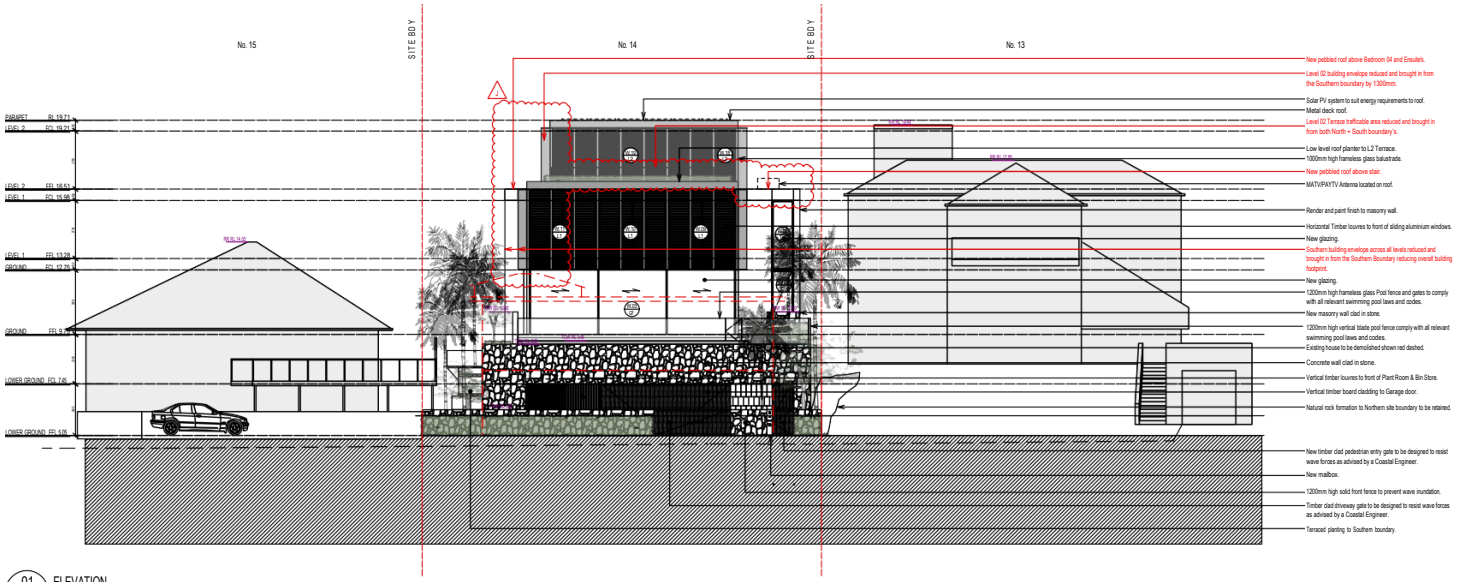
DRAWING ELEVATIONS
NORTH AND SOUTH
DATE 08.04.22 SCALE 1:100@A1
DRAWN DB PROJECT NO. 21006
DRAWING NO. DA.08 REV NO. I

DISCLAIMER

MATHIESON



02 ELEVATION
West
Scale 1:100



01 ELEVATION
East
Scale 1:100

MATHIESON ARCHITECTS
1 KEY ST 20 TESTER ST SURRY HILLS NSW 2010 AUSTRALIA
T +61 2 9280 4100 INFO@MATHIESONARCHITECTS.COM

LEGEND

- Site Boundary
- Architect's interpretation of natural ground line.
- Council setbacks / Height requirements from Architect's interpretation of natural ground line.
- Section cut taken from site contours modified for the existing house.



0 1 2 3 5 7 M

NOTES

REV NO.	DATE	REVISIONS	BY	CHK
A	12.07.21	Issued for Consultant Coordination	DB	ES
B	16.07.21	Pre-DA Package	DB	ES
C	24.08.21	Issue for Consultant Coordination	DB	ES
D	22.09.21	Issue for Consultant Coordination	DB	ES
E	11.10.21	Issue for Consultant Coordination	DB	
F	15.10.21	DA Issue	DB	ES
G	22.10.21	DA Issue	DB	ES
H	11.11.21	DA Issue	DB	ES
I	30.03.22	DA Amendment	DB	ES
J	08.04.22	Revised DA Issue	ES	

PROJECT OCEAN ROAD RESIDENCE
ADDRESS 14 OCEAN ROAD
PALM BEACH 2108
DOCUMENT DEVELOPMENT APPLICATION

DRAWING ELEVATIONS
EAST AND WEST
DATE 08.04.22 SCALE 1:100@A1
DRAWN DB PROJECT NO. 21006
DRAWING NO. DA.07 REV NO. J

DISCLAIMER

MATHIESON

ITEM 3.6	**MOD2022/0129 - 183 CONDAMINE STREET BALGOWLAH - MODIFICATION OF DEVELOPMENT CONSENT DA2021/1440 GRANTED FOR CONSTRUCTION OF TWO SEMI-DETACHED DWELLINGS INCLUDING TORRENS TITLE SUBDIVISION OF 1 LOT INTO 2**
REPORTING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2022/362744**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2022/0129 for modification of Development Consent DA2021/1440 granted for construction of two semi-detached dwellings including torrens Title Subdivision of 1 lot into 2 on land at Lot B DP 305885, 183 Condamine Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0129

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot B DP 305885, 183 Condamine Street BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent DA2021/1440 granted for construction of two semi-detached dwellings including Torrens Title Subdivision of 1 lot into 2
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	DM Holdings Pty Ltd
Applicant:	Bill Derrin

Application Lodged:	30/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	06/04/2022 to 20/04/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 17.2%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks consent for changes to the approved semi-detached dwellings as follows:

Ground floor

- Enclosure of approved outdoor decks adjacent to the northern and southern side boundaries
- Changes to doors and windows
- Removal of half-height stonework on northern and southern elevations
- Removal of two garage posts on the eastern elevation

First floor

- Enclosure of approved rear balconies
- Reconfiguration of approved master bedroom and ensuite layouts
- Changes to windows

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 - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
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 B DP 305885 , 183 Condamine Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the western side of Condamine Street. The site is regular in shape with a frontage of 15.24m along Condamine Street and a depth of 45.415m. The site has a surveyed area of 692.1m². The site is located within the R1 General Residential zone. The site includes a crossfall of up to 1.2m from north to south.

	The site contains nine significant trees and a variety of smaller planted vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mix of residential development including detached and semi-detached dwellings, dual occupancies and residential flat buildings. The Balgowlah centre is located approximately 100m north of the subject site.

Map:



SITE HISTORY

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

CDC2021/1229 - Demolition of existing structures - CDC2021-715 - Approved 30/11/2021.

DA2021/1440 - Construction of two semi-detached dwellings including Torrens Title Subdivision of 1 lot into 2 - Approved 08/02/2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated

northern beaches council

regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/1440, 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 DA2021/1440 for the following reasons: The proposed changes maintain the approved semi-detached use and do not alter the intent of the lot to be developed. The proposed changes will somewhat increase the bulk of the building but are contained within the approved building footprint and roof form, and will maintain general appearance of the development as previously approved.
(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 DA2021/1440 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	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.

Section 4.55 (2) - Other Modifications	Comments
notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided 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 purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment 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. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent

northern beaches council

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/04/2022 to 20/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

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 were included as a condition of consent in the previous consent and remain applicable to the development as modified.

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. 1224099M_02 dated 31 January 2022).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to the recommendations that were included as a condition of consent in the previous consent and remain applicable to the development as modified.

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	Approved	Proposed	% Variation	Complies
Minimum subdivision lot size:	300m²	Lot 1: 346.05m²	Unchanged	N/A	Yes
		Lot 2: 346.05m²	Unchanged	N/A	Yes
Height of Buildings:	8.5m	7.8m	Unchanged	N/A	Yes
Floor Space Ratio	0.5:1 346.05m²	0.49:1 341.7m²	0.59:1 405.6m²	17.2%	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	N/A
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.5:1 (346.05m²)
Proposed:	0.59:1 (405.6m²)
Percentage variation to requirement:	17.2%

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.4 of the Manly LEP, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 (2) of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation request in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the R1 General Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the

northern beaches council

circumstances of the case,

Comment:

Compliance with the floor space ratio development standard is considered unnecessary in this case for the following reasons:

- The proposed modification results in additional gross floor area by virtue of the enclosure of the approved ground floor decking adjacent to the northern and southern side boundaries and the first floor rear balconies.
- The proposed additions do not extend beyond the approved building footprint or roof form.
- The proposed proposed enclosure of open space areas at the ground and first floors is considered to reduce the potential for privacy impacts between the subject site and adjoining properties.
- The proposed modification will not give rise to any unreasonable amenity impacts.

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

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The proposed additional gross floor area is achieved within the approved building footprint and roof form.
- The proposed modification remains fully compliant with the MDCP built form controls, with the exception of total open space.
- The proposed modification will not result in any excessive visual bulk, streetscape or amenity impacts.
- Based on the above matters, the proposal is considered to represent an orderly and economic development that is of good design and amenity, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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.

4.4 Floor Space Ratio

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

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

Comment:

The proposed additional gross floor area is located at the rear of the approved dwelling and the development remains 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,

Comment:

The proposed additions do not result in excessive visual bulk and will 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 proposed modification will not substantially alter the appearance of the approved dwelling or conflict with the existing character and landscape of the area.

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

Comment:

The proposal will not adversely impact the use or enjoyment of adjoining land or 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:

N/A

Zone objectives

The objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*

  Comment:

  The proposed modification retains the approved semi-detached use.

  It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

  Comment:

  The proposed modification retains the approved housing type and density.

  It is considered that the development satisfies this objective.

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

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Comment:

N/A

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.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 692.1m²	**Requirement**	**Approved**	**Proposed**	**Complies**
4.1.2.1 Wall Height	N: 6.5m	GF: 2.8m	Unchanged	Yes
		FF: 6.15m	Unchanged	Yes
	S: 6.5m	GF: 3.4m	Unchanged	Yes
		FF: 6.2m - 6.4m	Unchanged	Yes
4.1.2.2 Number of Storeys	2	2	Unchanged	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.8m	Unchanged	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	8.23m	Unchanged	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N GF: 0.93m	1.24m	Unchanged	Yes
	N FF: 2.05m	2.2m	Unchanged	Yes
	S GF: 1.13m	1.2m	Unchanged	Yes
	S FF: 2.07m - 2.13m	2.2m	Unchanged	Yes
4.1.4.4 Rear Setbacks	8m	8m	Unchanged	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 380.66m²	55.3% 382.96m²	43.9% 303.9m²	**No**
	Open space above ground 25% of total open space	8%	0%	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	60% 228.12m²	75.1% 228.12m²	Yes
4.1.5.3 Private Open Space	18m² per dwelling	> 18m²	> 18m²	Yes



4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.1m	Unchanged	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0m	Unchanged	Yes
	1m curtilage side/rear setback	2.7m	Unchanged	Yes
	1.5m water side/rear setback	3m	Unchanged	Yes
4.1.10 Fencing	1m	0.6m - 1.4m	Unchanged	No (as approved)
Schedule 3 Parking and Access	4 spaces (2 per dwelling)	2 spaces	Unchanged	No (as approved)

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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
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	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The approved deck and balcony areas to be enclosed at the ground and first floor levels are roofed and the first floor balconies included full height privacy screens at the northern and southern elevations. As such, the proposed modification will not materially alter the overshadowing impacts of the previously

approved development.

3.4.2 Privacy and Security

The proposal includes the enclosure of the approved ground floor decking and first floor balconies. The reduction in these private open space areas that are in close proximity to side boundaries or elevated above ground level are considered to reduce the potential for privacy impacts to adjoining properties.

The proposal also includes changes to approved doors and windows at the ground and first floor levels. The proposed new and altered side boundary-facing windows are highlight windows and the amended door location at the southern elevation will not cause any adverse privacy impacts. The proposed rear windows to the master bedrooms are sufficiently set back from the rear boundary and are appropriately designed for privacy.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal reduces the approved total open space area from 55.3% to 43.9%, resulting in a shortfall of 76.76m².

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 modification will not impact any important landscape features or vegetation.

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 total open space areas removed by the proposed changes are located within the approved building footprint and do not impact any soft landscaped areas or vegetation.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The reduction in total open space results from the enclosure of the approved ground floor northern and southern side decking and the first floor rear balconies. The enclosure of these areas are considered to reduce the potential for privacy impacts to adjoining properties and adequate open space areas are maintained for the occupants of the subject site.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposal does not increase impervious surfaces on the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed changes will not spread weeds or degrade any private or public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal will not impact any vegetation or wildlife habitat.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposal does not seek to alter the approved car parking shortfall.

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

As the application has been made under Section 4.55(2) of the EPA Act, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

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. Mod2022/0129 for Modification of Development Consent DA2021/1440 granted for construction of two semi-detached dwellings including Torrens Title Subdivision of 1 lot into 2 on land at Lot B DP 305885,183 Condamine Street, BALGOWLAH, 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**
S4.55-04 Site Plan	Rev. D, 25 January 2022	Action Plans
S4.55-05 Subdivision Plan	Rev. D, 25 January 2022	Action Plans
S4.55-07 Proposed Ground Floor Plan	Rev. D, 25 January 2022	Action Plans
S4.55-08 Proposed First Floor Plan	Rev. D, 25 January 2022	Action Plans
S4.55-09 Elevations	Rev. D, 25 January 2022	Action Plans
S4.55-10 Cross Sections	Rev. D, 25 January 2022	Action Plans
S4.55-11 Long Sections	Rev. D, 25 January 2022	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. 1224099M_02	31 January 2022	Next Level Design Studio

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:

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

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

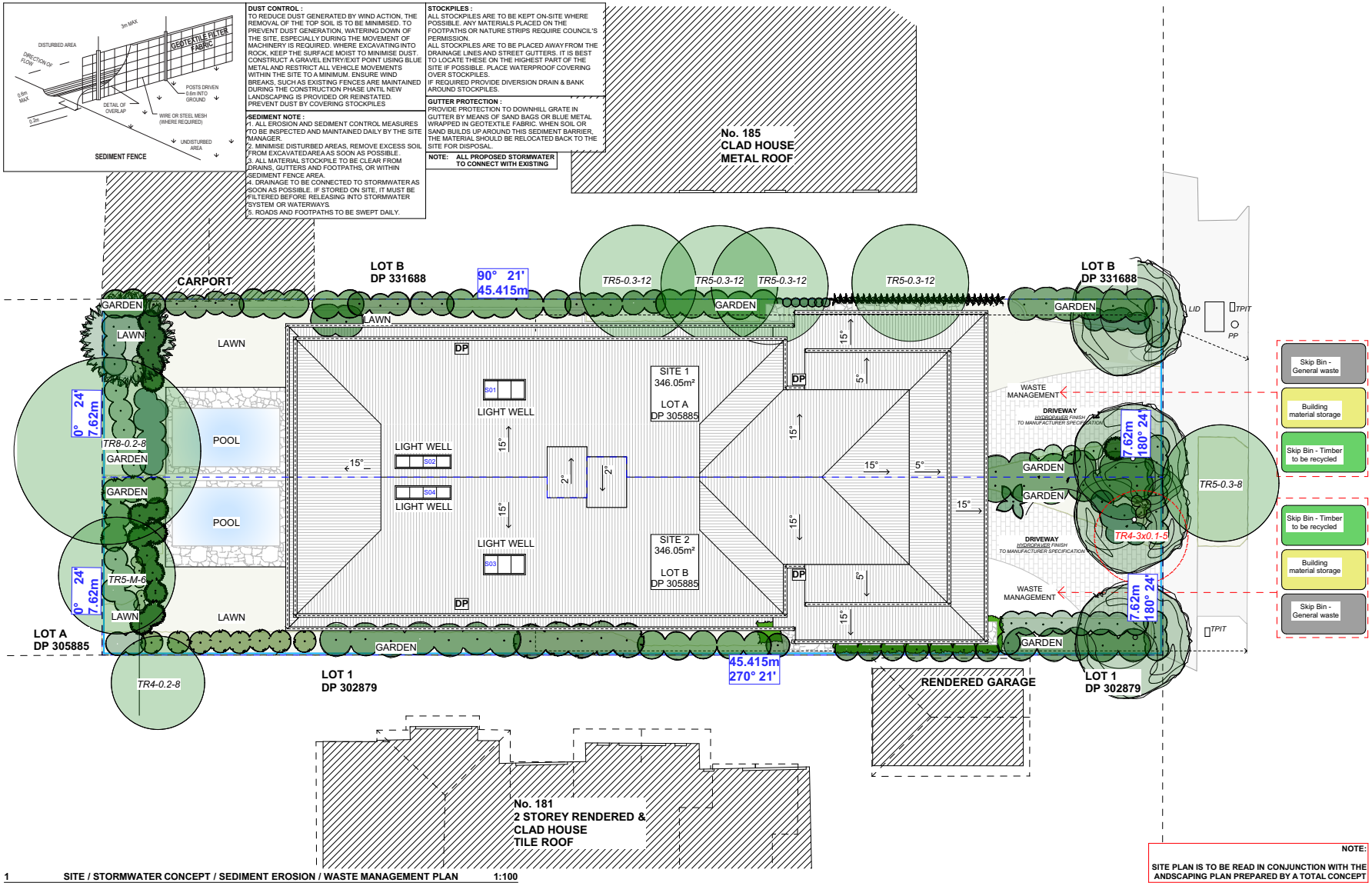
Signed



Adam Croft, Planner

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

Rodney Piggott, Manager Development Assessments



1 SITE / STORMWATER CONCEPT / SEDIMENT EROSION / WASTE MANAGEMENT PLAN 1:100

NOTE:
SITE PLAN IS TO BE READ IN CONJUNCTION WITH THE ANDSCAPING PLAN PREPARED BY A TOTAL CONCEPT

ACTION PLANS
m: 0426 957 518
e.operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	03.08.2021	DEVELOPMENT APPLICATION	RNA
B	28.09.2021	DA. REV A	RNA
C	16.12.2021	DA. REV B	RNA
D	25.01.2022	S4.55	AM

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The Builder/Contractor shall check and verify all levels and dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/Contractor and referred to the designer prior to the commencement of works.

LEGEND
SITE BOUNDARY
SEDIMENT BARRIER

CLIENT
DM HOLDINGS

PROJECT ADDRESS
183 CONDAMINE STREET, BALGOWLAH NSW 2093

DRAWING NO.
S4.55-04

DATE
Tuesday, January 25, 2022

DRAWING NAME
SITE / STORMWATER CONCEPT / SEDIMENT EROSION / WASTE MANAGEMENT PLAN

SCALE
1:100 @A2



REV.	DATE	COMMENTS	DRWN
A	03.08.2021	DEVELOPMENT APPLICATION	RNA
B	28.09.2021	DA. REV A	RNA
C	16.12.2021	DA. REV B	RNA
D	25.01.2022	S4.55	AM

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All errors and omissions are to be verified by the Builder/Contractor and referred to the designer prior to the commencement of works.

LEGEND
EXISTING
PROPOSED
DEMOLISHED

CLIENT
DM HOLDINGS

PROJECT ADDRESS
183 CONDAMINE STREET, BALGOWLAH NSW 2093

DRAWING NO.
S4.55-09

DATE
Tuesday, January 25, 2022

DRAWING NAME
ELEVATIONS

SCALE
1:100 @A2

ITEM 3.7	**DA2022/0175 - 5 CAMBRIDGE AVENUE NARRAWEENA - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/362801**
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 WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0175 for alterations and additions to a dwelling house including a swimming pool on land at Lot 48 DP 25497, 5 Cambridge Avenue NARRAWEENA, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0175

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 48 DP 25497, 5 Cambridge Avenue NARRAWEENA NSW 2099
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Danielle Susan Steedman Alexander David Hayes
Applicant:	JJ Drafting

Application Lodged:	16/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/02/2022 to 14/03/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 14.1%
Recommendation:	Approval

Estimated Cost of Works:	$ 400,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. The maximum height of the proposed development has been measured at 9.7m which represents a variation of 14.1% to the prescribed 8.5m building height limit.

No submissions have been received.

Due to the steep slope of the site and the siting and form of the existing dwelling, the non-compliant height elements would not impact upon the desired character of the locality. When assessed on its merits, it is concluded that the bulk and scale of the proposal will be commensurate with the existing built form of the site and surrounding built environment and that the height breach will not result in unreasonable amenity impacts to adjoining neighbours.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including a rear extension and an elevated swimming pool and deck. The proposal includes the following works:

Ground Floor

- Extension of the ground floor 1.5m towards the rear
- A 4.3m deep covered terrace at the rear of the ground floor with privacy screens on the side elevations
- Internal layout alterations
- Alterations to window and door openings

Lower Ground Floor

- Extension of the lower ground floor by up to 8.9m towards the rear
- Internal layout alterations
- Alterations to window and door openings
- An elevated deck
- A swimming pool and associated curtilage
- Stairs to the rear yard

AMENDED PLANS

Amended plans were received during the assessment in response to a lack of information regarding the siting of the proposed development in relation to the stormwater pipe on the site. The amended plans do not include any change to the proposed built form or siting of the proposal.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will not alter the environmental impact on nearby properties and the public domain.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

SITE DESCRIPTION

Property Description:	Lot 48 DP 25497 , 5 Cambridge Avenue NARRAWEENA NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Cambridge Avenue. The site is irregular in shape with a curved frontage of 9.145m along Cambridge Avenue and a maximum depth of 52.52m. The site has a surveyed area of 1,094.6m². The site is located within the R2 Low Density Residential zone and accommodates a part two-storey residential dwelling. The site falls approx. 13m from the west into a gully towards the southeast. The site contains a large landscaped area at the rear of the dwelling including several canopy trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

Map:



SITE HISTORY

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

Application **DA2002/1922** for Proposed addition to existing dwelling and renovation to the existing carport was approved on 29/01/2003 by Council staff.

Application **DA2009/1378** for Alterations and additions to the existing dwelling was approved on 07/12/2009 by Council staff.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
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 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 a stormwater asset location report. 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 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

Section 4.15 Matters for Consideration	Comments
	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
Landscape Officer	The application seeks consent for alterations and additions to a dwelling house including a swimming pool. 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 The Arborist's Report prepared by EziGrow is noted. The Report indicates that two Melaleuca trees are required to be remove to accommodate the proposed works. The works will impact the Tree Protection Zone and Structural Root Zone of the trees. Other trees on site are to be retained. Relocation of the pool would likely result in impact of the same and

Internal Referral Body	Comments
	other trees on the site. In this instance, no objections are raised to approval subject to conditions, including replanting.
NECC (Development Engineering)	The proposal is for the extension to the exiting dwelling. Council's records indicate that the subject property is burdened by a Council stormwater pipeline. The survey plan by Waterview Surveying Services indicates a buried pipe traversing the site as located by T.E. Peck Excavations Pty Ltd dated 28/5/2021. However the report by T.E.Peck Excavations has not been submitted. The applicant shall submit the report by T.E Peck Excavations to confirm the location of the Council pipeline traversing the site prior to further assessment. **Additional Information provided on 12/5/2022** The survey report by T.E.Peck Excavations has been reviewed. Insufficient information is provided in the report. The following additional information is required for assessment: • Dimensions and invert level of the pipe and culvert. • The pipe shall be shown on the architectural plans and sections. Specifically the offset from the edge of the stormwater asset to the proposed building and piers. • All proposed structures are to be a minimum 1meter from the edge of the stormwater asset. **Additional Information provided on 31/5/2022** The pipe locating survey has been provided and is satisfactory. However the dimensions of the pipe /culvert and the offsets from the proposed structures have not been shown on the plans as previously requested. The following additional information is required for assessment: • The pipe including, dimensions and invert levels, shall be shown on the architectural plans and sections. • The offset from the edge of the stormwater asset to the proposed building and piers are to be shown on plan and sections. • All proposed structures are to be a minimum 1 meter from the edge of the stormwater asset. **Additional Information provided on 8/6/2022** The amended stormwater plan provides details of the stormwater pipe and offsets to the proposed buildings. No objections to approval subject to conditions as recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A443579, dated 08/02/2022). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m	14.1%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	14.1%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that 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 proposed gable roof addition over the new terrace is at the same gutter and ridge height of the existing roof. Despite the roof addition being a continuation of the existing roof (not higher), due to the nature of the sloping site, portion of the roof addition ends up at a higher point from the natural ground level compared to the existing roof, thus contravening the building height control by a maximum of 1m at the very end.

Due to the topography of the land, and with the site falling towards the rear of the site, it is difficult to adhere strictly to the required building height.

Notwithstanding Council's calculation of the building height non-compliance being 1.2m above the control requirement rather than 1m, it is considered the applicant's justification to vary the building height development standard is acceptable in this case. The over-height portion of the dwelling is located centrally within the site and will have limited impact upon adjacent properties or the public domain.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The site topography presents a challenge to provide a numerically compliant building height while providing a dwelling extension with the same ridge level of the existing dwelling. Notwithstanding the non-compliance, the height and scale of the proposed development is generally consistent with that of other dwellings adjacent to and nearby the site.

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

Comment:

The proposed development is considered to be designed and sited in a manner that adequately mitigates visual impact, view loss, privacy and solar access impacts to adjacent properties

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

Comment:

The proposed development is not expected to impact upon the scenic quality of nearby coastal and bush environments as it is not readily discernible from any such location.

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

Comment:

The proposed development will not be visually prominent when viewed from the street or other public domain areas.

Zone objectives

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

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

  Comment:

The proposed development replaces a small and impractical dwelling with a larger, more functional dwelling within a low density residential environment and will contribute to the housing needs of the community.

It is considered that the development satisfies this objective.

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

  Comment:

  The proposed development does not alter the existing residential land use.
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

  Comment:

  The proposed development will not have an unreasonable impact upon the landscaped setting of the site. Trees that are to be removed to facilitate the development will be offset on the site with new tree plantings.

  It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.7m	N/A	Yes
B3 Side Boundary Envelope	N - 4m	Within	N/A	Yes

		envelope		
	S - 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	N - 0.9m	1.7m (existing)	N/A	Yes
	S - 0.9m	2.2m (existing)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Behind dwelling	N/A	Yes
B9 Rear Boundary Setbacks	6m	18m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (437.8m^2)	76.1% (833.5m^2)	N/A	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	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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
D16 Swimming Pools and Spa Pools	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D20 Safety and Security	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

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 $4,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $400,000.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0175 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 48 DP 25497, 5 Cambridge Avenue, NARRAWEENA, 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**
885/21 DA.02 Rev C	30/05/2022	JJ Drafting
885/21 DA.08 Rev C	30/05/2022	JJ Drafting
885/21 DA.09 Rev C	30/05/2022	JJ Drafting
885/21 DA.10 Rev C	30/05/2022	JJ Drafting

885/21 DA.11 Rev C	30/05/2022	JJ Drafting
885/21 DA.12 Rev C	30/05/2022	JJ Drafting
885/21 DA.13 Rev C	30/05/2022	JJ Drafting
885/21 DA.14 Rev C	30/05/2022	JJ Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A443579	08/02/2022	JJ Drafting
Arboricultural Impact Appraisal and Method Statement	12/11/2021	Ezi Grow
Geotechnical Assessment Report (Ref: QP 00297A)	20/01/2022	Hodgson Consulting Engineers

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	24/01/2022	JJ Drafting

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

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

2. **Approved Land Use**
Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house*, as defined by the Warringah Local Environment Plan 2011 Dictionary.

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

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

3. **Prescribed Conditions**
(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
    (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $4,000.00 is payable to Northern Beaches Council for the provision

of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $400,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $7 000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

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

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

9. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Water Management for Development Policy. Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to Council for approval. Council's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

10. **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.

11. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to the existing council pipeline

traversing the site 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 at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

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

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

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

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

Reason: Protection of Council's infrastructure.

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

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

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

14. **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.

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

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

16. **Protection of Landscape Features and Sites of Significance**
All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

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

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

Reason: Preservation of significant environmental features.

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

b) As a minimum, the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

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

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

Reason: Tree protection.

18. **Tree and Vegetation Protection**

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

i) all trees and vegetation within the site not 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 the Arboricultural Impact Appraisal and Method Statement dated 12 November prepared by EziGrow and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by 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.

19. **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.

20. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- 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.

21. **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.

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. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 68 are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

24. **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

25. **Required Tree Planting**
a) Trees shall be planted in accordance with the following:
i) 2 trees 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.

Reason: To maintain environmental amenity.

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 final Occupation Certificate.

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

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

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern

Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

28. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

29. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

30. **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.

31. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

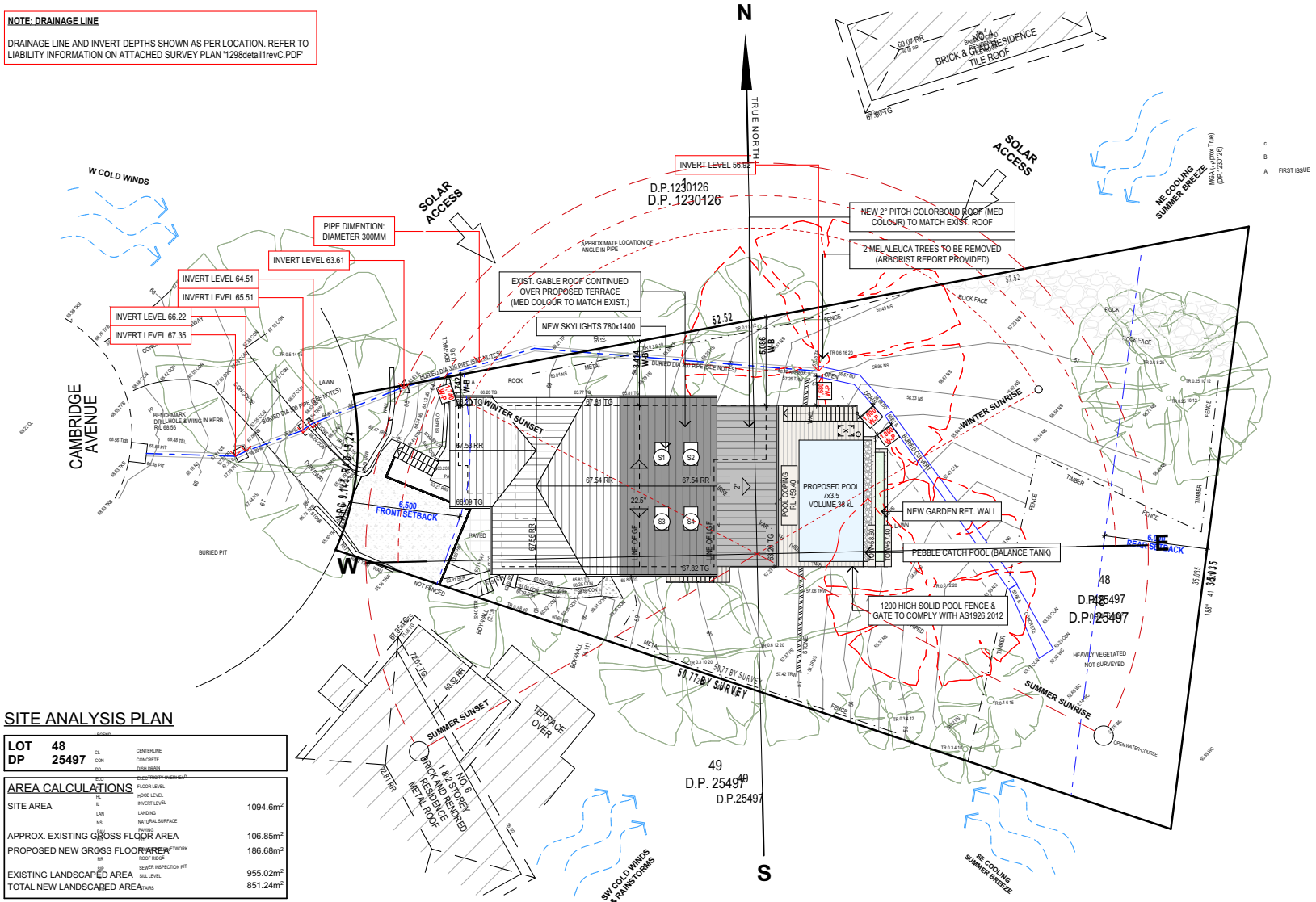
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life.

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

32. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

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



TRUE NORTH:

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
- Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.

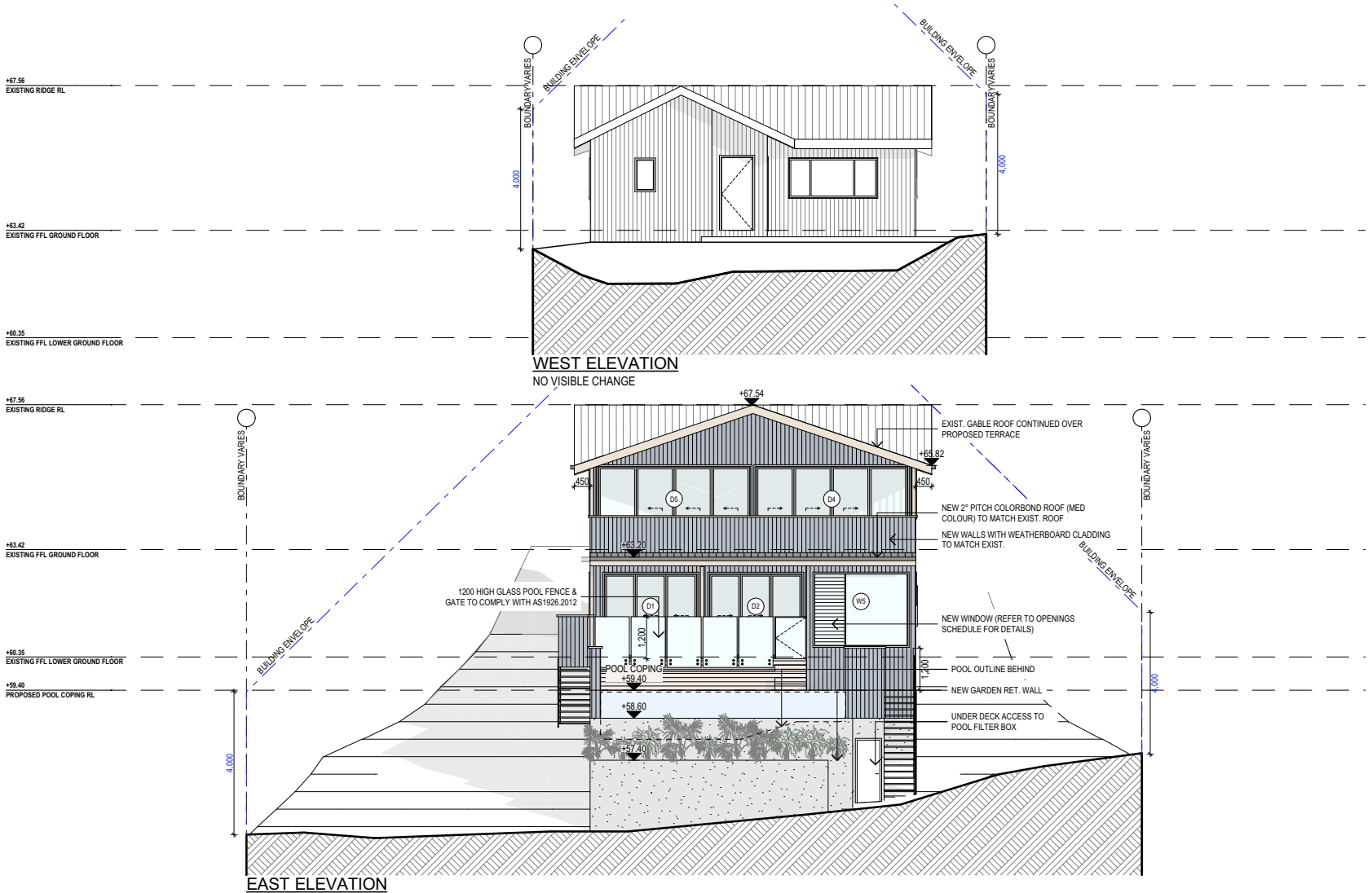
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REV:	DATE:	DESCRIPTION:
A	28.10.2021	AMENDMENTS TO PRELIM DRAWINGS
B	10.12.2021	DA DRAWINGS ISSUED
C	30.05.2022	RAINWATER PIPE UPDATED

PROJECT DETAILS:
PROPOSED ALTERATIONS AND ADDITIONS
5 CAMBRIDGE AVE, NARRAWEENA.

DRAWING TITLE:
SITE ANALYSIS PLAN

DATE:	DRAWN BY:	SCALE:
MAR./21	CA	1:200 @ A3
JOB No:	CHECKED BY:	DRAWING No:
885/21	JJ	**DA.02**



NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
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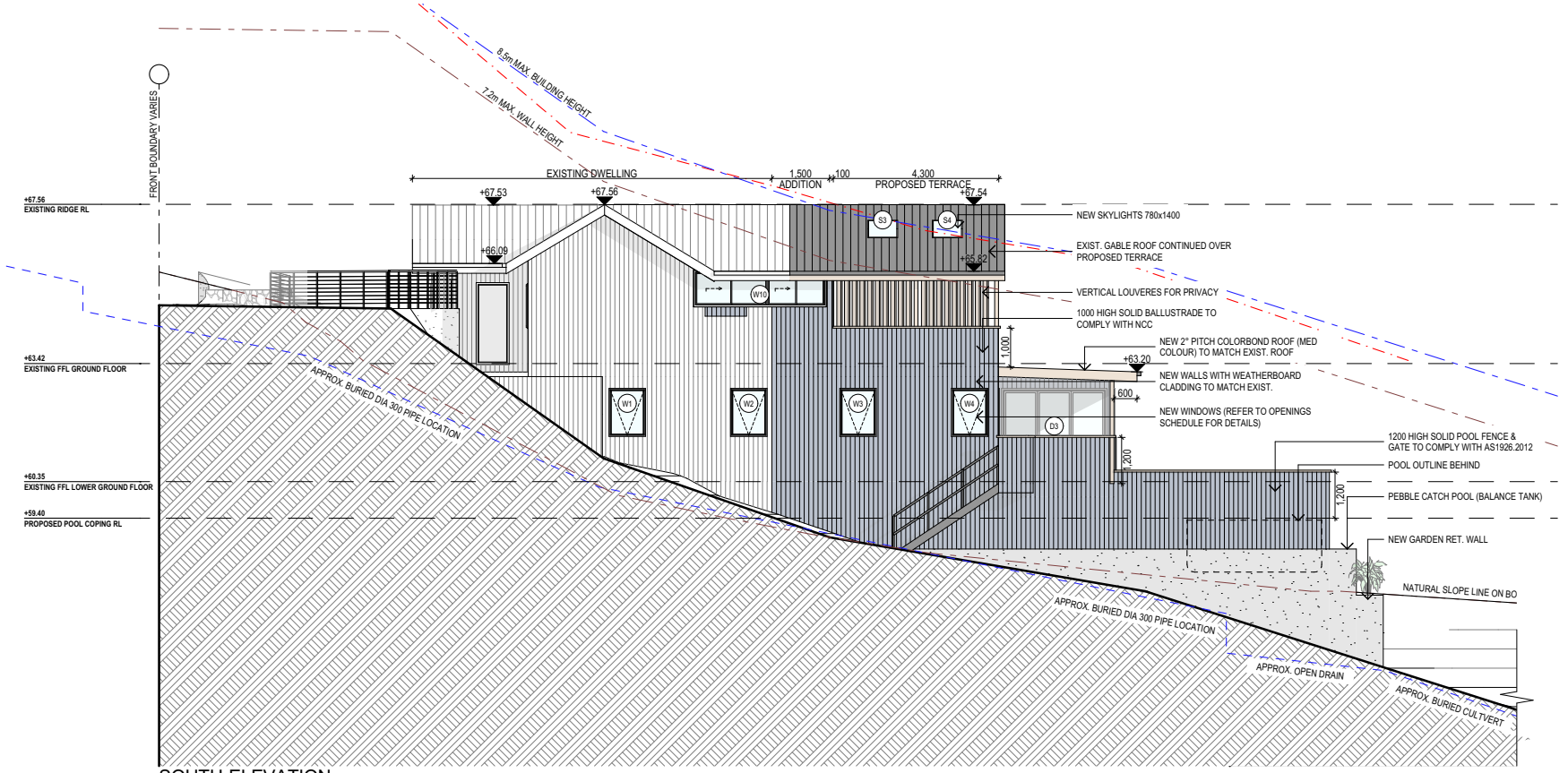
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PROJECT DETAILS:
PROPOSED ALTERATIONS AND ADDITIONS
5 CAMBRIDGE AVE, NARRAWEENA.

DRAWING TITLE:
PROPOSED EAST & WEST ELEVATIONS

DATE:	DRAWN BY:	SCALE:
MAR./21	CA	1:100 @ A3
JOB No: 885/21	CHECKED BY: JJ	DRAWING No: **DA.10**



SOUTH ELEVATION

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
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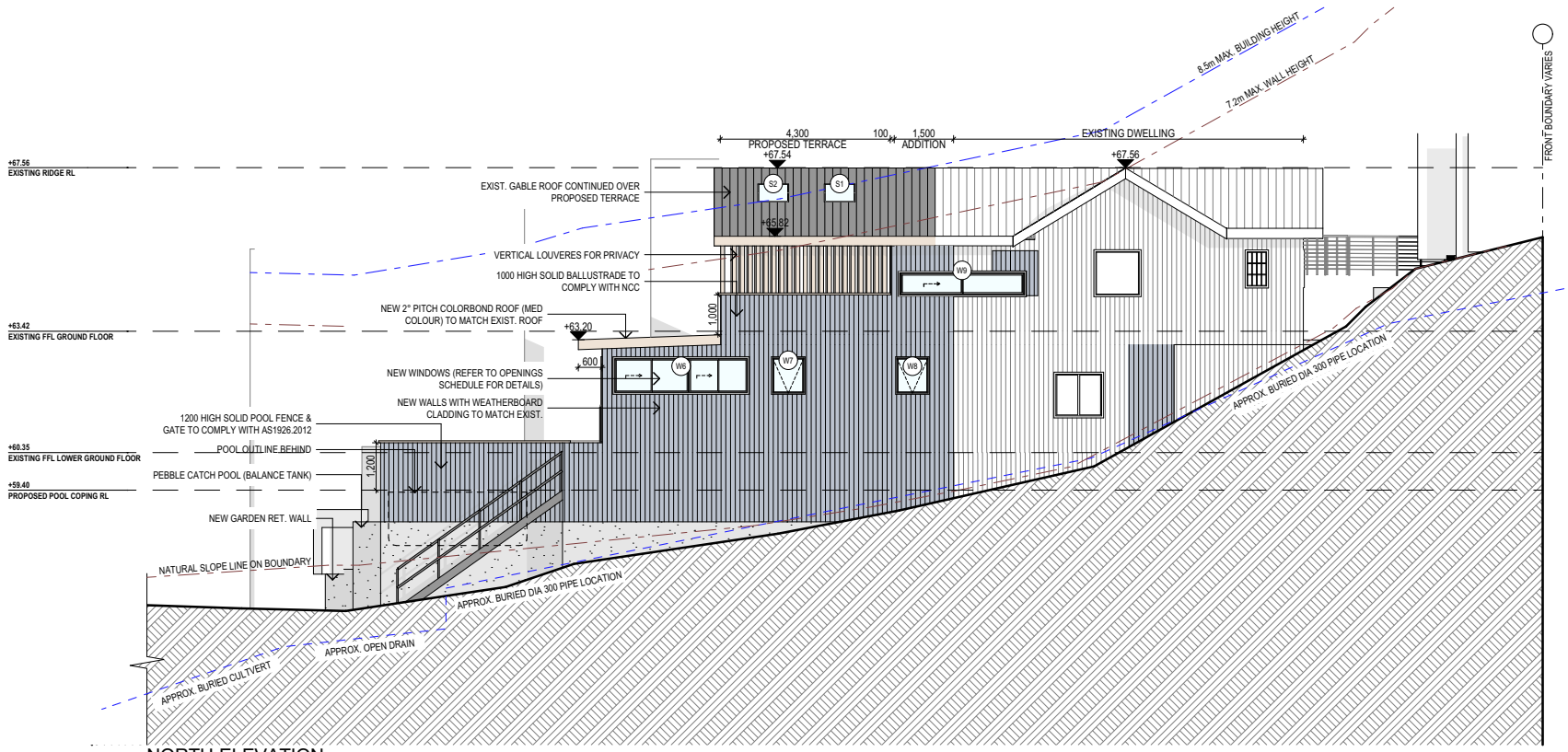
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PROJECT DETAILS:
PROPOSED ALTERATIONS AND ADDITIONS
5 CAMBRIDGE AVE, NARRAWEENA.

DRAWING TITLE:
PROPOSED SOUTH ELEVATION

DATE:	DRAWN BY:	SCALE:
MAR./21	CA	1:100 @ A3
JOB No:	CHECKED BY:	DRAWING No:
885/21	JJ	**DA.11**



NORTH ELEVATION

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
- Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.

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PROJECT DETAILS:
PROPOSED ALTERATIONS AND ADDITIONS
5 CAMBRIDGE AVE, NARRAWEENA.

DRAWING TITLE:
PROPOSED NORTH ELEVATION

DATE:	DRAWN BY:	SCALE:
MAR./21	CA	1:100 @ A3
JOB No:	CHECKED BY:	DRAWING No:
885/21	JJ	**DA.12**

Dear Chief Executive Officer 24th Jan 2022

PREMISES AT 5 CAMBRIDGE AVENUE, NARRAWEENA 2099.
PROPOSED ALTERATIONS AND ADDITIONS

CLAUSE 4.6 REQUEST -EXCEPTION TO THE DEVELOPMENT STANDARD (HEIGHT OF BUILDINGS) -WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

This present document is a written variation request submitted under clause 4.6 of Warringah Local Environmental Plan 2011 in connection with a development application seeking consent for alterations and additions and a swimming pool to an existing 1 and 2 storey dwelling.

1. INTRODUCTION
Clause 4.3 of the WLEP controls the height of building. Relevantly, clause 4.3 (2) of WLEP provides that the height of a building on any land is not to exceed the maximum height shown for the land on the height of buildings map, WHICH IS 8.5M.

The existing building height of the building varies from 4.5m to 8.5m depending on the slope of the site.

Portion of the proposed gable roof extension above the new terrace addition on the ground floor contravenes the 8.5m building height control by a maximum of 1m, due to the nature of the sloping site.

A variation has been requested.

2. REQUEST TO VARY A DEVELOPMENT STANDARD
It is requested that a variations be sought for the max height (clause 4.3) for the proposed gable roof addition to the rear of the existing dwelling.

The request is submitted to council in connection with and in support of the development application and is to be read in conjunction with the statement of environmental effects and submitted to council in support of and to inform the development application.

The SOEE deals with the impacts of the development proposal in detail and provides details and compliance with the relevant planning controls and objectives.

Clause 4.6 of the WLEP allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 of the WLEP requires that a consent authority be satisfied and consider a written request that seeks to justify the contravention of the development standard by demonstrating -

* that compliance with the development standard is unreasonable or unnessary in the circumstances of the case

* That there are sufficient environmental planning grounds to justify contravening the development standard.

*The applicant's written request has adequately addressed the matters required to be demonstrated to the above.

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

The consent authority's satisfaction as to those matters, must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.
The land and environment Court of NSW has provided judicial interpretation and clarification of the matters to be addressed in relation to variations to development standards lodged under the State Environmental Planning Policy 1 – Development Standards (SEPP 1) through the judgment of Justice Lloyd in "Winten Property Group Ltd v North Sydney Council (2001) 130 LGERA 79 at 89 ('Winten')

The 'Winten test was alter rephrased by Chief Justice Preston, in the decision of'Wehbe v Pittwater Council (2007)NSW LEC 827 ('Wehbe'). These tests and clause 4.6 of the LEP and other standard LEP instruments. Accordingly, this clause 4.6 variation request is set out using the relevant principals established by the court. Another recent one in the NSW Court of Appeal in "Four2Five Pty Ltd v Ashfiels Council (2015) NSWCA 248 has had some very important things to say about the use and construction of clause 4.6.

3. DEVELOPMENT STANDARD TO BE VARIED
The site is Zoned R2 under the WLEP.

This written request is to justify the contravention of the standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest as it is consistent with the objectives of the standards and are of relevance to the subject matter of the development application and the objectives for the development within the R2 zone under WLEP in which the development is proposed to be carried out.

The proposed gable roof addition over the new terrace is at the same gutter and ridge height of the existing roof. Despite the roof addition being a continuation of the existing roof (not higher), due to the nature of the sloping site, portion of the roof addition ends up at a higher point from the natural ground level compared to the existing roof, thus contravening the building height conrol by a maximum of 1m at the very end.

Due to the topography of the land, and with the site falling towards the rear of the site, it is difficult to adhere strictly to the required building height.

4. THE OBJECTIVES OF THE STANDARDS

Clause 4.3 (1) of the WLEP and the objectives of this clause are as follows:

a) ***to ensure that buildings are compatible with the height and scale of surrounding and nearby development.***
The proposed roof extension to the dwelling is consistent with the low density character of the area.

The scale of the proposed development is consistent with the adjoining residential lots. The proposed development does not result in any privacy issues or impacts to nearby neighbours, which have been addressed in the statement of environmental effects.

The proposal satisfies this objective.

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

The proposed gable roof addition above the new terrace addition will not affect or disrupt any views from adjoning properties, there will be no loss of privacy and no loss of solar access to adjoining properties due to the proposal.

There will be no effect upon adjoining properties in overshadwoing from this proposed addition.

Neighbouring properties are situated on a much higher level in comparison to the subject property/site.

The proposal satisfies this objective

c) to minimise any adverse impact of development on the scenic quality of Warringahs coastal and bush environments.
Majority of the landscaping has remained and complies with the control with over 77% of the site will remain landscaped. New vegetations are proposed to replace any impacted trees as inlcuded in the arborist's tree management plan.

The proposal will not affect the scenic quality of Warringahs coastal and bush environments.

The proposal satisfies this objective.

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

The proposal will not interrupt view corridors of its neighbours to any significant or material extent.

The proposal will not visually impact the streetscape or when viewed from the a public place such as the road, parks, reserve and or a community facility. The proposal has been provided with an open structure which will not provide any bulk to the streetscape. The proposal will not be visible from the streetscape.

The objective satisfies this objective.

Conclusion to this
In respect of the height standard which is of a minimal significance with respect to the objectives of the relevant applicable height of building development standard. The gradient of the land and the height of the existing building ridge, all assist in ensuring that a casual observer would have some difficulty in reading a small part of the additional height of the roof extension.

It is concluded that the development will be consistent and will still satisfy relevant height objectives, notwithstanding the numerical departure from the standard contained in clause 4.3 of WLEP.

The development is consistent with all of the abovementioned objectives of the standard.

The proposed development is consistent with such of the aims of the WLEP as are relevance to the development.

5. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT CLAUSE 4.6 (3)(b)
There are sufficient environmental planning grounds to justify contravening the development standard.

The proposal is consistent with the aims of the WLEP as it constitutes a good environmental planning ground justifying a contravention of the maximum height of buildings development standard contained in clause 4.3 of the WLEP.

Another good environmental planning ground justifying a contravention of the development standard in this instance is that there is no demonstrable public benefit in maintaining the development standard, clause 4.6 (5)(b) in this instance for to do would not result in any material public benefit in this situation.

The maximum height that is achieved in this case is 9.5m (only a small traingular portion of the roof to the rear) which is a minor height encroachment of 1m. ONLY A SMALL PORTION CONTRAVENES THIS HEIGHT

The proposed development will result in an improved outcome for the occupants and for the wider community in that there are likely to be no significant emenity impacts for residents and neighbours.

The proposed development is unlikely to increase the demand on local infrastructure and service and is entirely consistent with such of the zone objectives as are of relevance. The residential environment will remain characterised by a diverse range of low density dwelling styles, whilst not detracting from the consistent natural landscape setting.

This is a written request that the development will achieve the relevant zone objectives notwithstanding the numerical non-compliance with the height standard contained in clause 4.3 of the WLEP.

The above consitute good environmental planning grounds to justify contravening the development standard.

6. CONCLUSION
The proposed roof addition has been designed to provide for an indoor/outdoor covered living area. it will not affect adjoining properties.

Amenity to adjoning properties is maintained and no view loss will be experienced by the proposal.

The proposal will not have an adverse effect on any special ecological, scientific or aesthetic values.

It is requested that this non compliance be supported as there would be no practical utility in enforcing strict compliance with the relevantly applicable height of buildings development standard. All of the above constitutes good environmental planning grounds to justify contravening the development standard in this particular instance.

The variation from the development standard will not contravene any overarching State or regional objectives or standards, it will have no effect outside the site's immediate area and rises no issue of significance for State and or regional environmental planning.

Maintaining strict numerical with the 8.5m height of buildings development standard would not result in any public benefit in this instance. To maintain, to strictly enforce and apply the development standard in this instance would prevent the carrying out of an otherwise well designed residential development which is suited to the site.

IN SUMMARY
It is requested that this development justifies the contravention of the height of buildings development standard contained in clause 4.3 of the WLEP by demostrating that compliance with the development standard is unreasonable or unnecessary in the circumstances and the there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development shows it will be in the public interest as it is consistent with such of the objectives of the standard as are of relevance to the subject matter of the development application and the objectives for the development within the R2 zoning.

It is sought that this development application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the WLEP.

Yours Sincerely

Jitka Jankovec c/- JJDRAFTING AUST.P/L

ITEM 3.8	**DA2022/0150 - 2089 A PITTWATER ROAD CHURCH POINT - CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/364268**
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 PLEP 2014 as the applicants' written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0150 for construction of a dwelling house including a swimming pool on land at Lot 2 DP 1186422, 2089 A Pittwater Road CHURCH POINT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0150

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 2 DP 1186422, 2089 A Pittwater Road CHURCH POINT NSW 2105
Proposed Development:	Construction of a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kelly Lee Schott Matthew Roy Schott
Applicant:	Hot House Projects Pty Ltd

Application Lodged:	14/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	23/02/2022 to 09/03/2022
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 15.9%
Recommendation:	Approval

Estimated Cost of Works:	$ 993,500.00

EXECUTIVE SUMMARY

This development application seeks consent for construction of a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. The maximum height of the proposed development has been measured at 9.85m which represents a variation of 15.9% to the prescribed 8.5m building height limit.

Submissions were received from five (5) residents. Concerns raised in the objections predominantly relate to impacts of the development on the watercourse across the site, the setback of the dwelling to

the southwest boundary and the amount of landscaped area.

Due to the difference in levels between the maximum ridge height and floor levels of dwellings to the southwest (approx. 8-10m) and the modulation of the upper level built form, the non-compliant height element will not impact upon the desired character of the locality. When assessed on its merits, it is concluded that the height, bulk and scale of the proposal will be commensurate with the existing built form of the surrounding built environment and that the height breach and siting will not result in unreasonable amenity impacts to adjoining neighbours.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the construction of a new three-storey dwelling house and swimming pool with associated earthworks and landscaping.

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 Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - D4.8 Building envelope
Pittwater 21 Development Control Plan - D4.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 2 DP 1186422 , 2089 A Pittwater Road CHURCH POINT NSW 2105

Detailed Site Description:	The subject site consists of one (1) allotment located on the southwestern side of Pittwater Road. The site does not have a frontage to Pittwater Road. Access to the site is achieved via a right-of-carriageway across 2089 Pittwater Road and 2089B Pittwater Road. The site is irregular in shape with a width of 62.12m and a maximum depth of 21.355m. The site has a surveyed area of 1,185.5m². The site is located within the C4 Environmental Living zone and is vacant. The site contains a natural depression near the centre with the land falling from the northwest and southeast with a maximum fall of approx. 9.5m. The site mostly contains unkempt shrubs, weeds and groundcover vegetation. Several small trees are located throughout the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

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:

Pre-lodgement Meeting **PLM2021/0182** was held on 03/08/2021 for Construction of a Dwelling house. The outcome of the meeting was the proposal was not supported due to concerns regarding flooding, building height, setbacks and landscaped area.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	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 amended architectural plans. 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.

Section 4.15 Matters for Consideration	Comments
	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 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 23/02/2022 to 09/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Raymond Darcy Tregaskis	3 Corniche Road CHURCH POINT NSW 2105
Mrs Jennifer Sue Dixon	5 Corniche Road CHURCH POINT NSW 2105
Mr Michael John Lee Mrs Joanna Mary Lee	1 Corniche Road CHURCH POINT NSW 2105
Mrs Kim Louise Popplewell Mr Michael Eric Popplewell	23 Ilya Avenue BAYVIEW NSW 2104
Ms Michelle Katrina Guberina	PO Box 500 COLLAROY BEACH NSW 2097

The following issues were raised in the submissions:

- Impact on watercourse
- Setbacks
- Speed bumps on right-of-carriageway
- Landscaped area
- Potential business use
- Construction noise

The above issues are addressed as follows:

- **Impact on watercourse**

  The submissions raised concerns that the proposed development will impact upon the watercourse that flows through the site and that the submitted technical documentation may be inaccurate.

  Comment:

  The application and submitted technical reports have been reviewed by Council's Water Management, Riparian and Floodplain Engineering teams to ensure the proposed development does not unreasonably impact upon the watercourse or cause flooding within and around the site. No objections to the proposed development have been raised, subject to conditions of consent. Conditions are included to remediate and formalise the watercourse and provide ongoing maintenance to ensure the development does not impact upon the natural flow of water across the site.

- **Setbacks**

  The submissions raised concerns that the proposed dwelling does not comply with the minimum boundary setback requirements.

  Comment:

  The site does not have a front boundary as it does not have a street frontage. This means the side and rear boundaries are assessed on a merit basis. The Pittwater 21 DCP allows for discretion when nominating side and rear boundaries. In this case, the applicant has nominated

the southeast boundary as being the rear boundary with a minimum 6m setback and the northeast boundary being the side boundary with a 2.5m setback. The remaining boundaries are required to have a minimum setback of 1m.

The proposed development achieves compliance with all the minimum setback requirements. The 1m setback to the southwest boundary is acceptable is due to the large spatial separation between the nearest dwellings and the presence of the access handle and driveway to the dwelling at 1 Corniche Road. No habitable buildings are located within the access handle and the siting of the dwelling close to this boundary will not result in any unreasonable amenity impact to the dwellings on the northeast side of Corniche Road. Additionally, most of the proposed dwelling is setback 2m from the southwest boundary, which will further reduce any impact on adjacent and nearby properties.

- **Speed bumps on right-of-carriageway**

  The submissions raised concerns that the existing speed bumps on the access driveway to the site will lead to additional noise from vehicles during construction. It is requested the speed bumps be removed during construction.

  Comment:

  This application relates specifically to works proposed within the property boundaries of 2089A Pittwater Road. The speed bumps on the access driveway are located on a different property. Therefore, Council does not have the consent of the owner of that property to require the removal of the speed bumps during construction. Regardless, the speed bumps are a necessary safety device to ensure slow speeds are maintained by vehicles using the driveway. Removal of these devices would likely result in an unsafe vehicle and pedestrian outcome.

- **Landscaped area**

  The submissions raised concerns that the proposed development does not achieve the minimum required landscaped area.

  Comment:

  While the proposed development does not achieve the minimum landscaped area requirement, it is considered the proposal is generally consistent with the objectives of the control. A detailed assessment of the proposal in accordance with the landscaped area control requirement is included below in this report.

- **Potential business use**

  The submissions raised concerns that part of the proposed dwelling noted as "Workshop" will be used for the purpose of a business.

  Comment:

  The applicant is not seeking consent for the operation of a business on the site. A condition of consent is included to limit the permitted use of the site for the purpose of a dwelling house. The land use zone allows for home businesses and home occupations as development permitted without consent, thereby not requiring development consent from Council to undertake these land uses on the site.

- **Construction noise**

  The submissions raised concerns that noise during and after construction will cause disturbance to nearby residences.

  Comment:

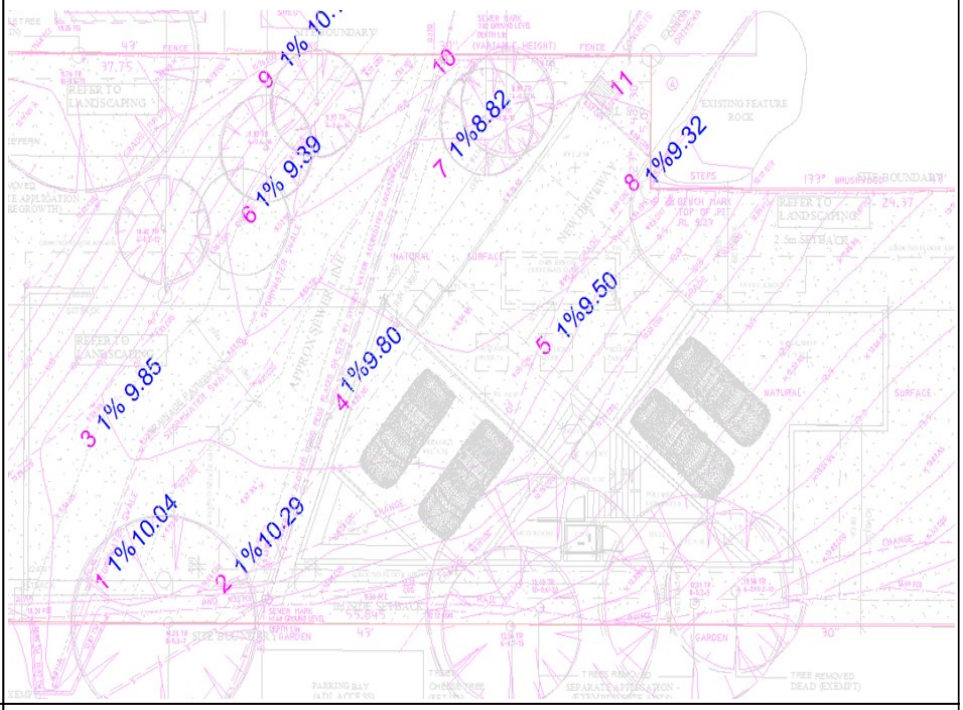
  It is to be expected that noise will be generated during construction works. Construction works are limited by condition of consent to certain hours of the day to limit the impact upon nearby residences. These hours are in line with the guidelines from NSW Environmental Protection Authority.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	**General Comments** Fireplace proposed for the loungeroom is required to be installed to the specifications of Australian Standards 2918, 4012 and 4013. We can see from the plans that the flue exit will be able to comply with the distances from rooflines and other structures according to AS4012/4013. Proposal is supported.
Landscape Officer	The application seeks consent for construction of a dwelling house including a swimming pool. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D4 Church Point and Bayview Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The Arborist's Report prepared by Waratah Eco Works and Landscape Plan prepared by Contour Landscape Architecture are noted. The Report indicates that all trees on site are to be retained, though Arboricultural supervision will be required to address potential impacts on the trees. it is noted that previous approval has been granted by Council for removal of three trees from the site under a Tree Permit approval. The Landscape Plans indicate planting of additional native species along with other plants. It is noted that two weed Genus (as listed by Sydney Weeds Network) are included in the Landscape Plan. Given location of the watercourse through the site, it

Internal Referral Body	Comments
	is recommended that the two plants (Dieties and Raphiolepis) be deleted and substituted on the plans. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	Council's Biodiversity referral team have reviewed the application for consistency against the relevant environmental controls, including: Biodiversity Conservation Act 2016 (BC Act) Biodiversity Regulation 2017 (BC Reg) State Environmental Planning Policy (Coastal Management) 2018 - Coastal Environment Area Pittwater LEP - Part 7.6 Biodiversity Protection Pittwater DCP - Part B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community - Part B4.3 Flora and Fauna Habitat Enhancement Category 2 Land The Drainage Line Assessment (Kingfisher Oct 2021) assessed the vegetation community on site and concluded the the endangered ecological community Pittwater Spotted Gum Forest does not occur on site. The development is also generally designed, sited and will be managed to minimise impacts, and has been conditioned to maintain terrestrial, riparian and aquatic biodiversity and their habitats. In order to comply with the P21 DCP flora and fauna requirements, namely the enhancement and/or creation of habitats for locally native flora and fauna to ensure the long-term viability of locally native flora and fauna and their habitats, the development shall ensure that at least 60% of any new planting incorporates native vegetation, and not include environmental weeds.
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 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.

Internal Referral Body	Comments
	Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated January 2022, the DA satisfies requirements under clauses 13, 14 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** 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)	The proposal is for the construction of a new dwelling. As the site is subject to flooding OSD is not required for this development. No objections to approval subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	The creek impact statement is satisfactory. The project impacts are limited to the developed section and shall be mitigated by the naturalisation of the downstream section within the lot boundary. Subject to conditions
NECC (Stormwater and Floodplain Engineering – Flood risk)	The development proposed to demolish existing dwelling and structures on site to construct a new three storey dwelling and inground pool. The three levels comprise of the basement garage, ground floor and first floor. There is a local depression that conveys overland flow from the north to south boundary. The proposed building ground and first floor are suspended over the depression. Both the ground and first floor are located above the FPL and PMF of the site. The consultant flood engineer has revised the site 1% AEP flood levels based on existing site survey levels and flood depths provided from Council. This is tabulated in red in his report. Based on this the applicable 1% AEP flood levels for the upper and lower garage are 9.8 (point 4) & 9.6 (Point 5) respectively. The upper and lower garage proposed levels are 9.7 and 9.3. Accordingly, are under the 1% AEP and will need to be raised to the 1% AEP level. Refer to overlay below.

Internal Referral Body	Comments
	In flood emergency event, it is possible to evacuate away from site or shelter in place on the ground or first floor as both are above the PMF. The proposal is generally compliant with all section B3.11 of DCP. 
NECC (Water Management)	This application has been assessed against relevant legislation and policy relating to water quality, waterways, riparian areas, and groundwater. Council Water Management for Development Policy supports Councils commitment to protecting and enhancing the aquatic and terrestrial natural environment. The proposal triggers water quality requirements (Table 5 – General Stormwater Quality Requirements) of the Northern Beaches Council Water Management for Development Policy. Additional water quality sytems are required in the treatment chain, refer 4.1.2 Standards of Design (Water Management for Development Policy) for Council requirements. The development application is acceptable and subject to conditions.

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. 11262258S, dated 09/12/2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0006905871, dated 09/12/2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	89

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

SEPP (Coastal Management) 2018

The site is located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP
The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP
The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP

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

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

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.85m	15.9%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The consent includes conditions requiring the raising of the garage floor levels to the 1% AEP level, i.e. RL 9.5 for Garage 1 and RL 9.8 for Garage 2. To ensure the overall building height is not raised to accommodate these conditioned floor levels, a condition is included to limit the building height to what is indicated on the notified architectural plans.

The building height reduced levels are conditioned as follows:

- Ground Floor - Hallway / Bed 3 (excluding beneath First Floor) / Bed 4 / Bed 5: RL 16.39
- Ground Floor - Lounge / Laundry / Powder / Sauna: RL 16.65
- Ground Floor - Lounge / Dining / Kitchen: RL 17.21
- First Floor: RL 18.88

Despite the requirement to raise the garage floor levels, there is no change to the overall building height as notified to neighbouring and nearby properties and no increased impact will be caused by building height. Additionally, there is no change to the extent of the building height variation as requested under Clause 4.6.

Therefore, it is in Council's opinion that there is no change to the environmental impact of the proposal and the application is not required to be re-notified.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.85m
Percentage variation to requirement:	15.9%



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:

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height and floor space in a contextually appropriate manner on this particular site. The flooding affectation and Flood Planning Levels (FPL) associated with the overland flow path which traverses the site is also an environmental planning ground in support of the variation noting that such levels prevent the floor levels and associated overall building height from being lowered.

Whilst strict compliance could be achieved by reducing ceiling heights and/or redistributing floor space on the site such outcome would not represent good contextually appropriate design and would result in an inferior amenity outcome for occupants of the proposed development and surrounding development. Such outcome would defeat objective 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should struct compliance be enforced and to that extent would thwart compliance with objective 1.3(c) of the Act.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, residential amenity or foreshore scenic outcomes. In this regard, I consider the proposal to

be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such outcome is achieved whilst realising the reasonable development potential of the land.

Council generally concurs with the applicant's justification to vary the building height development standard. It is considered the proposed height breach will not result in any unreasonable built form, amenity or view loss impacts to adjacent dwellings. The height breach is concentrated to a small area in the northern corner of the upper floor. The majority of the dwelling is below the building height limit. The dwelling will be below the tree canopy level and will sit significantly lower than the levels of the nearest dwellings to the southwest.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

While the proposal includes some numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties, given the geographical characteristics of the site and surrounds. The proposed development will not impact upon the existing and desired streetscape character as the dwelling

is sited behind existing dwellings of Pittwater Road and cannot be readily seen from the street.

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

Comment:

The height and scale of the proposed garage and dwelling is generally consistent with that of similar structures and dwellings in the site vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

As the maximum height of the proposed dwelling is significantly below the lowest levels of the dwellings to the southwest, no views or vistas are expected to be unreasonably impacted as a result of the development.

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

Comment:

The proposed development is appropriately stepped to respond with the topography of the site while also ensuring functional residential development can be provided on the site.

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

Comment:

Majority of the existing trees and vegetation are to be retained. The existing canopy trees and vegetation on and around the site will soften the built form and its visual impact on the natural environment.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

  Comment:

  Through its design and siting, the proposed development is considered to have low impact on the ecological and aesthetic values of the site.

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

Comment:

The proposed development is not expected to cause adverse impacts to the ecological and aesthetic values on the site.

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

Comment:

The proposed development provides for a low density residential dwelling with ancillary structures that are appropriately integrated into the natural landform of the site.

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

Comment:

The proposed development expected to cause unreasonable impact to wildlife corridors that the site may have. The undercroft area beneath the dwelling will maintain the natural setting of the drainage channel within the site and permit the passing of wildlife under the dwelling.

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	N/A - site does not front street	N/A	N/A	N/A
Rear building line	SE - 6.5m	7.64m	N/A	Yes
Side building line	NE - 2.5m	2.5m	N/A	Yes
	SW - 1m	1m	N/A	Yes

	NW - 1m	3.06m	N/A	Yes
Building envelope	NE - 3.5m	Within envelope	N/A	Yes
	SW - 3.5m	Outside envelope	Nil to 48.9%	No
Landscaped area	60% (711.3m^2)	54.6% (647.8m^2)	8.9% (63.5m^2)	No

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	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	N/A	N/A
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

The desired character statement of the Church Point and Bayview Locality states, in part, the following:

The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape.

The proposed development incorporates a three-storey element, which is contrary to the desired character statement requiring a maximum of two-storeys for dwellings. While not strictly complying with this part of the desired character statement, it is considered that the proposed dwelling does demonstrate consistency with all other aspects. The primary reason for the three-storey element is due to the excavation for the garage. The three-storey element is limited to a small section near the centre of the dwelling. The remainder of the dwelling is either one or two-storeys.

It is considered that although the proposal does not fully demonstrate consistency with the desired character statement of the Church Point and Bayview Locality, the proposal does demonstrate consistency with the low density residential character within a landscaped setting with landscape integration into the building design. The bulk and scale of the building is considered to be reasonable in the context of the site and locality.

D4.8 Building envelope

Description of non-compliance

The control requires development to be within a building envelope projected at 45 degrees at a height of 3.5m above the side boundary.

The proposed dwelling encroaches beyond the building envelope along portions of the southwest elevation up to 2.2m (48.9%) for a distance of 1.3m.

The dwelling encroaches beyond the building envelope for a maximum length of 12.2m of the southwest elevation, which represents 27.8% of the total length of the southwest dwelling elevation.

Merit consideration

With regard to the consideration of the variation, the development is considered under the outcomes of the control below

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

  Comment:

  As discussed earlier in this report, it is considered that the proposal is consistent with the

desired future character of the Church Point and Bayview 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 envelope non-compliance will not unreasonably impact on the streetscape or result in a building scale or density that is below the height of trees.

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

  Comment:

  The proposal appropriately relates to the spatial characteristics of the existing development and the natural environment.

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

  Comment:

  The proposed development is not considered to unreasonably increase the bulk and scale of the built form of the existing dwelling and demonstrates consistency with the bulk and scale of existing development in the locality.

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

  Comment:

  No views or vistas will be unreasonably impacted as a result of the proposal. Adequate building separation will be maintained between adjoining and surrounding properties which will contribute to the equitable preservation of views and vistas to and/or from public/private places.

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

  Comment:

  No unreasonable additional impact on the levels of amenity and solar access to adjoining properties are expected.

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

  Comment:

  Existing and proposed vegetation is considered to adequately reduce the visual bulk of the built form.

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

D4.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The control requires a minimum of 60% (711.3m^2) of the site area to be landscaped area.

The development proposes 54.6% (647.8m^2) landscaped area, which is a variation of 8.9% (63.5m^2).

Additional landscaped area is to be provided in the undercroft area surrounding the natural drainage channel. While this area is not technically counted towards the landscaped area as it is beneath the dwelling, the area is required to be landscaped and maintained to ensure the natural flow of the channel is not impeded by the proposed development.

As such, when including this area in the landscaped area calculation, the proposed development includes 66.4% (787.8m^2) landscaped area on the site.

Merit Consideration

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

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

  Comment:

  The proposed development is appropriate in bulk and scale and is not considered unreasonable within its context nor visually dominant or inconsistent with that of surrounding dwellings. Therefore, the desired future character of the locality is considered to be achieved.

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

  Comment:

  The proposed development demonstrates compliance with the required side and rear setbacks, ensuring adequate spatial separation between dwellings. While there is non-compliance with the building height and building envelope requirements, these elements are not expected to result in an unreasonable impact from the built form of the dwelling. Furthermore, the proposal incorporates landscaping to minimise the visual impact of the development. This provides a situation in which presentation of bulk and scale is adequately minimised.

- *A reasonable level of amenity and solar access is provided and maintained*

  Comment:

  A reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

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

  Comment:

The proposed development does not require the removal of any significant vegetation. In addition, the front portion of the site contains ample landscaped area, most of which will remain in place and continue to act as a visual buffer when viewed from the public domain.

- *Conservation of natural vegetation and biodiversity.*

  Comment:

  No native vegetation or wildlife species will adversely be affected by the proposed works.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

  Comment:

  The proposed development retains significant areas of soft landscaping, thereby assisting with prevention of runoff, soil erosion, and siltation.

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

  Comment:

  The development will maintain the bush land character of the area given the modest size of the proposal and the the established landscaping within the site that is to be retained.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

  Comment:

  The site contains a significant portion of permeable surface which allows for the infiltration of water to the water table, minimises run-off and also assists with stormwater management.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $9,935 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $993,500.

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building

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

Accordingly Council as the consent authority grant Development Consent to DA2022/0150 for Construction of a dwelling house including a swimming pool on land at Lot 2 DP 1186422, 2089 A Pittwater Road, CHURCH POINT, 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**
21137 DA002 Issue C	16/12/2021	Hot House Architects
21137 DA010 Issue E	16/12/2021	Hot House Architects
21137 DA100 Issue G	05/05/2022	Hot House Architects
21137 DA101 Issue G	05/05/2022	Hot House Architects
21137 DA102 Issue E	16/12/2021	Hot House Architects
21137 DA110 Issue C	16/12/2021	Hot House Architects
21137 DA200 Issue E	16/12/2021	Hot House Architects
21137 DA201 Issue E	16/12/2021	Hot House Architects
21137 DA300 Issue E	16/12/2021	Hot House Architects
21137 DA301 Issue E	16/12/2021	Hot House Architects
21137 DA302 Issue B	16/12/2021	Hot House Architects
21137 DA303 Issue D	16/12/2021	Hot House Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
STORM-1	16/12/2021	Taylor Consulting
STORM-2	16/12/2021	Taylor Consulting
STORM-3	16/12/2021	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. 1262258S	09/12/2021	Efficient Living
NatHERS Certificate No. 0006905871	09/12/2021	Efficient Living

Arboricultural Impact Assessment	14/01/2022	Waratah Eco Works
Drainage Line Assessment	October 2021	Ecological Consultants Australia
Flood Management Report	16/12/2021	Pittwater Data Services
Geomorphic Assessment	28/11/2021	Flow and Loam Environmental
Geotechnical Investigation (Ref: J3895)	21/12/2021	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
C1 Rev B	16/12/2021	Contour Landscape Architecture
C2 Rev B	16/12/2021	Contour Landscape Architecture
C3 Rev B	16/12/2021	Contour Landscape Architecture
C4 Rev B	10/12/2021	Contour Landscape Architecture
C5 Rev B	10/12/2021	Contour Landscape Architecture

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	25/01/2022	Matt Schott
21137 DA500 Issue C	16/12/2021	Hot House 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. **Approved Land Use**
Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house*, as defined by the Pittwater Local Environment Plan 2014 Dictionary.

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council’s footpaths, roadways, parks or grass verges without Council Approval.

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

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

erection of any fences, hoardings or other temporary works.

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of

residents and the community.

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $9,935.00 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 $993,500.00.

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.

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. **Amended Landscape Plan**
a) An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:
i) Deletion of *Dieties bicolour* from the plans and plant list
ii) Deletion of *Raphiolepsis indica* 'Oriental Pearl' from the plans and plant list

b) Plants may be substituted for similar, less invasive plant Genus
c) Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

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 and in accordance with Council's Water Management for Development Policy, 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 interallotment drainage easement benefitting the site.

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. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 21/12/2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Flooding**
In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2
There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level.

Building Components and Structural Soundness – B1
All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2
All new development must be designed to ensure structural integrity up to the Flood Planning Level, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level.

Floor Levels – C1
New floor levels within the development shall be set at or above the Flood Planning Level.

The upper and lower garage FFL floor level will need to be raised to RL 9.8m AHD and 9.5m AHD respectively.

Storage of Goods – G1
Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Recommendations

The development must comply with the recommendations outlined in the Flood Management Report for 2089A Pittwater Road Church Point prepared by Pittwater Data Services dated 16/12/2021.

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

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

11. **Amendment of Landscape Plans**
The submitted Landscape Plan is to be amended in accordance with the following:

- Landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the species listed for the Pittwater Ward under the Native Plant Species Guide page of Council's website.

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

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

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

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

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

Reason: Protection of the receiving environment.

13. **Design of Stormwater Outlet Structure to Drainage Channel**
Stormwater outlet structures to the drainage channel must be designed in accordance with DPI Water's Guidelines for Outlet Structures on Waterfront land. Guidelines can be found on WaterNSW website.

No mortar is to be used on the outlet. Rocks must be placed using an interlocking system with varying rock sizes. Rock sizing is to ensure the outlet stability.

This design is to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To protect the surrounding channel bank from the effects of localised erosion.

14. **Detailed Design of Drainage Channel Works**
A certificate from a from a suitably qualified engineer who has membership of Engineers Australia and the National Engineering Register (NER), stating that the drainage channel works have been designed in accordance with the objectives of the Pittwater 21 DCP B5.13. The full length of the drainage line is to be rehabilitated using natural material and soft engineering techniques. Sandstone spalls and boulders are satisfactory.

A 2.0 m wide buffer zone (measured from the edge of the channel) is to be landscaped with local native plants (8 plants by square meter minimum). Plant selection to consider shade conditions, under high overhang the vegetation can be replaced with a rock mulch for channel stability.

The piping or artificial channelling of natural watercourses and drainage channels is not permitted.

Structural support elements are not permitted within the cross sectional area of the channel.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure drainage channel works are completed in accordance with the consent approval.

15. **Detailed Design of Stormwater Treatment Measures - Major**
A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance Council's Water Management for Development Policy (including 4.1.2 Standards of Design) and meet the following water quality requirements:
Table 5

Pollutant	Performance requirements
Total Phosphorus	65% reduction in the post development mean annual load (1)
Total Nitrogen	45% reduction in the post development mean annual load (1)
Total Suspended Solids	85% reduction in the post development mean annual load (1)
Gross Pollutants	90% reduction in the post development mean annual load (1) (for pollutants greater than 5mm in diameter)
pH	6.5 - 8.5
Hydrology	The post-development peak discharge must not exceed the pre-development peak discharge for flows up to the 50% AEP
	(1)The percentage reduction in the post development mean annual loads are relative to the loads from the proposed development without treatment applied.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

16. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The deck between the dwelling and swimming pool as depicted on Dwg. No. 21137 DA101 Issue G, dated 05/05/2022, prepared by Hot House Architects is to be consistent across all plans.

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.

17. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in

respect of the subject site.

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

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

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

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

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

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

Reason: To provide public and private safety.

19. **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.

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

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

21. **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.

22. **Building Height**
The height of the dwelling is not to exceed the following reduced levels:
- Ground Floor - Hallway / Bed 3 (excluding beneath First Floor) / Bed 4 / Bed 5: RL 16.39
- Ground Floor - Lounge / Laundry / Powder / Sauna: RL 16.65
- Ground Floor - Lounge / Dining / Kitchen: RL 17.21
- First Floor: RL 18.88

Reason: To manage environmental and amenity impacts upon adjacent properties.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. **Project Arborist**
a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated January 2022 prepared by Waratah Eco Works and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

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

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

d) All tree protection measures specified must:
i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

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

Note: i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject

site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

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

Reason: To protect native wildlife.

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

Property: 1 Corniche Road CHURCH POINT

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. **Protection of Landscape Features and Sites of Significance**
All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

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

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal

Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

27. **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 the Arboricultural Impact Assessment dated January 2022 prepared by Waratah Eco Works and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,

vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

28. **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.

29. **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.

30. **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.

31. **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

32. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan.

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

Reason: Environmental amenity.

33. **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.

34. **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.

35. **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.

36. **Certification for the Installation of Stormwater Treatment Measures**
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the construction certificate approved plans . The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the

Occupation Certificate.

Reason: Protection of the receiving environment.

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

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

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

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

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

38. **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.

39. **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.

40. **Installation and certification of solid/fuel burning heater**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

41. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

42. **Environmental and Priority Weed Control**
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: Preservation of environmental amenity.

43. **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.

44. **Maintenance of drainage channel**
The drainage channel must be maintained by the owner, Northern Beaches Council is not responsible for any creek and maintenance issues in the private property.

Reason: Protection of the receiving environment.

45. **Maintenance of Stormwater Treatment Measures - Major**
Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

46. **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.

47. **Swimming Pool/Spa Motor and Mechanical Plant Noise**
The swimming pool / spa and mechanical plant motor shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

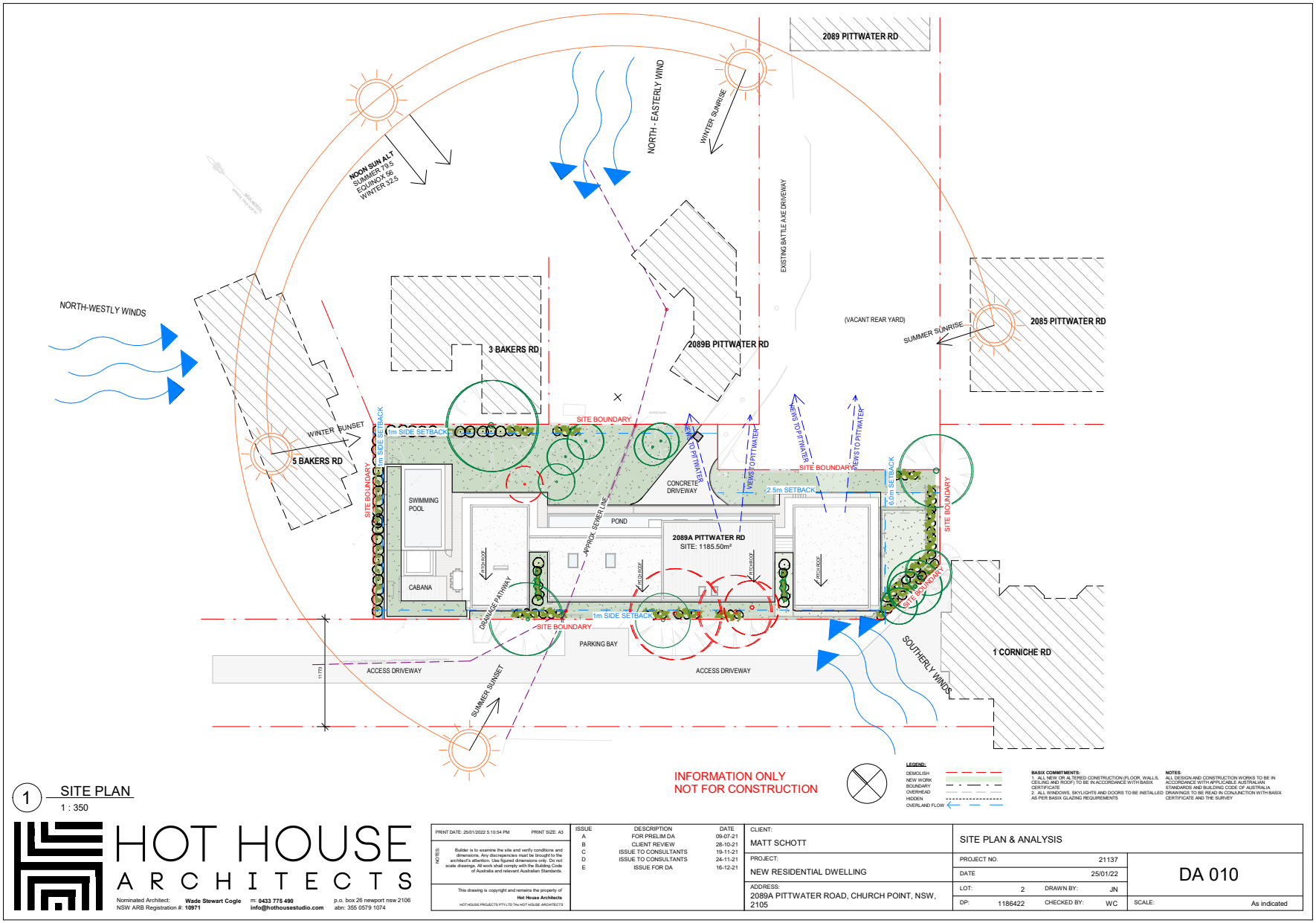
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

48. **Operation of solid fuel burning heaters**

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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



1 SITE PLAN
1 : 350

HOT HOUSE ARCHITECTS
Nominated Architect: Wade Stewart Cogle
NSW ARB Registration #: 10971
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NOTES:
Builder is to examine the site and verify conditions and dimensions. Any discrepancies must be brought to the architect's attention. Use figured dimensions only. Do not scale drawings. All work shall comply with the Building Code of Australia and relevant Australian Standards.

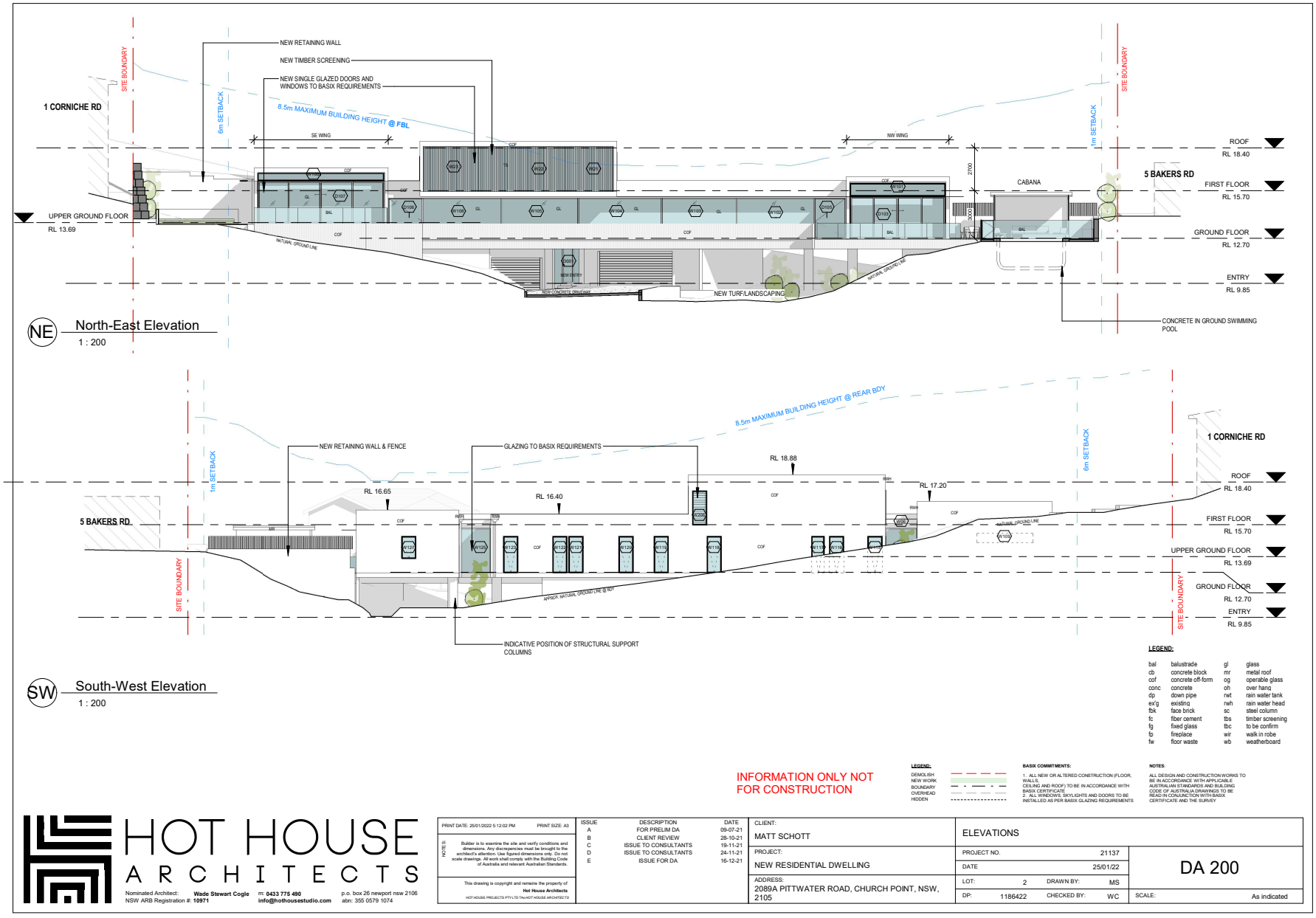
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HOT HOUSE PROJECTS PTY LTD TA's HOT HOUSE ARCHITECTS

ISSUE	DESCRIPTION	DATE
A	FOR PRELIM DA	09-07-21
B	CLIENT REVIEW	28-10-21
C	ISSUE TO CONSULTANTS	19-11-21
D	ISSUE TO CONSULTANTS	24-11-21
E	ISSUE FOR DA	16-12-21

CLIENT: MATT SCHOTT
PROJECT: NEW RESIDENTIAL DWELLING
ADDRESS: 2089A PITTWATER ROAD, CHURCH POINT, NSW, 2105

SITE PLAN & ANALYSIS
PROJECT NO. 21137
DATE 25/01/22
LOT: 2 DRAWN BY: JN
DP: 1186422 CHECKED BY: WC
SCALE: As indicated

DA 010



LEGEND:

bal	balustrade	gl	glass
cb	concrete block	mr	metal roof
cof	concrete off-form	og	operable glass
conc	concrete	oh	over hang
dp	down pipe	rwt	rain water tank
ex'g	existing	rwh	rain water head
fbk	face brick	sc	steel column
fc	fiber cement	tbs	timber screening
fg	fixed glass	tbc	to be confirm
fp	fireplace	wir	walk in robe
fw	floor waste	wb	weatherboard

INFORMATION ONLY NOT FOR CONSTRUCTION

LEGEND:
DEMOLISH
NEW WORK
BOUNDARY
OVERHEAD
HIDDEN

BASIX COMMITMENTS:
1. ALL NEW OR ALTERED CONSTRUCTION (FLOOR, WALLS, CEILING AND ROOF) TO BE IN ACCORDANCE WITH BASIX CERTIFICATE
2. ALL WINDOWS, SKYLIGHTS AND DOORS TO BE INSTALLED AS PER BASIX GLAZING REQUIREMENTS

NOTES:
ALL DESIGN AND CONSTRUCTION WORKS TO BE IN ACCORDANCE WITH APPLICABLE AUSTRALIAN STANDARDS AND BUILDING CODE OF AUSTRALIA DRAWINGS TO BE READ IN CONJUNCTION WITH BASIX CERTIFICATE AND THE SURVEY

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CLIENT: MATT SCHOTT

PROJECT: NEW RESIDENTIAL DWELLING

ADDRESS: 2089A PITTWATER ROAD, CHURCH POINT, NSW, 2105

ELEVATIONS

PROJECT NO. 21137

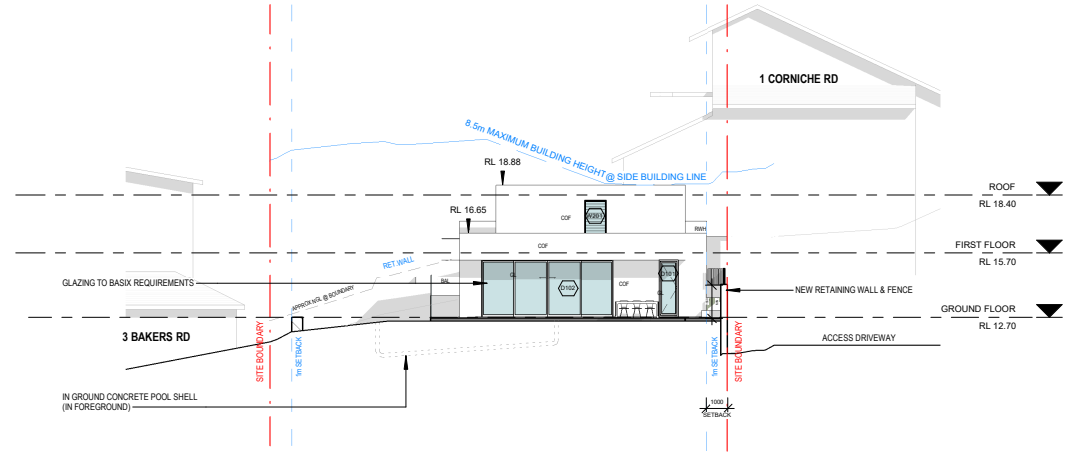
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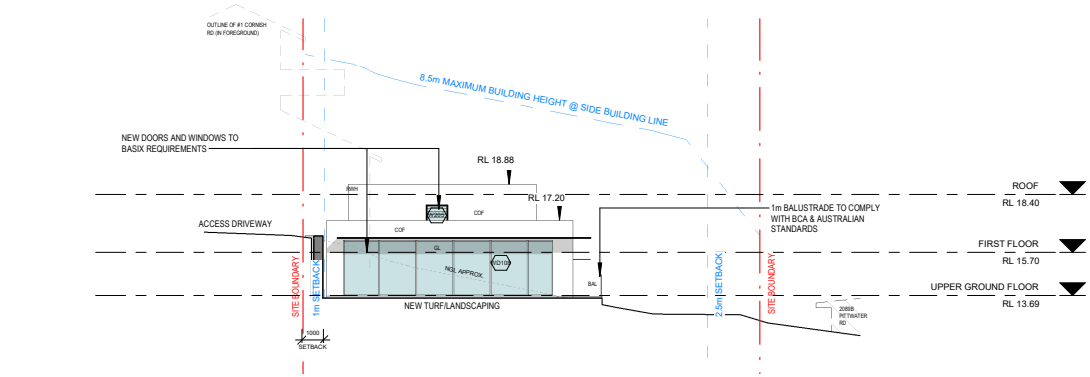
DP: 1186422 CHECKED BY: WC

DA 200

SCALE: As indicated



NW North-West Elevation
1 : 200



SE South-East Elevation
1 : 200

LEGEND:

bal	balustrade	gl	glass
cb	concrete block	mr	metal roof
ccf	concrete off-form	og	operable glass
conc	concrete	oh	over hang
dp	down pipe	rwt	rain water tank
ex'g	existing	rwh	rain water head
fbk	face brick	sc	steel column
fc	fiber cement	tbs	timber screening
fg	fixed glass	tbc	to be confirm
fp	fireplace	wir	walk in robe
fw	floor waste	wb	weatherboard

INFORMATION ONLY NOT FOR CONSTRUCTION

LEGEND:
DEMOLISH
NEW WORK
BOUNDARY
OVERHEAD
HIDDEN

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ELEVATIONS
PROJECT NO. 21137
DATE 25/01/22
LOT: 2 DRAWN BY: JN
DP: 1186422 CHECKED BY: WC
SCALE: As indicated

DA 201

CLAUSE 4.6 REQUEST TO VARY HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

2089A Pittwater Road, Bayview

Suite 1, 9 Narabang Way Belrose NSW 2085
Phone: (02) 9986 2535 | Fax: (02) 9986 3050 |

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4.6 Request to Vary Development Standard

Proposed New Dwelling

2089A Pittwater Road, Bayview

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

January 2022

1.0 Introduction

This clause 4.6 variation request has been prepared in support of a building height breach associated with a development application proposing the construction of a new dwelling house on the subject allotment. In the preparation of this variation request consideration has been given to the following architectural plans prepared by Hot House Studio Architects:

COVER SHEET	DA 001
EXTERNAL FINISHES	DA 002
SITE PLAN & ANALYSIS	DA 010
BASEMENT PLAN	DA 100
GROUND FLOOR	DA 101
FIRST FLOOR PLAN	DA 102
ROOF PLAN	DA 110
ELEVATIONS	DA 200
ELEVATIONS	DA 201
SECTIONS 1	DA 300
SECTIONS 2	DA 301
SECTIONS 4	DA 303
CONSTRUCTION MANAGEMENT PLAN	DA 500
WASTE MANAGEMENT PLAN	DA 501
AREA CALCULATION	DA 600
SHADOW DIAGRAM 9am	DA 700
SHADOW DIAGRAM 12pm	DA 701
SHADOW DIAGRAM 3pm	DA 702
BUILDING HEIGHT LIMIT	DA 800

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

2.0 Pittwater Local Environmental Plan 2014 (PLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of PLEP the height of a buildings permissible on the site is a maximum of 8.5 metres. The objectives of this control are as follows:

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

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

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

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

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

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

Building height is defined as follows:

> ***building height*** *(or* ***height of building****) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

Ground level existing is defined as follows:

> ***ground level (existing)*** means the existing level of a site at any point.

It has been determined that the majority of the proposed dwelling sits comfortably below the 8.5 metre height standard with the exception of the northern corner of the first floor building element which has a maximum building height of 9.851 metres and accordingly breaching the height standard by 1.351 metres or 15.8%. The extent of building height breach is shown in the building height blank diagram at Figures 1 - 3 over page.



Figure 1 - Building height blanket diagram showing extent of building height breach in plan view

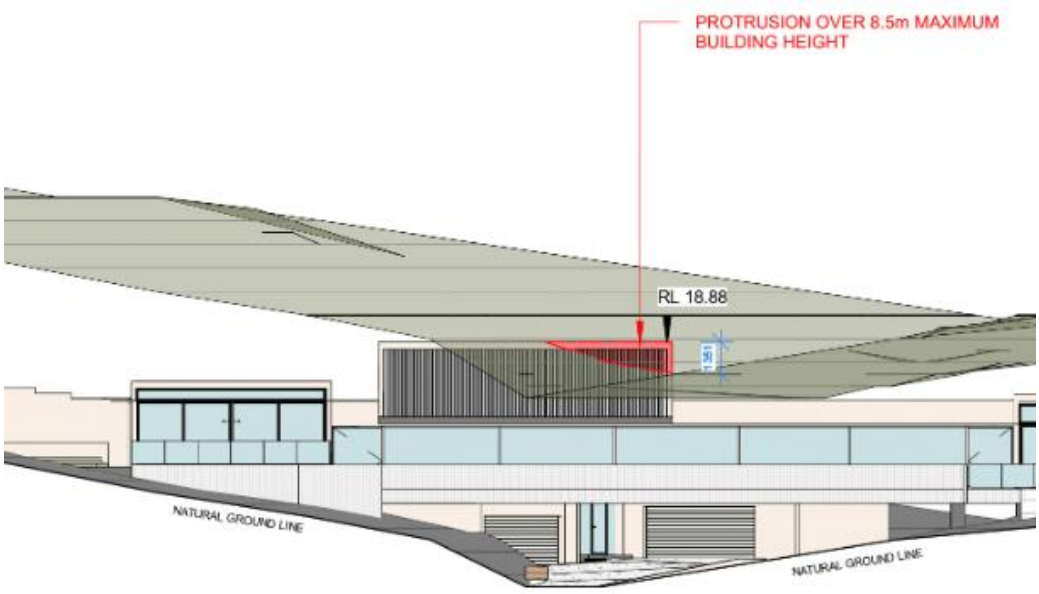


Figure 2 - Building height blanket diagram showing extent of building height breach in elevation

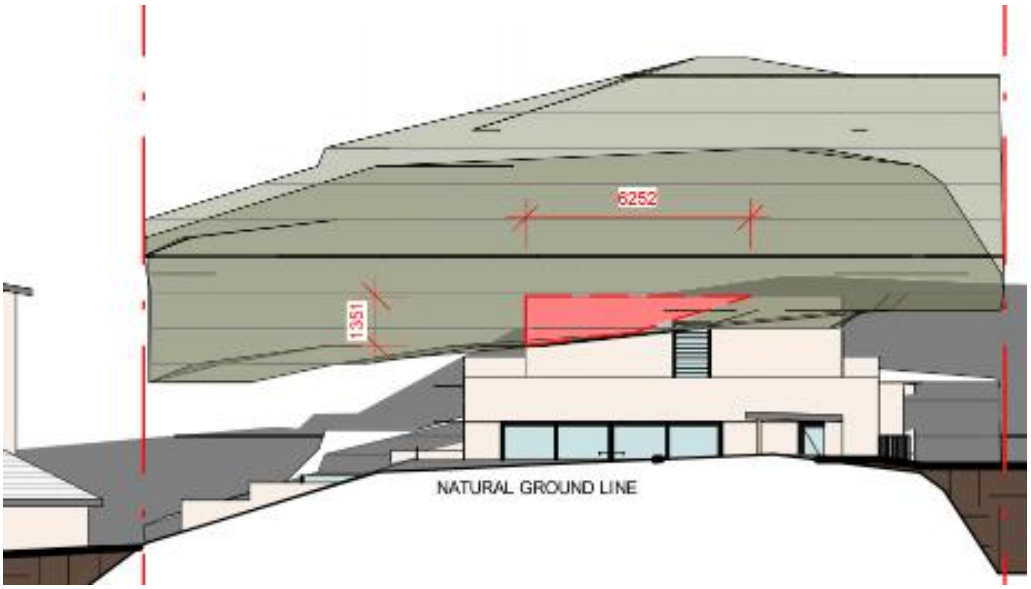


Figure 3 - Building height blanket diagram showing extent of building height breach in elevation

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

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

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

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

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

Clause 4.6(2) of PLEP provides:

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

This clause applies to the clause 4.3 Height of Buildings Development Standard.
Clause 4.6(3) of PLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provision at 4.3 of PLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Director-General has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of PLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

4.0 Request for variation

4.1 Is clause 4.3 of PLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

> *(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 PLEP Prescribes a fixed building height provision that seeks to control the height of certain development. Accordingly, clause 4.3 PLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The subject property is located within the Church Point and Bayview Locality. The Desired Future Character (DFC) statement within Pittwater 21 Development Control (P21DCP) plan is as follows:

> *The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on lowlands in the locality on land that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Retail, community and recreational facilities will serve the community.*
>
> *Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. The locality is characterised by steeply sloping blocks so the provision of facilities such as inclinators, driveways and carparking need to be sensitively designed. The shared use of vehicular/pedestrian access, and the use of rooftops as parking areas can be solutions that minimise the physical and visual impact on the escarpment or foreshore.*
>
> *Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Views from the buildings shall be maintained below the tree canopy level capturing spectacular views up the Pittwater waterway. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment.*
>
> *Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

The locality is visually prominent particularly from Scotland Island, Bilgola Plateau, and the Pittwater waterway. Therefore, a balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

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

Pedestrian/cycle access around the foreshore and to areas of open space will be upgraded and maintained.

Church Point will remain an important link to the offshore communities.

Having regard to the DFC statement, I am satisfied that that the building, by virtue of its height and scale, is consistent with the desired character of the locality notwithstanding the building height breaching elements proposed. In forming this opinion, I note:

- Notwithstanding the building height breaching elements, the Church Point and Bayview Locality will remain primarily a low-density residential area with the dwelling housing, the subject of this document, continuing to present as a 1 and 2 storey dwelling as viewed from surrounding properties it being noted that the battle-axe nature of the allotment will ensure that the dwelling house, in particular the building height breaching element, will not be readily discernible as viewed from Pittwater Road or Pittwater waterway.
- The building height breaching element does not itself require excavation or modification of the landform with the building sitting within a landscaped setting and safe from hazards.
- The non-compliant building element will not prevent the building as whole from blending into the escarpment which forms a backdrop to the site.
- The building height breaching element will not require the removal of any vegetation and will not impact on any public or private views.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

Notwithstanding the building height breaching element, the proposal is consistent with this objective.

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

Response: The dwelling has a stepped pavilion building form that responds to the topography of the site. Development along Pittwater Road and within the sites visual catchment is characterised by 1, 2 and 3 storey detached dwelling houses interspersed by senior's housing building forms generally responding to the topographical characteristics of the area. The majority of the proposed dwelling will sit well below the 8.5 metre development standard with the variation attributed to the highly irregular topographical characteristics of the site. In this regard, it is considered that the building height breaching element does not unreasonable contribute to visual bulk to the extent that the building would be considered incompatible with nearby development.

As mentioned previously, the area of non-compliance will not be readily discernible from the public domain given the battle-axe nature of the allotment with a predominantly single storey building presentation afforded to surrounding properties. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching element, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

(c) to minimise any overshadowing of neighbouring properties,

Response: The shadow diagrams prepared by Hot House Architects demonstrate that the building height breaching element will not contribute to non-compliant shadow impact on neighbouring properties. The spatial separation afforded to surrounding development minimises overshadowing. A copy of the shadow diagrams is at Attachment 1.

Notwithstanding the building height breaching element, the proposal is consistent with this objective.

(d) to allow for the reasonable sharing of views,

Response: Having inspected the subject site and its immediate surrounds to identify potential view corridors across the site I am satisfied that the proposed development, in particular the building height breaching element, will not give rise to unacceptable public or private view affectation. In forming this opinion, we note that the properties to the rear of the site are located at a higher elevation such that the views currently available over the site will not be compromised as consequence of the dwelling house proposed.

Under such circumstances, I am satisfied that a view sharing outcome is achieved in accordance with the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and accordingly the development provides for the reasonable sharing of views.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: As previously indicated, the building height breaching element does not itself require excavation or modification of the landform.

Notwithstanding the building height breaching element, the proposal is consistent with this objective.

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

Response: The proposed areas of non-compliance will not adversely impact on the natural environment with no site disturbance directly attributed to the building height breaching elements proposed. The site is not listed as a heritage item or within a heritage conservation area.

Notwithstanding the building height breaching element, the proposal is consistent with this objective.

Consistency with zone objectives

The subject site is zoned E4 Environmental Living pursuant to PLEP 2014 with secondary dwellings permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: The works relate to the construction of a new dwelling house. The proposal will not require the removal of any significant trees or any natural features having ecological and/or aesthetic values. Development will continue to be subservient to the natural environment and sited below the tree canopy notwithstanding the building height breaching element proposed.

This objective is achieved.

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

Response: The proposal will not adversely impact on the environmental values of the area. The proposal will maintain the environmental and aesthetic value when viewed from neighbouring properties and the public domain notwithstanding the building height breaching element proposed.

.
This objective is achieved.

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

Response: The breach to the 8.5 metre height standard does not give rise to any unreasonable bulk and scale concerns, nor does it result in a building which is inconsistent with the scale of development both existing and reasonably anticipated on steeply sloping sites along this particular section of Pittwater Road. Significant landscape features on the site will be largely preserved and the dwelling will integrate with that landscape character.

This objective is achieved notwithstanding the building height breaching element proposed.

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

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the E4 Environmental Living zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height and floor space in a contextually appropriate manner on this particular site. The flooding affectation and Flood Planning Levels (FPL) associated with the overland flow path which traverses the site is also an environmental planning ground in support of the variation noting that such levels prevent the floor levels and associated overall building height from being lowered.

Whilst strict compliance could be achieved by reducing ceiling heights and/ or redistributing floor space on the site such outcome would not represent good contextually appropriate design and would result in an inferior amenity outcome for occupants of the proposed development and surrounding development. Such outcome would defeat objective 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should struct compliance be enforced and to that extent would thwart compliance with objective 1.3(c) of the Act.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, residential amenity or foreshore scenic outcomes. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

- The development represents good design (1.3(g)).

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

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

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the E4 Environmental Living Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.
Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

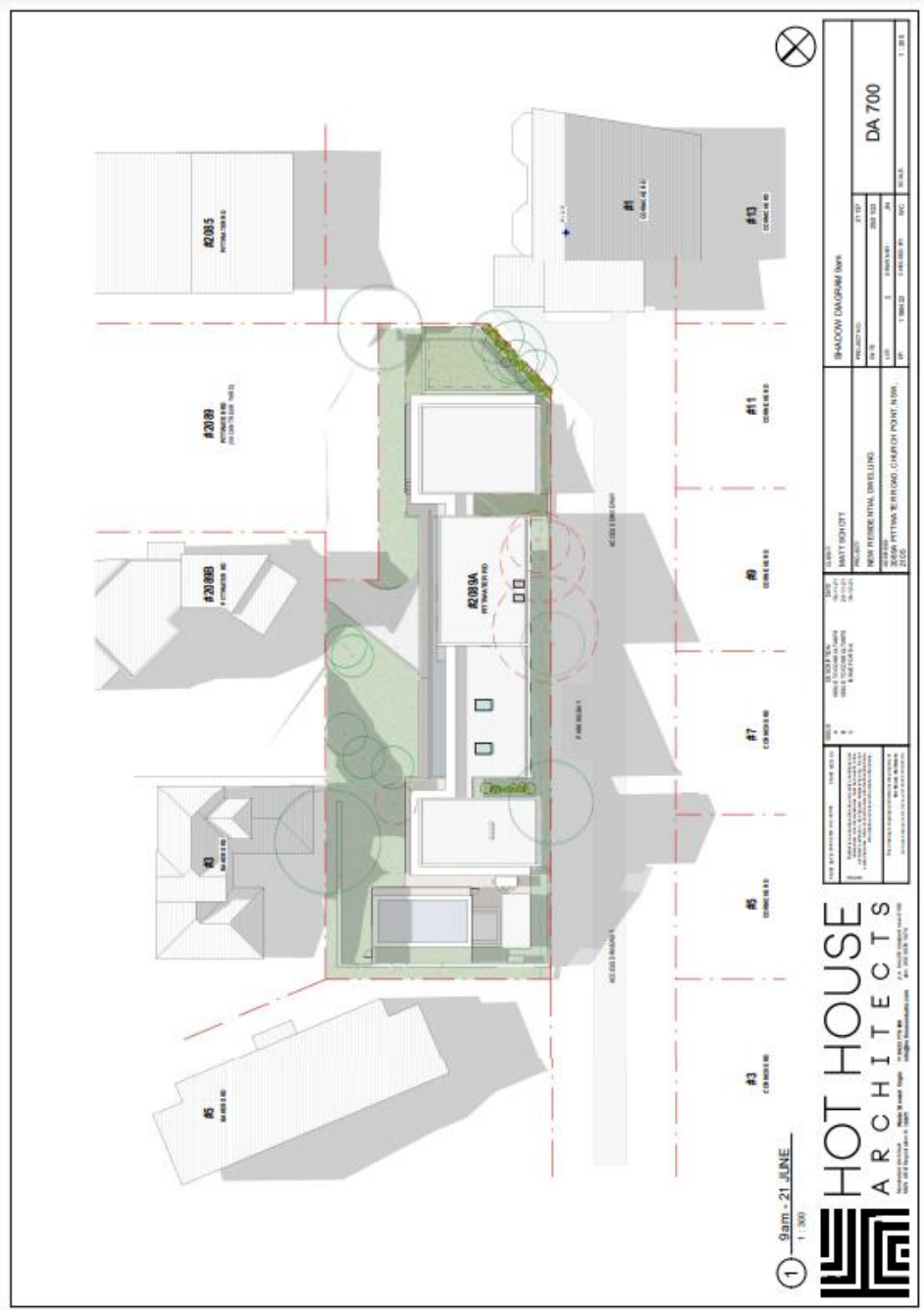
Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

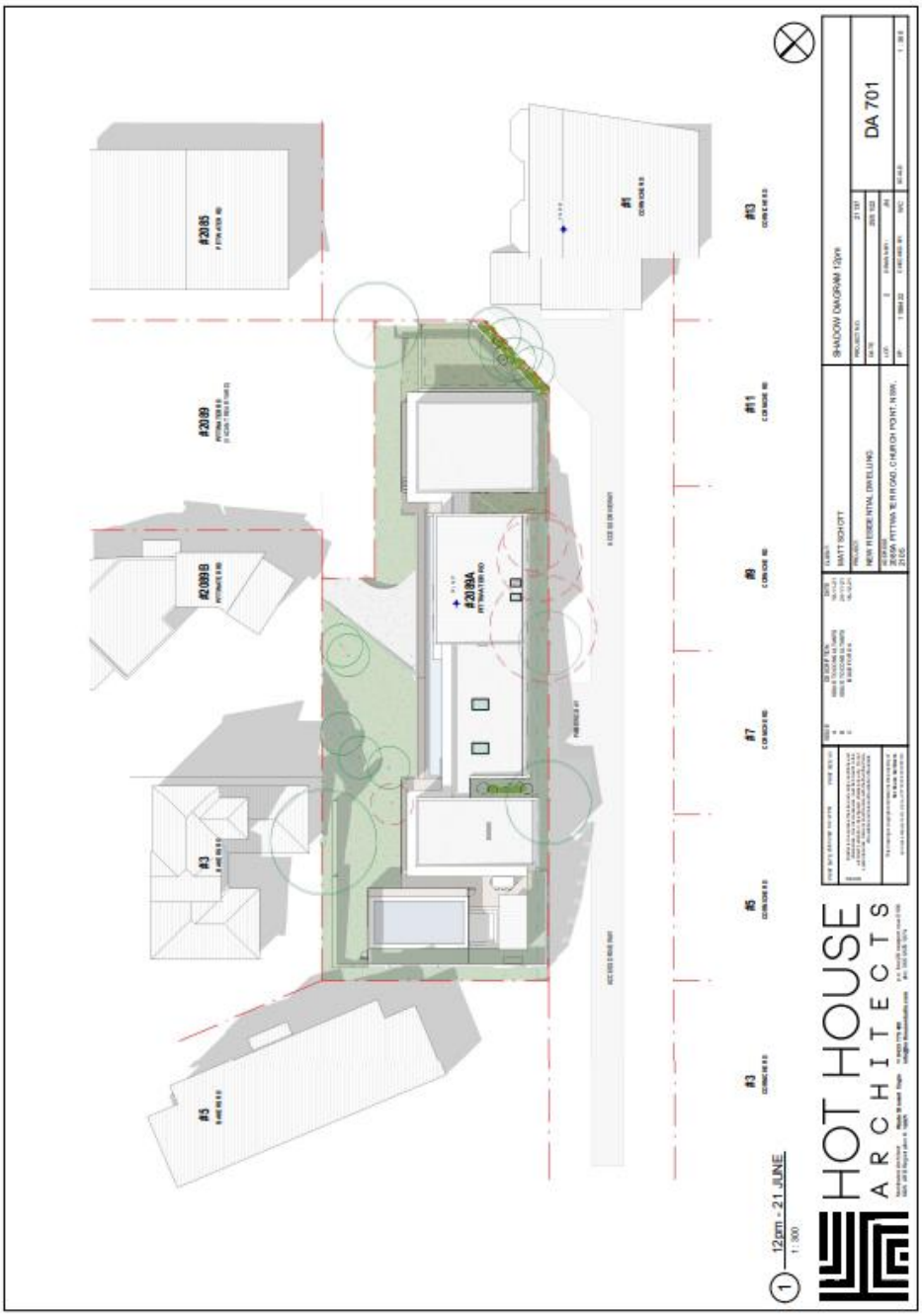
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

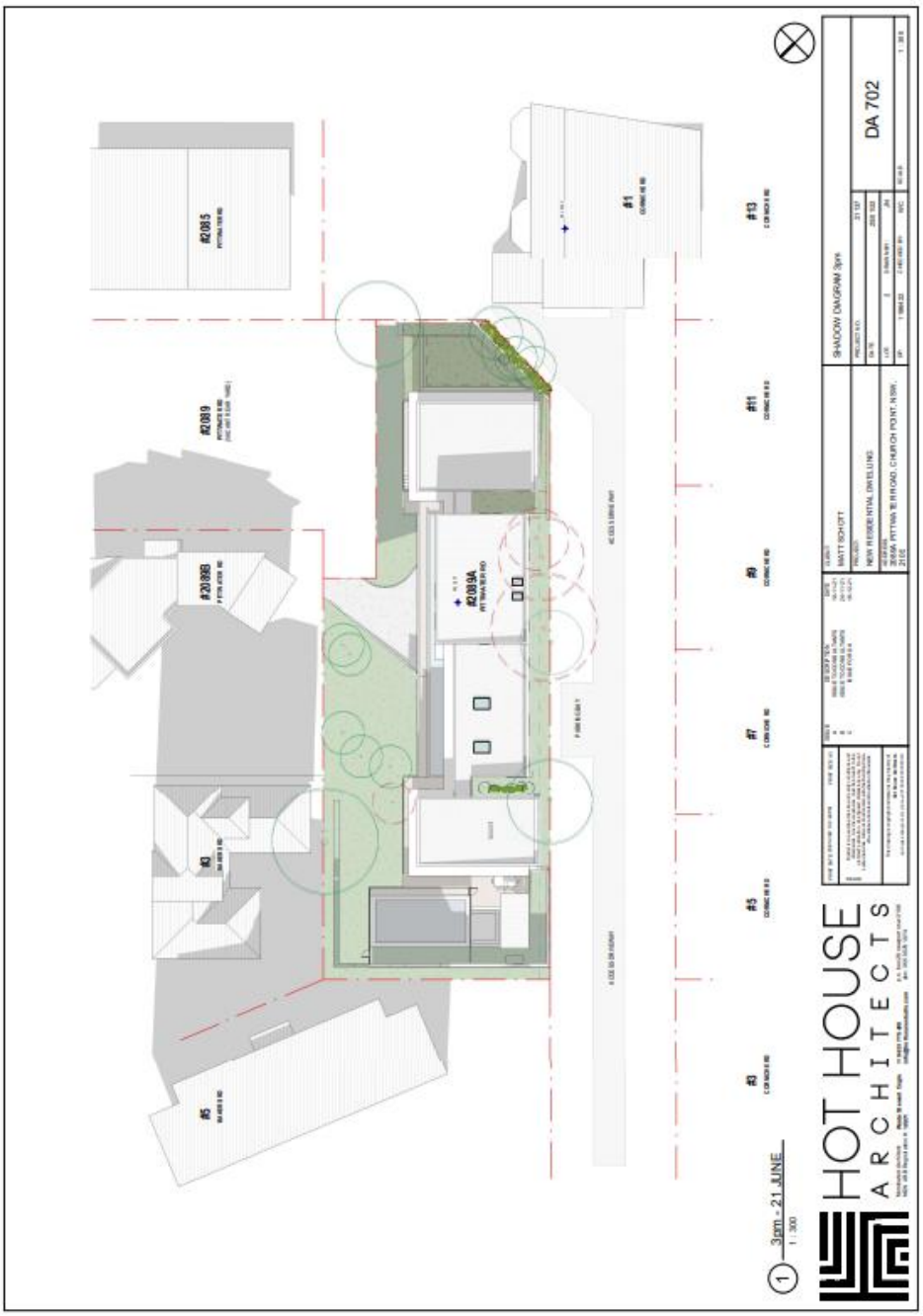
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

As such, I have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Attachment 1




#2085
#2089
#2089B
#2089A
#1
#3
#11
#9
#7
#5
#3
#3
HOT HOUSE ARCHITECTS
DA 701
SHADOW DIAGRAM 12pm
1 12pm - 21 JUNE
1:300


#2085
#2089
#2088
#2089A
#1
#13
#11
#9
#7
#5
#3
#5
3pm - 21 JUNE
1 : 300
HOT HOUSE
ARCHITECTS
SHADOW DIAGRAM 3pm
DA 702

ITEM 3.9	**DA2022/0373 - 33 WHEELER PARADE DEE WHY- DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/364338**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/0373 for demolition works and construction of a dwelling house including swimming pool on land at Lot 14 DP 11183, 33 Wheeler Parade DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0373

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 14 DP 11183, 33 Wheeler Parade DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Fiona Jane Ronge Neill Rourn Smith
Applicant:	Karen Victoria Buckingham

Application Lodged:	18/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	28/03/2022 to 11/04/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 979,330.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house including swimming pool.

The application is referred to the Development Determination Panel at the discretion of the Executive Manager, with respect to two objections raising concern that cost of works is underestimated. Other concerns raised in the objections relate to consultation with neighbours, built form non-compliances, amenity impacts (during construction as well as once constructed), vegetation, solar panels, retaining walls, property value, access via the shared driveway, and reporting potential future unauthorised works.

Critical assessment issues included wall height, rear setback, solar access, view loss, and privacy impacts. A key amendment recommended to be made to the proposed development by way of condition is to delete the eastern first floor balcony, in order to result in equitable view sharing to No. 35 Wheeler Parade.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition of the existing dwelling house and single garage, and construction of a new dwelling house, new garage with new driveway and hardstand area, and swimming pool.

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 Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 14 DP 11183 , 33 Wheeler Parade DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one allotment located on the

	western side of Wheeler Parade, Dee Why. The site is regular in shape with a frontage of 15.24m along Wheeler Parade and a depth of 60.96m. The site has a surveyed area of 902m². The site is located within the R2 Low Density Residential zone and accommodates a single-storey detached dwelling house with detached single garage.. The site slopes diagonally donwards approximately 6m from south-west to north-east and contains some vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by 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:

- Pre-lodgement Meeting PLM2014/0027 was held on 10 April 2014 to discuss demolition works, construction of a dwelling house in stages.
- DA2015/0458 for demolition works and construction of a dwelling house and swimming pool was withdrawn by the Applicant on 7 August 2015.
- Pre-lodgement Meeting PLM2021/0265 was held on 4 November 2021 to discuss construction of a dwelling house.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

Name:	Address:
Mr Andrew Cameron Edwards Mrs Susan Maree Abraham-Edwards	31 Wheeler Parade DEE WHY NSW 2099
Mr Leslie James Brumby	59 The Crescent DEE WHY NSW 2099

Name:	Address:
Mr Peter Clark	37 Wheeler Parade DEE WHY NSW 2099
Boston Blyth Fleming Pty Ltd Mr Ross Arthur Hockley Mrs Janet Elizabeth Hockley	1 / 9 Narabang Way BELROSE NSW 2085

The following issues were raised in the submissions:

- The cost of works is an underestimation.
- The owners of No. 33 Wheeler Parade did not discuss the proposal with neighbours prior to lodgement.
- The proposed rear setback is not compliant (and the supporting documentation cites the incorrect rear setback control), and is within within the tree protection zone of the adjoining public open space.
- The proposed development includes a non-compliant maximum wall height.
- The proposed development will result in unreasonable amenity impacts to No. 35 Wheeler Parade in relation to overshadowing, privacy and view loss. The submitted view analysis was not taken from the relevant property (No. 35 Wheeler Parade).
- Existing screen vegetation needs to be identified on plans.
- The proposed development will result in overlooking to No. 31 Wheeler Parade and Nos. 59 & 61 The Crescent and proposed plant screening is inadequate.
- The proposed plans do not show the required solar panels, which would increase building height and its impacts.
- The proposed retaining wall along the northern side boundary will decrease the existing open space enjoyed by the public, and will increase the height to approximately 3m (retaining wall with fence above).
- The proposal will reduce the property value of adjoining properties.
- Queries regarding:
    - Safeguarding of access to the properties that share the driveway with No. 33 Wheeler Parade during construction;
    - Preventing dirt, noise and mess and subsequent cleaning after completion of works; and
    - The process for reporting issues during construction.

The above issues are addressed as follows:

Cost of Works
Comment:
The submitted cost summary report has been certified by a suitably qualified person that the estimated cost of works is accurate, in accordance with Council's Lodgement Requirements. Under the delegations of the Executive Manager Development Assessment this application will be determined by the Development Determination Panel (DDP) to address the concerns raised within the submissions.

Consultation with Neighbours
Comment:
The proposed development was notified publicly from 23 March to 11 April 2022, as required by the Environmental Planning and Assessment Regulation 2021. Any consultation prior to lodgement of a development application is a voluntary courtesy, and is not required to be carried out by the landowner.

Built Form Non-Compliances - Rear Setback and Wall Height
Comment:

The proposed non-compliance with the minimum rear setback is acceptable for the reasons detailed in the section of this report relating to Part B9 Rear Setbacks of the Warringah Development Control Plan 2011. The proposed rear setback is acceptable with respect to the adjoining public open space, as assessed by Council's Landscape Officer and Parks Officer. The proposed non-compliance with the maximum wall height is assessed as requiring modification, as detailed in the section of this report relating to Part B1 Wall Heights of the Warringah Development Control Plan 2011.

Amenity Impacts - Overshadowing, Views and Privacy
Comment:
The impacts to overshadowing, views and privacy are addressed in the sections of this report relating to Parts D6 Access to Sunlight, D7 Views, and D8 Privacy of the Warringah Development Control Plan 2011.

Vegetation on Plans
Comment:
Existing and proposed vegetation on the site is labelled on the submitted landscape plan.

Solar Panels
Comment: Solar panels are not shown on plans, nor listed as proposed in the Statement of Environmental Effects. It is understood that the proposed pool is to be heated by solar panels, as stipulated by the submitted BASIX Certificate. Solar panels would result in additional building height, but would be comfortably accommodated on the proposed roof without breaching the maximum height of building. Notwithstanding this, development for the purpose of solar energy systems (e.g. a photovoltaic electricity generating system, solar hot water system or solar air heating system) is specified as exempt development under *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Part 2.3, Division 5, Subclause 2.41(4) Exempt Development this means that if solar panels were proposed, deletion of the structures would be moot, as they can be constructed without consent of Council.

Northern Retaining Wall
Comment:
The proposed retaining wall along the northern boundary is wholly on private land, so does not reduce any public land. No fencing is proposed under this development application.

Property Value
Comment:
Impact to property value as a result of development of land is not a planning matter for consideration under the Environmental Planning and Assessment Act 1979.

Access via Shared Driveway
Comment:
The application was reviewed by Council's Traffic Engineer with regard to the shared driveway. The shared driveway runs along the nature strip within the road reserve. The parking of any vehicles on the part of the driveway that is not on private property is illegal without a permit. Similarly, storage of building materials on the driveway would only be permissible with a permit. Any unlawful parking or storage of items on this driveway may be reported to Council for investigation. The submission of a Construction Traffic Management Plan for Council’s consideration and approval would be appropriate prior to the issue of the Construction Certificate. A condition of consent has been applied in this regard. A condition has also been applied requiring that access along the full width and length of the shared portion of driveway be maintained at all stages of construction, unless specifically approved otherwise by way of a Stand Plant, Place Building Materials on Footpath or Building Waste Container permit.

Dirt, Mess and Noise During Works
Comment:
Works on site (demolition and construction) must be carried out in accordance with the relevant Australian Standards to prevent unreasonable nuisance from noise, dust and vibration.

Reporting Issues During Works
Comment:
Any concerns with demolition or construction works are to be reported to the appointed Principal Certifier and/or to Council's Building Control Team for investigation.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for demolition works and construction of a dwelling house, including a swimming pool, and associated works, as described and illustrated in the reports and plans. 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 • E7 Development on land adjoining public open space It is noted an Arboricultural Impact Assessment (AIA) and Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. Two trees are identified in the AIA of which tree 2 is to be removed and tree 3 is to be retained. Landscape Referral supports the recommendations outlined in the AIA, and the imposed conditions shall apply in particular to excavation works proposed within the tree protection zone of tree 3. The Landscape Plan proposes planting within the tree protection zone and structural root zone of existing tree 3 and the installation of this planting shall be subject to the imposed conditions. Screen planting is proposed along the northern boundary, adjacent to the pool, which is supported, however shall be subject to the imposed conditions. The proposed pool is approximately 4 metres above the ground level of the adjoining public path and the visual impact shall be determined by the Assessing Planner. The Landscape Plan proposes tree planting which is supported, to offset any tree canopy loss from the proposed development, however species selection shall be from the Northern Beaches Council (NBC) Native Plant Species Guide - Curl Curl Ward or NBC Tree guide, and subject to the imposed conditions. Two trees exist in the reserve to the rear of the property and the proposed timber paling fence footings will impact the tree protection zone of these trees. Only hand excavation is permissible within the tree protection zone and footing locations must be approved by the project Arborist, subject to the imposed conditions.

Internal Referral Body	Comments
NECC (Development Engineering)	Applicants seeks approval for demolishing of existing dwelling and construction of a new dwelling. The access is via a shared driveway. The stormwater plan supporting the development is acceptable. No Development Engineering objection subject to recommended conditions.
Parks, reserves, beaches, foreshore	The development application is for demolition works and construction of a dwelling house, including a swimming pool, and associated works, as described and illustrated in the reports and plans. The property is located downslope of Wingala Reserve. No encroachment beyond the property boundaries is permitted. Parks Referral raise no concerns subject to the imposed conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 19 - Bushland in Urban Areas

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

(c) the need to retain any bushland on the land,
(d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and
(e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

Comment:
The subject site does not contain bushland. The subject site adjoins Wingala Reserve to the east, being land zoned RE1 Public Recreation. The subject site is downhill from the reserve, so will not result in any erosion of soils in the reserve. The reserve does not contain any waterways. The proposal is supported

by a landscape plan that demonstrates the site will be suitably planted and will not result in the spread of weeds or exotic plants within Wingala Reserve. The proposed development has been reviewed by Council's Landscape Officer and Parks team, who raise no objections to the proposal, subject to conditions of consent.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 12730S dated 3 March 2022). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	67
Thermal Comfort	Pass	Pass
Energy	50	88

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

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 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.

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:	Max. 8.5m	Garage: Max. 4.2m	-	Yes
		Dwelling House: Max. 8.49m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
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.

6.4 Development on sloping land

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

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

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

(c) the development will not impact on or affect the existing subsurface flow conditions.
Comment:
The Applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development

Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls
Principal Dwelling:

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	Max. 7.2m	8.1m	12.5%	No
B3 Side Boundary Envelope	5m	N: Within Envelope	-	Yes
		S: Within Envelope	-	Yes
B5 Side Boundary Setbacks	Min. 0.9m	N: 2.1m	-	Yes
		S: 2m	-	Yes
B7 Front Boundary Setbacks	Min. 6.5m	29.5m	-	Yes
B9 Rear Boundary Setbacks	Min. 6m	Dwelling: Min. 4.8m (First Floor) 6m (Ground Floor)	20% -	No Yes
		Deck: 3.1m	48.33%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	Min. 40% (360.8sqm)	42.5% (383.5sqm)	-	Yes

Garage:

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	Max. 7.2m	3.9m	-	Yes
B3 Side Boundary Envelope	5m	N: Within Envelope	-	Yes
		S: Within Envelope	-	Yes
B5 Side Boundary Setbacks	Min. 0.9m	N: 2m	-	Yes
		S: 0.9m	-	Yes
B7 Front Boundary Setbacks	Min. 6.5m	6.6m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	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
D16 Swimming Pools and Spa Pools	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
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The proposed development includes a maximum wall height of 8.1m, where this control allows for 7.2m. Not withstanding this, the control may be varied on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building does not exceed the 8.5 metre height development standard, is designed and located to minimise bulk and scale, and has a minimal visual impact when viewed from the downslope sides of the land. The slope of the land at the point of wall height non-compliance varies between 24-39%. Despite the control allowing for variation to the maximum wall height for sloping sites, the wall height non-compliance is recommended to be modified. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

To minimise the visual impact of development when viewed from adjoining properties, streets, waterways

and land zoned for public recreation purposes.
Comment:
As modified by conditions of consent (see below), the proposed development will not result in unreasonable impacts to adjoining sites, streets or nearby public recreation zones.

To ensure development is generally beneath the existing tree canopy level
Comment:
Despite its non-compliance, the proposed development is generally below the height of canopy trees in the surrounding area.

To provide a reasonable sharing of views to and from public and private properties.
Comment:
The portion of the development resulting in the greatest view loss is also the portion resulting in the greatest wall height non-compliance, being the first floor eastern balcony adjoining the parents retreat. A condition of consent has been applied to delete this balcony, so as to reduce the wall height non-compliance, and remove the portion of most severe view loss.

To minimise the impact of development on adjoining or nearby properties.
Comment:
With the exception of in relation to view loss, the proposed development does not result in unreasonable impacts to adjoining properties, as detailed throughout this report.

To ensure that development responds to site topography and to discourage excavation of the natural landform.
Comment:
The proposed development generally steps down with the cross-fall slope of the site, and does not rely on significant excavation to provide compliance with the maximum building height.

To provide sufficient scope for innovative roof pitch and variation in roof design.
Comment:
The proposed development employs an innovative roof design, in that it is of a low pitch to reduce the visual impact of the development and allow for some views over the dwelling.

B9 Rear Boundary Setbacks

The proposed development includes breaches to the minimum 6m rear setback, for the purpose of a ground floor deck within 3.1m of the western rear boundary, and a first floor bedroom within 4.8m of the rear boundary. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

To ensure opportunities for deep soil landscape areas are maintained.
Comment:
The proposed development retains 42.5% of the site as landscaped area, being in excess of the minimum 40% as required by Part D1 Landscaped area of the WDCP. As such, the proposed development provide ample opportunity for deep soil planting on the site.

To create a sense of openness in rear yards.
Comment:
The proposed non-compliant rear deck at the ground floor level is of open construction. The proposed non-compliance to the upper level relates to a minor protrusion to the first floor bedroom. As such, the proposed non-compliant elements do not result in a loss of openness to the rear yard.

To preserve the amenity of adjacent land, particularly relating to privacy between buildings.
Comment:
The impact to privacy is acceptable as detailed in the section of this report relating to Part D8 Privacy of the Warringah Development Control Plan 2011.

To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.
Comment:
No building pattern is discernible along Wheeler Parade. However, it is noted that the resulting built form of the proposed development will be similar to that at No 35 Wheeler Parade, adjoining the subject site to the south.

To provide opportunities to maintain privacy between dwellings.
Comment:
The proposed development retains ample space between adjoining dwellings to allow for significant separation and tree planting for assistance with privacy.

D6 Access to Sunlight

Objections raise concern about overshadowing to No. 35 Wheeler Parade. Part D6 Access to Sunlight requires that at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. The required private open space for No. 35 Wheeler Parade (based on Part D2 Private Open Space) is 60sqm with a minimum dimension of 5m. The rear yard of No. 35 Wheeler Parade contains 120sqm of private open space, 92sqm of which is uncovered. The submitted shadow diagrams demonstrate that the uncovered (and therefore unshaded) portion private open space receives sunlight to 50% or more of its area for 5 hours between 9am and 3pm on June 21. As such, the proposed development is compliant with this control.

D7 Views

An objection from No. 35 Wheeler Parade raised concern about view loss as a result of the proposed development. The Applicant provided height poles (as certified by a registered surveyor) indicating key points of the development. The development is considered against the underlying objectives of the control as follows:

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

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

Comment to Principle 1:
No. 35 Wheeler Parade currently enjoys panoramic views spanning from the north-west to the east. The view contains several important elements, including Dee Why Lagoon, Dee Why Beach and its interface with the water, Long Reef Headland and its interface with the water, Collaroy Beach, the ocean's horizon, and district views of Dee Why and Collaroy.

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

Comment to Principle 2:
The views from No. 35 Wheeler Parade are described as follows:

- Living Room: From standing and seated positions to the north, north-east and east, across the side and front boundaries.
- Stairwell: From a standing position to the north and north-west, across the side boundary.
- Sitting Room: From standing and seated positions to the north, across the side boundary.
- Kitchen: From a standing position to the north and north-east, across the side boundary.
- Pool Area: From a standing position to the north and north-east, across the side boundary.
- Secondary Living Room: From standing and seated positions to the north, across the side boundary.
- Rear Deck: From standing and seated positions to the north and north-east, across the side boundary.

Photographs of the views are as follows. Height poles have been highlighted for ease of reference. The pole highlighted in yellow indicates the south-eastern corner of the first floor eastern balcony. The poles highlighted in red indicate the north-eastern and south-eastern corners of the parents retreat at the first floor. The poles highlighted in green indicate the north-western and south-western corners of bedroom 1 at the first floor.



Above: The view from the living room of No. 35 Wheeler Parade, looking north across the side

boundary, from a standing position.



Above: The view from the stairwell of No. 35 Wheeler Parade, looking north across the side boundary, from a standing position.



Above: The view from the sitting room of No. 35 Wheeler Parade, looking north across the side boundary, from a standing position. The pole highlighted yellow is behind the centre window frame.



Above: The view from the kitchen of No. 35 Wheeler Parade, looking north-east across the side boundary, from a standing position.



Above: The view from the pool area of No. 35 Wheeler Parade, looking north-east across the side boundary, from a standing position.



Above: The view from the secondary living room of No. 35 Wheeler Parade, looking north across the side boundary, from a standing position.



Above: The view from the rear deck of No. 35 Wheeler Parade, looking north-east across the side boundary, from a standing position.

3. Extent of impact

"*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from*

bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:
The extent of view loss from each available view is as follows:

- Living Room: The view from the main living room is anticipated to be unaffected by the proposed development, with the exception of a negligible portion to the north-west (containing district views only). The proposed garage structure will be visible from the living room, though will generally be in line with existing development, so is not anticipated to obscure views to the ocean, beach, lagoon or headland. The view to the east will be entirely unaffected, as this is across the front boundary, away from the subject site. The view loss from this point is negligible.
- Stairwell: District views of Dee Why and Collaroy, and a small portion of the view to Dee Why Lagoon will be lost from this point. Given the view is obtained from a point of access (stairs) and not a place of recreation, and is obtained across a side boundary, the view loss from this point is minor.
- Sitting Room: District views to Dee Why and Collaroy are anticipated to be lost from this point, though the view to Dee Why Lagoon is anticipated to be retained. The view loss from this point is minor, as the most important element of the view (the water view to the lagoon) is unaffected.
- Kitchen: The views to Dee Why Beach, Collaroy Beach, Dee Why Lagoon and the districts of Dee Why and Collaroy are anticipated to be lost. The view to Long Reef Headland and its interface with the water is anticipated to be predominantly lost. The view to the ocean's horizon is anticipated to be retained. The view loss from this point is severe.
- Pool Area: The views to Dee Why Beach, Long Reef Headland (and its interface with the water), Collaroy Beach, Dee Why Lagoon and the districts of Dee Why and Collaroy are anticipated to be lost. The view to the ocean's horizon is anticipated to be retained. The view loss from this point is severe. However, it should be noted that the view to Dee Why Lagoon is predominantly obscured by existing vegetation on No. 31 Wheeler Parade, and that little space for recreation is provided around the pool area. That is to say, the area is generally used for swimming, and the view is unlikely to be appreciated from within the pool.
- Secondary Living Room: The views to Dee Why Lagoon, Dee Why Beach and its interface with the water, Long Reef Headland and its interface with the water, Collaroy Beach, and the ocean's horizon will be retained. The district views to Dee Why and Collaroy will be largely lost, though are of lesser value than the retained views. The view loss from this point is minor.
- Rear Deck: The views to Dee Why Lagoon, Dee Why Beach and its interface with the water, Long Reef Headland and its interface with the water, Collaroy Beach, and the ocean's horizon will be retained over the roof of the proposed development. The district views to Dee Why and Collaroy will be largely lost, though are of lesser value than the retained water views. The view loss from this point is minor.

The cumulative impact in consideration of the impact on all individual views is assessed as moderate.

4. Reasonableness of the proposal that is causing the impact
"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the*

answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:
The proposed development results in a numerical non-compliance with the rear setback control. The proposed rear setback is acceptable for the reasons detailed in the section of this report relating to Clause B9 Rear Setbacks. Further, the proposed rear setback only results in loss of view to nearby development and vegetation, and does not result in any notable or unreasonable view loss.

The proposed development also results in a numerical non-compliance with the wall height control of up to 8.1m, where a maximum of 7.2m is allowed. Clause B1 Wall Heights of the WDCP 2011 allows for variation to the control where the slope of the land is greater than 20%. The slope of the land at the point of wall height non-compliance varies between 24% - 39%. Despite the control allowing for variation to the maximum wall height for sloping sites, the wall height non-compliance is recommended to be modified (via condition), for the reasons detailed in the section of this report relating to Clause B1 Wall Heights of the WDCP 2011, and for the reasons detailed below.

The proposed eastern balcony at the first floor level includes a wall height of between 7.4m - 8.1m, given the slope of the land. As such, the entire balcony is not compliant with the wall height control. While the eastern balcony would allow for residents of the subject to site to gain significant views, the inclusion of that balcony results in severe view loss to the adjoining neighbour at No. 35 Wheeler Parade from the kitchen. Given views from kitchens are highly valued (as stipulated by the planning principle), the offending portion of the development is recommended to be deleted, by way of condition of consent. The portion of the development to be deleted is left (or west) of the pole highlighted yellow in the above photographs to where the height poles highlighted red are located.

Such a modification to the proposed development would ensure retention of the views to the majority of Dee Why Beach, the majority of Collaroy Beach, Long Reef Headland, its interface with the water, and the ocean's horizon. The views to Dee Why Lagoon and the districts of Dee Why and Collaroy remain anticipated to be lost. Given this, the recommended deletion of the eastern balcony at the first floor would reduce the view loss from the kitchen of No. 35 Wheeler Parade from severe to moderate, thereby resulting in reasonable view sharing.

Deletion of the eastern first floor balcony will also remove the negligible view loss to the living room, the minor view loss from the stairwell, and a portion of the minor view loss to the sitting room.

It should be noted that the proposed development will retain significant views from the first floor northern windows, and that the proposed western first floor balcony is acceptable for retention, thereby providing private outdoor space adjoining the 'parents retreat'.

It is acknowledged that the proposed development also results in severe view loss from the pool area of No.35 Wheeler Parade. However, as noted earlier in this section, the view to Dee Why Lagoon is already predominantly obscured by existing vegetation at No. 31 Wheeler Parade, Further, little space for recreation is provided around the pool area. That is to say, the area is generally used for swimming, rather than passive outdoor recreation at the paving level, and the view not already obscured by vegetation is unlikely to be appreciated from within the pool.

Retention of the view to the point that no severe view loss occurs would require restriction of development of the site to the front of the lot only, or to single-storey development. These solutions do not present more skillful design, as they would unreasonably hinder the development potential envisaged for the site by the applicable planning controls. As the view currently gained is over a side boundary and over a drastically underdeveloped lot, it is considered particularly vulnerable to change, and a development such as this (being reasonably compliant with built form controls, as modified by

recommended conditions of consent) should be anticipated for the site.

Given the proposed development's reasonable compliance with built form controls and the expectation that the subject site would be redeveloped to its full potential, the proposal demonstrates adequate view sharing and is acceptable, subject to deletion of the proposed eastern first floor balcony.

To encourage innovative design solutions to improve the urban environment.

Comment:
The proposed development demonstrates innovative design in that it allows for redevelopment of the site within reasonable compliance, without unreasonable impacts.

To ensure existing canopy trees have priority over views.

Comment:
The proposed development does not require removal of any significant canopy trees.

D8 Privacy

Objections raised concern about the impact on privacy to Nos. 31 and 35 Wheeler Parade, and Nos. 59 and 61 The Crescent. This control requires the following (addressed to demonstrate compliance):

- Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.
- Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.
- The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.
- The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.
- Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

The proposed development locates more actively used rooms so as not to result in unreasonable impacts to adjoining properties. That is, bedrooms (passively used) are orientated to adjoin the property to the south, and living areas are centrally located on site, with suitable separation to the northern properties. Windows to the upper level of the southern elevation (from which overlooking would otherwise be possible) are highlight, thereby preventing direct viewing to the south. The proposed upper level balconies are designed to prevent overlooking to adjoining residential properties (though it should be noted the eastern first floor balcony is recommended to be deleted by way of condition of consent with respect to its impact on views). Windows and balconies/decks to the northern elevation are separated from those of adjoining properties by a distance of greater than 9m. The proposal does not include separate habitation of the lower and upper floors, rendering the final point above irrelevant to the application. The proposed development is compliant with the requirements of this clause.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $9,793 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $979,330.

CONCLUSION

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

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

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

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

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

This proposal, for demolition works and construction of a dwelling house including swimming pool, has been referred to the Development Determination Panel at the discretion of the Executive Manager, with respect to two objections raising concern that cost of works is underestimated.

Other concerns raised in the objections relate to consultation with neighbours, built form non-compliances, amenity impacts (during construction as well as once constructed), vegetation, solar panels, retaining walls, property value, access via the shared driveway, and reporting potential future unauthorised works.

Critical assessment issues included wall height, rear setback, solar access, view loss, and privacy impacts. A key amendment recommended to be made to the proposed development by way of condition is to delete the eastern first floor balcony, in order to result in equitable view sharing to No. 35 Wheeler Parade.

As modified by conditions of consent, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to conditions of consent.

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 DA2022/0373 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 14 DP 11183, 33 Wheeler Parade, DEE WHY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA-002 Site Plan	2 March 2022	Fiona Ronge
DA-100 Garage Floor Plan	2 March 2022	Fiona Ronge
DA-101 Storage Floor Plan	2 March 2022	Fiona Ronge
DA-102 Ground Floor Plan	2 March 2022	Fiona Ronge
DA-103 Top Floor Plan	2 March 2022	Fiona Ronge
DA-200 Sections A/A & B/B	2 March 2022	Fiona Ronge
DA-201 Section C/C	2 March 2022	Fiona Ronge
DA-202 Section D/D	2 March 2022	Fiona Ronge
DA-203 Section E/E	2 March 2022	Fiona Ronge
DA-204 Section F/F	2 March 2022	Fiona Ronge
DA-205 Section G/G	2 March 2022	Fiona Ronge
DA-207 Section I/I	2 March 2022	Fiona Ronge
DA-208 Section J/J	2 March 2022	Fiona Ronge
DA-209 Long Section	2 March 2022	Fiona Ronge
DA-300 East Elevation	2 March 2022	Fiona Ronge
DA-301 West Elevation	2 March 2022	Fiona Ronge
DA-302 North Elevation	2 March 2022	Fiona Ronge
DA-505 Driveway Design Plan	2 March 2022	Fiona Ronge
DA-506 Roof Plan	2 March 2022	Fiona Ronge

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
DA-504 Erosion and Sediment Control Plan	2 March 2022	Fiona Ronge
STORM-1/A Stormwater Management Plan	2 February 2022	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. 1272350S	3 March 2022	Fiona Ronge
Arboriculture Construction Impact Assessment	January 2022	Aura Tree Services
Report on Geotechnical Site Investigation	February 2022	Crozier Geotechnical Consultants

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**
DA-600 Landscape Plan	1 March 2022	Fiona Ronge

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
DA-53 Waste Management Plan	2 March 2022	Fiona Ronge
Waste Management Plan	3 March 2022	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. **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	4 May 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 in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

Dwelling house means a building containing only one dwelling.

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 $9,793.30 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 $979,330.00.

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 $5000.00 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. **Amendments to the Approved Plans**
The proposed eastern balcony at the first floor level is to be deleted from plans. Door 05 at the first floor is to be replaced with a window. 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, with respect to view sharing for No. 35 Wheeler Parade.

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.

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. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's "WATER MANAGEMENT

for DEVELOPMENT POLICY ", and generally in accordance with the concept drainage plans prepared by Taylor Consulting Engineers, drawing number Storm -1/A, dated 10 January 2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

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, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

13. **Pre-Construction Stormwater Assets Dilapidation Report**
The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.p

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

Reason: Protection of Council's infrastructure.

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.

15. **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.

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.

17. **Construction Traffic Management Plan**
As a result of the site constraints, including the shared driveway, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate. The CTMP must address following:
- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available;
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior;
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety;
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures;
- Include a site plan showing the location of any site sheds, location of requested Work

Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees;
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site;
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council;
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties; and
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works outlined below, and as nominated in the Arboricultural Impact Assessment, in particular:
i) tree protection measures under section 5 Discussion for existing trees T3,
ii) works under section 6 Preliminary Site Specific 'Tree Plan of Management' of T3,
iii) setout and installation of the timber paling fence proposed along the western boundary,
iv) all landscaping works within the TPZ of existing trees to be retained including trees beyond the property boundary.

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

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and

c) remain in place for the duration of the construction works.

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

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

Reason: Tree protection.

19. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended and identified by tree number in the Arboricultural Impact Assessment):
i) tree 1 exempt due to size, tree 2 *Callistemon viminalis*,
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.

20. **Works on Land Owned or Managed By Council**
No works are to be carried out on land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.) and landscaping works on land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

21. **Protection of Trees Within Land Owned or Managed by Council**
Unless identified by the development consent, existing trees shall be protected in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: Tree protection and management.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

22. **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.

23. **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) 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,

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.

Reason: Tree and vegetation protection.

24. **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.

25. **No Access Through Land Owned or Managed by Council**
Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

26. **Storage of Materials on Land Owned or Managed by Council Prohibited**
The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

27. **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.

28. **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.

29. **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.

30. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

31. **Required Screen Planting**
Screen planting shall be planted in accordance with the following:
i) create a continuous screen along the northern boundary, as shown on the approved Landscape Plan, and extending to the existing screening vegetation identified as 'Slender Weaver Bamboo',
ii) be a suitable pot size so that plant height is at least 1.5 metres at installation,
iii) selected planting shall comply with the requirement of Australian Standard AS 1926.1 for a Non Climbable Zone.

The selected planting is to comprise of native species capable of attaining a height of 3 metres at maturity.

Plants are to be installed at intervals, appropriate to the selected species, so that individual plants knit together to form a continuous screen. Plants are to be installed in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Reason: To maintain environmental amenity.

32. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) Two (2) locally native trees 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 - Curl Curl Ward, or Council's Tree Guide,
ii) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
iii) 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,

iv) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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.

33. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

34. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**
All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

35. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.
A copy of the certificate of title demonstrating the creation of the positive covenant and

restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

36. **Retaining wall**
The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

37. **Post-Construction Stormwater Assets Dilapidation Report**
The Applicant is to submit a post-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the issue of Final Occupancy certificate. Council's Guidelines are available
at: https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.p

The post-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Final Occupancy Certificate.

Reason: Protection of Council's infrastructure.

38. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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 2008
(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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

39. **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.

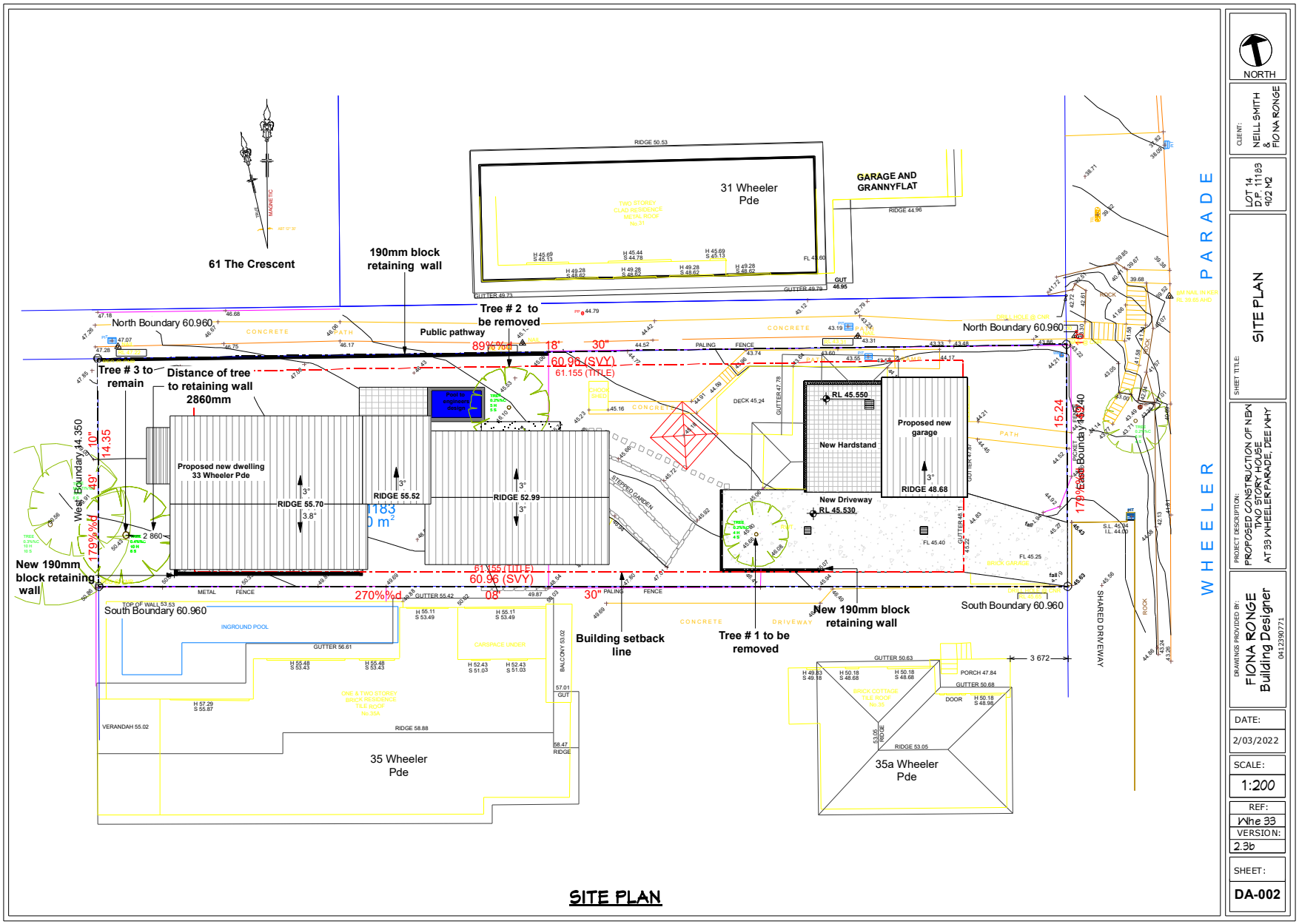
Reason: To maintain local environmental amenity.

40. **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.

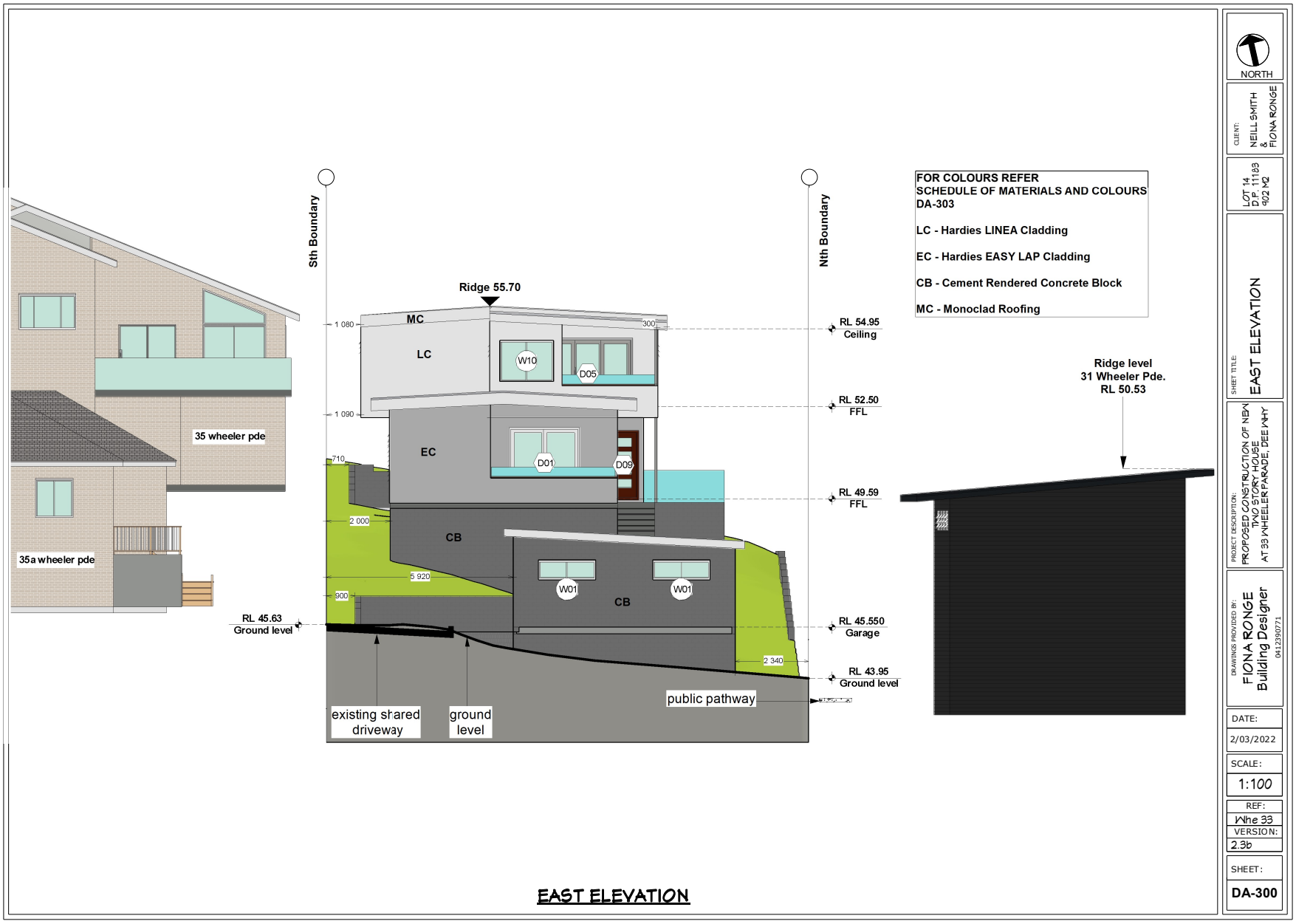
Reason: To ensure geotechnical risk is mitigated appropriately.

41. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

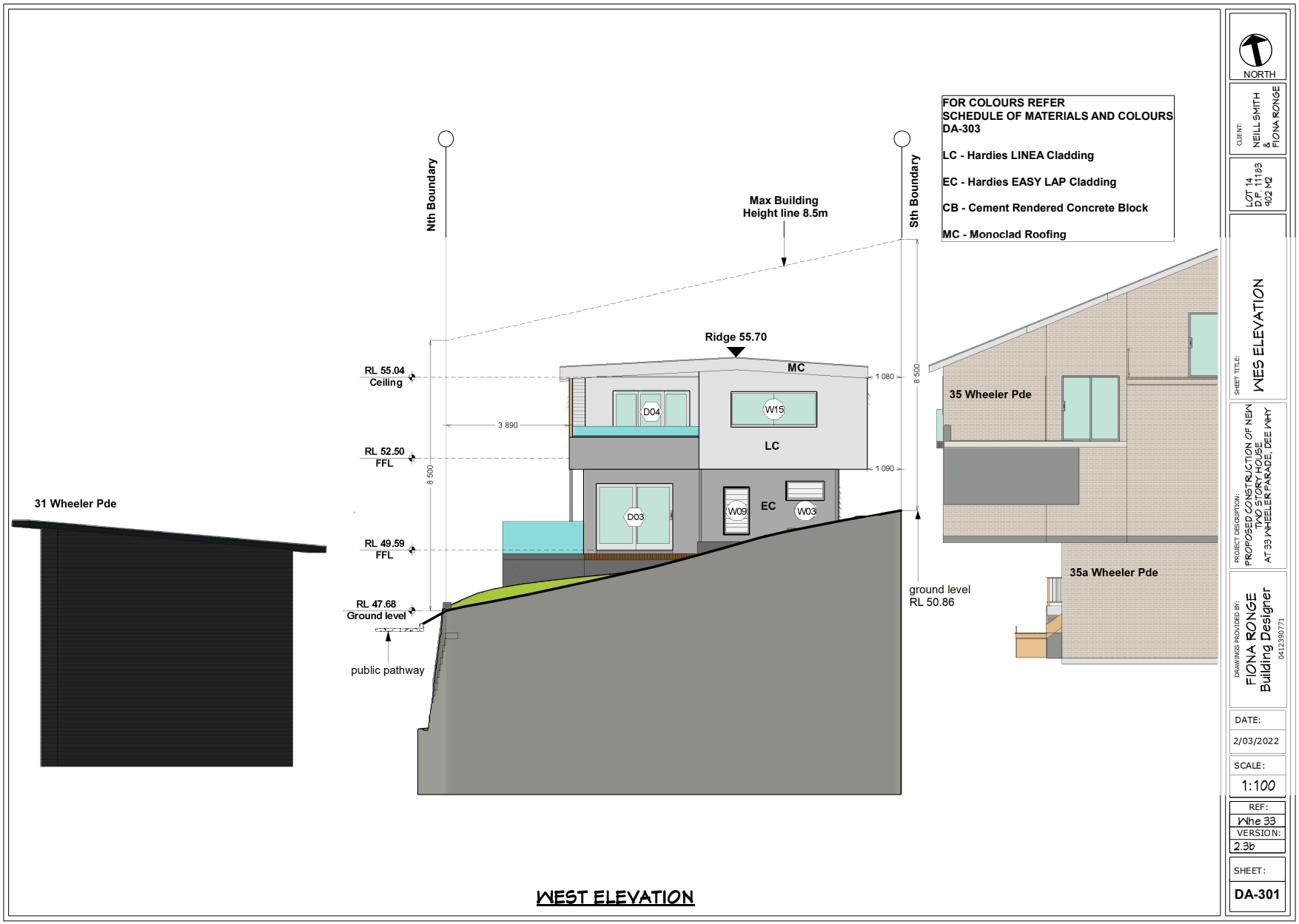
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.


61 The Crescent
190mm block retaining wall
31 Wheeler Pde
GARAGE AND GRANNYFLAT
Tree # 2 to be removed
Public pathway
North Boundary 60.960
Tree # 3 to remain
Distance of tree to retaining wall 2860mm
Proposed new dwelling 33 Wheeler Pde
RIDGE 55.70
RIDGE 55.52
RIDGE 52.99
New Hardstand
RL 45.550
Proposed new garage
RIDGE 48.68
New Driveway
RL 45.530
New 190mm block retaining wall
West Boundary 44.350
East Boundary 44.350
South Boundary 60.960
Building setback line
Tree # 1 to be removed
New 190mm block retaining wall
35 Wheeler Pde
35a Wheeler Pde
WHEELER PARADE
SHARED DRIVEWAY
SITE PLAN
NORTH
CLIENT: NEILL SMITH & FIONA RONGE
LOT 14 DP 11193 902 M2
SHEET TITLE: SITE PLAN
PROJECT DESCRIPTION: PROPOSED CONSTRUCTION OF NEW DWELLING HOUSE AT 33 WHEELER PARADE, DEE WHY
DRAWINGS PROVIDED BY: FIONA RONGE Building Designer 0412390771
DATE: 2/03/2022
SCALE: 1:200
REF: Whe 33
VERSION: 2.3b
SHEET: DA-002

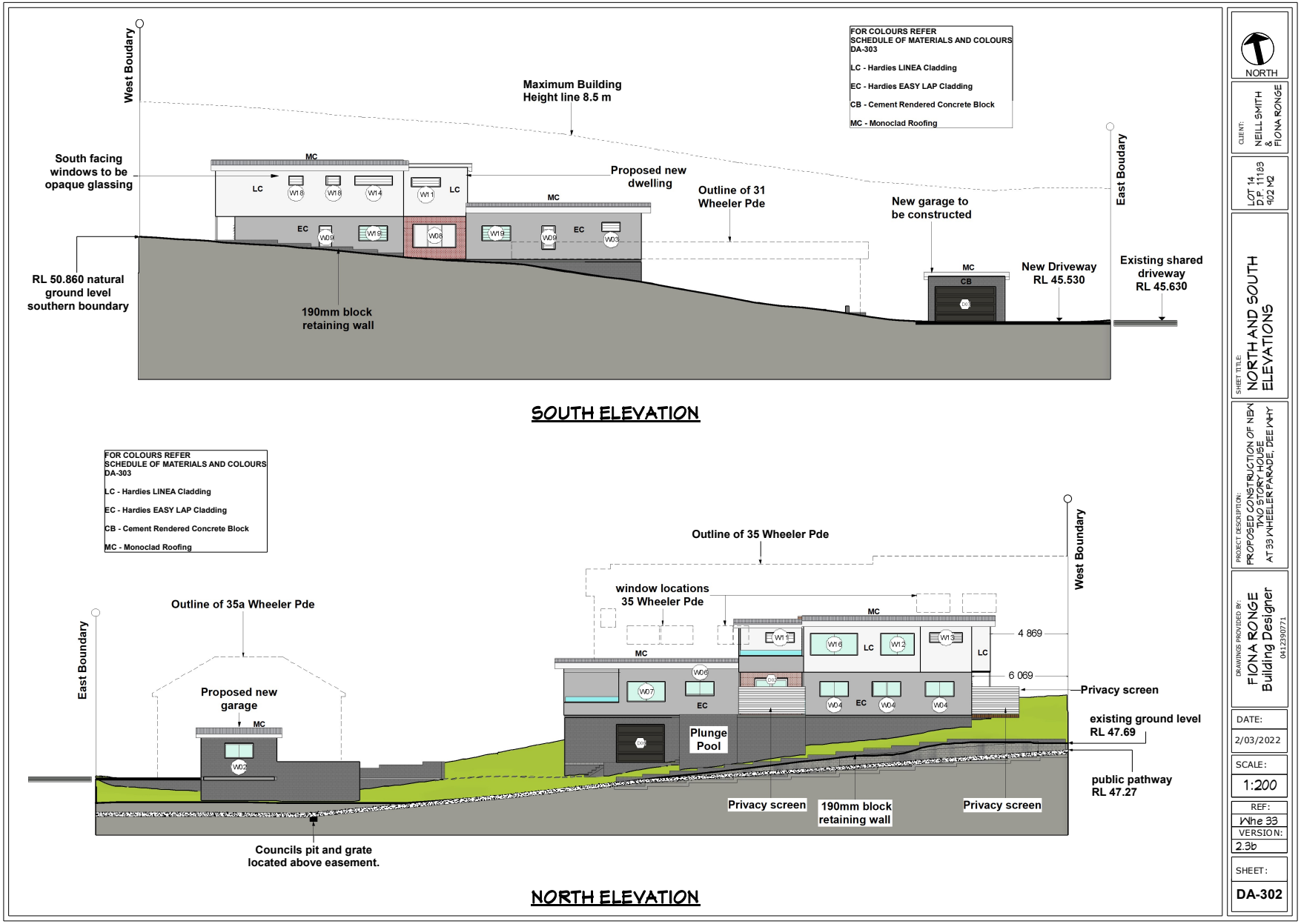
SITE PLAN



EAST ELEVATION



WEST ELEVATION


West Boudary
Maximum Building Height line 8.5 m
FOR COLOURS REFER SCHEDULE OF MATERIALS AND COLOURS DA-303
LC - Hardies LINEA Cladding
EC - Hardies EASY LAP Cladding
CB - Cement Rendered Concrete Block
MC - Monoclad Roofing
South facing windows to be opaque glassing
Proposed new dwelling
Outline of 31 Wheeler Pde
East Boudary
New garage to be constructed
RL 50.860 natural ground level southern boundary
190mm block retaining wall
New Driveway RL 45.530
Existing shared driveway RL 45.630
SOUTH ELEVATION
Outline of 35 Wheeler Pde
West Boundary
window locations 35 Wheeler Pde
Outline of 35a Wheeler Pde
East Boundary
Proposed new garage
4 869
6 069
Privacy screen
existing ground level RL 47.69
Plunge Pool
public pathway RL 47.27
Privacy screen
190mm block retaining wall
Privacy screen
Councils pit and grate located above easement.
NORTH ELEVATION
NORTH
CLIENT: NEILL SMITH & FIONA RONGE
LOT 14 DP 11193 902 M2
SHEET TITLE: NORTH AND SOUTH ELEVATIONS
PROJECT DESCRIPTION: PROPOSED CONSTRUCTION OF NEW TWO STOREY HOUSE AT 33 WHEELER PARADE, DEE WHY
DRAWING PROVIDED BY: FIONA RONGE Building Designer 0412390771
DATE: 2/03/2022
SCALE: 1:200
REF: Whe 33
VERSION: 2.3b
SHEET: DA-302