AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 13 JULY 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 13 July 2022 via teleconference Commencing at 10:00am

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Development Determination Panel held 22 June 2022

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS 4

3.1 DA2022/0084 - 73 Marine Parade AVALON BEACH - Demolition works and construction of a dwelling house, secondary dwelling and swimming pool 4

3.2 DA2022/0122 - 253 Whale Beach Road WHALE BEACH - Alterations and additions to a dwelling house including a swimming pool 67

3.3 Mod2022/0008 - 1 - 2, 25 Battle Boulevarde SEAFORTH - Modification of Development Consent DA2021/0227 granted for alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool 135

3.4 DA2022/0351 - 19 Herbert Street MANLY - Alterations and additions to a dwelling house 162

3.5 DA2021/1265 - 11 Pitt Road NORTH CURL CURL - Demolition works and construction of a dwelling house including a swimming pool 200

3.6 DA2021/2188 - 163 Whale Beach Road WHALE BEACH - Alterations and additions to a dwelling house including a swimming pool 255

3.7 DA2022/0005 - 21 Moore Street CLONTARF - Alterations and additions to a dwelling house including a swimming pool 317

3.8 DA2022/0487 - 85 Seaview Street BALGOWLAH - Alterations and additions to a dwelling house 398

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 22 JUNE 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 22 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	**DA2022/0084 - 73 MARINE PARADE AVALON BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE, SECONDARY DWELLING AND SWIMMING POOL**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/404114**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/0084 for demolition works and construction of a dwelling house, secondary dwelling and swimming pool on land at Lot 114 DP 8394, 73 Marine Parade AVALON BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0084

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 114 DP 8394, 73 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house, secondary dwelling and swimming pool
Zoning:	C2 Environmental Conservation C4 Environmental Living
Development Permissible:	Yes - Zone C2 Environmental Conservation Yes - Zone C4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lincoln John Courtney Megan Jane Lynch
Applicant:	Sean Clive Gartner

Application Lodged:	07/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	11/02/2022 to 25/02/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,649,850.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house, secondary dwelling and swimming pool.

The application is referred to the Development Determination Panel at the discretion of the Executive Manager, with respect to objections raising concern that cost of works is underestimated. Other concerns raised in the objections related to character, the zone objectives, excavation and geotechnical hazards, amenity (view loss, overshadowing and privacy), tree removal, built form and colours, and the

proposed heater.

Critical assessment issues related to coastal risk planning and geotechnical hazards, view sharing, privacy, solar access, side building line, and building envelope.

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 the following works:

- Demolition of the existing dwelling house;
- Reconstruction of the existing driveway;
- Construction of a new three-storey dwelling house, plus a secondary dwelling above a new double garage;
- Construction of an in-ground swimming pool; and
- Landscaping works.

In May and June 2022, the Applicant provided an arborist report and amended plans addressing concerns with building bulk, setbacks, amenity, stormwater and tree removal. The application did not require re-notification, as they resulted in lesser environmental impact, in accordance with Council's Community Participation Plan.

On 17 May 2022, in response to submissions raising concern with potential underestimation of the cost of works, the Applicant provided a Cost Summary Report prepared by a Quantity Surveyor. The original cost of works was estimated at $987,800. The updated cost of works was estimated at $1,649,850. The discrepancy arises between the first estimation being based on the owner being the building and the second estimation being based on market value. The updated estimation by a Quantity Surveyor is relied upon for the assessment.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority
Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose
Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
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 - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope

SITE DESCRIPTION

Property Description:	Lot 114 DP 8394 , 73 Marine Parade AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Marine Parade, Avalon Beach. The site is irregular in shape with a frontage of 19.405m along Marine Parade and a maximum depth of 103.63m. The site has a surveyed area of 1,878m². The site is located partially within the C4 Environmental Living zone (western three-quarters) and partially within the C2 Environmental Conservation zone (eastern quarter) and accommodates a two-storey detached dwelling house. The site slopes up to the east from the street to the rear by approximately 15m, for the western-most three quarters of the site. The eastern-most quarter of the site is a cliff face that drops steeply away to the ocean. The site is heavily vegetated to its eastern-most half. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by generally two-storey detached dwelling houses.

Map:



SITE HISTORY

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

- N0309/17 for alterations and additions to dwelling including new basement garage, gym and workshop to the front of the existing dwelling, extension to existing first floor deck and a new two (2) storey pavilion extension to the rear of the property with inclinator was with drawn by the Applicant on 25 October 2017.
- DA2017/1200 for alterations and additions to a dwelling house was classified as a deemed refusal and an appeal through the NSW Land and Environment Court was filed by the Applicant on 26 March 2018. The application was refused by Council's Development Determination Panel 11 April 2018. The appeal was dismissed by the NSW Land and Environment Court on 10 October 2018.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 built form non-compliances, landscaped area, view loss, solar access, tree removal, stormwater management, and cost of works. Amended information was received in May and June 2022. 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	(i) **Environmental Impact**

Section 4.15 Matters for Consideration	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	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

A portion of 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 Services, dated 5 October 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 11/02/2022 to 25/02/2022 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 7 submission/s from:

Name:	Address:
Mr Paul Anthony Miniter	75 Marine Parade AVALON BEACH NSW 2107
Courcheval Pty Ltd	C/- Garry Farrell Po Box 207 DOUBLE BAY NSW 1360
Ms Sarah Sibella Robson	79 Marine Parade AVALON BEACH NSW 2107

Name:	Address:
David Shannon	77 Marine Parade AVALON BEACH NSW 2107
Mrs Kimberley Sheridan	58 Marine Parade AVALON BEACH NSW 2107
Mrs Aime Joy Van Dyck	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT NSW 2106
Susan Farrell	71 Marine Parade AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- The proposed development is inconsistent with the desired character of the locality, due to its bulk and scale, and prominence in the streetscape.
- The proposed development is inconsistent with the objectives of the C4 Environmental Living zone.
- The proposed development relies on excessive excavation in consideration of the coastal hazards applicable to the site (cliff on site and cave under), and the geotechnical report and coastal engineering report are inadequate.
- The proposed development will result in view loss to Nos. 71, 75 and 77 Marine Parade.
- The proposed development will result in unreasonable overshadowing to No. 71 Marine Parade.
- The proposed development will result in unreasonable visual privacy impacts.
- The proposed development will result in unreasonable removal of vegetation, and does not provide adequate landscaped area.
- The proposed development is not compliant with the building envelope and building colours and materials controls.
- The proposal does not provide adequate detail about the proposed heater.
- The stated construction cost is underestimated for the works proposed.

It is noted that one of the submissions received was in support of the proposed development.

The above issues are addressed as follows:

Inconsistent with Character of the Locality
Comment:
The proposed development is compliant with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the site and surrounds.

C4 Environmental Living Objectives
Comment:
The proposed development is consistent with the objectives of the C4 Environmental Living zone, as detailed in the section of this report relating to the zone.

Excavation and Geotechnical/Coastal Hazards
Comment:
The proposed development is supported by an up-to-date coastal engineering report prepared by a suitably qualified coastal engineer, and an up-to-date geotechnical report prepared by a suitably qualified geotechnical engineer. These reports suitably assess the coastal and geotechnical hazards applicable to the site, and detail the recommendations for construction of the development. The recommendations within these reports are to be adhered to throughout construction and the ongoing use of the site, as required by conditions of consent.

The proposed development includes excavation to a maximum of 5.7m below the ground level for the

purpose of the lift shaft. The P21 DCP does not stipulate a maximum depth or volume of excavation. Clause B8.1 Construction and Demolition - Excavation and Landfill provides that certain categories of excavation must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater. The submitted geotechnical report demonstrates that the proposal complies with the Policy.

Additionally, the proposed development and the relevant reports have been reviewed by Council's Development Engineer, and Council's Principal Officer for Coast & Estuary, who are supportive of the proposed development, subject to conditions of consent.

Amenity - View Loss, Overshadowing and Privacy
Comment:
The proposed development is acceptable in relation to view loss, overshadowing and privacy, for the reasons detailed in the sections of this report relating to Clauses C1.3 View Sharing, C1.4 Solar Access, and C1.5 Visual Privacy of the P21 DCP.

Landscaping and Tree Removal
Comment:
Amended plans dated 5 May 2022 were provided that detail reconstruction of the existing driveway, rather than demolition of the existing driveway and relocation. The amended driveway allows for acceptable tree removal. The proposed development is compliant with the required landscaped open space under Clause D1.13 Landscaped Area of the P21 DCP. The proposal has also been reviewed by Council's Landscape Officer and Biodiversity Officer, who are supportive of the proposal, subject to conditions of consent.

DCP Controls - Building Envelope and Colours/Materials
Comment:
The proposed development is compliant with the requirements of Clause D1.5 Building Colours and Materials of the P21 DCP. The proposed development is proposed to be predominantly mid-grey, with white accents, and stone/timber features. Clause D1.5 provides that external materials and finishes shall appear to be natural, with subdued natural and dark coastal colours, and that brighter colour accents shall be permitted.
The proposed non-compliance with the building envelope is addressed in the section of this report relating to Clause D1.11 Building Envelope of the P21 DCP.

Proposed Heater
Comment:
The heater shown in the living toom at the upper level is noted as gas-powered, so is not solid fuel burning and does not require a chimney. It is noted that a second heater is shown diagrammatically in the outdoor living area at the upper level. A condition of consent has been applied, detailing that the heater must not be solid fuel burning without prior consent.

Cost of Works
Comment:
The Cost Summary Report originally provided with the application is based upon the owner being an owner builder, totalling $987,800. This method reduces the cost of works by a significant amount. The Cost Summary Report is accurate with respect to the cost of the build where the owner is constructing and managing the project, as a qualified landscaped contractor. The Applicant has since provided a Cost Summary Report prepared by a Quantity Surveyor based on market construction cost. The updated cost of works was estimated at $1,649,850. The updated estimation by a Quantity Surveyor is relied upon for the assessment.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	Additional Information Comment 08/06/2022: The amended Landscape Plan by Banksia Design Group (12/05/2022), amended Arboricultural Impact Assessment by Aura Tree Services (June 2022), and amended Architectural Plans by Gartner Trovato (03/05/2022 and 05/05/2022) are noted. The retention of the existing driveway alignment adjacent to the street trees is noted and supported. The Arboricultural Impact Assessment (AIA) identifies 14 trees for removal and 14 trees for retention, supported by the architectural plans. Of the 14 trees to be removed, six are exempt trees and one is proposed to be transplanted. If the development application is approved, seven native trees will be required to be removed due to their proximity to the proposed works. Tree 2 is shown on the Survey Plan as located in the road reserve, however its removal can be supported due to its location and the retention of all other street trees. Tree 3, *Livistona australis*, is proposed to be transplanted which will need to be supported by a Transplanting Methodology Plan, subject to the imposed conditions. The recommendations in the AIA for tree protection of all trees to be retained is supported, and a Project Arborist shall be engaged to supervise all works within the tree protection zone of trees to be retained, subject to the imposed conditions. The amended Landscape Plan shows sufficient screen planting adjacent to the pool. Tree 3, proposed to be transplanted, is shown adjacent to two additional *Livistona australis*, however these additional trees are missing from the planting schedule. Landscape Referral can support the proposed 4 x *Banksia integrifolia* and 2 x *Livistona australis* as replacement tree planting taking into consideration the trees to be retained within the property boundary and the bush fire requirements. All new landscaping should be implemented in accordance with the Asset Protection Zone requirements as specified within Appendix 4 of Planning for Bushfire Protection 2019, and the recommendations of the Bushfire Assessment Report. All planting on slab shall meet the soil depth requirements outlined in the conditions of consent. Original Comment: The development application is for demolition works and construction of a dwelling house, secondary dwelling and swimming pool.

Internal Referral Body	Comments

	Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to):
	
	• B4.22 Preservation of Trees and Bushland Vegetation
	
	• C1.1 Landscaping
	
	• C1.5 Visual Privacy
	
	• C1.24 Public Road Reserve - Landscaping and Infrastructure
	
	• D1 Avalon Beach Locality
	
	The Landscape Referral cannot support the application due to these primary concerns:
	
	• The relocation of the driveway which results in significant loss of tree canopy within the road reserve and within the property boundary. No information is provided to suggest the existing driveway location cannot be utilised for the proposed scheme.
	• The Landscape Plan, Architectural Plans and the Arboricultural Impact Assessment are not coordinated. The following has been identified (but not limited to):
	  ○ Trees to be removed/retained differ between the Landscape Plan and Architectural Plans (tree T1 and T14 in particular).
	  ○ The Landscape Plan shows an entrance stair, pathway/pond and stair to the driveway which is not shown on the Architectural Plans.
	  ○ The Landscape Plan shows a different arrangement of retaining walls to the front of the dwelling compared to the Architectural Plans.
	  ○ The Arboricultural Impact Assessment does not assess the impacts to existing trees to be retained (tree T2, T4 and T13 in particular), caused by the construction of an entrance pathway, proposed retaining walls and likely fill in this area.
	  ○ The survey indicates tree T2 and T13 to be located outside the property boundary however on the Landscape and Architectural Plans these trees are located inside the property boundary.
	• The Landscape Plan shows insufficient information for materiality and identifying the difference between lawn and planting areas. There are blank areas with no information as to what is proposed. The Landscape Plan does not show any screen planting adjacent to the pool, along the southern boundary, which is required for privacy from the neighbouring property. Please refer to the Northern Beaches Council Development Application & Modification Lodgement Requirements, Landscape Plan section for further information.

Internal Referral Body	Comments
	Furthermore, the Landscape Referral highlights the below requirements to assist the applicant for future amendments: • Once it is clearly identified as to how many trees are to be removed, further comment can be provided on tree replacement numbers. It is noted the property is in a bush fire risk area and must comply with Planning for Bushfire Protection 2019 however the inclusion of small trees to help reduce the built form, with fire retardant properties and to achieve at least 6 metres height at maturity, shall be included in the proposal. Trees 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. 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. • Landscape Area calculations cannot include any area outside the C4 (E4) Environmental Living zone. The area above the 30,000L rainwater tank cannot be included in the Landscape Area calculation unless 1m of soil depth is achieved. • On slab landscaping requires soil depth to be 600mm for shrubs and 1000mm for small trees. Soil depth is not indicated on the drawings and Council has concerns the species proposed on the Landscape Plan do not have adequate soil volume for a successful outcome. • *Rhaphiolepis* 'Oriental Pearl', although a cultivar, is considered an environmental weed and is not supported and an alternate species shall be selected.
NECC (Bushland and Biodiversity)	<u>Revised Comments</u> As detailed within the Landscape Referral, the amended design including changes to the proposed tree removals and tree retentions has been provided. The proposed conditions identify at least six tree replacements and a tree transplant methodology. While the amended development includes residual impacts that cannot be reasonably avoided, the development is designed, sited and will be managed to minimise that impact, and includes suitable impact mitigation measures. <u>Original Comments</u> The proposed development has been assessed against the objectives and controls of P21 DCP B4.22 Preservation of Trees and Bushland Vegetation, and State Environmental Planning Policy (Resilience and Hazards) 2021 cl. 2.10 Development on land within the coastal

Internal Referral Body	Comments
	environment area. The PLEP cl7.6 Biodiversity and P21 DCP B4.6 Wildlife Corridors only apply to the portion of the site zoned C2, and limited works within this area are proposed and a significant impact to biodiversity unlikely. The development should be designed, sited and managed to avoid adverse impacts on remnant native vegetation, including canopy trees and understorey vegetation, and on remnant native ground cover species. Development must also avoid any impact on trees on public land. As identified within the Landscape Referral, the driveway results in loss of tree canopy within the road reserve and within the property boundary. The development will result in a net loss of trees and native vegetation, and does not comply with the relevant planning controls. Alternate designs should be considered to retain additional trees. Where the applicant demonstrates that no reasonable alternative design exists and a tree must be removed, suitable compensatory tree planting is required.
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. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gartner Trovato Architects Pty. Ltd. dated January 2022 and Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2022, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.

Internal Referral Body	Comments
	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** The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site. **Coastline Bluff Hazard Management** A Geotechnical Investigations Report by White Geotechnical Group dated 14 January 2022 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. Further, an impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Horton Coastal Engineering Pty. Ltd. dated 10 January 2022 has also been submitted. The report assessed that an allowance for recession/weathering of the cliff face of about 7mm to 12mm per year should be considered. Coastal inundation is not a significant risk for the proposed development over a planning period of well over 100 years. Four types of hazards identified and risks assessed. The gentle to moderately graded slope that rises across the property and continues below is a potential hazard (Hazard One, Risk Acceptable). The vibrations from the proposed excavations are a potential hazard (Hazard Two, Risk Unacceptable). A loose boulder, wedge, or similar geological defect toppling onto the work site during the excavation process is a potential hazard (Hazard Three, Risk Unacceptable). The sea cliff face that falls from the top of the property is a potential hazard (Hazard Four, Risk Acceptable). Unacceptable risks can be minimised through adopting the recommendations and site inspections. As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP. **Development on Foreshore Area** A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore

Internal Referral Body	Comments
	area. The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Development Engineering)	**Information Provided on 16/5/2022 & 3/6/2022** The amended architectural plans proposes to utilise the exiting vehicular crossing location. The submitted stormwater plan with the discharge to the kerb via an OSD system is satisfactory subject to conditions. No objections to approval subject to conditions as recommended. **Original Comments:** The proposal is for a new dwelling and vehicular access. The submitted stormwater plan is unsatisfactory. Only 25% of the rainwater volume provided in excess of the Basix requirements can be credited towards the OSD tank capacity. As the proposed rainwater tank volume is less than the Basix requirement of 64900l the OSD volume cannot be offset. The stormwater plan shall be amended to provide the OSD volume as calculated. The proposed application cannot be supported by Development Engineering due to lack of information to address: • *Stormwater drainage for the development in accordance with clause 9.3.1 of Council's Water Management for Development Policy.*
Parks, reserves, beaches, foreshore	The development application is for demolition works and construction of a dwelling house, secondary dwelling and swimming pool. The property is split zoned, and the dwelling is located downslope of the C2 Environmental Conservation zone. The objectives of this zone are; • To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. • To ensure the continued viability of ecological communities and threatened species. • To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.

Internal Referral Body	Comments
	No encroachment beyond the land zoning or property boundary is permitted. The proposed development has no impact to visual amenity from the foreshore or the waterway below and therefore Parks Referral raises no concerns.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	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. 1268226M dated 17 January 2022). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	50
Thermal Comfort	Pass	Pass
Energy	50	77

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

SEPP (Infrastructure) 2007

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

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

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

SEPP (Coastal Management) 2018

The site is classified as coastal use area and coastal environment area, in accordance with 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 env has considered whether the proposed development is likely to cause an adverse impact on the

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) a

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Manage cumulative impacts of the proposed development on any of the sensitive coastal lakes

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headla

(e) existing public open space and safe access to and along the foreshore, beach, headlan

public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The proposed development is supported by a geotechnical risk assessment report and a coastal engineering report. This documentation demonstrates that the proposed development is of acceptably low risk in relation to coastal damage, erosion and recession. As such, the proposed development is not anticipated to result in adverse impact to the above matters.

(2) Development consent must not be granted to development on land to which this clause applies that:

(a) the development is designed, sited and will be managed to avoid an adverse impact ref

(b) if that impact cannot be reasonably avoided—the development is designed, sited and w

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

Comment:
As demonstrated by the architectural plans and supporting coastal engineering and geotechnical reports, the proposed works are demonstrated to be designed, sited and management so as not to result in any adverse impact.

14 Development on land within the coastal use area

(1) (a) has considered whether the proposed development is likely to cause an adverse impac
(i) existing, safe access to and along the foreshore, beach, headland or rock platform fo with a disability,
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshore
(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
(ii) if that impact cannot be reasonably avoided—the development is designed, sited an or
(iii) if that impact cannot be minimised—the development will be managed to mitigate th

(c) has taken into account the surrounding coastal and built environment, and the bulk, sca

Comment:
The proposed development is supported by a geotechnical risk assessment report and a coastal engineering report. This documentation demonstrates that the proposed development is of acceptably low risk in relation to coastal damage, erosion and recession. As such, the proposed development is designed, sited and will be managed so as not to result in adverse impact to the above matters. The proposed development has been reviewed by Council's Coast & Estuary Officer, who is supportive of the application, subject to conditions of consent. The proposal has been considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

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 proposed development is not anticipated to result in any increased risk of coastal hazards on the subject site and adjoining sites. The proposed development has been reviewed by Council's Coast & Estuary Officer, who is supportive of the application, subject to conditions of consent.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C2 : Yes Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C2 : Yes Zone C4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The objectives of the C4 Environmental Living zone are addressed as follows:

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

Comment:

The proposed development is low-impact in that it generally complies with the relevant built form controls, or is acceptable on merit where a non-compliance occurs. The proposed development is deigned and sited with respect to the area's special ecological, scientific or aesthetic values.

To ensure that residential development does not have an adverse effect on those values.
Comment:
The proposed development is designed and sited so as not to have an adverse impact on the special ecological, scientific or aesthetic values of the subject site and surrounds.

To provide for residential development of a low density and scale integrated with the landform and landscape.
Comment:
The proposed development is low density in that it is for a dwelling house and attached secondary dwelling no more than two storeys in height at any one point. The proposed development is integrated with the landform and landscape in that the excavation required is not excessive and does not result in unreasonable impacts, and the resultant landscaped area is compliant with the relevant requirements.

To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.
Comment:
The proposed development retains the existing state of the foreshore (cliff) and its vegetation. The portion of the site being developed is not classified as a wildlife corridor.

5.1 Relevant acquisition authority

The eastern-most portion of the land (zoned C2 Environmental Conservation) is classified for acquisition for regional open space. No development is proposed on this land.

5.1A Development on land intended to be acquired for public purpose

The eastern-most portion of the land (zoned C2 Environmental Conservation) is classified for acquisition for regional open space. No development is proposed on this land.

5.4 Controls relating to miscellaneous permissible uses

The proposed development includes a secondary dwelling with a gross floor area of 61.7sqm. The principal dwelling has a gross floor area of 322.1sqm. The floor area of the secondary dwelling equates to 19.15% of the floor area of the principal dwelling, and is therefore compliant with Clause 5.4(9)(b).

7.1 Acid sulfate soils

Clause 7.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed works are not anticipated to result in risk relating to acid sulfate soils.

7.2 Earthworks

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

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

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

(b) the effect of the proposed development on the likely future use or redevelopment of the land
Comment:
The proposal will not unreasonably limit the likely future use or redevelopment of the land.

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

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties
Comment:
The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

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

(f) the likelihood of disturbing relics
Comment:
The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area
Comment:
The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
Comment:
Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.
Comment:
The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

7.5 Coastal risk planning

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

(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and
Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and
Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

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

(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and
Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and
Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

(f) has regard to the impacts of sea level rise, and
Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development has regard to the impacts of sea level rise.

(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.
Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.6 Biodiversity protection

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

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

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

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

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
Comment:
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

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

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

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

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

(b) the consent authority is satisfied that:
(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or
(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or
(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.
Comment:
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

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

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

Comment:
The proposed development extends into the foreshore building area for the purpose of a swimming pool. The remainder of the development is set back from the foreshore building line.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
    - *pollution or siltation of the waterway, or*
    - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora*

habitats, or
- *an adverse effect on drainage patterns, or*
- *the removal or disturbance of remnant riparian vegetation, and*

- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:
The proposed development is consistent with the objectives of the C2 Environmental Conservation and C4 Environmental Living zones. The appearance of the proposed swimming pool is compatible with the surrounding area. The proposed swimming pool will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed swimming pool will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed swimming pool does not impact upon public access along the foreshore. The proposed swimming pool will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed swimming pool will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed swimming pool will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

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

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

7.10 Essential services

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

(a) the supply of water,

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed		% Variation*	Complies
Front building line	Min. 6.5m	24m		-	Yes
Rear building line	FSBL	>FSBL*		-	Yes
Side building line	N: Min. 1m	Garage Level:	Min. 3.8m	-	Yes
		Lower Level:	Dwelling: Min. 3.8m	-	Yes
			Stairs: Min. 1.3m	-	Yes
		Mid Level:	Min. 1.8m	-	Yes
		Upper Level:	Min. 1.5m	-	Yes
	S: Min. 2.5m	Garage Level:	Min. 2.4m	4%	**No**
		Lower Level:	Dwelling: Min. 2.5m	-	Yes
			Stairs: Min. 1.4m	44%	**No**
		Mid Level:	Green Roof: Min. 2.6m	-	Yes
			Dwelling: Min. 3.5m	-	Yes
		Upper Level:	Min. 2.5m	-	Yes
Building envelope	3.5m	N: Max. 1.9m outside envelope		38%	**No**
		S: Within envelope		-	Yes
Landscaped area	Min. 60% (765.5sqm) **	62.2% (793.76sqm, incl. 6% hard area)		-	Yes

* The proposal includes a minor breach to the Foreshore Building Line (FSBL), but this is for the purpose of the swimming pool, as permitted under Clause 7.8 (2)(b) of the PLEP 2014.

** The subject site has an area of 1,878sqm. A portion of the subject site (602sqm) is zoned C2 Environmental Conservation, which does not have a minimum landscaped area requirement. The landscaped area calculation is based on the portion of the site (1,276sqm) to which a landscaped area control applies, in accordance with the "Split Zones" requirement of Clause D12.10 of the P21 DCP.

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
A4.1 Avalon Beach Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
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
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Objections from Nos. 71, 75, and 77 Marine Parade, Avalon Beach raised concern about view loss as a result of the proposed development. As a result, height poles depicting key points of the development were erected and a view loss analysis was carried out. 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:
The affected views are described as follows:

- No. 71 Marine Parade: The affected views are to the north-west towards Careel Bay. The view does not contain icons. The view contains some partially obscured interface between water and land.
- No. 75 Marine Parade: The affected views are to the south-east towards dense vegetation, and to the south-west towards the ocean, Avalon Beach and Bilgola Headland. The views do not contain icons. The south-west view contains some partially obscured interface between water and land.
- No. 77 Marine Parade: The affected view is towards the south-west towards the ocean, Avalon Beach and Bilgola Headland. The view does not contain icons. The view contains some partially obscured interface between water and land.

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 affected views are obtained as follows:

- No. 71 Marine Parade: The views are obtained from the lower level rumpus room, upper level deck, and outdoor terrace to the north of the property. The views are obtained from a standing position across the northern side boundary.
- No. 75 Marine Parade: The views to the south-west are obtained from the terrace above the garage, and the first floor western (front) balcony. The view from the terrace above the garage is obtained from a standing position. The view from the first floor balcony is obtained from standing and seated positions. The view to the south-east is obtained from the rear deck, from standing and seated positions. All views are obtained across the southern side boundary.
- No. 77 Marine Parade: The view is obtained from the upper level western (front) balcony, from standing and seated positions, across the southern side boundary.

Below are photographs of the affected views from No. 71, 75 and 77 Marine Parade, with the height poles

highlighted in red and the key points of view surrounded in yellow:



Above: The view from the lower level rumpus room of No. 71 Marine Parade, to the north-west, from a standing position, across the northern side boundary.



Above: The view from the upper level deck of No. 71 Marine Parade, to the north-west, from a standing position, across the northern side boundary.



Above: The view from the northern terrace of No. 71 Marine Parade, to the north-west, from a standing

position, across the northern side boundary.



Above: The view from the terrace above the garage of No. 75 Marine Parade, to the south-west, from a standing position, across the southern side boundary.



Above: The angle of view from the first floor western (front) balcony of No. 75 Marine Parade.



Above: The view from the rear deck of No. 75 Marine Parade, to the south-east, from a standing position, across the southern side boundary.



Above: The view from the first floor western (front) balcony of No. 77 Marine Parade, to the south-west, from a standing position, across the southern side boundary.

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 impact views is described as follows:

- No. 71 Marine Parade:
    - Rumpus Room: The certified height poles demonstrate that the view to Careel Bay will be largely retained, with the portions anticipated to be lost already being predominantly obstructed by significant vegetation. The extent of view loss from this point is assessed as negligible.
    - Upper Deck: The certified height poles demonstrate that the view to Careel Bay from this point will be wholly retained.
    - Terrace: It is anticipated that the obstructed corridor view to Careel Bay will be lost from this point. Given the obstructed, distant and minor nature of this view, the extent of view loss from this point is considered minor.
- No. 75 Marine Parade:

- South-east: A significant portion of the vegetation (located on the subject site) will be removed for the purpose of construction, and replaced with Heath-leaved Banksia. Given the vegetation will be partially replaced, and the view is not of significance otherwise, the extent of view loss is assessed as minor.
- South-west: The certified height poles demonstrate that the view from the terrace above the garage will be drastically improved by the proposed development. The built form on the subject site will be reduced to the west, and it is anticipated No. 75 Marine Parade will enjoy a greater view corridor towards Avalon Beach and Bilgola Headland from this point. Access to the first floor balcony was not able to be provided at the time of assessment, so assumptions regarding the view are made. It is anticipated that a portion of the view directly south will be lost due to the proposed development, but that the view to Avalon Beach and Bilgola Headland will be retained. The extent of view loss from this point is assessed as minor to moderate.

- No. 77 Marine Parade: The certified height pole demonstrate that the new development will result in loss of view to vegetation and other development, and will not impact on the valuable elements of the view, being the ocean, Avalon Beach, and Bilgola Headland. The extent of view loss to No. 77 Marine Parade is negligible.
- It should also be noted that Nos. 71, 75 and 77 Marine Parade enjoy panoramic views from the north-east to the south-east, towards Bangalley Headland and the ocean that will be entirely unaffected by the proposed development. Further, views to the south-west from the upper deck of No. 71 Marine Parade to Avalon Beach and Bilgola Headland will be entirely unaffected by the proposed development, being in the opposite direction to the subject site.



Above: Panoramic view from the rear yard of No. 73 Marine Parade (the subject site), to the north-east, east and south-east, from a standing position, across the eastern rear boundary.



Above: Panoramic view from the rear deck of No. 75 Marine Parade, to the north-east, east and south-east, from a standing position, across the eastern rear boundary.

Photographs of the view from the rear yards of Nos. 71 and 77 Marine Parade to the north-east, east and south-east were not taken at the time of assessment, but are very similar and remain unaffected.

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:

Given the assessment above, the overall view loss impact resulting from the proposed development is minor. The proposal generously retains views for adjoining and nearby developments. In consideration of the extent of the proposed development's compliance with the applicable built form controls, and that any non-compliant elements do not contribute to view loss, the proposed development is assessed as reasonable in its context, and is therefore acceptable in relation to view sharing.

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

Comment:

The proposed development equitably allows for view sharing, as demonstrated above.

Canopy trees take priority over views.

Comment:

The trees proposed to be removed are acceptable, as assessed by Council's Landscape Officer and Biodiversity Officer, and are not removed to take advantage of views.

C1.4 Solar Access

The objection from No. 71 Marine Parade (being the property to the south-west) raised concern that the proposed development will result in unreasonable overshadowing. The proposed development is compliant with the requirements of this clause, as follows:

This clause requires that the main private open space of each dwelling adjoining a development are to

receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st. The three main private open spaces of No. 71 Marine Parade are located at the upper level, being a deck to the north-west of the dwelling, a terrace to the north, and the rear yard to the east, which contains a pool, lawn, and a small semi-covered sitting area. The submitted shadow diagrams demonstrate the following:

- The north-western deck will receive at least three hours of sun to the majority of the area of the deck;
- The northern terrace will experience overshadowing throughout the day as a result of the dwelling, though it should be noted that the terrace area is undercover and generally already in self-shadow; and
- The rear yard will generally retain significant sunlight throughout the day from before 9am until after 3pm.

This clause requires that 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). The windows to the principal living area of No. 71 Marine Parade face north-west and south-west, and are unaffected by the proposed development.

This clause requires that solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8am and 4pm during mid winter. The submitted shadow diagrams demonstrate that the solar panels on the roof of No. 71 Marine Parade will receive sunlight between at least 9am and 3pm, totalling a minimum of 6 hours of sunlight.

This clause requires that developments should maximise sunshine to clothes drying areas of adjoining dwellings. No external clothes drying area was visible at No. 71 Marine Parade.

C1.5 Visual Privacy

The objection from Nos. 71 and 75 Marine Parade raised concern that the proposed development will result in unreasonable impact to privacy. The proposed development is compliant with the requirements of this clause, as follows:

This clause requires that private open space areas of adjoining dwellings (including swimming pools and living rooms) are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation. The three main private open spaces of No. 71 Marine Parade are located at the upper level, being a deck to the north-west of the dwelling, a terrace to the north, and the rear yard to the east, which contains a pool, lawn, and a small semi-covered sitting area. The proposed development includes two elevated decks to the front of the dwelling, set below and well forward of the north-west deck at No. 71 Marine Parade, so do not pose a privacy concern. The proposed development includes a rear outdoor area (set to the south-east), adjacent to the terrace area of No. 71 Marine Parade. However, this area is predominantly screened with a 2m high wall to the southern elevation and the pool is designed such that users of the pool are at a height below fence level, so these elements provide suitable visual privacy to No. 71 Marine Parade. The proposed dwelling does not include any design features that would allow overlooking to the rear yard of No. 71 Marine Parade. The main private open space of No. 75 Marine Parade is to the rear of the dwelling, in the form of a covered rear deck, and an open rear yard. The proposed development does not include any decks or balconies located nearby the private open space of No. 75 Marine Parade. The two windows orientated towards the private open space of No. 75 Marine Parade are suitable in relation to privacy, as one is a highlight window with a sill height of 2.8m above finished floor level, and the other window is treated with angled louvre privacy screening, preventing view to the private open space.

This clause requires that 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. As above, the two elevated decks to the front of the dwelling are set below and well forward of the adjoining properties to the north and south. As such, these decks do not pose a privacy concern to Nos. 71 and 75 Marine Parade. As above, the rear outdoor area is screened with a 2m high wall to the southern elevation and the pool is designed such that users of the pool are at a height below fence level.

This clause requires that 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. The proposed development is designed such that the upper level will not result in direct viewing to the private open spaces of Nos. 71 and 75 Marine Parade. To the south elevation, there are no windows that are directly aligned with the private open spaces of No. 71 Marine Parade, with the exception of Windows 22 and 36. However, these windows are adjacent to internal stairs, being a point of access, rather than recreation. Beyond the stairs adjacent to Window 22 is a walkway (also a point of access), and a gym orientated away from the south. Beyond the stairs adjacent to Window 36 is a sitting area, though this is separated from the nearest private open space of No. 71 Marine Parade by 9m. To the north elevation, the two windows aligned with the private open space of No. 75 Marine Parade are suitably treated for privacy, as described above.

D1.9 Side and rear building line

The proposed development includes minor breaches to the southern side boundary, for the purpose of the garage and side access stairs between the garage and lower level. The garage is proposed to be located 2.4m from the southern side boundary, and the stairs are to be located 1.4m from the southern side boundary, where 2.5m is required. The underlying outcomes of the control are addressed as follows:

To achieve the desired future character of the Locality.
Comment:
The proposed development is compliant with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the site and surrounds.

The bulk and scale of the built form is minimised.
Comment:
The proposed development is generally compliant with the applicable built form controls, including building height. The proposal includes a breach to the building envelope control, which is addressed in the section of this report relating to Clause D1.11 Building Envelope of the P21 DCP. The proposal is generally of a built form, bulk and scale anticipated for the subject site.

Equitable preservation of views and vistas to and/or from public/private places.
Comment:
The proposed development is acceptable in relation to view loss for the reasons detailed in the sections of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.
Comment:
As above, the proposed development development allows for suitable view sharing via its design and siting.

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

The proposed development is acceptable in relation to overshadowing and privacy, for the reasons detailed in the sections of this report relating to Clauses C1.4 Solar Access, and C1.5 Visual Privacy of the P21 DCP.

Substantial landscaping, a mature tree canopy and an attractive streetscape..
Comment:
The proposed development includes a compliant landscaped area, suitably retains vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting.

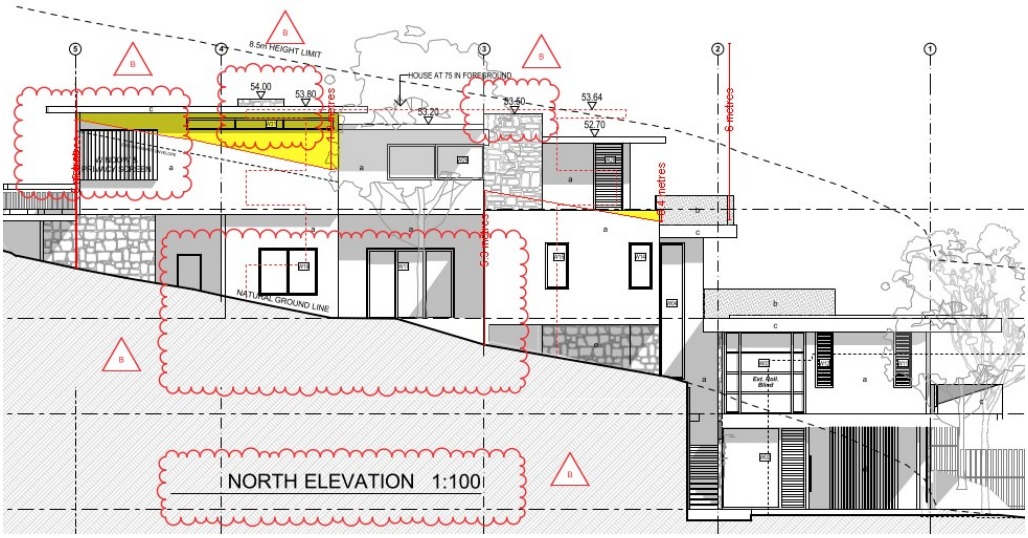
Flexibility in the siting of buildings and access.
Comment:
The proposed development demonstrates flexibility in the siting of the dwelling and attached secondary dwelling, without resulting in any unreasonable impacts to the subject site or adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form.
Comment:
The proposed development suitably retains existing vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting to soften and screen the proposed built form.

A landscaped buffer between commercial and residential zones is achieved.
Comment:
Not applicable. The subject site is within a residential zone and does not adjoin land in a commercial zone.

D1.11 Building envelope

The proposed development includes breaches to the northern side boundary building envelope, by a maximum of 1.9m. The image below highlights the breaching points in yellow. The areas clouded in red indicate minor amendments to the plans and do not relate to the building envelope control breach.



The underlying outcomes of the control are addressed as follows:

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

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

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 portions of the development that breach the building envelope control are designed and sited so as not to be seen from the street level. In this way, the proposed breaches do not impact upon the visual quality of the streetscape. The proposed development, despite its non-compliance with the building envelope, is of a scale that sits generally below the height of mature trees in the natural environment, and is of a density anticipated for the locality.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.
Comment:
The proposed development involves some excavation, including below the portions of the development that breach the building envelope control. However, the excavation is not excessive, is supported by a geotechnical report, and has been assessed as by Council's Development Engineer. As demonstrated by the figure above, the proposed dwelling house and attached secondary dwelling step down with the topography of the land. The proposed development is wholly compliant with the maximum height of building development standard. As such, the proposed development is designed and sited so as to respond to, reinforce, and sensitively relate to the characteristics of the site and the existing natural environment.

The bulk and scale of the built form is minimised.
Comment:
The proposed development is a maximum of two storeys in any one place, including at the points that breach the building envelope, and is compliant with the height of buildings development standard. The proposal includes floor to ceiling heights consistent with the proposed development type, and specific room uses. The portions of the development that breach the building envelope are compliant with the required setbacks. As such, the development is of a height and scale anticipated for the site, and it can be established that the non-compliance arises due to the topography of the land, which slopes down steeply from the rear to the front. The proposed development is also of consistent scale to adjoining dwelling to the north, employing the same floor levels and roof heights. As such, the proposed development is consistent with the anticipated bulk and scale for the site, and with that of adjoining and nearby developments.

Equitable preservation of views and vistas to and/or from public/private places.
Comment:
The proposed development is acceptable in relation to view loss for the reasons detailed in the sections of this report relating to Clause C1.3 View Sharing of the P21 DCP. The portions of the development that breach the building envelope control do not result in any view loss.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.
Comment:
The proposed development is acceptable in relation to overshadowing and privacy, for the reasons detailed in the sections of this report relating to Clauses C1.4 Solar Access, and C1.5 Visual Privacy of the P21 DCP. With reference to the building envelope non-compliance, the proposed breaches are to the northern elevation, so do not result in unreasonable overshadowing impacts, and the windows to the breaching portion are either highlight or treated with privacy screening, so does not result un any unreasonable privacy impacts.

Vegetation is retained and enhanced to visually reduce the built form.
Comment:
The proposed development suitably retains existing vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting to soften and screen the proposed built form. In particular, planting intended to achieve a height of 3m is proposed to be planted along the northern side boundary adjacent to the portion of the development that breaches the building envelope control. This will assist in screening the built form from No. 75 Marine Parade.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $16,499 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,649,850.

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

This proposal, for demolition works and construction of a dwelling house, secondary dwelling and swimming pool has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to Development Determination Panel at the discretion of the Executive Manager, with respect to objections raising concern that cost of works is underestimated.

Other concerns raised in the objections related to character, the zone objectives, excavation and geotechnical hazards, amenity (view loss, overshadowing and privacy), tree removal, built form and colours, and the proposed heater.

Critical assessment issues related to coastal risk planning and geotechnical hazards, view sharing, privacy, solar access, side building line, and building envelope.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, 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 DA2022/0084 for Demolition works and construction of a dwelling house, secondary dwelling and swimming pool on land at Lot 114 DP 8394, 73 Marine Parade, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

   a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A-01 Site Plan + Site Analysis issue B	5 May 2022	Gartner Trovato Architects
A-02 Garage + Entry Plan Revision B	5 May 2022	Gartner Trovato Architects
A-03 Lower Level Plan Revision B	5 May 2022	Gartner Trovato Architects
A-04 Mid Level Plan Revision B	5 May 2022	Gartner Trovato Architects
A-05 Upper Level Plan Revision B	5 May 2022	Gartner Trovato Architects
A-06 North + South Elevation Revision B	5 May 2022	Gartner Trovato Architects

A-07 East + West Elevation	5 May 2022	Gartner Trovato Architects
A-08 Section A + B	5 May 2022	Gartner Trovato Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
SW1 Site Stormwater Management Plan Issue DA-C	1 June 2022	Barrenjoey Consulting Engineers
SW2 Site Stormwater Management Detailing 1	27 April 2022	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment & Management Report	June 2022	Aura Tree Services
BASIX Certificate No. 1268226M	17 January 2022	Gartner Trovato Architects
Bushfire Risk Assessment	5 October 2021	Bushfire Planning Services
Coastal Engineering Advice	10 January 2022	Horton Coastal Engineering
Geotechnical Investigation J3808	14 January 2022	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**
Landscape DA Plan Sheet 2 of 3 Issue C	12 May 2022	Banksia Design Group
Landscape DA Plan Sheet 3 of 3 Issue C	12 May 2022	Banksia Design Group

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	17 January 2022	Sean Gartner

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	Received
Ausgrid	Response Ausgrid Referral	9 March 2022

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house and secondary dwelling, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

Dwelling house means a building containing only one dwelling.

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

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 $16,498.50 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 $1,649,850.00.

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

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

8. **Amended Landscape Plan**
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) update the planting schedule to capture all proposed plants, and in particular the additional 2 x *Livistona australis* in the front setback.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

9. **Tree Protection Plan**

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the

following trees identified in the Arboricultural Impact Assessment as:
i) tree 1, tree 5 to tree 15, tree 19, and tree 28.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:
i) layout of the development, including existing and proposed underground services,
ii) location of all trees identified for retention, including extent of canopy,
iii) access routes throughout the site for construction activity,
iv) plan documentation of tree protection measures including: location of tree protection fencing / barriers for tree 1, tree 5 to tree 15, tree 19, and tree 28, and/or; root protection in the form of mulching or boards proposed within the tree protection zone, as required; and trunk and branch protection within the tree protection zone, as required,
v) location of stockpile areas and materials storage,
vi) inspection hold points,
vii) other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason: Tree protection.

10. **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, native grasses and groundcovers,
ii) 600mm for shrubs.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the ‘wet’ weight of landscaping (soil, materials and established planting).

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

11. **Transplanting Methodology Plan**
A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed *Livistona australis* (tree 3), including:
i) Preparation of the transplantation site,
ii) Preparation of the trees/palms to be transplanted,
iii) transplanting methodology and installation works,
iv) post-transplanting care and duration,
v) ongoing maintenance program,
vi) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate

Reason: Tree protection.

12. **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 14/1/2022 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.

13. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

14. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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.

15. **Fire separation of garage top dwellings**
Where parts of a Class 1a dwelling are located above a Class 10a private garage that is not associated with the Class 1a dwelling, fire separation works is required to comply with Part 3.7.4 of the Building Code of Australia –'Fire separation of garage top dwellings' and NSW 1.1 Additions. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

16. **Construction in Bush Fire Prone Areas**
The recommendations made in the Bush Fire Assessment Report prepared by Bushfire Planning & Design, dated 5/10/21, Report Ref No. 3638 are to be considered as part of the assessment of the Construction Certificate.
Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the design and construction of the building to reduce the risk of ignition from a bushfire and provide building occupant safety.

17. **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 Barrenjoey Consulting Engineers job number 211105, drawing number SW1-DA-C, SW2 -DA, dated 1/6/2022. 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.

The drainage plans must address the following:
i. OSD shall be provided in accordance with Clause 9.3.1. of Council's Water Management for Development Policy.
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.

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. **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.

20. **Coastal Bluff Engineering Assessment Implementation**
The advice and recommendations contained in the approved Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd, dated 10 January 2022, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

21. **Coastal Bluff Engineering Assessment Implementation**
All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

22. **Engineers Certification of Plans**
The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

23. **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.

24. **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.

25. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or

easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

26. **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 and Tree Protection Plan.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in the Tree Protection Plan, and in particular:
i) tree protection measures under section 5.3 Discussion, and Appendix B,
ii) works under section 5.3 Discussion,
iii) any recommendations in the Tree Protection Plan,
iv) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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.

27. **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 4 - *Melaleuca quinquenervia*, tree 18 - *Eucalyptus* spp., tree 23 - *Glochidion ferdinandi*, tree 24 - Unknown spp., tree 25 - *Eucalyptus microcorys*, and tree 27 - *Glochidion ferdinandi*,
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.

28. **Tree Removal Within the Road Reserve**
This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Arboricultural Impact Assessment):
i) tree 2 - *Banksia integrifolia*,
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

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

Reason: Public liability.

29. **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.

30. **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

31. **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 sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

32. **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.

33. **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.

Reason: Tree and vegetation protection.

34. **Condition of Trees**
During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from the Project Arborist during the works. In this regard all protected trees shall not exhibit:
i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

35. **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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

37. **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.

38. **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.

39. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 6MH 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.

40. **Geotechnical Issues**
All conditions outlined in Geotechnical Investigations prepared by White Geotechnical Group dated 14 January 2022 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations, footings are undertaken in an appropriate manner and structurally sound.

41. **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

42. **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 species suitable to the bush fire requirements, capable of achieving at least 6 metre height at maturity, and selected from Northern Beaches Council's Native Plant Species Guide - Pittwater 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, 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 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.

43. **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.

44. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

45. **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.

46. **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.

47. **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.

48. **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

49. **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.

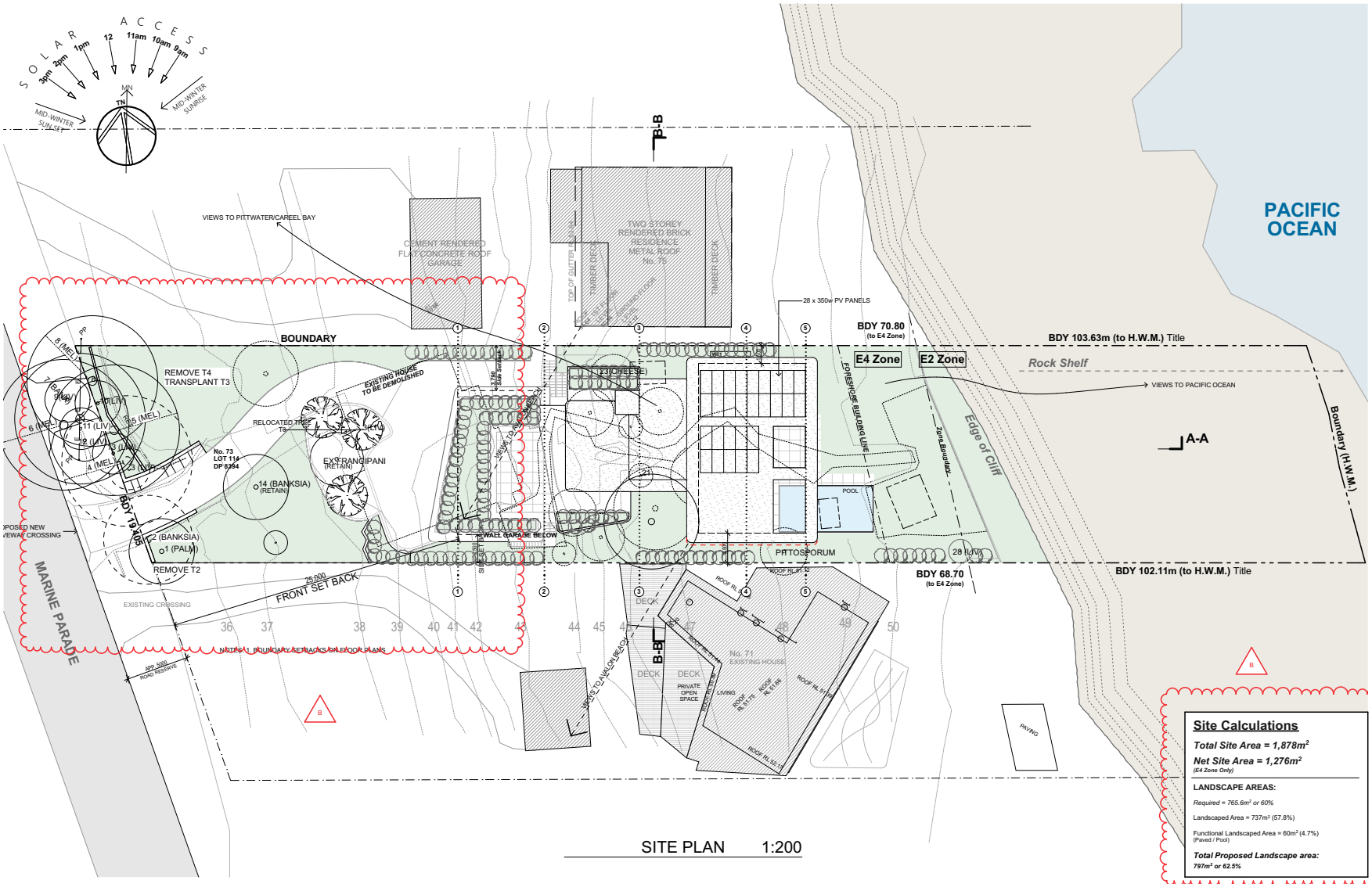
Reason: To maintain local environmental amenity.

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. **Noise - Lift and Swimming Pool**
All plant equipment must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dB(A) above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.



Site Calculations

Total Site Area = 1,878m²

Net Site Area = 1,276m²
(E4 Zone Only)

LANDSCAPE AREAS:

Required = 765.6m² or 60%

Landscaped Area = 737m² (57.8%)

Functional Landscaped Area = 60m² (4.7%)
(Paved / Pool)

Total Proposed Landscape area:
797m² or 62.5%

GARTNERTROVATO ARCHITECTS

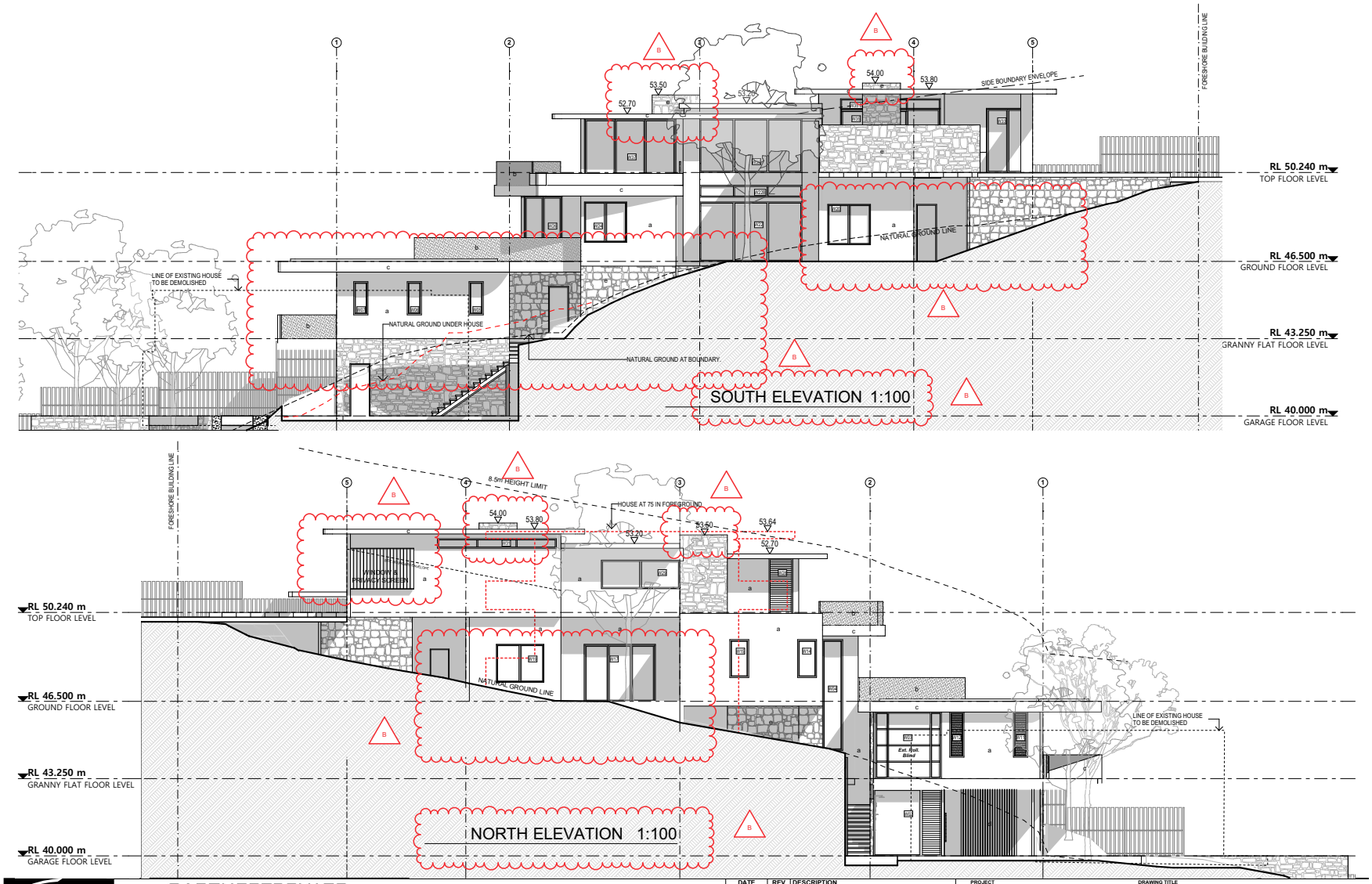
DATE	REV	DESCRIPTION
25/01/2022	A	DEVELOPMENT APPLICATION
05/05/2022	B	REVISIONS TO DRAWINGS AS CLOUDED.

PROJECT
NEW HOUSE
73 MARINE PARADE, AVALON BEACH
LOT 114, DP 8394

FOR **COURTNEY FAMILY**

DRAWING TITLE
SITE PLAN + SITE ANALYSIS

PROJECT NO.	DRAWN BY	PLOT DATE
2105	SG / AB	09/05/2022
SCALE	**DRAWING NO.**	**REVISION**
1:200 @ A2	**A-01**	**B**



GARTNERTROVATO ARCHITECTS

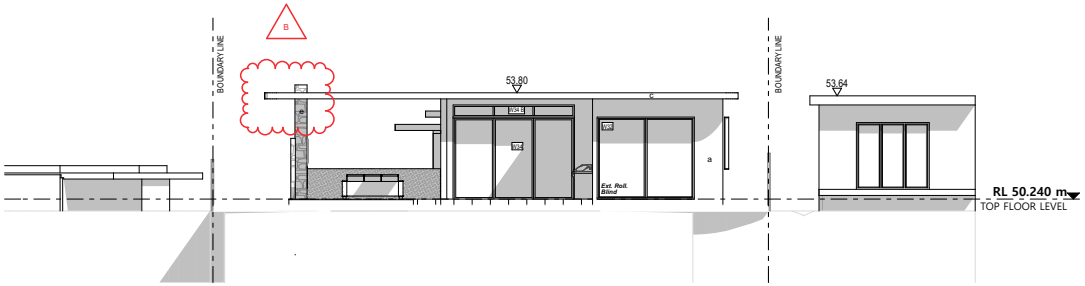
DATE	REV	DESCRIPTION
25/01/2022	A	DEVELOPMENT APPLICATION
05/05/2022	B	REVISIONS TO DRAWINGS AS CLOUDED.

PROJECT
NEW HOUSE
73 MARINE PARADE, AVALON BEACH
LOT 114, DP 8394

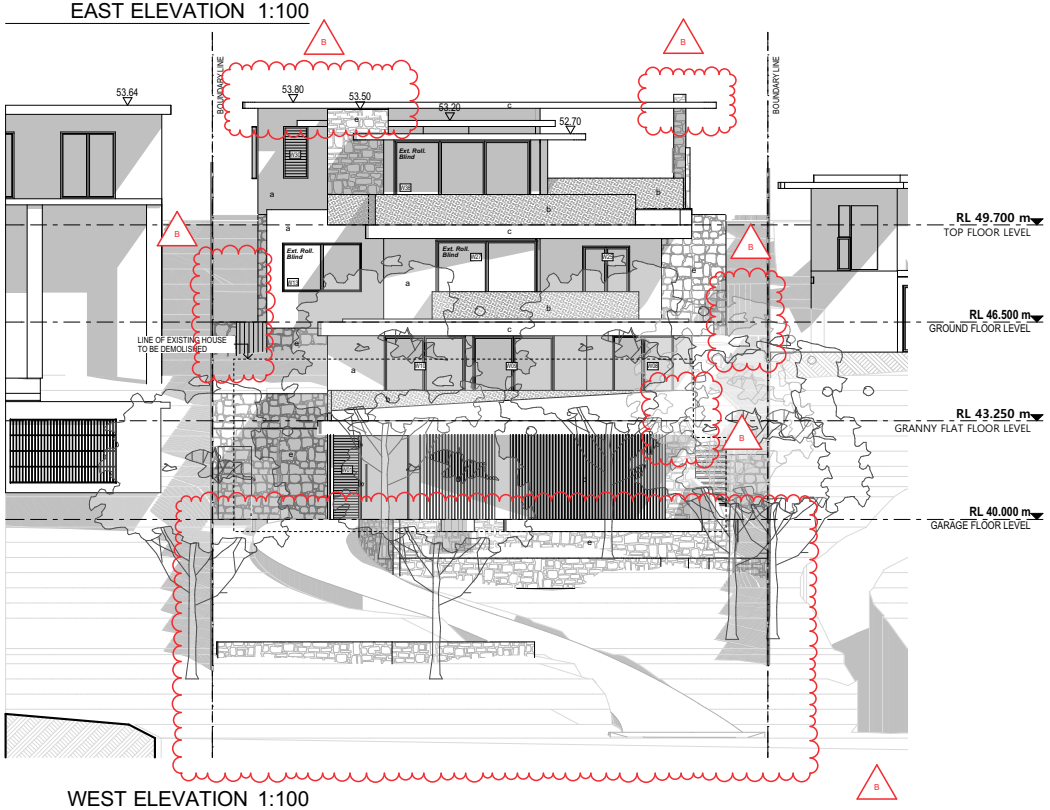
FOR **COURTNEY FAMILY**

DRAWING TITLE
NORTH + SOUTH ELEVATION

PROJECT NO.	DRAWN BY	PLOT DATE
2105	SG / AB	09/05/2022
SCALE	**DRAWING NO.**	**REVISION**
1:100 @ A2	**A-06**	**B**

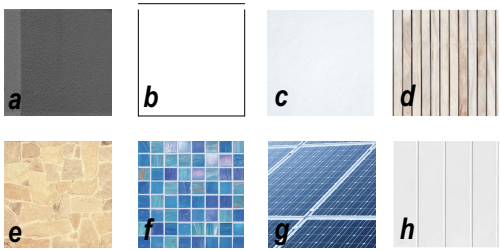


EAST ELEVATION 1:100



WEST ELEVATION 1:100





EXTERIOR FINISHES LEGEND

- **a** TEXTURED RENDER WITH PAINT FINISH - EQUAL TO RESENE DOUBLE GRAVEL
- **b** GLASS BALUSTRADE
- **c** OFF FORM CONCRETE BALUSTRADE - RESENE 'GLISTENING WHITE' PAINT FINISH
- **d** HORIZONTAL TIMBER "THIN" CLADDING TO BALCONY SOFFIT - NATURAL CLEAR FINISH
- **e** 'BODEGA' NATURAL STONE WALL CLADDING
- **f** GLAZED MOSAIC TILES TO POOL
- **g** SOLAR PANELS TO ROOF
- **h** V JOINT FIBRE CEMENT SOFFIT - WHITE PAINT FINISH



GARTNERTROVATO ARCHITECTS

DATE	REV	DESCRIPTION
25/01/2022	A	DEVELOPMENT APPLICATION
05/05/2022	B	REVISIONS TO DRAWINGS AS CLOUDED.

PROJECT
NEW HOUSE
73 MARINE PARADE, AVALON BEACH
LOT 114, DP 8394

FOR **COURTNEY FAMILY**

DRAWING TITLE
EAST + WEST ELEVATION

PROJECT NO.	DRAWN BY	PLOT DATE
2105	SG / AB	09/05/2022
SCALE	**DRAWING NO.**	**REVISION**
1:100 @ A2	A-07	B

ITEM 3.2	**DA2022/0122 - 253 WHALE BEACH ROAD WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/404254**
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 DA2022/0122 for alterations and additions to a dwelling house including a swimming pool on land at Lot 169 DP 15376, 253 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0122

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 169 DP 15376, 253 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Alterations and additions to 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:	Bruce Randall Solomon Elliot Solomon
Applicant:	Bruce Randall Solomon

Application Lodged:	08/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/02/2022 to 03/03/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 22.35%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,551,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2021/0122 for alterations and additions to an existing three storey dwelling house including the construction of a new swimming pool.

The alterations and additions to the dwelling house retain the existing northern and southern side structural walls, however provide alterations to the roof form and front and rear facades.

The maximum height of the proposed development is 10.4m above the existing ground level, which involves a 22.35% variation to Clause 4.3 - Height of Buildings within Pittwater LEP 2014. Any

variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Despite the variation, the proposed skillion roof form sits 629mm below the ridge line of the existing gable roof that is currently on the site. The applicant has demonstrated that compliance with the height standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 22.35% variation to Clause 4.3 - Height of Buildings of Pittwater LEP 2014.

When considered on its merits, the bulk and scale of the resulting development is considered to be acceptable in the circumstances of the case, noting that the proposed alterations result in lowering the building by 629mm and that the design treatments to the rear façade will provide for greater articulation to the existing dwelling. These factors will ultimately improved the dwelling's presentation to the foreshore area and Whale Beach locality.

The proposed development maintains an existing non-compliance to the Pittwater 21 DCP side setback provision. However, these variations do not create any unreasonable amenity impacts, specifically with regards to view sharing, solar access, visual bulk and privacy.

The application was exhibited for 14 days and received one (1) submission. The issues raised in the submission pertain to view sharing and solar reflectivity from the proposed roof. A detailed assessment of these issues has been conducted and the application has been found to be satisfactory, subject to conditions.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of alterations and additions to an existing dwelling involving internal rearrangement of rooms and spaces. Changes to the building envelope will involve new skillion roof, and material, new wall cladding and new windows. The existing structural walls on the side elevations will be maintained. Tree removal, landscaping and a new swimming pool is also proposed.

Specifically, the works comprise:

Level 3 (Entry) - Internal rearrangements and additions, new lift, extension of stairs to the north-west corner and planter boxes.

Level 2 (Ground Floor) - Internal rearrangements, new studio and terrace below the driveway, small addition to the north-west corner for internal stairs, and balcony planter boxes.

Level 1 (Lower Ground Floor) - Internal rearrangements, new lift, external stairs, new terrace and rainwater tanks below the terrace.

Ancillary External Works - Tree removal, landscaping and a new swimming pool with decking.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - 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 - C1.23 Eaves
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 169 DP 15376 , 253 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Whale Beach Road, Whale Beach. The site is irregular in shape with a frontage of 15.565m and respective depths of 57.26m and 54.255m along the northern and southern side boundaries. The site has a surveyed area of 834sqm. The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a three storey dwelling house. Access to the dwelling is provided via a suspended driveway. The site backs onto Whale Beach. The rear portion of the site is densely vegetated. Pedestrian access stairs are

	located between the dwelling house and Whale Beach. The site falls steeply away from the front boundary towards the rear, representing an approximate slope of 44.9%. The site is environmentally constrained with geotechnical, bushfire and biodiversity constraints. **Description of Surrounding Development** The surrounding built environment is characterised by multi storey dwelling houses on sloping sites.

Map:



SITE HISTORY

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

Pre-lodgement Meeting PLM2020/0060

A pre-lodgement meeting was held between the applicant and Council on 31 March 2020 to discuss the proposed development prior to the formal submission of the DA.

The scheme presented in the meeting is similar to that of the DA albeit designed by different architects. Generally Council was supportive of the proposal presented in the meeting, but noted that non-compliances with Council's built form controls may result in view loss from neighbouring properties, and that these impacts should be considered in the preparation of any DA.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 16 May 2022.

Council requested that a written request be submitted pursuant to Clause 4.6 of Pittwater LEP 2014 to justify the non-compliance with Clause 4.3 - Height of Buildings of Pittwater LEP 2014. The height of the building is measured at 10.4m and thus, the proposal could not rely upon the 10m exemption provision for sloping sites permitted under Clause 4.3(2D) of Pittwater LEP 2014. This information was submitted on 2 May 2022. Additional 3D modelling was also provided to depict the extent of the non-compliance.

The additional information did not alter the scope of works proposed and thus, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed 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. The applicant submitted a clause 4.6 request and revised plans with 3D modelling to depict the extent of the height breach. This information was assessed accordingly. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 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 Bushfire Assessment Report was submitted with the application that included a certificate (prepared by Bushfire Hazard Solutions, dated 14 December 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bushfire Assessment Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Withheld	WHALE BEACH NSW 2107

One (1) submission was received following the public exhibition period. The following issues were raised in the submissions:

- **View Loss**

  The submission raised concerns that the proposed development would result in unreasonable view loss from nearby properties.

  Comment:

  This matter has been discussed in detail within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP. In summary, it is noted that the proposal involves lowering the existing building height by 629mm, which will create an additional view corridor through the site. Overall, Council is satisfied that the proposed development achieves consistency with the objectives of the control and the view sharing planning principle established within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

- **Solar Reflectivity**

  The submission raised concerns that the new skillion roof will result in adverse solar reflectivity to neighbouring properties.

  Comment:

  A suitable condition has been included with this consent that requires the roof colour to be within the medium to dark range, which will alleviate solar reflections to neighbouring properties.

Conclusion

The concerns raised within the submission have been addressed above and resolved through conditions where appropriate. The concerns do not warrant the refusal of this development application.

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. Landscape Plans and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. 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 • D12 Palm Beach 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. As described in the Statement of Environmental Effects the proposed works comprise a rearrangement of internal spaces, small studio addition, new terraces, steps, pool and retaining walls. The existing side walls, setbacks and basic envelope are retained. No building works are proposed within the Foreshore Building Line, allowing continuation of the vegetated foreshore and this is proposed to be enhanced by additional revegetation to the lower slopes as indicated in the Landscape Plans. The Landscape Plans submitted provide additional landscape enhancement of the existing landscape setting and no concerns are raised, except for the inclusion of the proposed Cupaniopsis anacardioides (Tuckeroo) tree planting. Tuckeroo is a self-seeding species invasive to northern beaches headland communities and is not permitted to be planted, and shall be substituted with an alternative tree selection that is not self-seeding. All landscape works are restricted to the legal boundary boundaries and no physical encroachment into private nor public lands are permitted. Additionally, conditions shall be imposed that screen planting along the proposed pool and decking vertical walls shall be the subject of imposed conditions for planting to achieve a height equal to the pool and decking level to soften the built form from the foreshore zone. The Arboricultural Impact Assessment recommends the removal of

Internal Referral Body	Comments
	four trees to facilitate the proposed development including three exempt species. Nine trees within the property are recommended in the Arboricultural Impact Assessment to be retained and protected. Tree protection measures are recommended where proposed development occurs within the tree protection zone of trees to be retained. Six of the existing trees assessed in the Arboricultural Impact Assessment are located within the drainage easement or road verge land south of the development property. A Tree Protection is submitted as part of the Arboricultural Impact Assessment, and all existing trees identified for retention shall be retained and protected in accordance with the Tree Protection Plan and the Arboricultural Impact Assessment, and conditions shall be imposed.
NECC (Bushland and Biodiversity)	The application seeks approval for alterations and additions to existing dwelling including rearrangement of internal spaces, additions, new terraces, steps, pool and retaining walls. 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)** **Pittwater Local Environmental Plan (PLEP)** • 7.6 Biodiversity Protection **Pittwater Development Control Plan (PDCP)** • B4.17 Littoral Rainforest - Endangered Ecological Community The application seeks to remove four (4) exempt trees: • T7 Cupressus sp. (exempt by species), • T7a Coprosma repens (exempt by height) • T7b Coprosma repens (exempt by height) • T9 Metrosideros excelsa (exempt by height) As all trees proposed for removal are exempt, no approval from Council is required for removal. Vegetation within the site is currently maintained at levels compliant with an Inner Protection Area, as stated within the submitted Bushfire Hazard Assessment, therefore no objection is raised to the establishment of a formal APZ over the site. No objection is raised to the species selection within the submitted landscape plan which indicated 100% native species will be used in planting schedule.

Internal Referral Body	Comments
	Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
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 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 Colco Consulting Pty. Ltd. dated 22 December 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** **Development on Foreshore Area** A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.

Internal Referral Body	Comments
	The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The property is very steep, with the low section down near the beach being identified as being flood affected. The proposed development is at the top, well above the FPL.
Parks, reserves, beaches, foreshore	The development application is for alterations and additions to the existing dwelling, and associated works, as described and illustrated in the reports and plans. The development site adjoins the Whale Beach foreshore public reserve that is located downslope of the property, as well as a drainage reserve to the south of the property. Existing landscape encroachments exists including foreshore path from the property to the public reserve, and stairs and retaining walls over the drainage reserve, as shown on the Survey Plan, and Council reserves the future right to seek removal of any encroachment for public safety or for any other public capital works. No additional physical encroachments over the site boundaries are permitted under the development application, and new structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the foreshore, and conditions shall be imposed to satisfy this requirement. The proposed works do not impact public access to the foreshore public reserve nor impact Council access to the drainage reserve, and thus Parks Reserves and Foreshores Referral raise no concerns.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	*The proposal was referred to Ausgrid who raised no objections to the development.*
Aboriginal Heritage Office	*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*

External Referral Body	Comments
	are no Aboriginal heritage issues for the proposed development. *Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.*

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A432243 dated 17 November 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 who raised no objections of proposal.

SEPP (Biodiversity and Conservation) 2021

The site adjoins land zoned RE1 Public Recreation to the rear and south. For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

a) the need to retain any bushland on the land,

b) 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

c) 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 proposal does not necessitate the removal of vegetation on the RE1 zone. Moreover, suitable conditions have been included with this consent to mitigate impacts upon the adjoining reserve.

Overall, the proposal satisfies the relevant considerations within this SEPP.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Environment Area pursuant to this SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

a) has considered whether the proposed development is likely to cause an adverse impact on the following:

i) existing, safe access to and along the foreshore, beach, headland or rock
ii) platform for members of the public, including persons with a disability,
iii) overshadowing, wind funnelling and the loss of views from public places to
iv) foreshores,
v) the visual amenity and scenic qualities of the coast, including coastal

headlands,
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

b) is satisfied that:

i) the development is designed, sited and will be managed to avoid an adverse
ii) impact referred to in paragraph (a), or
iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
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 retains the existing pedestrian access stairs that provide access from the subject site to Whale Beach. Thus, the proposal will not preclude access to or along the foreshore area. In addition, the proposed development does not result in overshadowing of the foreshore area or wind funnelling of the foreshore. The roofline of the proposed development, which involves a skillion roof form as opposed to the existing gable roof form, sits 629mm below the apex of the existing gable roof. Thus, the development will not compromise views towards the foreshore, but rather will provide for an additional view corridor through the site.

Additionally, the proposal largely retains the existing building envelope and utilises new external finishes that will harmonise with the natural environment. Thus, the proposal will not unreasonably detract from the scenic qualities of the coastal area. The Aboriginal Heritage Office have also provided comments for the application and are satisfied that the proposal will not have an adverse impact upon Aboriginal cultural heritage, practices or places. In addition, the site is not located in close proximity to items identified with local or state environmental heritage significance. Thus, the development will not have an adverse impact upon built items identified with local or state environmental heritage significance.

For these reasons, it is considered that the proposal is appropriately designed, sited and will be managed to avoid an adverse impact upon the matters referred to in Clause 2.11.

The Development Assessment Planner has also taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development and concluded that the scale of the development will be commensurate with the surrounds and that the proposal will be suitable for this coastal setting.

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

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

Comment:

The proposed development has been adequately designed and sited to respond to the environmental constraints of the site. Therefore, it is considered that the proposal is not likely to cause increased risk

of coastal hazards within the locality.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Conclusion

As demonstrated above, the proposed development satisfies the relevant provisions within SEPP (Resilience and Hazards) 2021.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.4m	22.35%	**No**

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

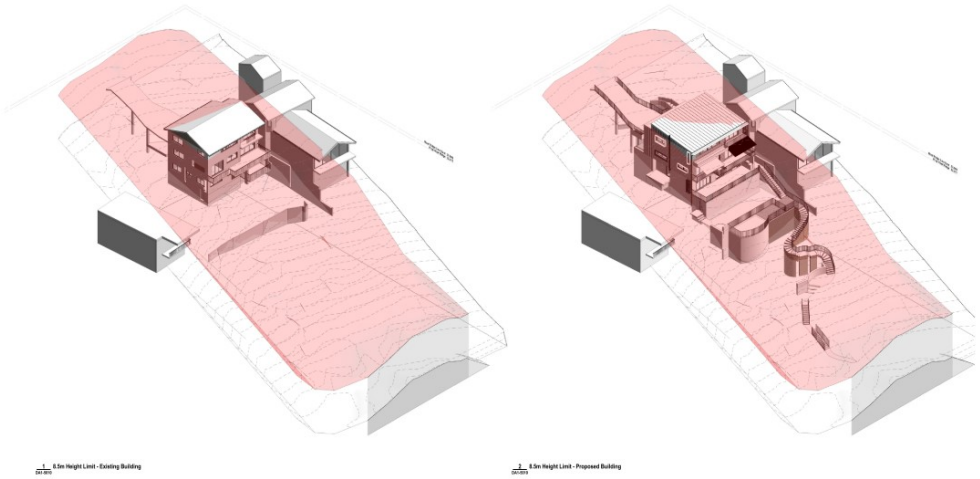
Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.4m
Percentage variation to requirement:	22.35%

The maximum height of the proposed development is 10.4m above the existing ground level, which exceeds the statutory requirement of 8.5m. It is noted that the proposal cannot rely on the 10m height exemption for sloping sites, as detailed within Clause 4.3(2D) of Pittwater LEP 2014, as the works exceed the 10m height plane. Thus, the 8.5m height limit is the development standard in this instance.

It is important to note that the highest point of the modified skillion roof form sits at RL32.411 on the high side of the roof, which is 629mm below the apex of the existing hipped roof form sited at RL33.04.

Figure 1 below depicts the elements of the existing and proposed building that protrude above the 8.5m height plane.

Figure 1: *elements of existing and proposed building that protrude above 8.5m height plane*



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 applicant's written request argues, in part:

"The proposal is a modern upgrade of an existing older style dwelling with the new roof design worthy of an appropriate degree of flexibility in applying the numerical height control for the reasons stated in this application. We also note that the proposed roof is lower than existing and that if the existing roof was to be retained then there would be no breach as the existing would be deemed to comply.

The bulk and scale of the building is low-impact and consistent with the planning objectives of the zone, the locality and neighbouring properties.

The proposal provides a residential dwelling and character with building structures at a height, bulk and scale consistent with the sloping site and locality.

The dwelling with will sit comfortably in a landscaped setting and is compatible with the existing visual character of the area.

The proposal minimises any adverse effects of bulk and scale on the land and in the locality. The relatively minor height breach is an anomaly and does not interfere with views or amenity and would not be apparent to a casual observer. The proposal is worthy of an appropriate degree of flexibility in applying the numerical height control.

Flexibility is appropriate and should be applied in this circumstance to achieve excellence in architectural design and amenity for the residents while resulting in no negative impacts on neighbours and locality".

Development Assessment Planner Comment:

Council's Development Assessment Planner agrees generally with the applicant's justification to contravene the height of buildings development standard.

In particular, it is agreed that the roofline of the proposed skillion roof form sits 629mm below the apex of the existing gable roofline. Therefore, if the existing roofline were to be retained as part of the proposal then the development would be 'deemed to comply' with the height standard as the building height would be unchanged.

Moreover, the reduction in building height will provide for an additional view corridor over the site. Furthermore, the reduction in building height, coupled with the retention of the existing side walls, will ensure that the height, bulk and scale of the dwelling house maintains an appropriate visual relationship with the surrounding area.

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 Pittwater LEP 2014 are:

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

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

Comment:

The roofline of the modified skillion roof form sits 629mm below the apex of the existing gable roofline. Moreover, the side walls of the dwelling house will be preserved and the dwelling house will maintain a three storey appearance when viewed from the foreshore area. It is noted that there are numerous examples of three storey dwelling houses within the visual catchment of the site. For these reasons, the dwelling house will be consistent with the desired character of the locality by virtue of its height and scale.

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

Comment:

As noted above, the height and scale of the dwelling house is compatible with surrounding development within the coastal area.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The southern adjacent site is a public reserve utilised for drainage. The proposal results in overshadowing of this area, however does not result in overshadowing of neighbouring residential properties.

d) to allow for the reasonable sharing of views,

Comment:

The roofline of the development sits 629mm below the existing building. Thus, the proposal will provide an additional view corridor over the site.

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

Comment:

The existing building does not step down significantly with the slope of the land. Nevertheless, the use of the new terraces and balconies on the rear elevation provides a greater 'stepped' response to the natural topography.

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

Comment:

The use of dark cladding on the façade will ensure the building harmonises with the natural environment. In addition, the proposed landscape treatment will further soften the built form. It is also noted that the development is not located within the visual catchment of items identified with local or heritage significance and thus, the development will not have an adverse impact upon heritage conservation areas and heritage items.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The area of the site that is subject to the development is largely within previously disturbed areas of the site. The dense vegetation below the foreshore building line is being retained, which will soften the visual impacts of the development when viewed from Whale Beach. Furthermore, the proposed additions are appropriately sited and scaled, such that the works will not unreasonably detract from the visual qualities of the locality. Overall, the development is considered to have an acceptable impact upon the ecological, scientific or aesthetic values of the area.

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

Comment:

As demonstrated above, the proposed development does not have an adverse effect on the ecological, scientific or aesthetic values listed above.

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

Comment:

The proposed development does not necessitate the removal of significant landscaping and does not significantly alter the site topography. The proposal also does not change the existing low density residential land use and the scale of the development is commensurate with nearby residential development within the locality. The proposed landscape treatment will further soften the built form. Overall, the proposal meets this objective.

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

Comment:

The proposal does not result in the removal of the foreshore vegetation in the rear portion of the site. Conditions have been included with this consent to mitigate impacts to this vegetation.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone and Clause 4.3 - Height of Buildings of Pittwater LEP 2014.

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

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

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

7.2 Earthworks

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

Council's Biodiversity and Landscape Officers have reviewed the application and are satisfied that the proposal is not likely to have an adverse impact upon the foreshore vegetation, subject to adherence to the conditions of consent.

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

Comment:

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

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

Comment:

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

Conclusion

Having regard to the above assessment, it is concluded that the proposed development is consistent with Clause 7.2 of Pittwater LEP 2014, subject to conditions.

7.6 Biodiversity protection

The site is identified on the Pittwater LEP 2014 Biodiversity Map. Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:
(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

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

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

Comment:

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

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

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

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

Comment:

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

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 7.6 of Pittwater LEP 2014, subject to conditions.

7.7 Geotechnical hazards

The site is identified on the Pittwater LEP 2014 Geotechnical Hazard Map. Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

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

Comment:

The proposed development is supported by a Geotechnical Investigation (prepared by Douglas Partners, dated 14 December 2021), architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The Geotechnical Investigation concludes that the proposal demonstrates an acceptable level of risk, subject to adherence to the conditions within the report. These conditions have been included as part of this consent.

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

Comment:

The proposed development is supported by a Geotechnical Investigation and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. Suitable conditions are imposed with this consent to ensure that stormwater is managed in accordance with Council's Water Management for Development Policy.

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

Comment:

The Geotechnical Investigation concludes that the proposal demonstrates an acceptable level of risk, subject to adherence to the conditions within the report. These conditions have been included as part of this consent. Thus, Council is satisfied that the proposal is adequately designed, sited and will be managed to avoid geotechnical risk and adverse impacts on the development and surrounding properties.

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 7.7 of Pittwater LEP 2014, subject to conditions.

7.10 Essential services

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

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

Comment:

The proposal benefits from the aforementioned essential services and thus, the application satisfies the requirements within Clause 7.10 of Pittwater LEP 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	6.6m - 10.7m	-	Yes
Rear building line	Foreshore Building Line	Outside of Foreshore Building Area	-	Yes
Side building line	(north) 2.5m	Dwelling: 1.5m (existing) Exterior stairs and pool decking: 0.25m	40% 90%	**No** **No**
	(south) 1m	Dwelling: 1.53m (existing) Pool: 1.47m	-	Yes
Building envelope	(north) Merit Assessment as slope under footprint is >30%	Outside standard envelope applied to sites with slopes less than 30% under building footprint	88.5%	Acceptable on Merit
	(south) Merit Assessment as slope under footprint is >30%	Outside standard envelope applied to sites with slopes less than 30% under building footprint	152.6%	Acceptable on Merit
Landscaped area	60% (500.4m^2)	63.5% (530sqm)	-	Yes

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	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	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	No	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	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

Clause A4.12 of the Pittwater 21 DCP provides guidance on the form and scale of development anticipated for the Palm Beach Locality. The locality statement notes as follows:

"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. 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 the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. 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.

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.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

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.

Palm Beach will remain an important link to the offshore communities".

Comment:

The proposed development involves alterations and additions to an existing three storey dwelling house. Whilst the locality statement calls for two storey development within low density residential areas, the proposed development is considered to achieve the overall intention of the desired future character statement for the following reasons:

- The proposed development does not increase the number of storeys to the existing dwelling

house and results in a 629mm reduction in building height.
- Whilst the side walls are retained, the proposal comprises a number of articulated elements on the rear elevation to alleviate the building bulk.
- The site is dominated by landscaping and the proposal incorporates native landscape treatment, which will ensure the built form is integrated with the landform and landscape.
- The height of the building is generally below the established tree canopy.
- The proposal includes new dark external finishes to harmonise with the natural environment.
- The proposal has been designed to respond to the environmental constraints of the site.
- The development is serviced by essential services (i.e. stormwater, vehicular access and parking etc.).

C1.3 View Sharing

An anonymous submission was received from a nearby property raising concern that the existing building on the subject unreasonably impacted a previous view corridor through the subject site. Whilst the proposed development results in a 629mm reduction in building height from the current roofline, the submission requested that the building be lowered further to provide additional views. It is noted that this nearby property is located upslope of the subject site.

To consider this issue, the Development Assessment Planner examined the existing view lines from the front boundary of this nearby property.

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:

  The view in question involves partial views towards Whale Beach. The obstructions include dense vegetation within the Whale Beach Road Council road reserve, existing power lines and existing development on the eastern side of Whale Beach Road. The view encapsulates the north Whale Beach headland and a portion of the land-water interface. Whilst the view is obstructed, it is considered to hold high value.

  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 Development Assessment Planner was not able to get internal access to this nearby property. However, based on an examination from the front yard it is noted that standing views can be enjoyed from the ground floor, whilst sitting and standing views could be enjoyed from the upper floor. The living and entertaining areas are situated on the first floor.

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 maintains the existing side walls and results in a 629mm reduction in building height through removing the gable roof and replacing the building with a skillion roof that slopes to the east with the fall of the topography. Based on the reduction in height, the view line from this nearby property will be enhance and additional glimpses of the headland and sand will be enjoyed.

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:

Whilst the roofline of the skillion roof is situated above the 8.5m height plane that is applied to the site, an additional view corridor is provided as the building is situated 629mm below the roofline of the existing dwelling on the site. As such, there is no further view impact caused by the proposed development when compared to the existing dwelling house on the subject site.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

The proposed development enhances existing views from the public domain.

- *Canopy trees take priority over views.*

  Comment:

  The proposal does result in the removal of a non-exempt tree species. However, Council's Landscape Officer raises no objections to the tree removal. It is noted that additional native landscape treatment will be planted on the site.

Conclusion

As demonstrated above, the proposed development is consistent with the outcomes of this control and the view sharing principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.*

C1.4 Solar Access

The control requires as follows:

- *"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)".*

A technical non-compliance is proposed, in that the main private open space (both existing and proposed) within the subject site's rear yard will not obtain adequate solar access. The non-compliance is an existing issue, and is a consequence of the site's orientation and topography (i.e. its front-to-rear downhill slope and east-west aspect).

It is noted that the proposed development does not result in non-compliant overshadowing of surrounding residential properties.

Under these circumstances, the existing non-compliance is supported on merit.

C1.23 Eaves

Eaves are proposed, however they will be less than 450mm wide. Despite this, the proposed skillion roof form is consistent with modern developments within the precinct and will be sufficient to enable internal solar access and shading, as demonstrated by the commitments and targets within the submitted BASIX Certificate. As such, the outcomes of the control are met, and the proposed variation is supportable on merit.

D12.6 Side and rear building line

Description of non-compliance

The control stipulates that development shall be setback 1m from one side boundary and 2.5m from the opposing side boundary. For the purpose of this assessment the 2.5m side building line is applied to the northern side boundary and the 1m side building line applied to the southern side boundary.

The new works comply with the southern side setback requirement. However the pool decking and external steps are setback 0.25m from the northern side boundary, whilst does not satisfy the numeric requirement. The dwelling house also retains the existing northern side setback of 1.5m, which does not satisfy numeric requirement.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows

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

Comment:

As discussed in detail within the section of this report relating to Clause A4.12 of the Pittwater 21 DCP, the proposed development achieves the overall intent of the Palm Beach Desired Future Character Statement.

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

Comment:

Whilst the existing side walls of the dwelling house are maintained, the overall bulk and scale of the resulting development has been minimised through the 629mm reduction in building height and through the provision of articulated elements on the rear façade. Furthermore, the swimming pool decking and external staircase is situated in close proximity to ground level and will not be visually imposing when viewed from Whale Beach or surrounding properties within the foreshore area.

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

Comment:

The roofline of the proposed development, which involves a skillion roof form as opposed to the existing gable roof form, sits 629mm below the apex of the existing gable roof. Thus, the development will not compromise views towards the foreshore, but rather will provide for an additional view corridor through the site.

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

Comment:

As noted above, reasonable view sharing is achieved.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the*

development site and maintained to residential properties.

Comment:

Windows on the northern elevation of the dwelling are generally offset from existing south facing windows on the northern adjacent dwelling house (255 Whale Beach Road), which prevents unreasonable levels of overlooking. Moreover, the swimming pool decking and external stairs are sited near ground level and do not prompt unreasonable privacy impacts.

In regards to overshadowing of adjacent properties, it is noted that the southern adjacent site is a public reserve utilised for drainage. The proposal results in overshadowing of this area, however does not result in overshadowing of neighbouring residential properties.

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

Comment:

The proposed development complies with the Pittwater 21 DCP landscaped area numeric requirement and accommodates sufficient landscape treatment to maintain an attractive streetscape.

- *Flexibility in the siting of buildings and access.*

Comment:

Flexibility is afforded with regards to the side setback non-compliance as the proposal does not result in unacceptable streetscape or amenity impacts. Furthermore, vehicular and pedestrian access arrangements to the site will be maintained via Whale Beach Road.

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

Comment:

Sufficient vegetation is accommodated on the site to visually reduce the built form.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

The site does not adjoin commercial development.

Conclusion

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

D12.8 Building envelope

As the slope of the land under the building footprint is greater than 30%, the proposed development is

subject to a merit assessment when applying the envelope control.

The proposal involves variations to the standard envelope requirement on the northern and southern side elevations. It is noted that the variations to the envelope provision will remain generally consistent to the existing development on the site given the retention of the existing northern and southern side walls. The northern and southern side walls that are being retained are only modified through the provision of external wall cladding. Figures 2 and 3 depict the extent of the variations.

Figure 2: *elements of building outside standard envelope on northern elevation*

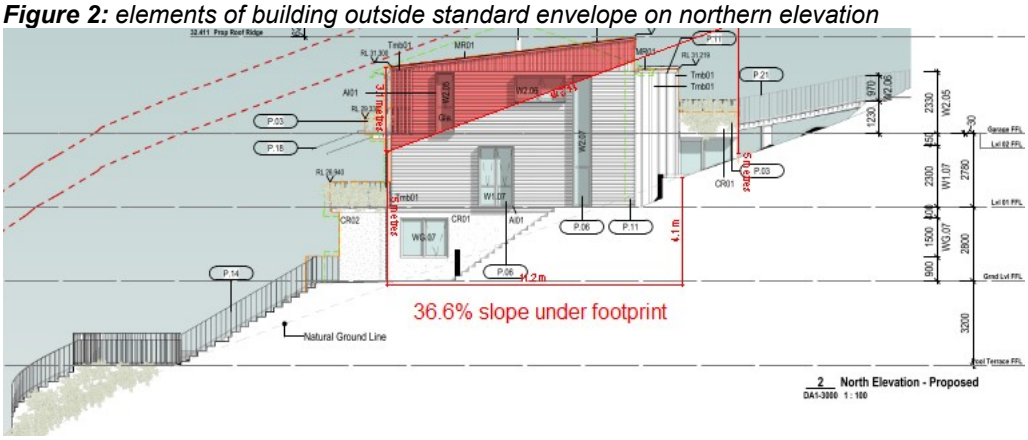
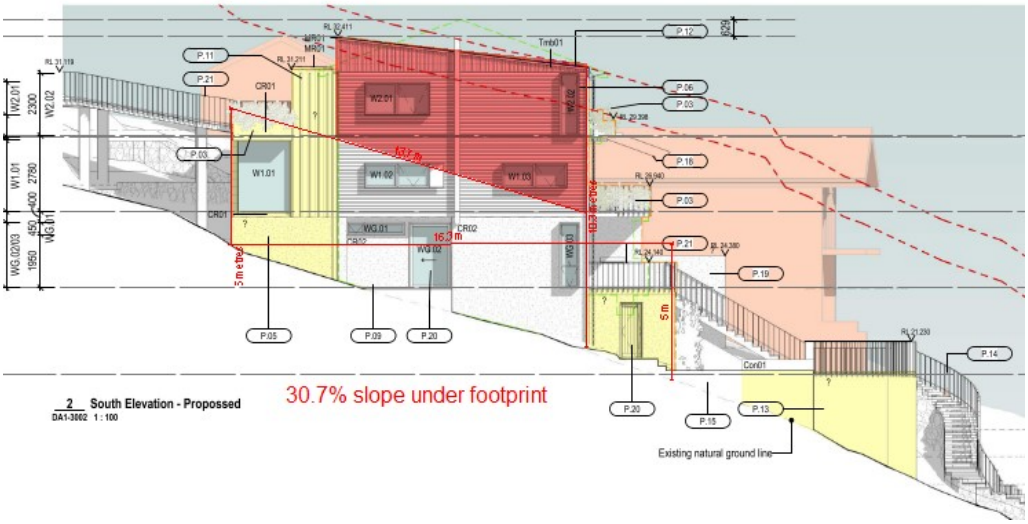


Figure 3: *elements of building outside standard envelope on southern elevation*



When considering the development on its merits, it is concluded that the outcomes of the control are achieved. A detailed assessment against the outcomes is provided below as follows:

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

Comment:

As discussed in detail within the section of this report relating to Clause A4.12 of the Pittwater 21 DCP,

the proposed development achieves the overall intent of the Palm Beach Desired Future Character Statement.

- *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 overall height of the dwelling is reduced by 629mm through the modified roof form. Whilst the existing side walls to the dwelling are retained, the perceived bulk and scale of the dwelling has been reduced through the reduction in the building height and the provision of articulated elements on the rear façade. The height of the dwelling house is also generally located below the established tree canopy.

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

Comment:

The proposal incorporates sufficient landscape treatment to ensure the works integrate with the landform and landscape.

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

Comment:

Whilst the existing side walls of the dwelling house are maintained, the overall bulk and scale of the resulting development has been minimised through the 629mm reduction in building height and through the provision of articulated elements on the rear façade

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

Comment:

The roofline of the proposed development, which involves a skillion roof form as opposed to the existing gable roof form, sits 629mm below the apex of the existing gable roof. Thus, the development will not compromise views towards the foreshore, but rather will provide for an additional view corridor through the site.

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

Comment:

Windows and balconies/terraces are appropriately located to prevent direct overlooking between dwellings. In regards to overshadowing of adjacent properties, it is noted that the southern adjacent site is a public reserve utilised for drainage. The proposal results in overshadowing of this area, however does not result in overshadowing of neighbouring residential properties.

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

Comment:

Sufficient vegetation is accommodated on the site to visually reduce the built form.

Conclusion

As demonstrated above, the proposal is consistent with the outcomes of this control and therefore, is acceptable on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $15,510 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,551,000.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP

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

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.

The proposed development involves alterations and additions to an existing three storey dwelling house including a new swimming pool within the rear yard.

The maximum height of the proposed development is 10.4m above the existing ground level, which involves a 22.35% variation to Clause 4.3 - Height of Buildings within Pittwater LEP 2014. However, the proposed alterations to the roof form result in a 629mm reduction in building height when compared to the existing dwelling house.

The applicant has provided sufficient justification for the departure from the development standard in that compliance with the standard is unreasonable in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Pittwater 21 DCP has found that the proposal does not comply with the side setback provision. Given the constraints on the development by virtue of the steep topography and the retention of existing side elevations of the dwelling house, some flexibility in applying this control is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the Desired Future Character Statement of the Palm Beach Locality.

In summary, the proposal is recommended for approval as the siting and design of the dwelling house is responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and locality character.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Buildings 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 DA2022/0122 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 169 DP 15376, 253 Whale Beach Road, WHALE 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**
DA1-0501 (Revision 07)	21 December 2021	H & E Architects
DA1-1100 (Revision 11)	21 December 2021	H & E Architects
DA1-1100 (Revision 11)	21 December 2021	H & E Architects
DA1-1102 (Revision 11)	21 December 2021	H & E Architects
DA1-3000 (Revision 11)	21 December 2021	H & E Architects
DA1-3001 (Revision 11)	21 December 2021	H & E Architects
DA1-3002 (Revision 11)	21 December 2021	H & E Architects
DA1-3003 (Revision 10)	21 December 2021	H & E Architects
DA1-4100 (Revision 10)	21 December 2021	H & E Architects
DA1-6000 (Revision 09)	21 December 2021	H & E Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Bushfire Assessment Report Ref. 200254B	14 December 2021	Bushfire Hazard Solutions
Arboricultural Impact Assessment	November 2021	Bluegum Tree Care and Consultancy
Geotechnical Investigation Ref. 211270.00	14 December 2021	Douglas Partners
BASIX Certificate No. A432243	17 November 2021	Humphery & Edwards

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**
L-DA-00	15 December 2021	360 Degrees
L-DA-01	15 December 2021	360 Degrees
L-DA-02	15 December 2021	360 Degrees
L-DA-03	15 December 2021	360 Degrees
L-DA-04	15 December 2021	360 Degrees
L-DA-05	15 December 2021	360 Degrees
L-DA-06	15 December 2021	360 Degrees
L-DA-07	15 December 2021	360 Degrees

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	25 January 2022	Mr Bruce Solomon

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 and detached studio. These land uses are defined as follows:

dwelling house *means a building containing only one dwelling.*

detached studio *means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—*
(a) is established in conjunction with a dwelling house, and
(b) is on the same lot of land as the dwelling house, and
(c) is separate from the dwelling house, and
(d) is not used as a separate dwelling house, and
(e) does not contain any cooking facilities.

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

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

3. **Prescribed Conditions**
(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $15,510.00 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 $1,551,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Delineation of Asset Protection Zones**
Prior to the commencement of any vegetation clearance/modification, the boundaries of the

bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries.

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

Reason: To protect native vegetation and wildlife.

8. **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.

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

10. **Traffic Management and Control Plan**
The Applicant is to submit an application for Traffic Management and Control Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management and Control 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.

11. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing internal drainage system.

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.

12. **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 Investigation (prepared by Douglas Partners, dated 14 December 2021) are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **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 as nominated in the Arboricultural Impact Assessment, and in particular as listed in the following sections:
i) 5. Potential Impacts of Proposed Works
ii) 6. Recommendations
iii) tree protection fencing as identified in the Tree Protection Plan
iv) retention of existing trees as nominated in the Tree Protection Plan

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.

14. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):
i) tree 9 - NZ Christmas Bush
ii) 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, unless nominated for retention in the Arboricultural Impact Assessment. Exempt Species nominated for removal include: tree 7 - Cypress Pine, and tree 7a and 7b - Mirror Bush.

Reason: To enable authorised development works.

15. **Clearing for Asset Protection Zones**
Clearing of vegetation during works for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

16. **Working and Access on Reserves Permit**
Should any works or access (undertaken by principal contractors working without Council supervision) be required on land owned or managed by Council, a “Working on Reserves” permit prior to commencement is to be submitted and approved. Applications can be obtained from Council’s website or the Parks and Recreation business unit.

Reason: Public safety and the protection of Council infrastructure.

17. **Installation and Maintenance of Sediment and Erosion Control**
Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom’s ‘Managing Urban Stormwater: Soils and Construction’ (2004).

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

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

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 except those nominated for retention,
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.

19. **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.

20. **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.

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

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

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

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

22. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

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

28. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) all landscape works under this consent is restricted to land within the legal boundaries,
ii) the proposed Cupaniopsis anacardioides (Tuckeroo) tree planting listed in the Plant Schedule is not permitted and shall be substituted with an alternative locally native tree selection that is not self-seeding,
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 and other trees, 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) 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,
v) planting to the lower garden area below the pool and decking vertical walls shall be selected to achieve a mature height equal to the pool and decking level.

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.

29. **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

30. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans (360 Degrees Landscape Architects 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.

31. **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.

32. **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.

33. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Council's Water Management for Development Policy by a suitably qualified Civil Engineer.

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. **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.

35. **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

36. **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.

37. **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.

38. **Maintenance of Asset Protection Zones**
Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

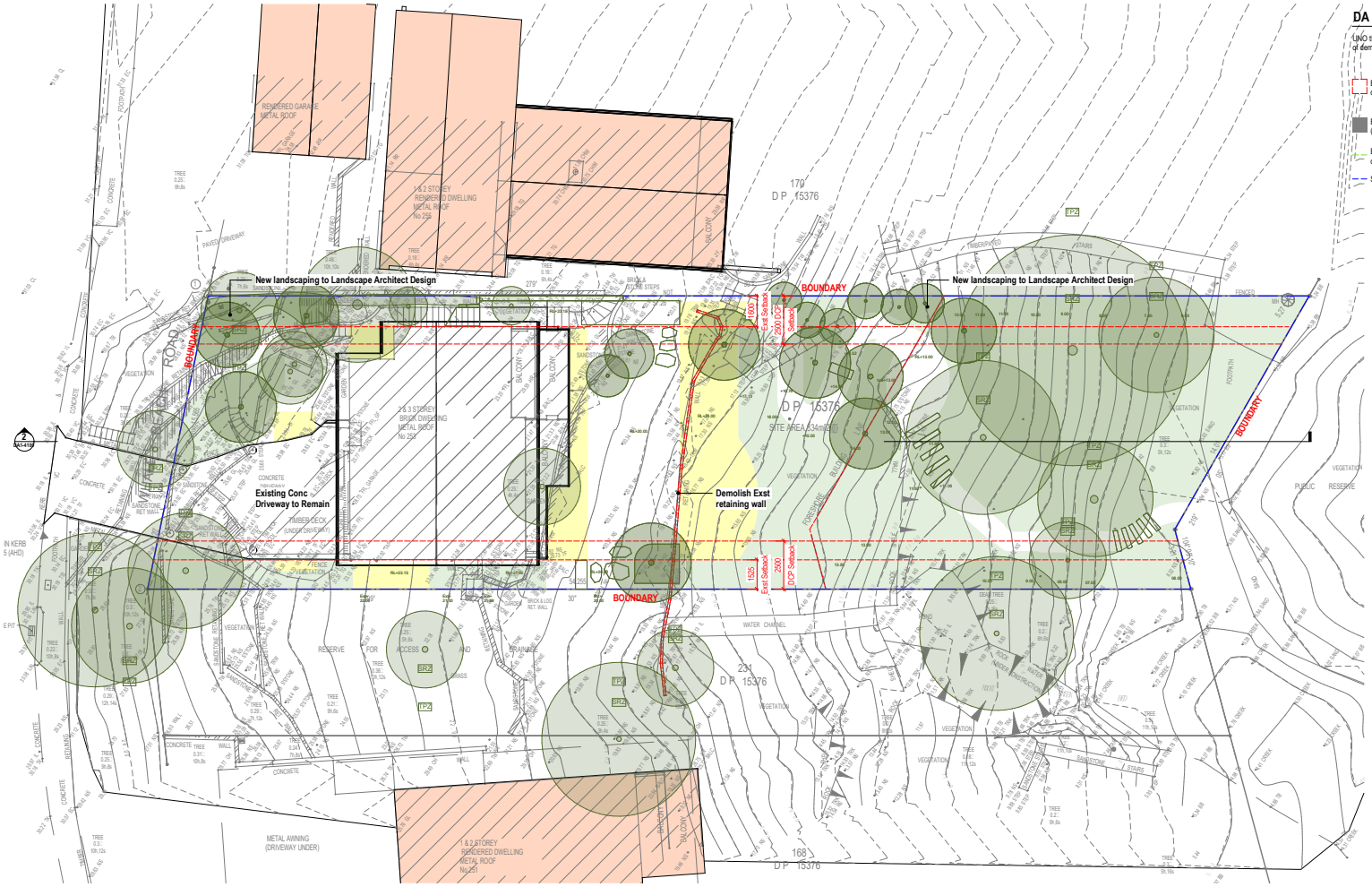
Reason: To protect native vegetation and wildlife.

39. **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.

40. **Noise - Lift and Swimming Pool**
All plant equipment must be installed and operated at times so as not to cause ‘offensive noise’. It must be demonstrated that the noise level will not exceed 5dB(A) above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.



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Rev	Date	Amendments
01	01/12/20	Issued to Consultants
02	19/05/21	Issued for Information: Amended Roof Design Development
03	11/06/21	Issued for Information: Amended DA Drawings
04	23/09/21	Issued to Consultants
05	05/10/21	Issued for Information: Updated DA Drawings
06	18/10/21	Issued to Consultants: Updated Development Application
07	21/12/21	Development Application Issue. Amendments for issue to council

Rev	Date	Amendments

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Humphrey & Edwards Pty Ltd | ABN 86656838227
Nominated Architect: Glenn Cunnington #6415

Project
Whale Beach Residence

Client
Barbara & Bruce Solomon

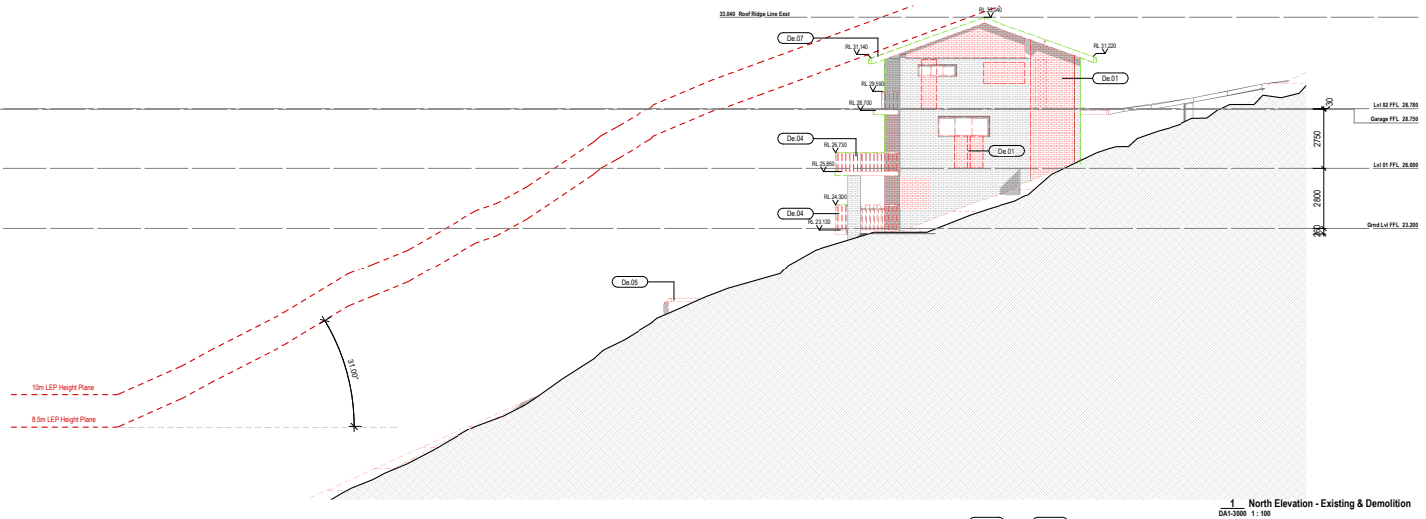
Location
253 Whale Beach Road, Whale Beach NSW 2107

Drawing
Site Plan - Proposed

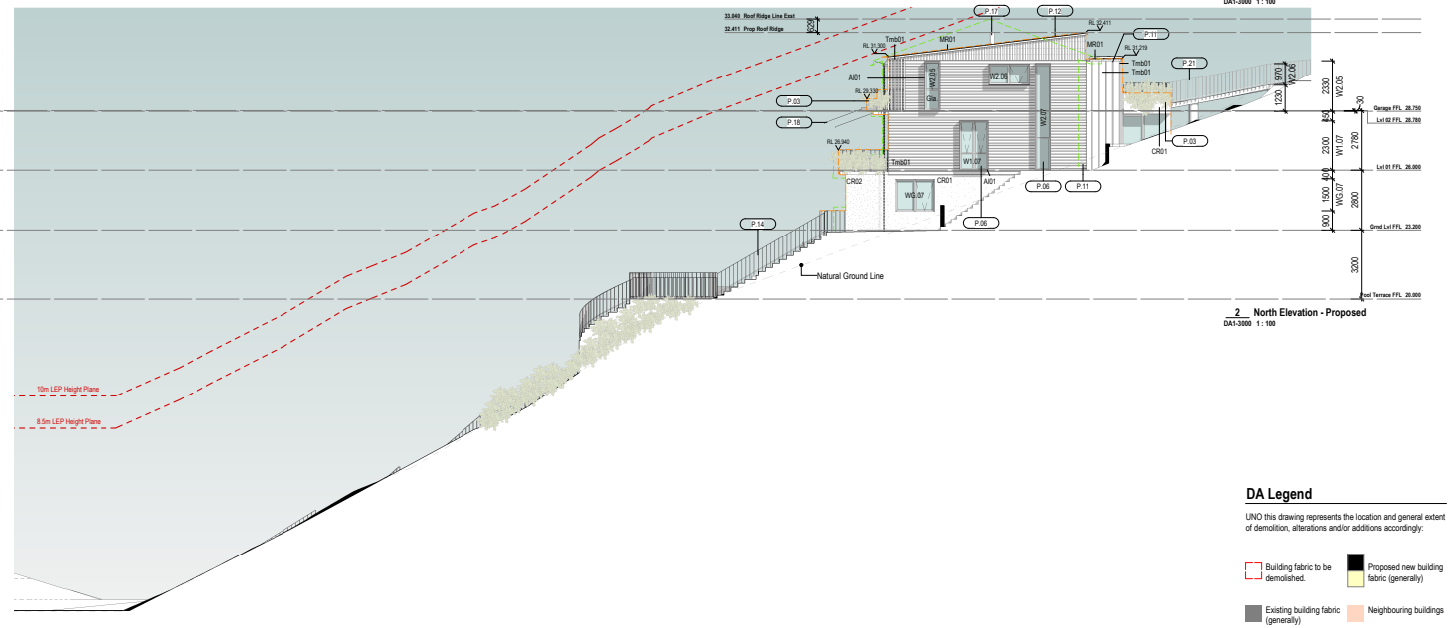
Development Application

Scale @ A1	1:100	Drawn by	Checked by
Scale @ A3	1:200	CR	CG
Project Start Date	Issue Date	Sheet Issue Date	21/12/21
Project #	2598	Zone	Disc
Drawing #	DA1-0501	Rev	07

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1 North Elevation - Existing & Demolition
DA1-3000 1 : 100



2 North Elevation - Proposed
DA1-3000 1 : 100

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01	09/10/20	Issued for Information:
02	30/10/20	Preliminary Issue
03	01/12/20	Issued to Consultants
04	11/12/20	Issued for Information:
05	06/04/21	Issued to Contractor: Issued Window Schedule to Contractor for preliminary Costing
06	19/05/21	Issued for Information: Amended Roof Design Development
07	11/06/21	Issued for Information: Amended DA Drawings
08	23/09/21	Issued to Consultants
09	05/10/21	Issued for Information: Updated DA Drawings
10	18/10/21	Issued to Consultants: Updated Development Application
11	21/12/21	Development Application Issue: Amendments for issue to council

Keynotes on Sheet	
Key Value	**Keynote Text**
De.01	Demolish exist boundary wall incl all embedded doors as windows as req to suit proposed construction in accordance with any Structural Eng req's
De.04	Demolish exist balustrade/handrail
De.05	Demolish existing retaining wall and temporarily restrain landscape for new retaining walls in accordance with landscape architect details
De.07	Remove existing roof and associated structure in accordance with Structural Eng requirements
P.03	New Planter beds in accordance with landscape architect's details
P.06	New windows and associated shading devices in accordance with approved BASIX requirements. Refer to window schedule
P.11	Proposed timber cladding to approved sample
P.12	New skillion roof with copper standing seam metal finish to approved detail to drain to copper down pipes and chain
P.14	New stair access in accordance with Landscape architect approved design. Stair to include metal balustrade/handrail in accordance with BCA requirements
P.17	Proposed fireplace and chimney flue
P.18	Proposed retractable fabric awning
P.21	New Metal balustrade to detail

DA Legend

UNO this drawing represents the location and general extent of demolition, alterations and/or additions accordingly:

- Building fabric to be demolished.
- Proposed new building fabric (generally)
- Existing building fabric (generally)
- Neighbouring buildings
- Existing building outline
- Proposed new building outline
- Site Boundary

1:100 2 5 10M

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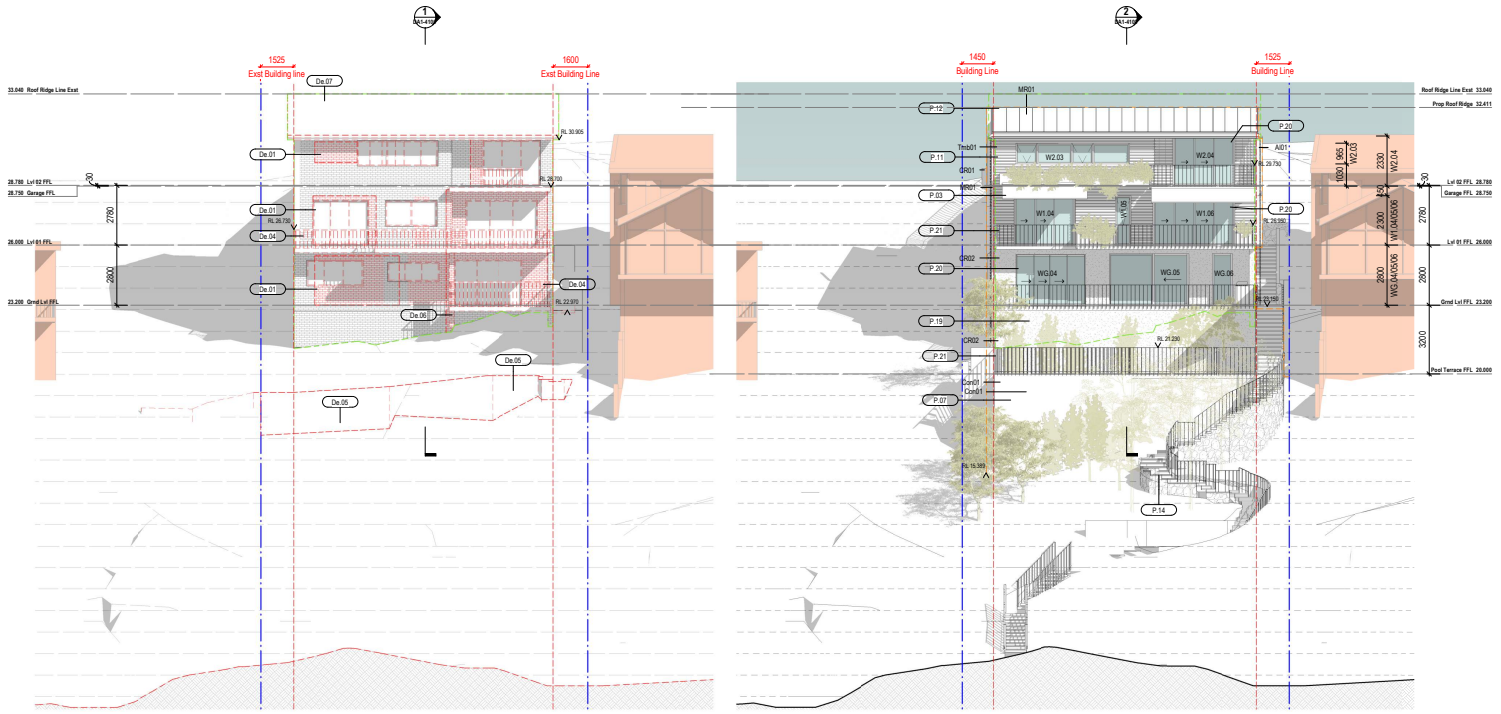
Location
253 Whale Beach Road, Whale Beach NSW 2107

Drawing
North Elevations

Development Application

Scale @ A1	1:100	Drawn by CR	Checked by CG
Scale @ A3	1:200		
Project Start Date	Issue Date	Sheet Issue Date	21/12/21
Project # 2598	Zone	Discipline	
Drawing # DA1-3000		Revision	11

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1 East Elevation - Existing & Demolition
DA1-3001 1 : 100

2 East Elevation - Proposed
DA1-3001 1 : 100

Keynotes on Sheet

Key Value	Keynote Text
De.01	Demolish exst boundary wall incl all embedded doors as windows as req to suit proposed construction in accordance with any Structural Eng req's
De.04	Demolish exst balustrade/handrail
De.05	Demolish existing retaining wall and temporarily restrain landscape for new retaining walls in accordance with landscape architect details
De.06	Cut down existing brickwork wall to suit new balcony configuration
De.07	Remove existing roof and associated structure in accordance with Structural Eng requirements
P.03	New Planter beds in accordance with landscape architect's details
P.07	Proposed swimming pool in accordance with BASIX requirements
P.11	Proposed timber cladding to approved sample
P.12	New skillion roof with copper standing seam metal finish to approved detail to drain to copper down pipes and chain
P.14	New stair access in accordance with Landscape architect approved design. Stair to include metal balustrade/handrail in accordance with BCA requirements
P.19	Proposed cement render and paint finish to approved sample
P.20	New doors to detail
P.21	New Metal balustrade to detail

DA Legend

UNO this drawing represents the location and general extent of demolition, alterations and/or additions accordingly:

- Building fabric to be demolished.
- Proposed new building fabric (generally)
- Existing building fabric (generally)
- Neighbouring buildings
- Existing building outline
- Proposed new building outline
- Site Boundary

1:100 2 5 10M

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11	21/12/21	Development Application Issue: Amendments for issue to council

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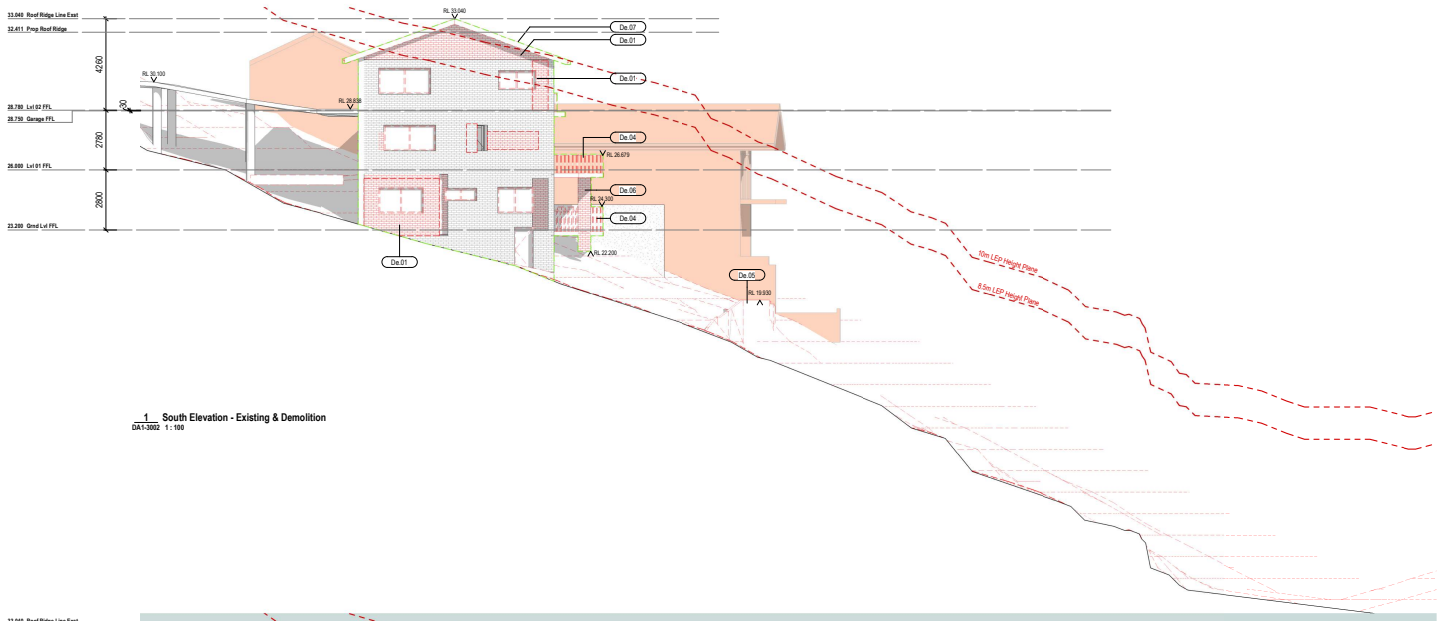
Location
253 Whale Beach Road, Whale Beach NSW 2107

Drawing
East Elevations

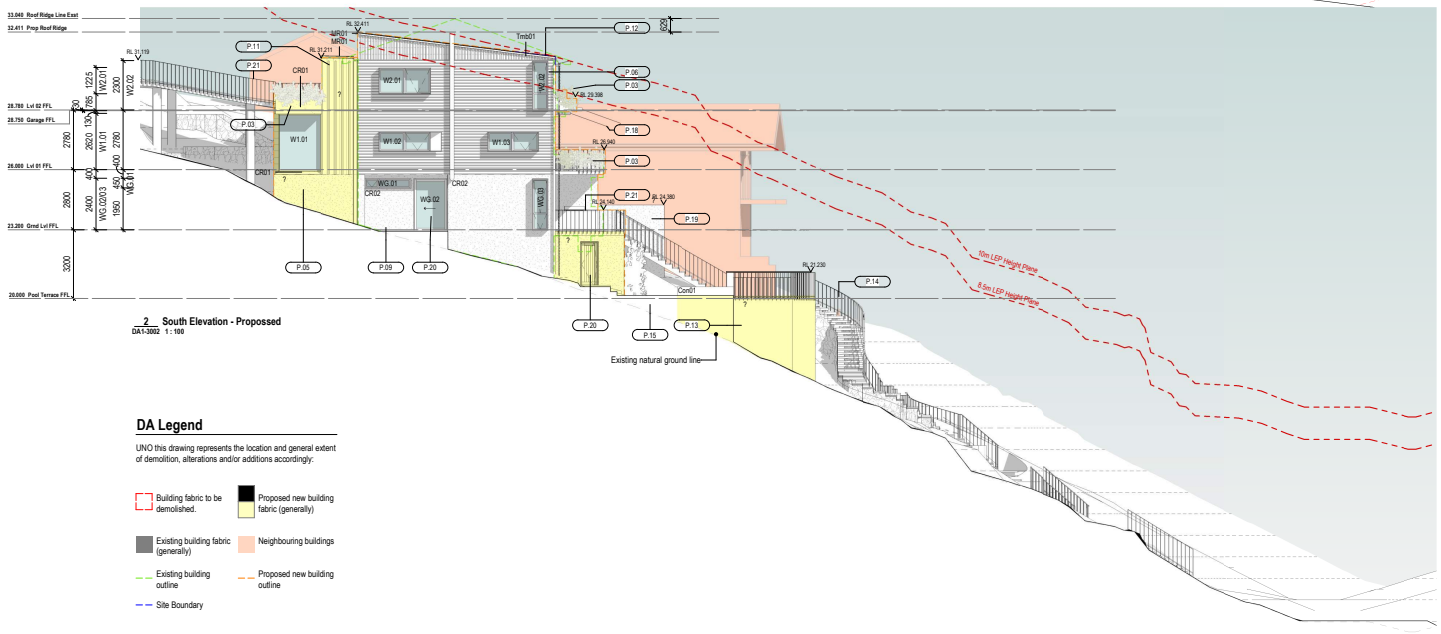
Development Application

Scale @ A1	1:100	Drawn by	CR
Scale @ A3	1:200	Checked by	CG
Project Start Date	Issue Date	Sheet Issue Date	21/12/21
Project #	2598	Zone	
Drawing #	DA1-3001	Disc	
		Rev	11

21/12/2021 5:12:37 PM



1 South Elevation - Existing & Demolition
DA1-3002 1 : 100



2 South Elevation - Propossed
DA1-3002 1 : 100

DA Legend

UNO this drawing represents the location and general extent of demolition, alterations and/or additions accordingly:

- Building fabric to be demolished.
- Proposed new building fabric (generally)
- Existing building fabric (generally)
- Neighbouring buildings
- Existing building outline
- Proposed new building outline
- Site Boundary

General Notes

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Rev	Date	Amendments
01	09/10/20	Issued for Information:
02	30/10/20	Preliminary Issue
03	01/12/20	Issued to Consultants
04	11/12/20	Issued for Information:
05	06/04/21	Issued to Contractor: Issued Window Schedule to Contractor for preliminary Costing
06	19/05/21	Issued for Information: Amended Roof Design Development
07	11/06/21	Issued for Information: Amended DA Drawings
08	23/09/21	Issued to Consultants
09	05/10/21	Issued for Information: Updated DA Drawings
10	18/10/21	Issued to Consultants: Updated Development Application
11	21/12/21	Development Application Issue: Amendments for issue to council

Keynotes on Sheet

Key Value	Keynote Text
De.01	Demolish exst boundary wall incl all embedded doors as windows as req to suit proposed construction in accordance with any Structural Eng req's
De.04	Demolish exst balustrade/handrail
De.05	Demolish existing retaining wall and temporarily restrain landscape for new retaining walls in accordance with landscape architect details
De.06	Cut down existing brickwork wall to suit new balcony configuration
De.07	Remove existing roof and associated structure in accordance with Structural Eng requirements
P.03	New Planter beds in accordance with landscape architect's details
P.05	New studio with brickwork walls to underside of existing driveway over existing deck
P.06	New windows and associated shading devices in accordance with approved BASIX requirements. Refer to window schedule
P.09	New hard surface private terrace
P.11	Proposed timber cladding to approved sample
P.12	New skillion roof with copper standing seam metal finish to approved detail to drain to copper down pipes and chain
P.13	Proposed pool deck to detail
P.14	New stair access in accordance with Landscape architect approved design. Stair to include metal balustrade/handrail in accordance with BCA requirements
P.15	Proposed grassed area and associated retaining walls to Landscape Architect detail
P.18	Proposed retractable fabric awning
P.19	Proposed cement render and paint finish to approved sample
P.20	New doors to detail
P.21	New Metal balustrade to detail

1:100 1 2 5 10M

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Humphrey & Edwards Pty Ltd | ABN 89656838227
Nominated Architect: Glenn Cunnington #6415

Project
Whale Beach Residence

Client
Barbara & Bruce Solomon

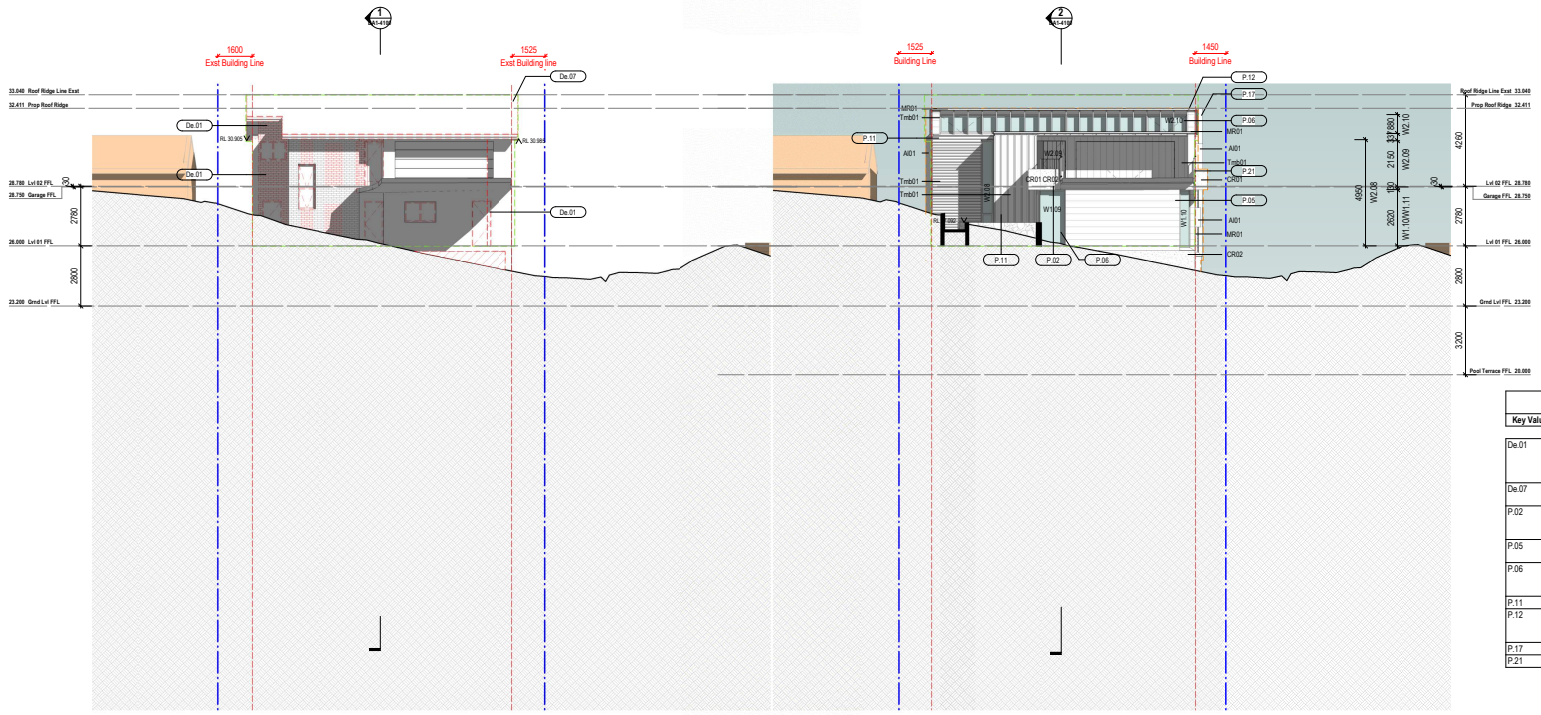
Location
253 Whale Beach Road, Whale Beach NSW 2107

Drawing
South Elevations

Development Application

Scale @ A1	1:100	Drawn by	Checked by
Scale @ A3	1:200	CR	CG
Project Start Date	Issue Date	Sheet Issue Date	21/12/21
Project # 2598	Zone	Discipline	
Drawing # DA1-3002		Revision	11

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1 West Elevation (Facing Whale Beach Rd) - Existing & Demolition
DA1-3003 1 : 100

2 West Elevation (Facing Whale Beach Rd) - Proposed
DA1-3003 1 : 100

Keynotes on Sheet

Key Value	Keynote Text
De.01	Demolish exst boundary wall incl all embedded doors as windows as req to suit proposed construction in accordance with any Structural Eng req's
De.07	Remove existing roof and associated structure in accordance with Structural Eng requirements
P.02	New concrete driveway infill to suit proposed entry configuration, studio below and circulation requirements
P.05	New studio with brickwork walls to underside of existing driveway over existing deck
P.06	New windows and associated shading devices in accordance with approved BASIX requirements. Refer to window schedule
P.11	Proposed timber cladding to approved sample
P.12	New skillion roof with copper standing seam metal finish to approved detail to drain to copper down pipes and chain
P.17	Proposed fireplace and chimney flue
P.21	New Metal balustrade to detail

DA Legend

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- Building fabric to be demolished.
- Proposed new building fabric (generally)
- Existing building fabric (generally)
- Neighbouring buildings
- Existing building outline
- Proposed new building outline
- Site Boundary

1:100 2 5 10M

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Nominated Architect: Glenn Cunnington #6415

Project
Whale Beach Residence

Client
Barbara & Bruce Solomon

Location
253 Whale Beach Road, Whale Beach NSW 2107

Drawing
West Elevations - Facing Whale Beach Road

Development Application

Scale @ A1	1:100	Drawn by	CR
Scale @ A3	1:200	Checked by	CG
Project Start Date	Issue Date	Sheet Issue Date	21/12/21
Project #	2598	Zone	Disc
Drawing #	DA1-3003	Rev	10

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Colco Consulting Pty Ltd

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2 May 2022

To Northern Beaches Council
Council Offices
Pittwater Road
DEE WHY NSW 2099

Attention - Principal Planner Adam Susko

Clause 4.6 Application to Vary Pittwater LEP Development Control for breach of the 10m maximum height control - 253 Whale Beach Road Whale Beach -

Development Application No. DA2022/0122 for alterations and additions to the existing dwelling at No.253 Whale Beach Road Whale Beach - rearrangement of internal spaces, additions, new terraces, steps, pool and retaining walls. Lot 169 in DP 15376, land area 828.30m2. The existing building fabric is retained.

1.0. Introduction and Summary – Varying of Height Control

1.1. This application relates to an anomaly wherein the existing dwelling walls and wall heights are retained but the existing pitched roof is replaced with a lower skillion roof. The proposed alterations are 629mm lower in overall height than the existing pitched roof.

The existing dwelling at the southeast corner breaches the height control but is deemed to be compliant as existing prior to the current PLEP. The height of the southeast corner does not change, however due to the existing roof being replaced then Council requires a Clause 4.6 Application to vary the control as confirmed by council planner Adam Susko by email of 28 April 2022. In responding to our email explanation of 19 April, Adam Susko states in part (our Italics):

- *Thanks for your email below explaining where the height discrepancy has arisen from. I accept your explanation of the error and concur with this.*
- *Council requires a Clause 4.6 Variation Request to be submitted on the basis of variation sought to Clause 4.3 of the Pittwater LEP 2014. The building, whilst existing, is proposed to undergo a significant renovation and exceeds the height limit.*

1.2. A revised set of drawings including an enlarged 3D perspective was forwarded to council on 19 April and an extract below showing the existing and the proposed which highlight the existing “breach” and the proposed breach are shown in Fig. 1.0-3 above.

1.3. The reality is that the southern and eastern upper walls remain as per the existing dwelling with a new roof form – the height is not increased at the south-eastern point and the overall building height is significantly reduced.

1. The proposal retains the existing walls, wall height and height of the roof edge at the southeast corner.
2. The existing walls and height exceed the current LEP height control, however as they are existing prior to the PLEP, they are therefore “Deemed to comply”.
3. The new roof form lowers the height from that of the existing pitched roof. But the height remains the same at the south-eastern corner.
4. The roof design is a simple skillion replacing the existing higher pitched gable roof. The skillion is an essential component of the architectural style.
5. If the existing roof had been retained then it would be deemed to comply apply, there would be no breach and a clause 4.6 application would not be required.
6. The proposal results in an improved environmental outcome and an improvement in architecture and liveability.

1.4. Authority - the authority to contravene a development standard is contained in clause 4.6 of the Pittwater Local Environmental Plan 2014 (PLEP). This clause 4.6 application is submitted to support the development application and Vary Development Standards as stated – Exceptions to Development Standards for non-compliance with the numerical control for maximum height - PLEP Clause 4.3.

1.5. Objectives of Clause 4.6. The objectives and purpose of clause 4.6 are:

- Provide an appropriate degree of flexibility in applying LEP numerical development standards on a merit basis provided the consent authority is satisfied there are good reasons to substantiate a variation and that the application appropriately justifies the varying of the control/s.
- Achieve better outcomes from development by allowing flexibility in particular circumstances.

The clause requires a written submission to justify the contravention of the development standard by demonstrating that compliance with the standard is unreasonable or unnecessary; and there are sufficient environmental planning grounds to justify contravening the development standard.

1.6. The subject site is - Zoned C4 Environmental Living. Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

1.7. Applicable Height Control – Pittwater LEP 2014 clause 4.3(2D) – 10 metres

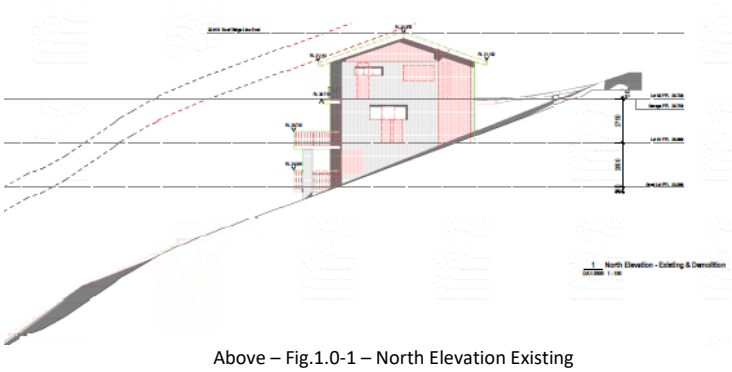
The Maximum Height and slope of the land is 8.5 metres and 10 metres above ground level existing for steeply sloping land – clause 4.3 and 4.3(2D). Clause 4.3(2D)(d) of the Pittwater Local Environmental Plan 2014 provides that if the slope of the land where the proposed building footprint exceeds 16.7 degrees (30%) the height may be up to 10 metres. This is a steeply sloping site.

The slope of the subject land as it drops down to the east in the building footprint area varies from 21.22 degrees to 21.66 degrees. This represents an extreme slope and meets the Pittwater LEP criteria for increased height for the site of up to 10 metres, subject to compliance with the Zone E4 Environmental Living Objectives and Palm Beach Locality Statement. **We conclude that:**

- The proposal complies with the PLEP E4 Objectives and the Locality statement, and invokes the height control of up to 10 metres above ground levels existing under the provisions of clause 4.3(2D) of the Pittwater Local Environmental Plan 2014. The applicable height control is 10 metres.
- The proposal is essentially the same building envelope with a lower overall roof height,
- The proposal retains the existing walls on the south-eastern corner but due to replacing the existing pitched gable roof the new skillion it technically breaches the control at that location.

1.8. Proposal

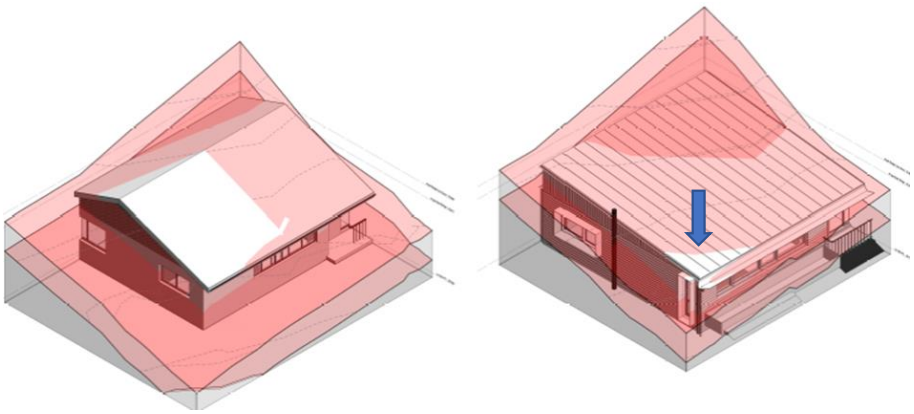
The proposal primarily comprises internal rearrangements, new front elevation and rear elevation, and new roof form as shown in the DA drawings and following drawing extracts.



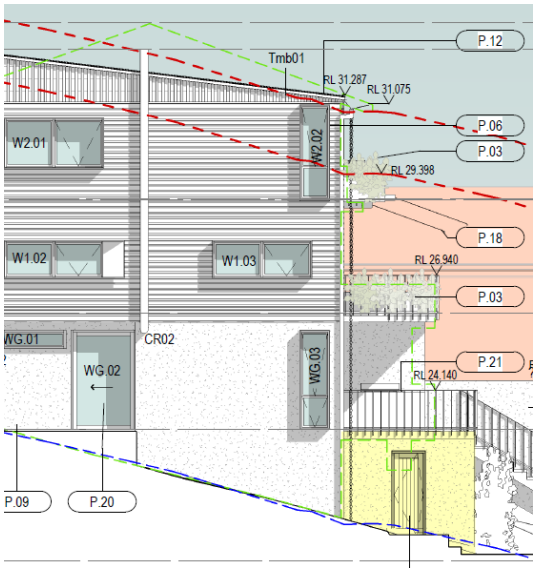
Above – Fig.1.0-1 – North Elevation Existing



Above – Fig. 1.0-2 North Elevation Proposed



Above – Fig. 1.0-3 Southeast corner 3D drawings - Existing and Proposed showing extent of breach coloured white. The proposed roof height is 629mm lower than the existing roof ridge height.



Above – Fig. 1.0-4 Southeast corner elevation drawing - Existing and Proposed showing extent of breach above the 10metre height control – varying from NIL to 397mm.

1.9. The proposed development has been assessed in our Statement of Environmental Effects with the conclusion that the proposal complies with applicable statutory planning objectives and numerical controls – except for what

we consider a minor breach as outlined in this application. In our opinion, there a no negative amenity or environmental impacts resulting from the breach in height.

1.10. This application seeks to vary the clause 4.3 numerical height control of 10 metre to allow the small variation on the south-eastern corner as shown I Figs. 1.0-3 and 1.0-4 above.

1.11. Concurrence of the Director-General

NSW Department of Planning Circulars, advise the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. Given the consistency of the variation to the objectives of the zone, we consider the concurrence of the Director-General may be assumed in accordance with authority delegated to Council.

2.0. Site and locality.

2.1. Details are contained in our Statement of Environmental Effects submitted with the development application. The property is located on the eastern (low) side of Whale Beach Road just south of Morella Road. Whale Beach Road is sealed and has concrete constructed kerbs and gutters. The subject site drops significantly down the site to the east where it joins the Whale Beach Foreshore Reserve and Whale Beach. There is also a significant cross fall to the south and to the council drainage reserve. The site is located on an east/west axis and enjoys significant views to Whale Beach below and out beyond to the Tasman Sea/South Pacific Ocean and along the coastline.



Fig. 2.0-1 – Existing dwelling and properties behind. No existing views will be impacted by this proposal.

2.2. The Site is an irregular pentagon in shape dropping away steeply from Whale Beach Road eastwards where it meets the Whale Beach Reserve and also dropping steeply across the site to the south towards the drainage reserve adjoining. Refer to survey document and extract below in Fig. 2.0-2.

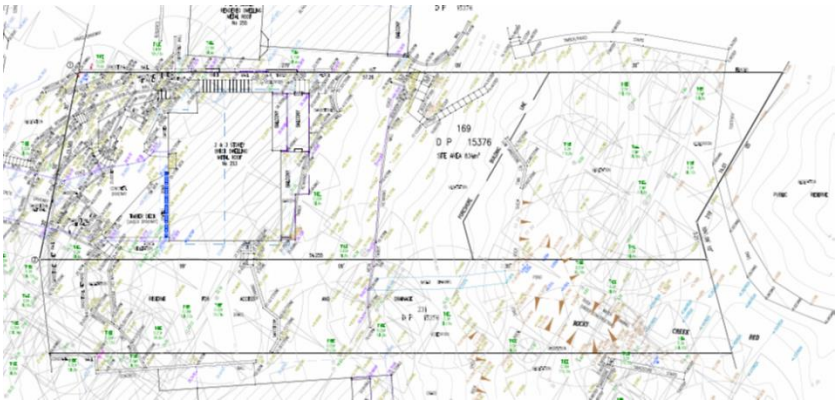


Fig. 2.0-2 – Extract from site survey. Note: The land adjoining to the south is a council drainage reserve 7.62m wide

2.3. Dimensions and area of the land are shown in the following table:

Frontage – 15.565 metres	Rear – 14.01/3.21 metres
Northern side boundary – 57.26 metres	Southern side boundary – 54.255 metres
Site area – 834m2	
Steepness of site over building area	Varies from 21.22 degrees to 21.66 degrees and also falls away steeply to the south. It is a steeply sloping site as defined in clause 4.3(2D) of the PLEP 2014. Refer to Fig. 2.0-3 below.

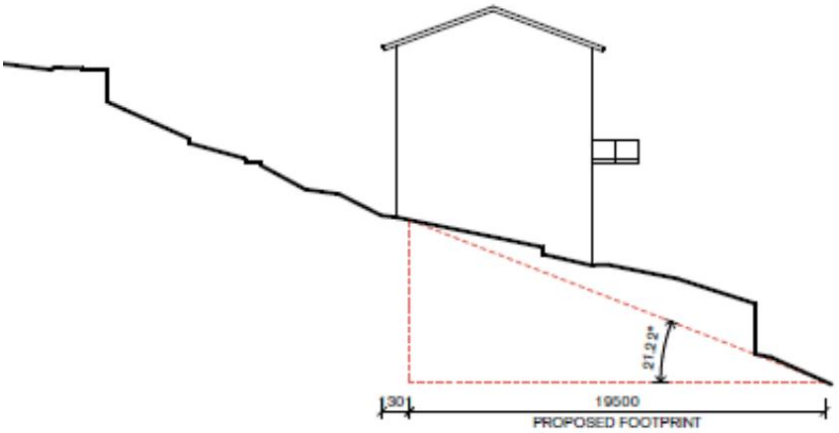


Fig. 2.0-3 – Demonstrates existing dwelling and the proposed footprint including pool. The steepness of the land varying from slope of 21.22 degrees to 21.66 degrees over the proposed footprint.

2.4. The immediate adjoining and surrounding locality is characterised by – a variety of architectural styles and size of dwellings addressing difficult sloping sites:

- Recent developments have replaced older houses with substantial large multi-level residential dwellings either stepping up the high side or stepping down the slope on the low side of Whale Beach Road - two-storeys and three-storeys with overlaps appearing as part four storeys in places.
- Allotments being relatively narrow, long, and steeply sloping steeply up and down from the road with houses therefore constructed across the maximum width of the allotments and close to the road access.
- Houses on the high side are stepped up and into the hillside with parking structures either close to the front boundary or have steeply sloping driveways up or down the slope.
- Houses on the low side are located close to the road, stepped down the hillside and cut into the land with garages located on, or close to, the front alignment within the setback area.
- Newer dwellings are mostly two-storeys and three-storeys with overlaps appearing as three (3) or four (4) storeys of a variety of styles on steep hillside allotments. Inspection reveals about two-thirds of houses along Whale Beach Road are visually three storeys and, in some instances, quite prominently so.
- Houses along the low side have roof forms dominating the streetscape where roofs are often visible behind dense tree growth along Whale Beach Road.
- Parking along Whale Beach Road is restricted with limited parking available and large crowds visiting the popular location particularly during the summer months. On-street parking is difficult.
- Views from houses on the high side of Whale Beach Road tend to be over vegetation, trees and houses and garages on the low side of the road to parts of the beach and Ocean beyond.
- Views from the road to the beach are mostly restricted to the ocean and headlands.

3.0. Exceptions to LEP development standards – NSW Land and Environment Court Judgements.

In preparing this clause 4.6 application we had regard to relevant L&E Court judgements including –

Winton Property Group Limited v North Sydney Council [2001] NSWLEC 46; and *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; and judgement Randwick City Council v Micaul Holdings Pty Ltd [2016]; and Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118; and Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 ('Al Maha'); and L&E Court judgement in Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61; and the NSW Court of Appeal in RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

We are not lawyers, and our understanding of these judgments is they related to confusion and tension as to the matters that must be addressed and satisfied in a clause 4.6 application and the extent of satisfaction in the eyes of a consent authority. We understand that the legal principles were settled in the 2019 Court of Appeal judgement (RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.). We note the advice stated in an article published by Lindsay Taylor Lawyers on 5 August 2019 which appears to summarise the legal situation. We quote in part as follows (our Italics):

"On appeal, the applicant argued that Moore J had misconstrued and misapplied cl 4.6 by finding that to 'adequately address' the matters required to be demonstrated in cl 4.6(3), the request had to actually demonstrate those matters, rather than merely seek to demonstrate those matters.

The Court rejected this argument. After setting out Preston CJ's conclusions in Baron Corp, the Court reaffirmed (at [51]):

… in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).

"In our view, the decisions in Baron Corp and RebelMH make clear that the position set out in Al Maha is now the settled law on cl. 4.6 requests. A request under cl. 4.6 will only adequately address cl. 4.6(3) if the consent authority is satisfied that the matters have in fact been demonstrated. This is, in our view, a different test and a higher standard than was required under the test in Initial Action."

4.0. PLEP 2014 Height Non-Compliance and Justification

4.1. PLEP Clause 4.3 – Maximum Height – 10 metres above ground levels existing. The proposal complies with the maximum height control over the whole of the development other than the breach at the south-eastern corner of the roof as outlined in detail in paragraphs 1.8 of this application and Figs. 1.03 and 1.04 above. There is no increase in the height of the existing walls and roof at this point, however, as the roof form is changed it is apparently perceived as a breach in what appears to be an anomaly. It is noted that the overall height compared with the existing ridge height is a reduction of 692mm.

4.2. The height plane has been measured in accordance with the definition of ground level existing and has been determined by surveyed levels (RLs) by a registered surveyor and cross checked by the project architects. Similarly, the RLs of the neighbouring buildings have been determined and related to the subject proposal.

4.3. Impact on Views - View sharing. The topography of the site and the locality varies due to the landform sloping from Whale Beach Road above towards Whale Beach. Existing dwellings and development varies on the high side and low side of the road, and again along the waterfront. The proposed height breach does not interfere with views. The view analysis assessment in our Statement of Environmental Effects concludes –

1. The existing house structure and side setbacks are retained with the roof height lowered by 629mm. proposed additions are located at the lower front and lower rear areas well below any view corridors.

2. Existing views are maintained. A formal view impact assessment is not necessary. Compliance with the principles and the objectives of view sharing are achieved - maintenance of reasonable view sharing to owners and neighbouring dwellings with views and vistas from roads and public places to water, headland, beaches, and bush views maintained.

4.4. Proposed variation Summary - Table

LEP Requirement	10 metres
Proposed	The southern and western parts of the proposal fully comply with the numerical height control with the breaches varying as the land drops down to the east. The breach for the roof varies from NIL up to 397mm (3.97%)
Is the planning control in question a development standard?	Yes
Is the non-compliance relating to the clause requirement a Numerical and/or Performance based variation?	Numerical
Numerical variation as a % variation to the requirement	**3.97% over a small area.**

4.5. Relevant Questions and Assessment

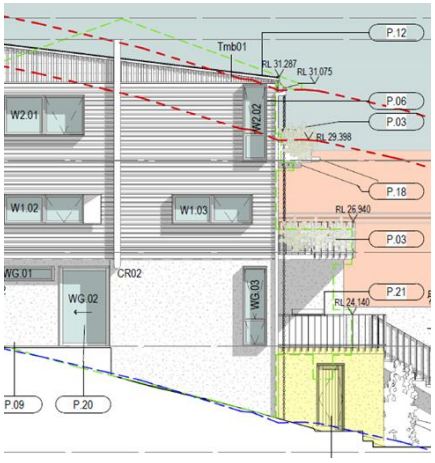
The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the Pittwater Local Environmental Plan 2014. Relevant questions and response follow.

Q1. Is the planning control in question a development standard?

Yes - the prescribed Height of buildings limitation pursuant to Clause 4.3 of the PLEP 2014 is a development standard.

Q2. What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PELP 2014 and response are shown in the Table below:

The objectives of clause 4.3 are:	**Response**
(1) The objectives of this clause are as follows— (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality, (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development, (c) to minimise any overshadowing of neighbouring properties, (d) to allow for the reasonable sharing of views, (e) to encourage buildings that are designed to respond sensitively to the natural topography, (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items. (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. (2A) Despite subclause (2), development on land— (a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and (b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level. (2B) Despite subclause (2), development on land— (a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and	1. Compliance with the applicable PLEP maximum height of 10 metres above ground levels existing complies throughout other than the minor breach at the south-eastern corner which is noted to be the same as existing. 2. The breach in height is shown in Figs. 1.03 and 1.04 above and below: 

(b) that has a maximum building height of 11 metres shown for that land on the Height of Buildings Map, may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level. (2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2. …….. (2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if— (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and (b) the objectives of this clause are achieved, and (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.	3. There are no negative impacts on either public or private views and the proposal complies with the planning objectives for view sharing. 4. Bulk and scale are similar to the existing dwelling with a lower roof height, less than many existing dwellings and consistent with the locality. Existing dwellings in the locality vary considerable in architectural style, size, bulk and scale. ***5. Conclusion: The replacement of the existing higher pitched gable roof with a lower skillion roof is a critical element to the architectural style. There are no neighbouring dwellings immediately to the south and the height breaches have no negative impacts on neighbours or the adjoining public reserve. Objectives are achieved.***

Q3. What are the underlying objectives of the zone?

Objectives and response are shown in the Table below:

The objectives of the zone C4 Environmental Living are:	Response
Objectives of zone • To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. • To ensure that residential development does not have an adverse effect on those values. • To provide for residential development of a low density and scale integrated with the landform and landscape. • To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.	1. The development is permissible and consistent with the aims and objectives of the Pittwater LEP 2014 and the Land Zone objectives. Provides for the housing needs of the community in a low-density and low-impact environment. 2. The bulk and scale of the building is low-impact and consistent with the planning objectives of the zone, the locality and neighbouring properties. 3. The proposal provides a residential dwelling and character with building structures at a height, bulk and scale consistent with the sloping site and locality. 4. The dwelling will sit comfortably in a landscaped setting and is compatible with the existing visual character of the area. 5. The proposal fully complies with the numerical height control other than the breach on the south-eastern corner varying as the land drops down to the east and south. The breach for the roof at that point varies from NIL and up to 397mm. 6. The proposal makes excellent reuse of the existing older style dwelling. ***7. Conclusion: The proposal minimises any adverse effects of bulk and scale on the land and in the locality. The relatively minor height breaches are at the eastern part of the dwelling, do not interfere with views or amenity and would not be apparent to an observer.***

Q4. Is the variation to the development standard consistent with the objectives of Clause 4.6 of PLEP 2014?

Objectives and response are shown in the Table below:

The objectives of clause 4.6 are:	Response
1. The Objectives are: a) to provide an appropriate degree of flexibility in applying certain development standards to particular development. (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances. 2. Consent for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. (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.*	1. The proposal is a modern upgrade of an existing older style dwelling with the new roof design worthy of an appropriate degree of flexibility in applying the numerical height control for the reasons stated in this application. We also note that the proposed roof is lower than existing and that if the existing roof was to be retained then there would be no breach as the existing would be deemed to comply. 2. The bulk and scale of the building is low-impact and consistent with the planning objectives of the zone, the locality and neighbouring properties. 3. The proposal provides a residential dwelling and character with building structures at a height, bulk and scale consistent with the sloping site and locality. 4. The dwelling with will sit comfortably in a landscaped setting and is compatible with the existing visual character of the area. ***5. Conclusion:*** ***- The proposal minimises any adverse effects of bulk and scale on the land and in the locality. The relatively minor height breach is an anomaly and does not interfere with views or amenity and would not be apparent to a casual observer. The proposal is worthy of an appropriate degree of flexibility in applying the numerical height control.*** ***- Flexibility is appropriate and should be applied in this circumstance to achieve excellence in architectural design and amenity for the residents while resulting in no negative impacts on neighbours and locality*** ***- The application has adequately addressed the matters required to be demonstrated by subclause (3). In this circumstance strict compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the standard.***

Q5.How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Response:
1. The proposal is for alterations and additions to an existing dwelling approved and constructed many years ago prior to the PLEP 2014. The existing southern and eastern walls are retained, and the height of the subject breach is the same as existing at the south-eastern corner, however the new roof form invokes a technical breach.

2. Strict compliance with the height control is illogical and would result in retaining the existing higher pitched gable roof which is significantly higher than proposed. Strict compliance would serve no useful purpose.

3. The proposal does not result in environmental or amenity negatives.

Conclusion: A requirement to strictly comply with the numerical controls is unnecessary and would result in negative architectural impacts with the retention of the existing roof heights and form with no apparent benefits being achieved. The variations sought result in no loss of views or negative environmental impacts, and achieves a better outcome by lowering the existing ridge height and presenting a modern new architectural form. The proposal is worthy of consent.

Q6 .Does the noncompliance with the development standard raise any matter of significance for State or Regional Environmental Planning**?**

Conclusion: The non-compliances do not raise any matter of significance.

5.0. Conclusion

1. This application submits that the variation for the minor technical breach of height is justified in the circumstances and should be accepted. The simple skillion roof design is an important element to the architectural integrity of this dwelling and location. The breach of the PLEP height on the south-eastern corner of the roof is reasonable, appropriate, and justified in achieving the planning objectives and architectural outcome. The breach achieves a desirable outcome.

2. The variation is minimal over a small area, the same height as the existing roof at that point, and will not result in any negative environmental or amenity outcomes. Strict compliance is unnecessary in the circumstances of the case:

- The proposal is consistent with the objectives of the building height standard, the zoning of the land when assessed against each individually, and as a whole.
- The proposal is in the public interest for the reason that it achieves the relevant planning objectives, and has no negative environmental impacts.
- The clause 4.6 application adequately address cl. 4.6(3) and the consent authority should be satisfied that the matters have in fact been demonstrated.

3. It is necessary for the consent authority to determine that the written application request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3). It is a matter for the consent authority to form such opinion that this Clause 4.6 application justifies acceptance of the noncompliance. We suggest the consent authority should have no difficulty in being satisfied that this application demonstrates:

- Compliance with the PLEP Objectives and Maximum Height objectives.
- The development standard is unnecessary and unreasonable in this circumstance, and results in a desirable architectural outcome.
- There are sufficient environmental planning grounds to justify contravening the standards, and
- The development is in the public interest because it complies with the Zone objectives, and the height objectives and there would be no public benefit derived from maintaining the numerical development standard.

Yours faithfully,



Wayne Collins
Director

Qualification/Disclaimer

This report, Statement of Environmental Effects (SEE), is based on information provided by the instructing party and relates only to the information provided at the date of issue of this report and planning legislation applicable at that date. Colco has made what it considers reasonable enquiries in preparing this report; however, it cannot confirm the accuracy of architectural drawings or supporting consultant's specialist reports. Colco accepts these documents in good faith. The Statement of Environmental Effects is for the benefit of the client in regard to a development application for development on the subject site and not for any other purpose. Colco cannot forecast an outcome of a consent authority.

Colco, officers, and staff were required to make judgements on matters which are or may be incapable of precise assessment – being subjective in which others may reach a different conclusion. The statements, opinion and conclusions expressed in this report are made in good faith, reasonable belief they are correct and not misleading; and always subject to the limitation of accuracy of instructions and documents provided. Colco disclaims all liability to the extent permitted by law.

ITEM 3.3	**MOD2022/0008 - 1 - 2, 25 BATTLE BOULEVARDE SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT DA2021/0227 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING WITHIN A DETACHED DUAL OCCUPANCY DEVELOPMENT, INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/407052**
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 applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. THAT Council as the consent authority **approves** Development Consent to Mod2022/0008 for Modification of Development Consent DA2021/0227 granted for alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool on land at Lot 1 SP 21645, 1 / 25 Battle Boulevarde SEAFORTH, Lot 2 SP 21645, 2 / 25 Battle Boulevarde SEAFORTH, Lot CP SP 21645, 25 Battle Boulevarde SEAFORTH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0008

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 SP 21645, 1 / 25 Battle Boulevarde SEAFORTH NSW 2092 Lot 2 SP 21645, 2 / 25 Battle Boulevarde SEAFORTH NSW 2092 Lot CP SP 21645, 25 Battle Boulevarde SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2021/0227 granted for Alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 21645
Applicant:	Edwina Nelson Wills

Application Lodged:	14/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	24/01/2022 to 11/02/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 18.8%
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify DA2021/0227 for Alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool.

No submissions were received in response to the notification of the application.

The proposal does not increase to the approved roof ridge or overall building height, but includes new works exceeding the height of buildings development standard by greater than 10%. As such, the application is referred to the Development Determination Panel.

The development proposes a building height of 10.1m, resulting in a variation of 18.8% (1.6m) to the 8.5m control. Notwithstanding that the subject application is made under S4.55 (2) and Clause 4.6 does not strictly apply, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C3 Environmental Management zone.

Despite the proposed building height and DCP built form non-compliances, the proposal maintains a compatible visual relationship with surrounding development and will not result in adverse amenity impacts to surrounding properties.

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 proposed modification seeks consent for changes as follows:

Ground floor

- Reconfigure Bed 01, WIR & ensuite, minor change to Study wall
- New juliet balcony to Bed 01
- New entry porch

First floor

- Reconfigure & extend Bed 02 & ensuite 02 to create new WIR 02
- Reconfigure & extend Bed 03 with new balcony
- Reconfigure & extend Bed 04 to create new ensuite 04 & WIR 04
- Replace store with reconfigured study
- New timber batten screens to east and west elevations

External

- Replace existing tile roof with new zinc roof. The roof form is altered but maintains the approved ridge height (RL20.99).
- New vaulted dormers to Bed 02, Bed 04 and stair void
- Changes to windows and doors
- Relocate existing solar panels

No change is proposed to the approved lower ground floor, pool, outdoor dining area or landscaped areas.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
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 - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1 SP 21645 , 1 / 25 Battle Boulevarde SEAFORTH NSW 2092 Lot 2 SP 21645 , 2 / 25 Battle Boulevarde SEAFORTH NSW 2092 Lot CP SP 21645 , 25 Battle Boulevarde SEAFORTH NSW 2092
Detailed Site Description:	The subject site is identified as 1/25 Battle Boulevarde, Seaforth (Lot 1, SP 21645). The site is also known as 25 Battle Boulevarde; the allotment forms part of a strata-subdivided dual occupancy, with the other allotment/dwelling known as 2/25 Battle Boulevarde / 25A Battle Boulevarde. The site is located on the lower/southern side of Battle Boulevarde. The site is a battle-axe allotment with a single road frontage at the northern boundary; both side boundaries adjoin residential allotments and the rear boundary adjoins a public waterway (Middle Harbour). The site is an irregularly-shaped allotment; the area of Lot 1 is 1,113m2 while the total area of the site is approximately 1,387.3m2. The site is steeply sloped, with a maximum front-to-rear downhill slope of approximately 39 metres. The

	rear of the site sits atop a small cliff/overhang with a height of approximately nine metres. The majority of the site is located within the C3 Environmental Management zone under MLEP 2013, with sections of the rearmost part of the site being unzoned. Parts of the northern and eastern boundaries adjoin R2 Low Density Residential sites, the eastern and part of the western boundaries adjoin C3-zoned sites and the waterway to the rear of the site is unzoned. Part of the rear of the site contains a local heritage item, which is identified by Schedule 5 of MLEP 2013 as Item I1 (Harbour foreshores); this heritage item follows the shoreline, and due to the irregular shape of the site it both bisects the southwest corner of the site and straddles other sections of the rear boundary. The front/northern boundary of the site also adjoins another heritage item identified by Schedule 5 of MLEP 2013 as Item I266 (Retaining wall). The site is not located within a heritage conservation area. Existing developments on the site are as follows: 1/25 (i.e. 25) Battle Boulevarde contains a three-storey dwelling house, which includes a semi-basement level and a level that is semi-enclosed within the roof. There is also a large/levelled terrace and associated retaining walls on the easternside of the dwelling. A pathway to the north of the dwelling and an inclinator adjacent to the western boundary also provides access to this allotment. Car parking for the allotment is located atop of development at 2/25 Battle Boulevarde (see below). 2/25 (i.e. 25A) Battle Boulevarde contains a three-storey dwelling house with rooftop parking for both dwellings above. As Lot 2 directly adjoins the Battle Boulevarde road reserve, pedestrian access is directly obtainable from the street. Development at the rear of the site below the aforementioned cliff includes mooring bay, jetties and a single-level boathouse. **Detailed Description of Adjoining/Surrounding Development** All adjoining C2/R2-zoned allotments contain detached multi-storey dwelling houses and associated structures (e.g. swimming pools). Development within residential-zoned areas on the northern side of Middle Harbour consists predominately of low-density residential development (i.e. detached dwellings of varying sizes and associated structures).

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:

DA2021/0227 - Alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool - Approved 16/06/2021 by NBLPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/0227, 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 DADA2021/0227 for the following reasons: • The overall form of the approved dwelling (in terms of height, gross floor area, setbacks, number of levels, etc.) will not be significantly altered by the proposed modifications. • Despite changes to the first floor level, the overall layout of the dwelling (including quantitative considerations such as the number of bedrooms, car parking spaces, etc.) will not be substantially altered. • Landscape areas will remain unchanged, and overall open space areas will continue to be provided. • The proposed modifications will not result in notable qualitative changes to the development, in terms of visual bulk, solar access, privacy, view loss, etc.
(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 DA2021/0227 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
(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	There are no current draft environmental planning instruments.
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 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.

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 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

The application of existing use rights as a dual occupancy was established in the assessment of the previously approved development, DA2021/0227. There is no evidence that the lawfully approved use of the site as a dual occupancy has ceased at any point prior to or since that approval.

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 24/01/2022 to 11/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	**Supported without conditions.** The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2021/0227).
NECC (Coast and Catchments)	**Supported without conditions.** 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.
Parks, reserves, beaches, foreshore	**Supported without conditions.** The application is for modification to development consent DA2021/0227, seeking minor changes to the approved internal layout, balconies, windows, materials and roof. Parks, Reserves and Foreshores raise no concerns.
Strategic and Place Planning (Heritage Officer)	**Supported with conditions.** <u>Planning Comment</u> A condition requiring photographic archival recording of the existing of the dwelling, including its site and its context was imposed under DA2021/0227 and remains applicable to the modified development. HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site adjoins two heritage listed items, listed in Schedule 5 of Manly

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
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Local Environmental Plan 2013. The site is also located within the Manly Foreshore Scenic Protection Area.

Item I266 - Retaining wall - Battle Boulevarde

Item I1 - Harbour foreshores - Municipal boundary adjacent to the Harbour

Details of heritage items affected

Details of the heritage items, as contained within the Northern Beaches Heritage Inventory, are:

Item I266 - Retaining wall
<u>Statement of significance:</u>
The Battle Boulevarde Retaining Wall is a representative example of historical infrastructure built by the Municipal Council of Manly. It provides evidence of the high quality of urban elements in the premodern period in this area.
The stone retaining wall is aesthetically distinctive and presents a landscape feature of the vicinity.
The stone retention wall demonstrates high standards of material quality and duration in public works of the past century.

Item I1 - Harbour foreshores
<u>Statement of Significance:</u>
Natural landscape type - Aesthetic.
<u>Physical Description:</u>
Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.

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 modifications to an approved development application DA2021/0227, including internal layout
</td></tr>
</table>

Internal Referral Body	Comments
	reconfigurations, extensions to the first floor layout, changes to the ground floor windows, roof material and dormer windows. The existing dwelling on the subject site dates back to early 1900s and despite the earlier alterations and additions some of the original features are still discernible; such as the sandstone external walls, shingle wall cladding, bay windows, original roof form and chimney. The approved DA drawings were considered to recognise these features and respond positively to its historic context. However, the proposed modifications to the approved consent are considered to make no reference to the established setting and does not respond to the historic context by removing the original roof form. The proposal diminishes the historic identity and integrity of the existing building when viewed from the harbour. Therefore, from a heritage perspective, the proposal is considered not acceptable in its current form. Heritage requires amendments to the proposal to demonstrate respect for the building's historic identity and context by retaining and preserving any original fabric possible, including the original roof form. **Amended comments - 23 May 2022** An addendum heritage report (by JOHN OULTRAM HERITAGE & DESIGN - dated 17 May 2022) has been submitted in support of the changes to the approved Development Application and the report concludes that the "*the property would not meet any of the Heritage Manual criteria for identification as a place of local significance due to the level of change that has occurred".* This conclusion is not fully supported by Heritage, however, given the property is not heritage listed and the proposal retains some original fabric and maintains a similar bulk and scale to the existing property, the impact of the proposal on the existing context and the heritage items within the vicinity is considered manageable. Heritage will condition that a photographic archival recording of the existing of the dwelling, including its site and its context be undertaken to Heritage NSW standards, for research and archival purposes. Therefore, no objections are raised on heritage grounds, subject to one condition. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
	Further Comments
	COMPLETED BY: Oya Guner, Heritage Advisor

Internal Referral Body	Comments
	DATE: 09 February 2022, Revised 23 May 2022

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	The proposal was referred to the Aboriginal Heritage Office who provided a response stating that the proposal is acceptable subject to the previously imposed conditions of consent, which remain applicable to the modified development.

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. A393000_03 dated 6 December 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The proposed changes are located generally within the approved development footprint and do not alter the previous assessment against the provisions of the SEPP. Council's Coastal Officer raised no objection to the proposed modification.

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
Height of Buildings:	8.5m	10.1m	10.1m	18.8%	No
Special height provisions	RL 39.98	RL 20.99	Unchanged	N/A	Yes
Floor Space Ratio	0.4:1 554.92m²	0.34:1 472.5m² (No. 25: 344.8m², No. 25A: 127.7m²)	0.35:1 489.4m² (No. 25: 361.7m², No. 25A: 127.7m²)	N/A	Yes

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.1m
Percentage variation to requirement:	18.8%

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 4.3 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 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 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 height of buildings development standard and the underlying objectives of the C3 Environmental Management 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 circumstances of the case,

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The proposal relates to an existing dwelling that exceeds the building height control and does not increase the overall height of the existing building;
- The dwelling is offset from those on adjoining properties;
- The additional gross floor area and building bulk will not adversely impact the amenity of adjoining properties or the scenic quality of the foreshore area.

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 modification improves the amenity and usability of the existing/approved first floor level without further additions beyond the building footprint;
- The proposal seeks to retain the attic-style appearance of the existing/approved first floor, while minimising amenity impacts to surrounding properties.

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.

4.3 Height of buildings

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

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

Comment:

The proposed works beyond the building height control will not result in excessive or unreasonable visual bulk, and the modified development remains compatible with the desired character of the locality.

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

Comment:

The proposed modification does not alter the height of the existing/approved dwelling and is

compatible with the height and scale of surrounding developments.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed modification will not materially alter the overshadowing impacts of the approved development or result in unreasonable loss of sunlight to adjoining properties, noting the siting of the dwelling and the separation provided to the dwellings and private open spaces of adjoining properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposal will not result in any unreasonable view impacts.

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

Comment:

The modified proposal responds appropriately to the natural topography of the site.

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

Comment:

The proposed modification minimises adverse visual impacts to the natural environment, nearby heritage items and the foreshore/harbour.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

  Comment:

  The proposed modifications relate to alterations and additions to an existing dwelling.

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

  Comment:

  The proposed changes are relatively minor in the context of the existing dwelling and will not have an adverse impact on the above values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposal will not adversely impact the tree canopy or dominate the natural scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

  Comment:

  The proposed modification will not unreasonably impact on nearby foreshores, geological features or bushland.

- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.

  Comment:

  The proposed changes relate to the approved development footprint and will not alter any approved landscaped or hard surfaces on the site.

- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

  Comment:

  The proposed height and bulk of the dwelling are compatible with the existing vegetation and topography of the site and will not conflict with any surrounding land uses.

Conclusion:

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

5.10 Heritage conservation

The application was referred to Council's Heritage Officer who raised no objection to the proposed modification, subject to the recommended conditions of consent.

6.9 Foreshore scenic protection area

The proposed modification will not adversely impact visual aesthetic amenity or views to and from Sydney Harbour.

6.10 Limited development on foreshore area

The proposed modification relates to approved alterations and additions to an existing dwelling located partly within the foreshore area. The modifications are contained within the existing development footprint and do not extend further into the foreshore area. The additions to the dwelling are therefore permissible pursuant to clause 6.10(2)(a) of the LEP.

The proposed modification will have no foreseeable environmental impact in relation to the foreshore area and does not alter the compliance of the approved development with this control.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1387.3m²	**Requirement**	**Approved**	**Proposed**	**Complies**
4.1.2.1 Wall Height	East: 8m (gradient 1:4+)	GF: 5.9m	Unchanged	Yes
		FF: 9.9m	Unchanged	No (as approved)
	West: 7.8 (gradient 1:4.5)	GF: 5.9m	Unchanged	Yes
		FF: 8.45m	Unchanged	No (as approved)
4.1.2.2 Number of Storeys	2	3	Unchanged	No (as approved)
4.1.2.3 Roof Height	Height: 2.5m	4.3m	Unchanged	No (as approved)
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	N/A (battle axe lot; unchanged)	Unchanged	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages (East)	GF (outdoor dining): 1.97m	2.6m	Unchanged	Yes
	FF: 3m	13.05m	13.7m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (West)	GF: 1.97m	1m	Unchanged	No (as approved)
	FF: 3m	2.2m	1.8m	**No**
4.1.4.5 Foreshore Building Lines and Foreshore Area	8m (based on wall height)	Building line: existing Verandah: 7.8m Pool/deck: 5m/2.8m	Unchanged	No (as approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area 832.74m²	66.8% 927.3m²	Unchanged	Yes
	Open space above ground 25% of total open space	11.7%	Unchanged	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of	48.7%	Unchanged	Yes

	open space 370.92m²	451.7m²		
4.1.5.3 Private Open Space	18m² per dwelling	> 18m²	Unchanged	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.5m	Unchanged	Yes
	1m curtilage side/rear setback	0.2m	Unchanged	No (as approved)
	1.5m water side/rear setback	1.5m	Unchanged	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Unchanged	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
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	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 Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposed changes to windows will not adversely impact the privacy of adjoining properties. The subject dwelling is offset from those on the adjoining properties and timber privacy screening is proposed to the new east and west-facing first floor windows.

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

The approved non-compliant wall heights, number of storeys and roof height remain unchanged as a result of the proposed modification.

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

Description of non-compliance

The approved first floor western side setback of 2.2m was non-compliant with the 3m control. The proposed modification results in a further reduction of 400mm to this setback.

The approved non-compliant ground floor western side setback remains unchanged as a result of the proposed modification.

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 setback breach is not visible with the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The subject dwelling is offset from those of adjoining properties and will not result in any adverse impacts in relation to the above matters. Suitable privacy screening is provided to the non-compliant first floor wall.

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

Comment:

The setback breach can be supported in this case given the lack of amenity impacts to surrounding land.

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 proposed breach occurs at first floor level and will not impact any vegetation or landscaped areas.

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.

4.1.9 Swimming Pools, Spas and Water Features

The approved swimming pool and associated decking is unchanged by the proposed modification.

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 2022

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).

The application seeks to modify DA2021/0227 for Alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool.

The key planning issues considered within the assessment are the proposed development standard variation, built form non-compliances and the anticipated amenity impacts of the proposal.

Notwithstanding the proposed building height variation of 18.8%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

No submissions were received in response to the notification of the application.

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 approval to Modification Application No. Mod2022/0008 for Modification of Development Consent DA2021/0227 granted for Alterations and additions to a dwelling within a detached dual occupancy development, including a swimming pool on land at Lot 1 SP 21645,1 / 25 Battle Boulevarde, SEAFORTH, Lot 2 SP 21645,2 / 25 Battle Boulevarde, SEAFORTH, Lot CP SP 21645,25 Battle Boulevarde, SEAFORTH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
0100 Site Plan	Rev. E, 6 December 2021	Richards Stanisch
0201 General Arrangement - Lower Ground & Ground Plans	Rev. I, 26 November 2021	Richards Stanisch
0202 General Arrangement - First Floor & Roof Plans	Rev. H, 6 December 2021	Richards Stanisch
0501 Elevations (Sheet 01)	Rev. I, 26 November 2021	Richards Stanisch
0502 Elevations (Sheet 02) & Proposed Finishes	Rev. K, 26 November 2021	Richards Stanisch
0503 Sections A & B	Rev. D, 26 November 2021	Richards Stanisch

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A393000_03	12 May 2021	Certified Energy

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

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

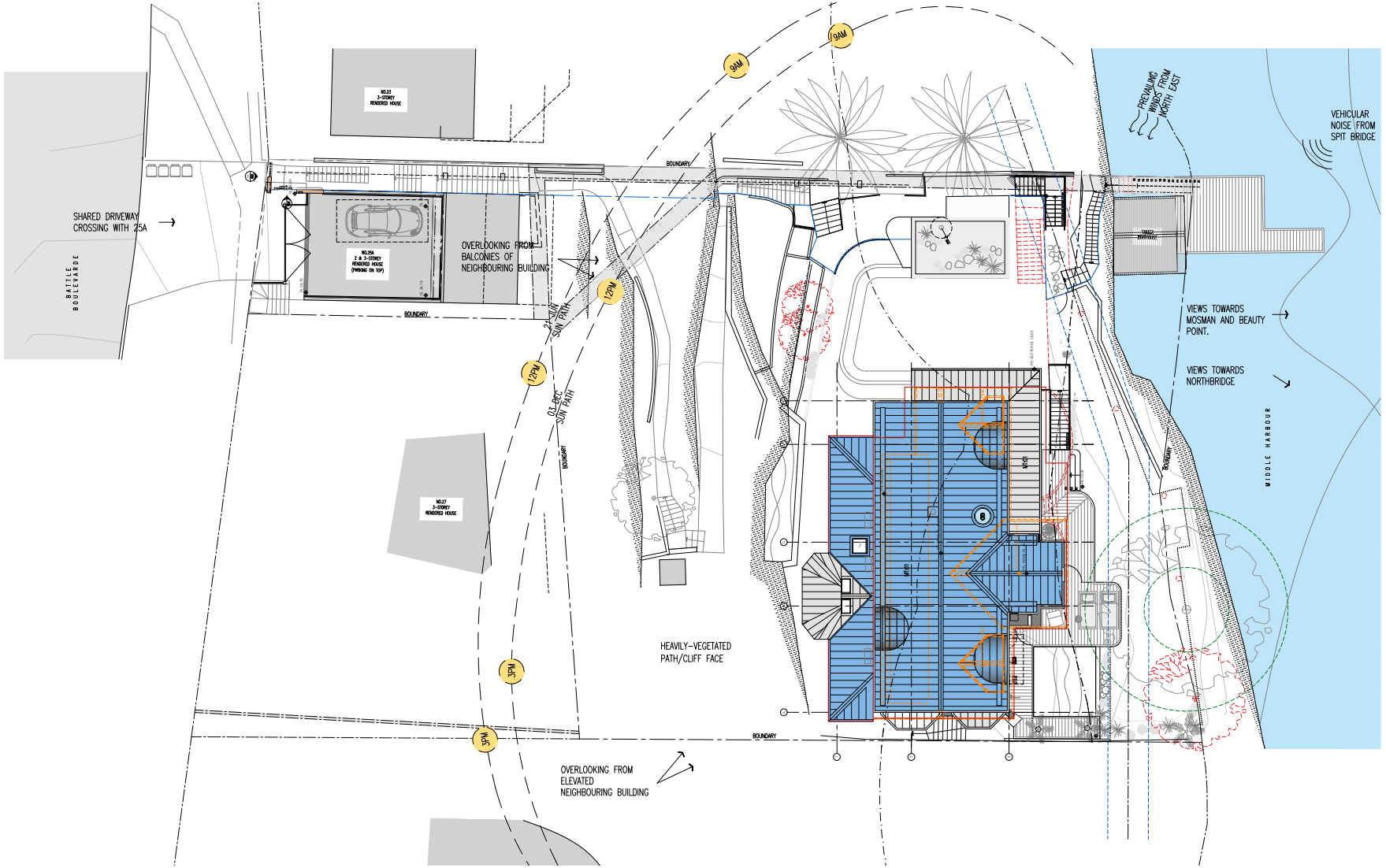
B. Add Condition 3A. Ausgrid to read as follows:

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

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Response Ausgrid Referral	21 February 2022

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

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



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MN TN

Rev. No.	Date	Revision	By	Chk.
A	11.09.20	DA ISSUE	RM	JR
B	19.10.20	REVISED ROOF TO VERANDAH	RM	JR
C	27.04.21	EX. BOATSHED REINSTATED	RM	JR
D	08.11.21	S4.55 ISSUE	RM	JR
E	06.12.21	S4.55 ISSUE	RM	JR

Rev. No.	Date	Revision	By	Chk.

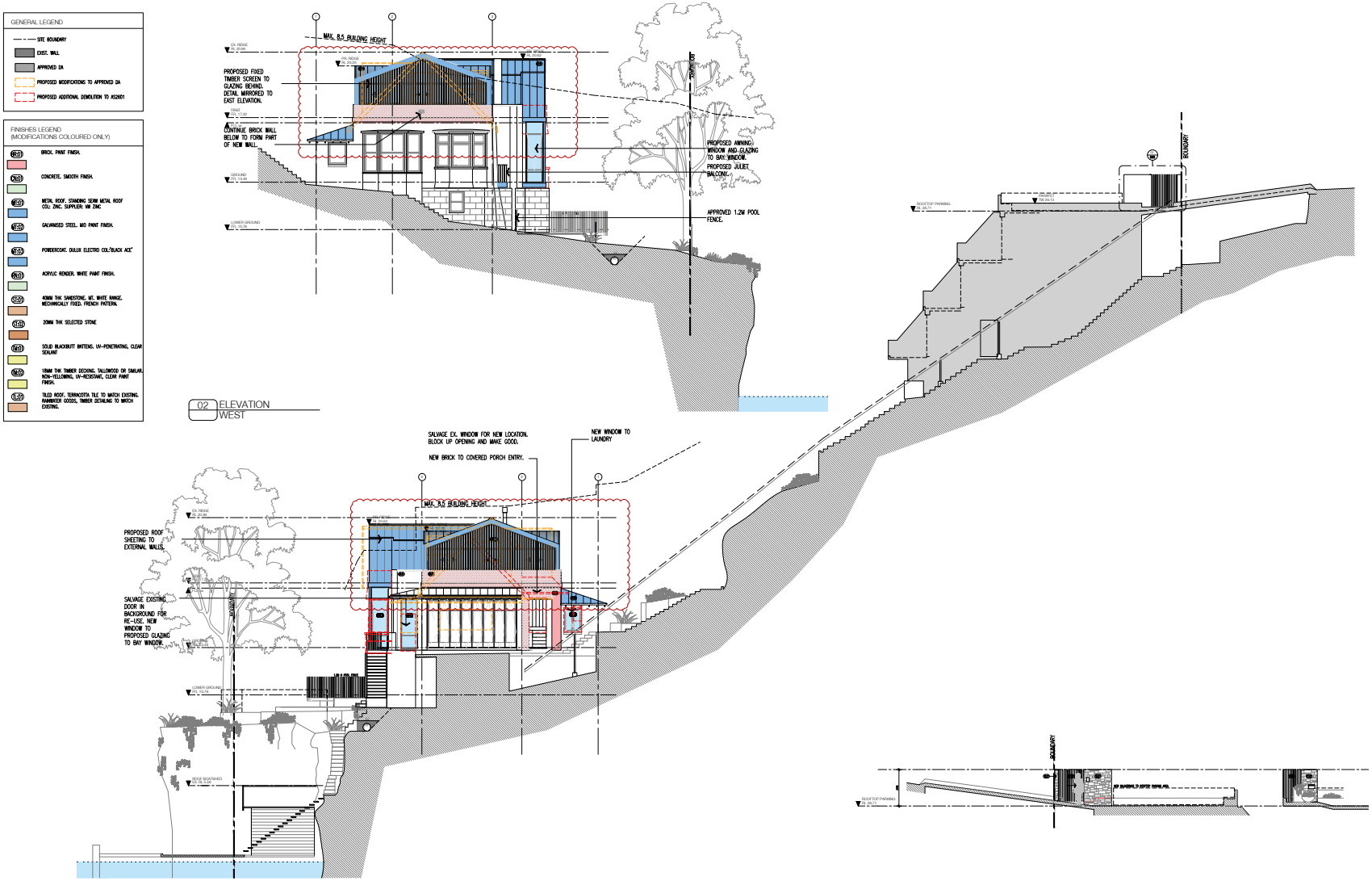
Project: 25 Battle Boulevarde SEAFORTH
Guringai Land

Drawing: Site Plan & Site Analysis

Date	Scale	Sheet Size
06.12.2021	1:100	@ A1
Reg No.	Drawn	Chk.
-	RM	JR
Job No.	Drawing No.	Revision
85874	0100	E

S4.55

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Rev. No.	Date	Revision	By	Chk.
A	25.09.20	DA ISSUE	RM	JR
B	19.10.20	REVISED ROOF TO VERANDAH	RM	JR
C	27.10.20	REVISED FOLLOWING CLIENT MEETING	RM	JR
D	20.11.20	REVISED BOATSHED FINISH	RM	JR
E	23.11.20	REVISED BOATSHED FINISH	RM	JR

Rev. No.	Date	Revision	By	Chk.
F	27.04.21	EX. BOATSHED REINSTATED	RM	JR
G	28.10.21	ISSUE TO CONSULTANTS	RM	JR
H	08.11.21	S4.55 ISSUE	RM	JR
I	26.11.21	S4.55 ISSUE	RM	JR

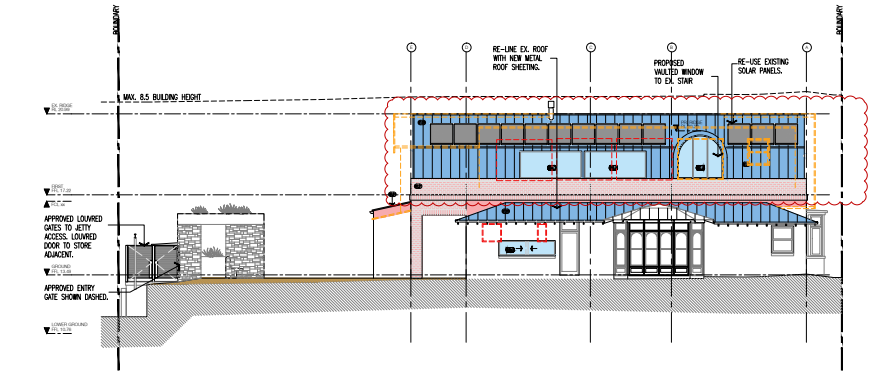
Project
25 Battle Boulevarde SEAFORTH
Guringai Land

Drawing
Elevations
Sheet 01

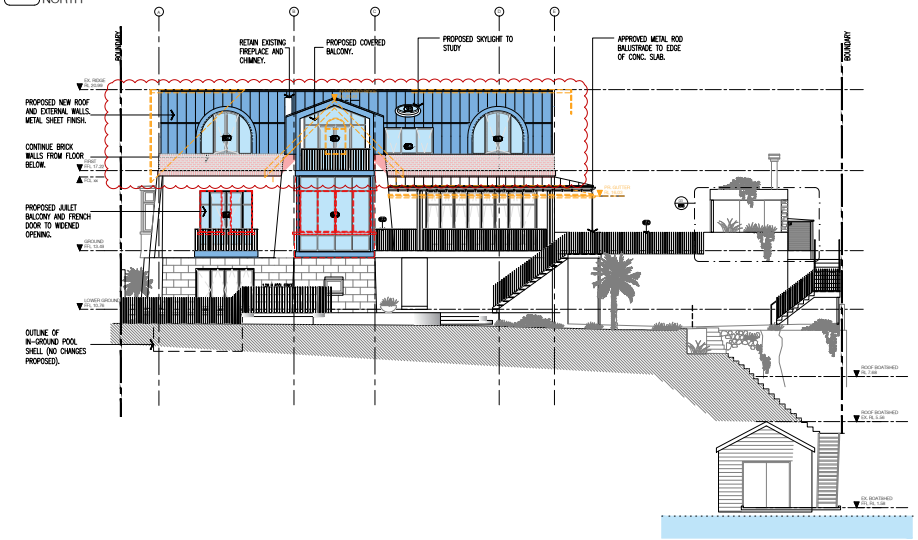
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-	RM	JR
Job No.	Drawing No.	Revision
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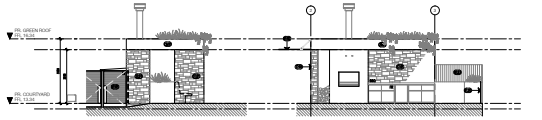
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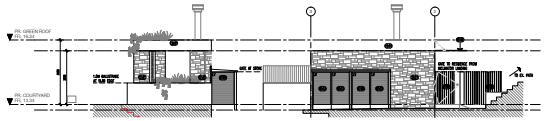


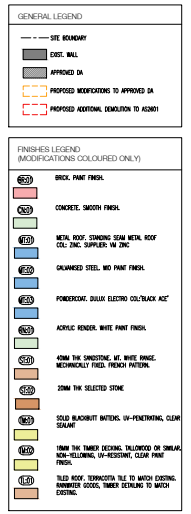
02 ELEVATION NORTH



01 ELEVATION SOUTH









03 EXTERNAL FINISHES

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F	20.11.20	REVISED BOATSHED FINISH	RM	JR
G	23.11.20	REVISED BOATSHED FINISH	RM	JR
H	27.04.21	EX. BOATSHED REINSTATED	RM	JR
I	28.10.21	ISSUE TO CONSULTANTS	RM	JR
J	08.11.21	S4.55 ISSUE	RM	JR

Rev. No.	Date	Revision	By	Chk.
K	26.11.21	S4.55 ISSUE	RM	JR

Project
25 Battle Boulevarde SEAFORTH
Guringai Land

Drawing
Elevations & Finishes Board
Sheet 02

Date	Scale	Sheet Size
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Reg No.	Drawn	Chk.
-	RM	JR
Job No.	Drawing No.	Revision
85874	0502	K

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RICHARDS STANISICH

ITEM 3.4	**DA2022/0351 - 19 HERBERT STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/407119**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0351 for alterations and additions to a dwelling house on land at Lot 27 DP 4449, 19 Herbert Street MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0351

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 27 DP 4449, 19 Herbert Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	John Edward Byrne Leila Suzanne Knowles
Applicant:	John Edward Byrne

Application Lodged:	25/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/06/2022 to 21/06/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 15.59%
Recommendation:	Approval

Estimated Cost of Works:	$ 550,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation to Clause 4.4 Floor space ratio (FSR) under Manly Local Environmental Plan 2013. The proposal seeks a variation of 15.59% (19.96m^2).

It is important to note, the subject site is an 'Undersized Lot' in accordance with Clause 4.1.3.1 of Manly Development Control Plan 2013 (MDCP 2013). The subject site is 213.4m^2 that equates to a FSR requirement of 0.6:1 (128.04m^2) under Manly Local Environmental Plan 2013. However, under Clause 4.1.3.1 of MDCP 2013, when calculating the FSR against a site area of 250m^2, the FSR requirement equates to 0.6:1 (150m^2). The proposed FSR is 148m^2 and as such would comply with the

development standard under the exceptions to FSR for undersized lots. Notwithstanding, the applicant has demonstrated by way of a Clause 4.6 Variation Request that strict compliance with the floor space ratio development standard is considered to be unnecessary and unreasonable in this circumstance. Furthermore, the applicant has provided sufficient environmental planning grounds to justify the variation to Clause 4.4 Floor Space Ratio under Manly Local Environmental Plan 2013.

The proposed development was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

Critical assessment issues included roof pitch, window setbacks, side setbacks, rear setbacks, and total open space variations. Notwithstanding, the variations to the controls have been assessed against the objectives of the controls and are supportable in this circumstance.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Demolition of dilapidated rear sun-room and bedroom at ground floor level;
- Demolition and replacement of existing retaining wall in back garden, to increase available outdoor space level;
- Reconstruction of rear dwelling including relocation of kitchen and dining area with direct access to paved outdoor living area;
- Addition of new laundry and study at ground floor level;
- Replacement of external timber entry stairs;
- Extension of first floor to include three (3) bedrooms and one (1) bathroom;
- Maintain and extend steep gable roof form;
- Extend existing shed dormers on east and west facades; and
- Demolition of existing dilapidated chimney and first floor fireplace.

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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 27 DP 4449 , 19 Herbert Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Herbert Street. The site is irregular in shape with a angled frontage of 9.165m along Herbert Street and a maximum depth of 26.38m. The site has a surveyed area of 213.4m². The site is located within the R1 General Residential zone from MLEP 2013 and accommodates a two storey dwelling house currently on the site. The site slopes gently from the front northern boundary upwards to the rear southern boundary over approximately 3 metres. The site contains garden beds, and trees. There are no details of any threatened species on the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design.

Map:



SITE HISTORY

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

DA0013/2007
Development Application for Alterations and Additions to an Existing two (2) storey dwelling.
Approved on 16 March 2007.

Application History
Following the preliminary assessment of the application, Council requested that the applicant submit clarification regarding Clause 4.4 Floor space ratio under Manly Local Environmental Plan 2013 as the calculation of the gross floor area differed to the Floor Space Ratio outlined in the Clause 4.6 Variation Request, and Statement of Environmental Effects. Further information regarding Clause 4.1.4 Setbacks (front, side, and rear) and Building Separation of Manly Development Control Plan 2013 was requested in relation to the side setback of the western ground floor.

Subsequently, the applicant provided amended Master Plans, amended Clause 4.6 Variation Request, and an amended Statement of Environmental Effects to address the request for further information. The amended plans, amended Clause 4.6, and amended Statement of Environmental Effects did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
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 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 Clause 4.4 Floor space ratio and Clause 4.6 Exceptions to development standards of Manly Local Environmental Plan 2013. Further information was requested in relation to Clause 4.1.4 Setbacks (front, side, and rear) and Building Separation of Manly Development Control Plan 2013. Subsequently, the applicant provided amended Master Plans, an amended Clause 4.6 Variation Request, and an amended Statement of Environmental Effects. 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

Section 4.15 Matters for Consideration	Comments
	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 07/06/2022 to 21/06/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing dwelling, as described and illustrated in the reports and plans. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly

Internal Referral Body	Comments
	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 There is a non-compliance with the landscaped open space, however this matter shall be determined by the assessing planner. It is unclear on the plans which vegetation is to be retained, however the Statement of Environmental Effects indicates that the mature screen planting in the rear garden will be maintained. From the available site photographs it is noted one native tree will be required to be removed to facilitate the new landscape design in the rear setback, and to satisfy the Manly DCP controls one replacement tree shall be installed within the property boundary, subject to the imposed conditions. All trees and vegetation to be retained shall be protected as per the conditions of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A449520 dated 27 February 2022).

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.

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	8.9m (Existing) 8.4m (Addition)	- -	N/A Yes
Floor Space Ratio	FSR: 0.6:1 (128.04m^2)	FSR: 0.7:1 (148m^2)	15.59% (19.96m^2)	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (128.04m^2)
Proposed:	0.7:1 (148m^2)
Percentage variation to requirement:	15.59% (19.96m^2)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

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

Comment:

The Applicant's written request 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 objectives of the LEP Clause 4.4(1) and DCP Clause 4.1.3 FSR are met:

- *The scale of the development will not obscure important landscape features;*
- *Views are not disrupted from adjacent and nearby development; and*
- *Adequate sunlight will penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

The site is undersized at 213.4m^2, based on 250m^2 being the minimum lot size for Area C:

- *DCP Clause 4.1.3.1 provides for Exceptions to FSR for undersized lots;*
- *FSR of 0.6:1 for a 250m^2 site = 150m^2; and*
- *This proposal of 148m^2 would equate to 0.59:1 on that basis, therefore technically compliant.*

Neighbours amenity will be preserved;

- *privacy is not disrupted; some existing side windows have been removed to prevent overlooking, insulation wil improve aural privacy, living rooms are located at ground level; and*
- *sunlight is maintained to private open spaces and to habitable rooms of adjacent dwellings.*

New work is consistent with the existing and desired character of the residential area.

• Streetscape is maintained and bulk and scale controlled:

- *The front elevation is preserved;*
- *The footprint of the building increases by only 16m2, at the rear set into an existing terrace minimising height, bulk and scale;*
- *The increased floor space at 1st floor level is contained within the roof form and dormers, set*

into the middle of the roof to minimise visual bulk and scale from the street and neighbouring properties, plus maintain solar access; and

- *The scale is in keeping with the density and building forms of the street.*

Access to sunlight is maintained for neighbouring properties. Building height is not increased. Substandard existing building elements will be rebuilt and necessary facilities will be provided.

It is considered that compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

It is agreed that the proposal is subject to Clause 4.1.3.1 Exceptions to FSR for Undersized Lots under Manly Development Control Plan 2013. It is confirmed that the subject site is located in Area 'C' on the LEP LSZ Map that bases the calculation of FSR based upon a lot size of 250m^2. Therefore, in accordance with the DCP control the proposal is compliant with the Floor Space Ratio as it is an undersized lot. Notwithstanding, as outlined under Clause 4.1.3.1, the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3). Therefore, in this instance, the variation of 15.59% (19.96m^2) is considered to be a minor variation that is largely located at the rear of the dwelling. In summary, it is considered that the applicant has demonstrated that proposal has incorporate good design that responds appropriately to the amenity of the built environment.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the 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 4.4 – 'Floor space ratio' of the MLEP

2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:
The proposal has ensured that the bulk and scale of the development is consistent with the existing and desired streetscape character. The proposal largely results in the rear addition of the dwelling, that will not impact upon the existing streetscape.

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

Comment:
There are no important landscape features that will be unreasonably impacted by the proposed works, as the density and bulk of the proposed dwelling remains consistent with the existing dwelling. In regards to townscape features, there are no townscape features within close vicinity of the subject site.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:
The proposal maintains an appropriate visual relationship between new development and the existing character and landscape of the area. The proposal retains the existing roof pitch that is a feature of the character of the dwelling house. The proposal has incorporated the addition to match the existing dwelling and includes retention of landscape features.

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

Comment:
The proposal does not give rise to any adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:
The proposal is for residential use. Therefore this objective is not relevant in this instance.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- ***To provide for the housing needs of the community.***

  Comment:
  The proposal will provide the residential housing needs of the community within a general residential environment.

It is considered that the development satisfies this objective.

- ***To provide for a variety of housing types and densities.***

  Comment:
  The proposal will retain the existing residential dwelling house use.

  It is considered that the development satisfies this objective.
- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

  Comment:
  The proposal retains the residential land use of the site and therefore this objective is not relevant.

  It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 213.45m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250m2 site area	1 dwelling per 213.45m^2	-	Yes
4.1.2.1 Wall Height	E: 7.1m (based on gradient 1:10)	4.9m to 6.7m	-	Yes
	W: 6.9m (based on gradient 1:15)	5.2m to 6.5m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.5m	-	Yes

	Pitch: maximum 35 degrees	15 degrees (Dormer) 50 degrees (Main Roof - match existing)	- 42.86% (15 degrees)	Yes **No**
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	unaltered	-	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	Ground Floor E: 1.63m (based on 1/3 wall height) First Floor E: 2.23m (based on 1/3 wall height)	Ground Floor 1.1m to 1.5m First Floor 1.5m to 2.8m	32.52% (0.53m) 32.74% (0.73m)	**No** **No**
	Ground Floor W: 1.73m (based on 1/3 wall height) First Floor W: 2.23m (based on 1/3 wall height)	Ground Floor 0.24m First Floor 0.74m to 2.05m	86.13% (1.49m) 65.74% (1.42m)	**No** **No**
	Windows: 3m	1.1m	63.33% (1.9m)	**No**
4.1.4.4 Rear Setbacks	8m	6.7m	16.25% (1.3m)	**No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (117.40m^2)	44.37% (94.7m^2)	19.34% (22.7m^2)	**No**
	Open space above ground 25% of total open space (23.68m^2)	7.81% (7.4m^2)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (33.15m^2)	56.92% (53.9m^2)	-	Yes
	1 native tree	0 native tree	100% (1 native tree)	**No***
4.1.5.3 Private Open Space	18m^2	>18m^2	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces (unaltered)	-	N/A

* Conditioned via Council's Landscape Officer for the planting of one (1) native tree please see Condition 16 Required Tree Planting

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Under Clause 4.1.2.3 Roof Height of Manly Development Control Plan, the following applies to the Roof Pitch:

Roof Pitch
c) The maximum roof pitch must be generally no steeper than 35 degrees. A roof with a steeper pitch will be calculated as part of the wall height. In this regard the wall height controls at paragraph 4.1.2.1 of this plan will apply to the combined wall height and the height of the roof steeper than 35 degrees.

The rear extension results in the continuation of the existing roof pitch, that is greater than 35 degrees at approximately 50 degrees, presenting a variation of 42.86% (15 degrees). Therefore, in this instance this portion of the dwelling is calculated as wall height, that equates to a wall height of 7.9m along the eastern facade and 8.2m along the western facade. The required wall height is 7.1m along the eastern facade and 6.9m along the western facade, presenting a variation of 11.27% (0.8m) and 18.84% (1.3m) respectively.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation.

This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report.

In summary, the variation to the roof pitch is supportable in this instance, as it matches the existing pitch. Furthermore, the wall height numerical non-compliance that occurs as a result of the roof pitch is supportable, as the wall height numerical non-compliance demonstrates compliance with the objectives of the control as outlined under the Clause 4.6 section contained within this report.

Therefore, the roof pitch numerical non-compliance is supportable in this circumstance, as the roof pitch is a extension of the existing pitch.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly Local Environmental Plan 2013. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary.

Under Clause 4.1.3.1 Exceptions to FSR for Undersized Lots of Manly Development Control Plan 2013, the subject site is an 'undersized allotment' as the subject site is located in Area C on the LEP LSZ map. The subject site is 213.4m^2 that equates to a FSR requirement of 0.6:1 (128.04m^2) under Manly Local Environmental Plan 2013. However, under Clause 4.1.3.1, when calculating the FSR against a site area of 250m^2, the FSR requirement equates to 0.6:1 (150m^2). The proposed FSR is 148m^2 and would therefore comply with the development standard under the exceptions to FSR for undersized lots.

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

Description of non-compliance

Under Clause 4.1.4.2 of MDCP 2013, the requirements for setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The wall height of the eastern facade varies from 4.9m to 6.7m, resulting in the requirement for the eastern side setback to be 1.63m for the ground floor additions and 2.23m for the first floor additions. The wall height of the western facade varies from 5.2m to 6.5m, requiring the western side setback to be 1.73m for the ground floor additions and 2.23m for the first floor additions. The proposed side setback are numerically non-compliant for the eastern and western, ground and first floor additions, requiring an assessment against the objectives of the control in this instance.

Under Clause 4.1.4.2 of MDCP 2013, the requirements for all new windows that face the side boundary are to be setback at least 3m from side boundaries. The proposal presents new windows to the ground floor that are setback 1.1m (W1) and 1.5m (W2) from the eastern boundary and on the first floor new

windows that are setback 1.5m (W5) to the eastern boundary, presenting a maximum variation of 63.33%,

Under Clause 4.1.4.4 of MDCP 2013, the rear setback requirements state that the distance between any part of a building and the rear boundary must not be less than 8m. The proposed rear setback to the dwelling house is 6.7m, presenting a 16.25% variation.

The variation to the window setback requirements, side setback requirements, and rear setback requirements are supportable in this circumstance as the objectives of the control have been met as outlined below.

Merit consideration:

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

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

Comment:
The proposal is generally located at the rear of the dwelling house, resulting in the existing streetscape to be maintained. Furthermore, the spatial proportions, street edge, and landscape character of the street are retained in this proposal.

Objective 2) To ensure and enhance local amenity by:

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

Comment:
The proposal has ensured the local amenity has been enhanced by incorporate privacy measures. The window setbacks and ground floor side setbacks along the eastern facade will not result in any unreasonable privacy concerns as the proposal is separated by an existing side boundary setback limiting opportunity for unreasonable privacy impacts. The proposed window on the first floor will not give rise to unreasonable privacy impacts as the window is a vertical window with a louvre blind for a proposed bathroom that is located above the bath tub. The rear setback variation is not likely to result in any unreasonable privacy concerns as the rear setback area includes existing trees that provide supplementary screening. The proposal is accompanied with shadow diagrams that demonstrate the proposal will provide equitable access to light, sunshine, and air movement. There are no significant views that are impacted and appropriate view and vista sharing is maintained. The proposal will not result in any adverse impacts to the streetscape, and the existing character has been maintained. Lastly, the proposal does not alter any traffic conditions as part of the proposed development.

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

Comment:

Flexibility is afforded in this circumstance, as the window setback, side setback, and rear setback variations will not result in unreasonable amenity impacts to adjoining sites.

Objective 4) To enhance and maintain natural features by:

- ***accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;***
- ***ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and***
- ***ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.***

Comment:
The proposed development results in an more than compliant landscaped area that includes plantings, deep soil zones, and vegetation. The subject site does not detract from the context of the site and the site does not adjoin open space lands, national parks, or urban bushland.

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

Comment:
The subject site is not located in bush fire prone land and therefore this objective is not relevant.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area 3. As such, at least 55% (117.40m^2) of the site is to be open space and at least 35% (33.15m^2) of the open space to be landscaped area. The proposed development results in a numerically non-compliant total open space of 44.37% (94.7m^2), presenting a variation to this control by 19.34% (22.7m^2).

The proposal achieves compliance with the landscaped area with a total of 56.92% (53.9m^2) provided.

The proposal requires a minimum number of one (1) native tree in accordance with Clause 4.1.5.2 of Manly Development Control Plan 2013. As addressed by Council's Landscape Officer, a suitable condition has been imposed to require a one (1) native tree to be planted, to meet the requirements of the control.

In this instance, the variation to the total open space is considered to be supportable as the objectives of the control have been met as outlined below.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:
The proposal retains existing landscape features and vegetation and the proposal does not result in the

removal of any significant 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 proposal maximises soft landscaped areas and open space at ground level and provides a more than compliant landscaped area. The proposal retains the existing Frangipani tree in the front yard, and includes enhancement of planting in the rear yard.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:
The proposal does not result in any unreasonable impacts to amenity including sunlight, privacy, and views. The proposed works are largely contained towards the rear of the property and will therefore not result in changes to the existing streetscape.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:
The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:
The proposed development is not likely to lead to the significant spread of weeds, or degradation of private open space. Council's Landscape Officer has recommended an on-going Landscape Maintenance condition stating, all weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:
The proposed development is not likely to affect any existing wildlife habitat and potential for wildlife corridors.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The subject site does not currently provide any parking spaces and no new parking spaces are proposed. The proposal does not amend the frontage of the ground floor and the existing front setback does not allow for the required dimensions for a car space on the subject site. Therefore, whilst the proposal is numerically inconsistent with Schedule 3 of MDCP 2013 that requires 2 parking spaces, the provision of car parking within the subject site is not achievable within the existing site context.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $5,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $550,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

This proposal, for Alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to Clause 4.4 Floor space ratio development standard under Manly Local Environmental Plan 2013.

The development application was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

The critical assessment issues surrounding the variation request for the floor space ratio development standard under Manly Local Environmental Plan 2013 has been assessed. The Clause 4.6 variation request has demonstrated compliance with the standards are unreasonable and unnecessary and sufficient planning grounds have justified the contravention.

The variation to the roof pitch, window setbacks, side setbacks, rear setbacks, and total open space controls under Manly Development Control Plan 2013 have been assessed against the objectives of the controls. In this regard, the objectives of the controls have been satisfactorily met and the variations are supportable.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0351 for Alterations and additions to a dwelling house on land at Lot 27 DP 4449, 19 Herbert Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
   The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

   a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Demolition Plans - A201, Rev B	28 June 2022	Leith Schmidt Architect
Proposed Site Plan - A301, Rev B	28 June 2022	Leith Schmidt Architect

Proposed Ground Floor Plan - A302, Rev B	28 June 2022	Leith Schmidt Architect
Proposed First Floor Plan - A303, Rev B	28 June 2022	Leith Schmidt Architect
Proposed Elevations (North & East) - A304, Rev B	28 June 2022	Leith Schmidt Architect
Proposed Elevations (South & West) - A305, Rev B	28 June 2022	Leith Schmidt Architect
Proposed Sections - A401, Rev B	28 June 2022	Leith Schmidt Architect
Proposed Site Analysis & Roof Plan - A402, Rev B	28 June 2022	Leith Schmidt Architect

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (No.A449520)	27 February 2022	Leith Schmidt Architect
Geotechnical Report	22 April 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:

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Report	27 February 2022	John Byrne

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

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

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

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Response Ausgrid Referral	29 June 2022

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

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

3. **Prescribed Conditions**
(a) All building works must be carried out in accordance with the requirements of the

Building Code of Australia (BCA).

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council’s footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $5,500.00 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 $550,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. **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, review of the geotechnical content of all structural designs 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.

9. **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.

10. **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.

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

12. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **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.

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

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

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

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

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

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

16. **Required Tree Planting**
One (1) locally native tree shall be planted within the property boundary to achieve at least 6 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or Council's Tree Guide, and in accordance with the following:
i) tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
ii) planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings and other trees, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
iii) tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: To maintain environmental amenity.

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

18. **Geotechnical Certification Prior to Occupation Certificate**
Prior to issue of the Occupation Certificate, the applicant is to submit details to the Principal Certifying Authority demonstrating compliance that the recommendations of the risk assessment

required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 have been undertaken.

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **Waste Management Confirmation**
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

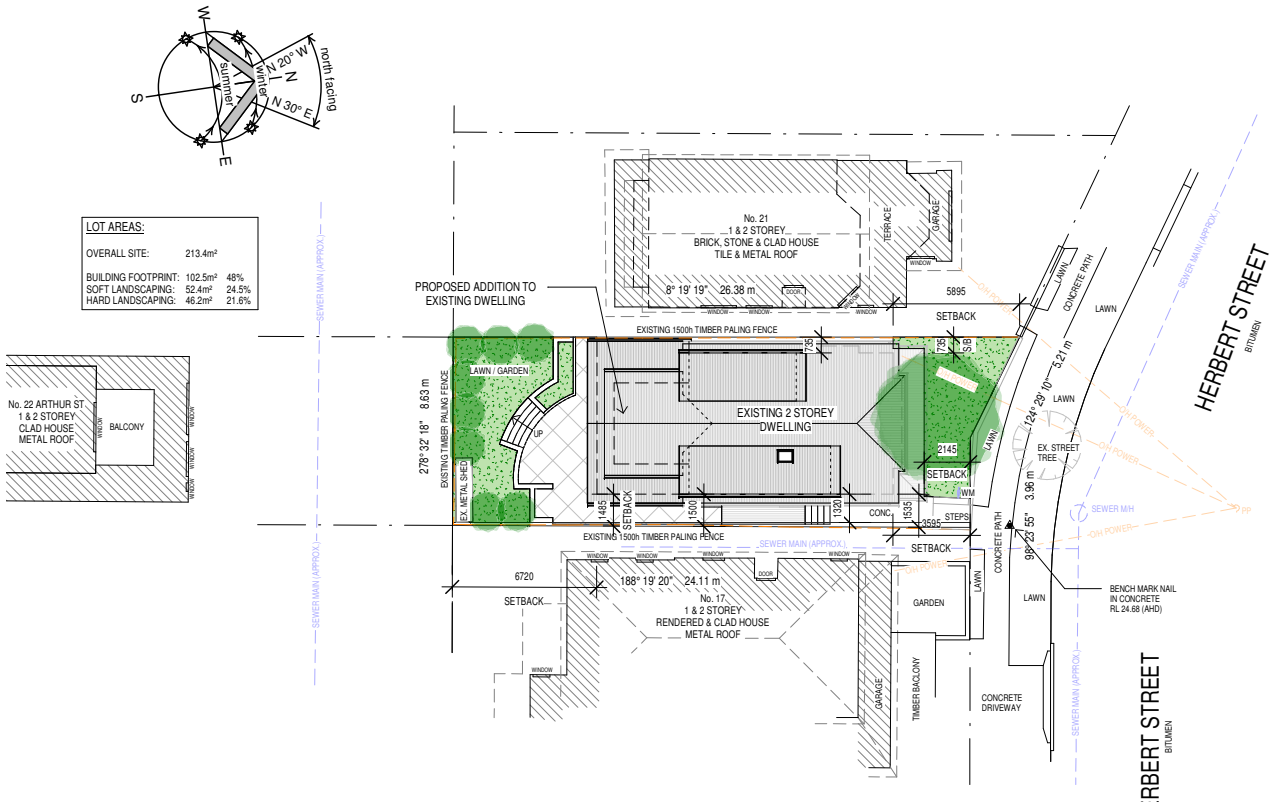
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

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

If any tree required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the 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.



1 PROPOSED SITE PLAN
1 : 200

NOTES:

Any discrepancies to be brought to the architect's attention.
Use figured dimensions in preference to scaling.
Only scale under direction from architect.
Builder to examine site and verify conditions and dimensions.
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Email: leith.s.architect@gmail.com
NSW Registration No: 5874

PROJECT CLIENT:	Leila Knowles & John Byrne
ADDRESS:	19 HERBERT STREET, MANLY 2095
PROJECT:	PROPOSED ADDITIONS & ALTERATIONS TO A DWELLING

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DATE:	28.06.2022
ISSUE NUMBER:	DA - REV B
DRAWN BY:	LS/DS
PROJECT No:	990-02

SHEET NAME: PROPOSED SITE PLAN

SCALE: 1 : 200 **DRAWING NO:** A301

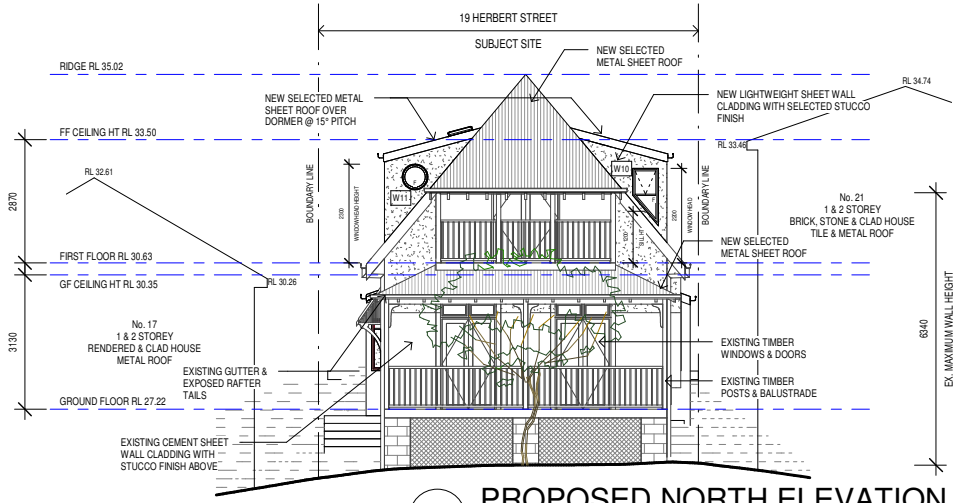
BASIX NOTES:

ROOF:
- COLORBOND SHEETING - MEDIUM COLOUR

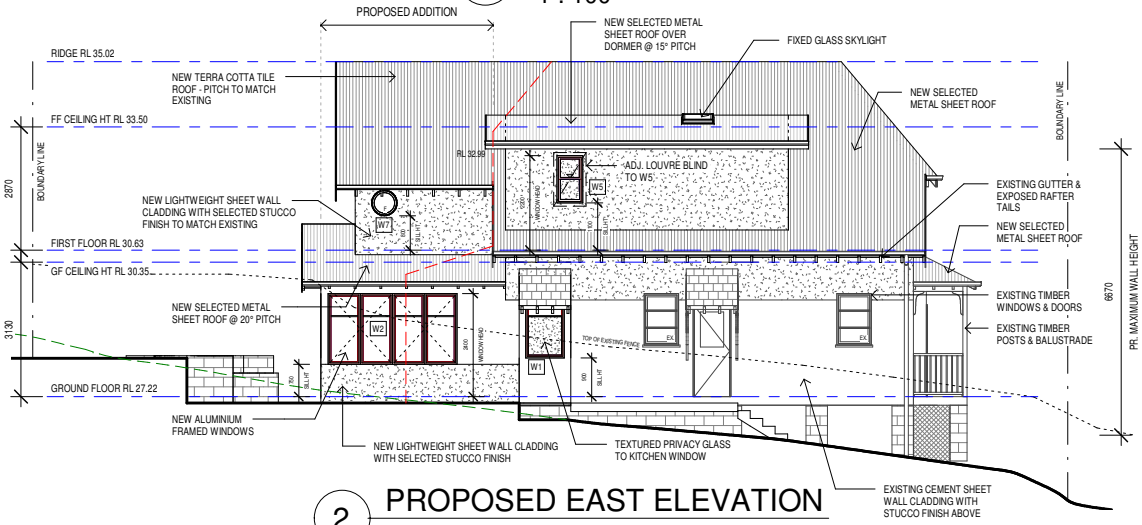
ROOF INSULATION:
- FOIL SARKING + R2.5 BULK INSULATION

WALL INSULATION:
- FOIL SARKING + R1.5 BULK INSULATION

WINDOWS:
- ALUMINIUM FRAMES WITH CLEAR GLAZING



1 PROPOSED NORTH ELEVATION
1 : 100



2 PROPOSED EAST ELEVATION
1 : 100

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DATE:	28.06.2022
ISSUE NUMBER:	DA - REV B
DRAWN BY:	LS/DS
PROJECT No:	990-02

SHEET NAME: PROPOSED ELEVATIONS

SCALE: 1 : 100 **DRAWING NO:** A304

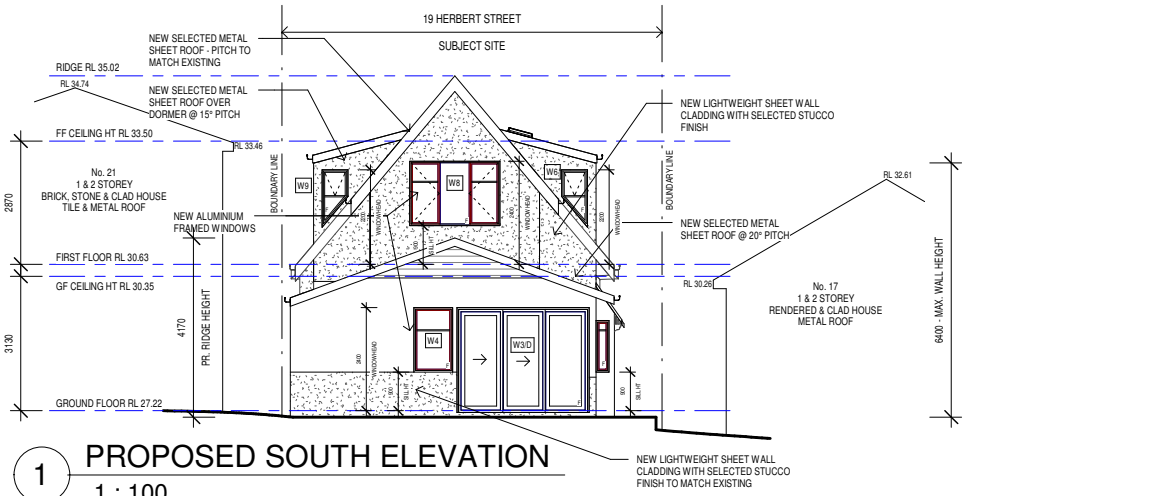
BASIX NOTES:

ROOF:
- COLORBOND SHEETING - MEDIUM COLOUR

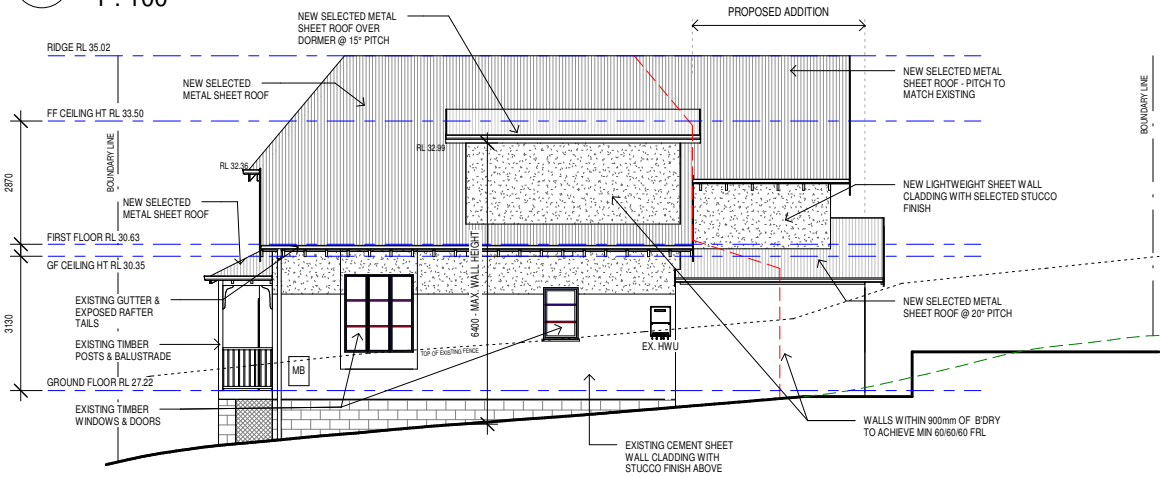
ROOF INSULATION:
- FOIL SARKING + R2.5 BULK INSULATION

WALL INSULATION:
- FOIL SARKING + R1.5 BULK INSULATION

WINDOWS:
- ALUMINIUM FRAMES WITH CLEAR GLAZING



1 PROPOSED SOUTH ELEVATION
1 : 100



2 PROPOSED WEST ELEVATION
1 : 100

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ISSUE NUMBER:	DA - REV B
DRAWN BY:	LS/DS
PROJECT No:	990-02

SHEET NAME: PROPOSED ELEVATIONS

SCALE: 1 : 100 **DRAWING NO:** A305

CLAUSE 4.6 VARIATION

Alterations & Additions to 19 Herbert Street, Manly

30 June 2022

IMPACT ASSESSMENT

RESIDENTIAL DENSITY

LOT SIZE

LEP – zone C: one dwelling per 250 sqm of site area is allowable with a minimum site area (land subdivision) of 250sqm

SITE AREA 213.45 m2

This is currently an undersized, single dwelling property. No changes to site area is proposed.

The site is undersized, however existing.

FLOOR SPACE RATIO

		m2
SITE AREA		213.45
ALLOWABLE FLOOR SPACE RATIO - area F	0.6:1	
ALLOWABLE FLOOR AREA		128
EXISTING		
Ground Floor Area – enclosed (corrected to excl ext walls)		74
First Floor Area		33
TOTAL FLOOR AREA		**107**
EXISTING FLOOR SPACE RATIO	**0.5:1**	
PROPOSED		
Proposed Additional Ground Floor Area		16
Proposed Additional First Floor Area (recalculated)		25
TOTAL ADDITIONAL FLOOR SPACE AREA		41
TOTAL PROPOSED FLOOR SPACE AREA		**148**
PROPOSED FLOOR SPACE RATIO	**0.7:1**	

The proposal does not comply with the LEP.

The existing floor space ratio (FSR) is 0.5:1. With alterations, gross floor area is proposed to increase to 148 square metres, which will increase the FSR to 0.7:1.

Clause 4.6 Variation Request - FSR

It is considered that the increase in floor area and FSR is acceptable and a variation is requested for the following reasons:

- The objectives of the LEP Clause 4.4(1) and DCP Clause 4.1.3 FSR are met:
  - The scale of the development will not obscure important landscape features
  - Views are not disrupted from adjacent and nearby development
  - Adequate sunlight will penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development
- The site is undersized at 213.4m2, based on 250m2 being the minimum lot size for Area C.
  - DCP Clause 4.1.3.1 provides for Exceptions to FSR for undersized lots
  - FSR of 0.6:1 for a 250m2 site = 150m2.

CLAUSE 4.6 VARIATION
Alterations and Additions to 19 Herbert Street, Manly
30 June 2022

- This proposal of 148m2 would equate to 0.59:1 on that basis, therefore technically compliant.

- Neighbours amenity will be preserved;
  - privacy is not disrupted; some existing side windows have been removed to prevent overlooking, insulation wil improve aural privacy, living rooms are located at ground level
  - sunlight is maintained to private open spaces and to habitable rooms of adjacent dwellings
- New work is consistent with the existing and desired character of the residential area
- Streetscape is maintained and bulk and scale controlled:
  - The front elevation is preserved
  - The footprint of the building increases by only 16m2, at the rear set into an existing terrace minimising height, bulk and scale, and
  - The increased floor space at 1st floor level is contained within the roof form and dormers, set into the middle of the roof to minimise visual bulk and scale from the street and neighbouring properties, plus maintain solar access
  - The scale is in keeping with the density and building forms of the street.
- Access to sunlight is maintained for neighbouring properties. Refer Shadow diagrams and SOLAR ACCESS AND SHADING p12
- Building height is not increased.
- Substandard existing building elements will be rebuilt and necessary facilities will be provided.

It is considered that compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

END OF DOCUMENT

ITEM 3.5	**DA2021/1265 - 11 PITT ROAD NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Daniel Milliken**
TRIM FILE REF	**2022/408885**
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 DA2021/1265 for demolition works and construction of a dwelling house including a swimming pool on land at Lot 1 DP 21968, 11 Pitt Road NORTH CURL CURL, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1265

Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 1 DP 21968, 11 Pitt Road NORTH CURL CURL 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:	Glen Paul Van Den Hoek
Applicant:	Minto Planning Services Pty Ltd

Application Lodged:	04/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/08/2021 to 26/08/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 961,000.00

EXECUTIVE SUMMARY

This application seeks consent for a demolition and construction of a dwelling house including an in-ground swimming pool and associated landscape works.

The proposed development is compliant with Clause 4.3 Height of Building Development Standard which is 8.5m and is generally compliant with the relevant built form controls stipulated within the Warringah Development Control Plan (WDP) 2011.

Based on recent changes to Council's Development Determination Panel (DDP) Charter, any application with five (5) or more submissions (regardless of cost of works) must be determined by the

DDP. Five (5) submissions opposing the development have been received.

Revised plans were received on 7th October 2021 following a meeting with the Applicant and the Owner of the property. The revised plans were in response to a letter from Council dated 21 September 2021. The issues raised by Council were in relation to view sharing and the non-compliant side boundary envelope along the western elevation at both the front and rear of the proposed dwelling. Council requested that the proposed second level of the dwelling was either deleted or re-designed to minimise the view loss impacts from adjoining properties.

The second level was redesigned to create a 6.1m setback to the western side boundary, thereby leaving a view corridor for the properties on the northern side of Pitt Road. This redesign has satisfactorily resolved the issues.

Notwithstanding the other minor numerical non-compliances to the WDCP, the proposed development is commensurate with other dwelling houses within the locality, will not result in any unreasonable amenity impacts to surrounding properties and is therefore recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the construction of a dwelling house and associated landscape works. The works in more detail include the following:

Lower Ground Floor:

- Three (3) bedrooms, one with ensuite
- Rumpus room
- Gym
- Study
- Bathroom
- Mechanical and Hydraulic Plant Room
- Electric Plant Room

Ground Floor:

- Double garage
- Office / bedroom and ensuite
- Living / kitchen / dining
- Laundry
- Terrace

First Floor:

- Master bedroom / walk-in-robe-ensuite
- Office
- Balcony

An in-ground swimming pool is proposed in the backyard. Vehicular access to the property is provided via a new driveway and crossover in the north eastern corner of the property.

Revised plans were received on 7th October 2021 following a meeting with the Applicant and the

Owner of the property. The revised plans were in response to a letter from Council dated 21 September 2021. The issues raised by Council were in relation to view sharing and the non-compliant side boundary envelope along the western elevation at both the front and rear of the proposed dwelling. Council requested that the proposed second level of the dwelling was either deleted or re-designed to minimise the view loss impacts from adjoining properties.

The revised plans addressed the concerns raised by Council in the following manner:

- Lowering the building including a reduction of the lower ground floor from RL29.85 to RL29.45.
- Re-designing the development to re-locate the proposed second floor to the eastern side of the site to reduce the side boundary envelope breach along the western elevation and minimise the view loss impacts from the adjoining properties.

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 - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 21968 , 11 Pitt Road NORTH CURL CURL NSW 2099

Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Pitt Road. The site is regular in shape with a frontage of 15.09m along Pitt Road and a depth of 50.29m. The site has a surveyed area of 758m². The site is located within the Low Density Residential zone from WLEP 2011 and accommodates a part one, part two storey dwelling. Access to the site is from Pitt Road with vehicular access provided via an existing concrete driveway located along the western boundary. A detached single carport is located along the western side of the dwelling. A masonry fence is located along the front boundary of the site. The site falls away from Pitt Rd to the rear of the site with a fall of approximately 7m from the north eastern corner to the south western corner. Ocean views and view of North Head are obtained from the dwelling in a southerly direction whilst district views are obtained from the dwelling in a south westerly direction. The site is not identified as bush fire prone land and is not heritage listed within the immediate vicinity of any heritage items. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by original and more recently developed residential dwellings. The majority of the dwellings located along the southern side of Pitt Road are two (2) storey when viewed from the street and increasing to three (3) storey's in height in response to the topography of the surrounding sites and to obtain ocean and district views.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current Draft State Environmental Planning Policies.
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 potential view sharing, and non-compliance with Council's building envelope control. The

Section 4.15 Matters for Consideration	Comments
	applicant submitted the additional information on 7 October 2021. 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.
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 12/08/2021 to 26/08/2021 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 5 submission/s from:

Name:	Address:
Mrs Kerry Louise Bray Haydon Bray	13 Pitt Road NORTH CURL CURL NSW 2099
Marlon Shou	Address Unknown
Dani Rote	14 Pitt Road NORTH CURL CURL NSW 2099
Michael John Webb	16 Pitt Road NORTH CURL CURL NSW 2099
Mr John Peter McLoughlin Ms Kim Michelle Shelley	2/13 Beach Street CURL CURL NSW 2096

The following issues were raised in the submissions:

- Height of Building
- Wall Height
- Privacy
- Access to Sunlight
- Rear Boundary Setback
- Front Boundary Setback
- Bulk and Scale
- Side Boundary Envelope
- Excavation and Earth Works
- Landscape Open Space
- View Loss

The above issues are addressed as follows:

- **Height of Buildings / Exception to Development Standard**

  Comment:
  The submissions raised concerns that the overall building height is 9.58m resulting in a 12.7% breach to the building height development standard of 8.5m as prescribed in the Warringah Development Control Plan (WDCP) 2011.
  A review of the survey (Drawing No. 62382001A, Prepared by Hill & Blume, dated 14/08/2020) submitted with the DA along with the Sections Plan (Prepared by Popov Bass, Section AA, Section BB & Section CC, dated 15 October 2021) indicates the proposed building height measures 8.4m in height, therefore complying with the permissible building height of 8.5m.

- **Wall Height**

Comment:

The submissions raised concerns that the development proposes a non-compliant wall height. The wall height control (B1 Wall Heights) contained within the WDCP states that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space). A detailed assessment of the plans submitted with the development application indicate a maximum wall height of 8.2m along the western elevation. Whilst this creates a 1.0m variation to the wall height control, it is noted that this measurement is taken from the underside of the roof of the first floor to the natural ground level. The first floor is located 6.1m to the western boundary which provides a significantly generous setback resulting in minimal bulk towards the property (No. 13) located on the lower side. The impact of the variation is also further reduced given the wall height of the lower ground floor and ground floor levels directly below measures approximately of 4.4m in height. The variation to the wall height is therefore considered acceptable given the generous setbacks to the western boundary through an articulated design which responds positively to the sites topography which in turns minimises the overall bulk and scale of the dwelling when viewed from surrounding properties and the public space.

- **Privacy**

  Comment:

  The submissions raised concerns regarding potential overlooking and towards the adjoining properties, in particular 7 Pitt Road to the east and 13 Pitt Road to the west. Where there is the possibility of potential overlooking, conditions have been imposed to ensure windows located along the eastern and western elevations of the proposed development are treated appropriately to mitigate any potential privacy concerns. A condition is also imposed to reduce the depth of the first floor balcony at the rear of the dwelling to 3.0m and 1.65m privacy screens be erected at the finished floor level along both the eastern and western edges of the balcony. It is considered these amendments will address any potential privacy concerns. A detailed discussion is provided under D8 Privacy in the assessment report.

- **Access to Sunlight**

  Comment:

  The submissions raised concerns that the proposed development would create unreasonable overshadowing towards adjoining properties. Given the north/south orientation of the site, any overshadowing towards the adjoining properties is considered to be in keeping with the requirements of D6 Access to Sunlight within the WDCP 2011.

- **Rear Boundary Setback**

  Comment:

  The submissions raised concerns that the proposed development will not be in keeping with the existing rear boundary setback of adjoining properties. The development proposes an in ground swimming pool and decking in the backyard set 2.0m from the rear boundary. Generous planting is proposed along the southern (rear) boundary and side boundaries adjacent to the swimming pool and decking which will assist in providing privacy to the adjoining properties. Similar development is evident along the southern side of Pitt Road with examples of in ground swimming pools evident within the rear setback of the property. The proposed dwelling and

swimming pool are consistent with other developments within the immediate vicinity.

- **Front Boundary Setback**

  Comment:

  The submissions raised concerns that the proposed development is non-compliant with the required 6.5m front setback prescribed for the site. Whilst it is noted that the development does create a non-compliant front setback, the dwelling and ancillary works including landscaping, stairs and fencing maintain a sense of openness within the front setback and will be in keeping with the predominant character of the existing streetscape along Pitt Road.

- **Bulk and Scale**

  Comment:

  The submissions raised concerns that the overall bulk and scale of the proposed dwelling will be excessive and out of keeping with the scale of surrounding dwellings. The revised plans have significantly reduced the overall bulk and scale of the development by reconfiguring and increasing the setback of the first floor to the western boundary from 3.6m - to 6.1m. The subject site experiences a cross fall from the eastern boundary to the western boundary. As discussed, the revised plans have significantly reduced the bulk and scale of the first floor along the western side of the dwelling significantly minimising the bulk and scale of the dwelling when viewed from Pitt Road. The proposed dwelling successfully The proposal is accompanied by shadow diagrams which demonstrate adequate natural light and solar access is provided.

- **Side Boundary Envelope**

  Comment:

  The submissions raised concerns that the proposed dwelling would significantly breach the side boundary envelope controls along both the eastern and western elevation of the development. As discussed within the assessment report, revised plans were received from the applicant which increased the setback to the western boundary from 3.6m to 6.1m. The amended design will result in a development which slightly encroaches into the side boundary envelope along both the eastern and western elevations at the rear. Whilst the breach is noted it is considered minor with the design ensuring adequate solar access is provided to the adjoining dwellings with any privacy issues addressed via condition to ensure the amenity for surrounding occupants is protected. The revised design provides an articulated design reducing the bulk and scale of the dwelling when viewed from both Pitt Road and the adjoining dwelling to the west (13 Pitt Road).

- **Excavation and Earthworks**

  Comment:

  The submissions raised concerns regarding the amount of excavation and earthworks proposed for the site, in particular along the western boundary. A Geotechnical Report completed by White Geotechnical Group (25th January 2021) was submitted with the development application supporting the proposed works. A submission was received which included a peer review of the Geotechnical Report submitted by the applicant. This was prepared by JK Geotechnics (Ref: 34429BMlet, dated16 September 2021). The peer review states that the Geotechnical Report submitted with the development application did not adequately address E10 Landslip Risk of the WDCP 2011. The Geotechnical Report prepared by GK Geotechnics was reviewed and noted

by the Applicant on 1 July 2022. To ensure the recommendations for best practice are adhered to as to not adversely affect the stability of the subject and surrounding land, suitable conditions are imposed in the consent. These conditions include pre and post-dilapidation reports being undertaken and to ensure any excavation work is contained within the subject site. The structural adequacy of any retaining walls along or to the adjoining boundaries is to be design and certified by a Structural Engineer. The subject site is identified as being in Land slip Risk Area B which requires a preliminary assessment of the site conditions to be undertaken. In this instance a Geotechnical Report by a suitably qualified geotechnical engineer was required to be submitted with the development application. A risk analysis summary was carried out in the Geotechnical Report submitted with the DA which is in accordance with the guidelines published by the Australian Geomechanics Society.

Whilst it is acknowledged that localised excavation is proposed up to a depth of 1.5m along the western elevation, a condition is imposed to ensure that all supporting structures/retaining walls and excavation is wholly contained within the property boundaries. Details providing this are required prior to a construction certificate. A Pre-construction Dilapidation Report must be submitted to the Principal Certifying Authority prior to any works commencing on site (including demolition and excavation) prior to commencement of works. A Post-construction Dilapidation Report is also required subject to the issue of an Occupation Certificate. The reports are to be conducted at 7 Pitt Road and 13 Pitt Road.

Council is satisfied that Clause 6.4 Development on Sloping Land in the WLEP 2011 has been addressed and that a suitably qualified engineer has been engaged to provide an adequate assessment of the site conditions, subject to conditions.

- **Landscape Open Space**

  The submissions raised concerns that the development does not comply with the minimum 40% landscaped open space required for the site under Control D1 Landscaped Open Space and Bushland Setting of WDCP 2011. This calculation includes the water surface of swimming pools and any open space areas with a dimension of less than 2 metres being excluded. An assessment of the plans submitted with the development application result in a total landscaped open space area of 313sqm (41.2%) of the site complying with the subject control.

- **View Loss**

  Comment:

  The submissions raised concerns that the development would impact on existing ocean and district views obtained in a southerly direction towards North Curl Curl Beach, South Curl and Manly. The dwellings that are impacted are located along the northern side of Pitt Road opposite the subject site. A detailed view loss assessment is contained within the assessment report under D7 Views.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application seeks consent for the demolition of an existing dwelling and ancillary structures followed by the construction of a new

Internal Referral Body	Comments
	dwelling, swimming pool and associated landscape works. Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls: • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation The Landscape Plan prepared by Wilder Gardens is noted. The plans indicate that 6 small trees/palms are to be removed to accommodate the proposed works. The trees are not considered significant and no objections are raised to removal. The Landscape Plans indicate a range of trees, shrubs and groundcovers over the site, which is supported. No objections are raised to approval subject to conditions as recommended.
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 (section 13); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. Recommended for approval subject to conditions
NECC (Development Engineering)	1st Development Engineer referral The applicant proposed to charge the on site stormwater to Council's kerb and gutter on Pitt Road. However, Council requires the on site stormwater to be discharged via an easement in accordance with he section 5.5 of Council's Water Management For Development Policy. In the above policy, there is a clear process shall be followed prior to charging the on site stormwater to Council's Kerb and gutter. The applicant shall try to seek a drainage easement from the downstream property as the above policy. If the applicant is unable to obtain an easement and decide to discharge to the kerb and gutter at Pitt Road, a kerb and gutter capacity check/ calculation must be provided to demonstrate Council's kerb and gutter has sufficient capacity to take the additional discharge without causing any flooding/overflow issue to the adjacent properties on Pitt Road.

Internal Referral Body	Comments
	As such, Development Engineering cannot support the application due to the clause C4 of Council's Warringah DCP 2011. 2nd Development Engineering referral The previous requests have been provided in this submission. Development Engineering has no objection to the application subject to the following condition of consents.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. As this site drains into the Curl Curl Lagoon estuary, the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to the creek or lagoon. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. As the application proposes to increase impervious area by more than 50m2 a filtration device must be installed to capture organic matter and coarse sediments prior to discharge of stormwater from the site, and maintained throughout the life of the development. If groundwater or tailwater is encountered during excavation, the applicant should contact Council as per the conditions. This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Curl Curl Lagoon if conditions are adhered to. The proposal is therefore supported.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided who raised no objection to the proposal.

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. e Recommendation of this report.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1171905S_02, 1 July 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A response has been received within the 21 day statutory period with no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

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

Comment:
The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes. The proposal has been reviewed by Council's Coastal and Catchments Officer and Council's Riparian Lands and Creeks Officer who have not raised any objections to the proposed works.

(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:
Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

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 proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. The proposal has been reviewed by Council's Coast and Catchments Officer and Development Engineer who has raised no objection to the proposed works (subject to conditions).

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	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
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.

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

6.4 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

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	West - 7.2m East - 7.2m	8.2m 7.6m	13.8% 5.5%	No No
B2 Number of storeys	2 / 3 / N/A	3	N/A	Yes
B3 Side Boundary Envelope	West - 5m	0.3m max in height for a length of 3.9m	6%	Yes
	East - 5m	0.2m - 0.5m in height for a length of 2.2m	4% - 10%	Yes
B5 Side Boundary Setbacks	East - 0.9m	Nil - Stairs 1.2m - Lower ground floor 0.9m - Ground floor 1.9m - First floor	100% N/A N/A N/A	No Yes Yes Yes
	West - 0.9m	Nil - Stairs 0.9m - Lower ground floor 0.9m - Ground floor 6.1m - First floor	100% N/A N/A N/A	No Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	6.5m - dwelling Nil - retaining wall 2.6m - front fence	N/A 100% 60%	Yes No No
B9 Rear Boundary Setbacks	6m	20.1m - dwelling 2.0m - swimming pool / deck	N/A 66.7%	Yes No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (303.5sqm)	41.2% (313sqm)	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	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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
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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal does not comply with the wall height control (7.2m). The proposed wall height is up to 8.2m along the western elevation and 7.6m along the eastern 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 minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

Comment:

The proposal involves a dwelling that has a first floor level that is well articulated, and well setback from boundaries. The dwelling also maintains landscaped area to the front and rear of the site. Along with articulation and stepping of the built form, this provides a circumstance in which the visual impact of the development is adequately minimised.

To ensure development is generally beneath the existing tree canopy level

Comment:

The proposed dwelling is compliant with the building height standard and this assists in ensuring the dwelling will remain generally below the tree canopy levels in the vicinity.

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

Comment:

The compliant building height and stepping of the upper level provides a situation in which the proposal maintains reasonable viewing corridors through the sides as well as over the subject site. Revised plans were submitted from the Applicant providing a generous setback of the first floor to the western elevation of 6.1m.

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

Comment:

The proposal involves an upper level that is well stepped and setback from the boundaries and is well articulated. Further to this, the proposal involves a style and size of windows that minimise opportunity for overlooking and appropriate conditions to be imposed to ensure the amenity of adjoining properties is protected. This provides a design that adequately minimises visual and amenity impact.

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

Comment:

The proposal provides for the demolition and construction of a new dwelling. The proposed development responds appropriately to the site topography and does not result in unreasonable excavation of the natural landform.

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

Comment:

The proposal provides sufficient scope for the relatively flat roof form which is appropriate given the context of the area.

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

B3 Side Boundary Envelope

Description of non-compliance

Part B3 of Warringah Development Control Plan 2011 states that buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5 metres above ground level (existing) at the side boundaries.

The development will marginally breach the side boundary envelope along both the eastern and western elevations towards the rear. The breach along the eastern elevation is contained within the south eastern corner of the development to the proposed privacy screen and a small portion of the facade. The breach measures 2.2m in length for a height of 0.2m - 0.5m resulting in a 7.2% breach to the side boundary envelope control. Along the western elevation, the breach falls in a similar location. The breach measures 3.9m in length for a maximum height of 300mm resulting in a 4.1% variation to the side boundary envelope control. The breach along the western elevation is predominantly contained within the awning.

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:

  Revised plans have been received which increase the setback from the western boundary at first floor from 3.6m to 6.1m. The increased setback will provide a more articulated facade along the western elevation. This generous setback to the western boundary will largely alleviate the impact of any bulk and scale towards 13 Pitt Road and significantly reduce any potential amenity impacts towards the occupants. No windows are proposed along the western elevation of the first floor addition. The breach to the side boundary envelope is contained at the rear of the development and given the articulated design of the development, along the eastern elevation this is located within the first floor and along the western elevation within the ground floor.

  Given the cross fall of the site and siting of the adjoining dwellings at both 7 and 13 Pitt Road, the breach to the side boundary envelope along both the eastern and western elevations is considered acceptable. The breach will not result in any unreasonable overshadowing towards the adjoining properties and given the generous setback to both the eastern and western side boundaries. The development is considered to respectfully address the sloping topography of the site whilst ensuring compliance with the maximum building height.

  As discussed within the report, concern is raised from adjoining properties regarding potential privacy impacts. Appropriate conditions are imposed to ensure overlooking from adjacent

windows and elevated balconies does not impact on the amenity of the adjoining properties.

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

  Comment:

  Notwithstanding the non-compliance, the subject site and adjoining sites will continue to receive appropriate solar access and privacy.

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

  Comment:

  Despite the breach to the building envelope along both the eastern and western elevations, the development is compliant with the building height prescribed in the WLEP. Minor breaches are proposed along the eastern and western side boundaries at ground level as a result of access stairs and retaining walls. This is a direct response to the slope of the site and is not considered to create any adverse impacts towards the adjoining properties and will not be visible when viewed from Pitt Road. The development is considered to respond appropriately to the topography of the site.

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

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 requires development to maintain a minimum setback from side boundaries of 0.9m. The new stairs and retaining wall along the eastern elevation propose a nil setback to the side boundary and will be partly more than 1 metre above ground. Therefore presenting a 100% variation to the required control of 0.9m. Along the western side elevation, the development proposes a retaining wall and fence within the front setback which will extend to the western boundary. A low retaining wall and access stairs are located along the western elevation sitting below 1.0m in height towards the rear of the property.

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:

  Notwithstanding the setback variations towards both the eastern and western boundaries, the proposed development provides adequate opportunities for deep soil landscape areas. The proposed landscape area is greater than the requirement at 41% of total site area.

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

  Comment:

  The proposed wall and stairs along the western side of the dwelling will not become visually dominant given that the wall measures a maximum of 700mm above ground level with the stairs sitting below the wall. The structure will sit below the western side boundary fence and therefore will not be visible or visually dominant when viewed from the adjoining dwellings. The 11.3m long retaining wall will be constructed to the top of the stairs constructed along the eastern boundary. The top of the retaining wall (RL33.08) will not be visible when viewed from Pitt Road given the slope of the site and the northern part of the wall being located approximately 18.5m from the northern (front) boundary. The wall will sit generously below the existing adjoining masonry wall (RL34.47) and therefore will not become visually dominant when viewed from the street or from the adjoining property at 7 Pitt Road.

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

  Comment:

  As discussed above, the non-compliance with both the eastern and western side boundaries is as a result of the proposed access stairs and retaining walls. The eastern and western elevations of the dwelling generously comply with the minimum setback control to the side boundaries. The design provides stepping of the upper level and has been designed and sited in such a way that does not give rise to an unreasonable bulk and scale. This distribution and articulation of building bulk will ensure that the scale is minimised.

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

  Comment:

  The breach to the side setback control is contained to the access stairs and retaining walls along the eastern and western elevations. The eastern and western elevations of the dwelling generously comply with the minimum setback control to the side boundaries. It is considered that the design and siting of the dwelling will not result in an unreasonable level of solar access to the adjoining sites. Concerns have been raised from 7 Pitt Road regarding the lack of privacy treatment along the eastern elevation of the proposed dwelling. W06 servicing the laundry and pantry at ground floor level (RL32.60) is setback 1.8m from the eastern side boundary. A visit to the site revealed that this window will be located adjacent to an access door located along the western elevation of 7 Pitt Road and given the use of these rooms is not anticipated to create any adverse impacts towards the amenity of the occupants at 7 Pitt Road. Whilst the window sill heights on the adjacent dwelling (No. 7) and proposed first floor addition generally correlate, it is noted that the overlooking between both properties would occur from a WIR and bathroom window. 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 NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that *"overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time"*.
  The first floor balcony along the southern elevation is considered excessive in size and is to be reduced in depth to a maximum of 3.0m. A privacy screen measuring 1.7m in height is to be constructed for the entire depth of the deck along both the eastern and western elevation and

conditioned accordingly to minimise direct overlooking towards the neighbouring properties.

Along the western elevation, the bathroom windows (W002 at the lower ground floor and W102 at ground floor) are to be frosted glass to minimise any overlooking towards the dwelling to the west at 13 Pitt Road. Concern has also been raised in regard to the ground and first floor windows servicing a hallway at both levels. The ground floor level window (W003) is not anticipated to overlook any windows or private open space along the eastern elevation of 13 Pitt Road as a result of the boundary wall and landscaped courtyard. To ensure the amenity of the adjoining property at 13 Pitt Road is protected a condition is to be imposed to window (W103).

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

  Comment:

  The proposal ensures a reasonable retention of view corridors through the stepping and articulation of the upper level, and the compliant building height. This is discussed in detail under D7 Views in this report.

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

B7 Front Boundary Setbacks

Description of non-compliance

The proposed dwelling is located is located 6.5m from the front boundary adhering to the front setback control. As outlined under Part B7 of WDCP 2011 the requirements for front boundary setbacks indicate that, the front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.

It is noted that the development proposes a wall along the western side of the pedestrian entry flush with the front boundary. Other works include a front entry gate 0.5m to the front boundary and an open style fence 2.7m from the front boundary. Entry steps to the dwelling are proposed 3.7m from the front boundary.

In this instance, the variation is considered to be supportable as outlined below demonstrating compliance with 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 create a sense of openness.*

  Comment:

  The proposed dwelling will be located 6.5m from the front boundary. The development proposes two (2) walls measuring a maximum 1.6m in height to define the pedestrian entry to the dwelling. The entrance to the dwelling incorporates access stairs to the dwelling. Landscaping

works are also proposed within the front setback along the eastern side of the site with a larger turfed area proposed along the western side of the site. The development proposes a relatively open style design with the crossover and driveway being located along the western half of the front boundary with the entrance and landscaped / turfed area being located along the eastern half of the front boundary. An open style front entry gate is proposed along the pedestrian entrance with an open style fence located 2.7m from the front setback and 4.7m in length across the turfed area to the eastern side of the site. On balance of the sites layout, the street context and the landscape curtilage proposed, the development achieves an adequate sense of openness and enhances the street.

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

  Comment:

  The proposal retains the visual continuity and pattern of buildings and landscape elements similar to those in the vicinity. The proposal largely retains the existing dwelling house and the minor encroachment within the front building setback does not detract from the visual continuity along southern side of Pitt Road.

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

  Comment:

  The visual quality of the streetscape and public spaces is protected. The height, bulk and scale of the proposal is consistent with the existing site and surrounding development.

- *To achieve reasonable view sharing.*

  Comment:

  As described elsewhere in this report, the variation to the front boundary setback does not give rise to any unreasonable view loss. This matter has been further addressed within Section D7 of this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control. 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 coping are located 2.3m to the rear boundary.

It is noted that Clause B9 permits 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 swimming pool, including coping and decking account for less than 50% of the rear setback area, approximately 91sqm or 28%.

The following outlines an assessment 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:

  Notwithstanding the variation, generous deep soil areas are provided for future landscaping.

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

  Comment:

  The in-ground swimming pool does not extend above the existing building height maintains a sense of openness in the rear yard with built form minimised.

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

  Comment:

  As noted above, the swimming pool is in-ground and does not extend above the existing building height, therefore ensuring the amenity to adjacent land and between buildings is preserved.

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

  Comment:

  The proposed swimming pool is typical residential development that is evident across the wider area and in rear setback areas. As such, the proposal ensures the existing visual continuity and pattern of buildings, rear gardens and landscape elements is maintained.

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

  Comment:

  The rear setback variation will not give rise to unreasonable overlooking and impacts on privacy between buildings.

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.

D7 Views

View loss objections were received from the owners of No. 7 Pitt Road, No. 12 Pitt Road and No. 14 Pitt Road. No. 14 and No 12 are located directly opposite the subject site along the northern side of Pitt Road with no. 7 Pitt Road located to the eastern side of the subject site.

A site visit was undertaken at 12 Pitt Road on 8 November 2021. Photos were taken from the first floor of No. 12 from the kitchen/living area and from the first floor balcony. 14 Pitt Road is a single storey dwelling and is located directly west of 12 Pitt Road. The corridor maintained along the western side of the subject site will ensure reasonable views are maintained from the windows located along the southern elevation of 14 Pitt Road. In the instance that 14 Pitt Road was to be developed, generous views would be afforded from a first floor.

A site visit was not undertaken at 7 Pitt Road. The dwelling at 7 Pitt Road is located on the higher side of the subject site and is three (3) storeys. The submission received from 7 Pitt Road raises concern with possible view loss from the ground and first floor. The ground floor (RL34.855) of 7 Pitt Road contains a large floor to ceiling window along the southern elevation and a terrace located along the eastern side of the dwelling. At first floor (RL38.005), a large balcony and windows are located along the southern elevation to capture the ocean and district views. The proposed ground floor (RL32.6) will be 2.285m below the finished ground floor level of 7 Pitt Road with the proposed first floor (RL35.75) measuring 2.3m below the finished floor level of the first floor at 7 Pitt Road. The views from the existing first floor of 7 Pitt Road will not be interrupted as a result of the proposed dwelling. At ground floor, the existing window along the southern elevation of the dwelling and the balcony along the eastern side of the dwelling will maintain the existing uninterrupted views.

To determine the reasonableness of the development with regards to views, the following assessment is provided.

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:

  The views affected from 12 Pitt Road are views of Curl Curl Beach, North Head and Manly. These views are obtained from the first floor and first floor balcony in a southern direction. District views and views of Curl Curl Lagoon are also obtained from the first floor and first floor balcony in a south and south westerly direction. These views include water and land/water

interface views.

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 12 Pitt Road are obtained from a kitchen/living/dining area from the first floor of the property. Views are also obtained from the first floor balcony which measures the entire width of the property. Photos below are taken from these rooms and from the balcony. A photo was also taken from 14 Pitt Road in front of the living room window.



Above: Photo taken from kitchen at first floor of 12 Pitt Road



Above: Photo taken from dining area at first floor level of 12 Pitt Road.



Above: Photo taken from the first floor balcony at 12 Pitt Road.



Above: Photo taken from in front of living room window at 14 Pitt Road.

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 first floor living room and kitchen is anticipated to be

affected by the proposed development along the eastern side of the development. Ocean and water/land interface views and district views will be slightly disrupted along the western side of the dwelling. The view to the south west and west will be entirely unaffected, as this is across the front boundary, away from the subject site. The view loss from this point is negligible.

- Sitting Room: Ocean and water/land interface views across to Manly and North Head are anticipated to be impacted from this point, though the view to Curl Curl Lagoon and ocean views of Curl Curl Beach in a southerly and south westerly direction are anticipated to be retained. The view loss from this point is moderate, as the most important element of the view (the water view to the lagoon) is and a portion of the view of Curl Curl Beach is unaffected.
- Kitchen: A portion of the views of Curl Curl Beach over the eastern side of the subject site are anticipated to be lost. The view towards Mackillop Park to the north of Freshwater Beach and its interface with the water is anticipated to be predominantly lost. The view to the southern end of Curl Curl Beach is anticipated to be retained. The view loss from this point is moderate
- Rear first floor balcony: The views to Curl Curl Lagoon, Curl Curl Beach and its interface with the water, North Head and its interface with the water, will be partially retained over the roof of the proposed development and along the western side of the development as a result of the revised plans providing a 6.1m setback to the western boundary at first floor. Ocean views and a small area of water/land interface views to the eastern side of the proposed dwelling will be lost as a result of the proposal. The district views towards Curl Curl and Freshwater will be largely maintained, though are of lesser value than the retained water views. The view loss from this point is moderate.

The cumulative impact in consideration of the impact on all individual views is assessed as moderate/severe.



Above: Image shows the additional built form (in green) to the western side of the proposed dwelling.

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 wall height control along the western elevation. However given the articulated design and the generous setback of 6.1m to the western boundary the proposed non-compliant wall height is acceptable for the reasons detailed in the section of this report relating to Clause B1 Wall Heights. Further, the proposed side setback to the western elevation only results to minimal loss of view to nearby development and vegetation, and does not result in any notable or unreasonable view loss.

The proposed development does result in a numerical non-compliance with the wall height control of up to 8.2m, 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 is below 20%. However given the articulation along the western elevation, the wall height is broken up with the first floor located 6.1m from the western boundary which reduces the bulk and scale of the proposed building.

The first floor component of the proposed dwelling is compliant with the 8.5m development height standard along the eastern side of the dwelling. While views from the kitchen /living and balcony at 12 Pitt Road will be disrupted, this is not as a result of a skilful and considerate design which has provided compliant wall height, setbacks and building envelope along the eastern side of the dwelling. Substantial ocean, ocean/land interface and district views will not be retained from the kitchen/living room and balcony along the western side of the proposed dwelling.

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 skilful design, as they would unreasonably hinder the development potential envisaged for the site by the applicable planning controls. The subject site is considered to be one of the remaining houses along Pitt Road which has not been developed and the current proposal is considered to be in keeping with the surrounding development with the design achieving a skilful and almost fully compliant development. A development such as this (being reasonably compliant with built form controls) should be anticipated for the site.

Conclusion

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.

As indicated above, the view loss is a direct result of the first floor component of the development. The non-compliant component of the dwelling is contained mainly towards the western side where the view loss is considered to be minor. The development generously complies with the side setback provision at both ground and first floor with only a minor breach to the building envelope located at the rear. Accordingly, the proposal has been amended to a more skilful design to retain the significant and valued Freshwater Beach and Headland areas. As a result, the the bulk, scale and height of the proposal is assessed as presenting reasonable view loss.

Therefore an amendment or refusal of the application is not warranted in this particular circumstances.

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

  Comment:

  The proposal has been amended to generously increase the setback of the first floor to the western boundary from 3.6m to 6.1m. this will retain elements of the water and district views and address the submissions made in respect of view sharing.

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

  Comment:

  There are no trees within the subject land that will obstruct or form part of the view line.

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

D8 Privacy

Description of non-compliance

Clause D8 of the WDCP 2011 requires the building layout to be designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The proposal includes an elevated balcony, and windows at the ground and first floor in close proximity to the sites boundaries. These openings are expected to cause unreasonable overlooking and privacy impacts to the surrounding sites, which is contrary to the intent of this control. Given the dense urban nature of the area due to the subdivision pattern, careful consideration must be given to elevated windows and a balcony in this location.

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:

Concern has been raised from the adjoining properties in relation to overlooking towards existing windows and private open space. Along the western elevation, the development proposes two (2) large floor to ceiling windows (W103 first floor and W003 at ground floor) The windows will service a hallway at both levels and are located 4.8m from the western side boundary. The ground floor window (W003) is not anticipated to create any unreasonable overlooking towards any windows at 13 Pitt Road given the landscaped courtyard and generous setback to the western boundary. However due to the height and its association with the primary internal living area of the dwelling at first floor, a significantly greater overlooking potential upon the outdoor private open space of the western adjacent property is expected. and therefore appropriate privacy treatment is recommended by way of condition. The narrow bathroom windows along the western elevation at ground and first floor are also required to be frosted glass.

Visual privacy impacts to rear adjacent properties are not expected to be unreasonable due to the large spatial separation of the balcony from their private open space, however given the elevated nature and size of the first floor rear balcony, a condition is imposed to reduce the depth of the balcony from 5.6m to 3.0m . In order to ensure the proposed development complies with the objectives of the control, a condition is recommended to require the construction of a 1.65m high privacy screen along both sides of the first floor balcony located off the master bedroom. This will assist in reducing the visual privacy and overlooking impact of users of the balcony on occupants of the eastern and western adjacent properties.

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

  Comment:

  The privacy screens and windows are conditioned to require a design solution that is compatible with the existing dwelling and surrounding character of the locality.

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

  Comment:

  The conditioned privacy screens and obscure glass windows are expected to improve the security of occupants of the subject site and adjacent properties.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $9,610 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $961,000.

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

This proposal, for demolition and construction of a dwelling house including an in-ground swimming pool and associated landscaping, has been referred to the Development Determination Panel (DDP) due to five (5) submissions opposing the development being received during the assessment period. Compliance with Clause 4.3 Height of Buildings as stipulated under the Warringah Local Environmental Plan (MLEP) 2011 is achieved.

The redesign of the upper level, to create a 6.1m side setback and a view corridor through the site, has satisfactorily resolved the view sharing impacts.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.
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 DA2021/1265 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 1 DP 21968, 11 Pitt Road, NORTH CURL CURL, 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**
DA101 Rev 02 - Site Plan	5 October 2021	PopovBass
DA104 Rev 03 - Ground Floor Plan	5 October 2021	PopovBass
DA105 Rev 03 - Lower Ground Floor Plan	5 October 2021	PopovBass
DA106 Rev 03 - Rear Yard Plan	5 October 2021	PopovBass
DA107 Rev 03 - Level 01 Plan	5 October 2021	PopovBass
DA108 Rev 03 - Roof Plan	5 October 2021	PopovBass
DA109 Rev 02 - North Elevation	5 October 2021	PopovBass
DA110 Rev 02 - South Elevation	5 October 2021	PopovBass
DA111 Rev 02 - East Elevation	5 October 2021	PopovBass
DA111 Rev 02 - West Elevation	5 October 2021	PopovBass
DA113 Rev 03 - Section AA	5 October 2021	PopovBass
DA113 Rev 03 - Section BB	5 October 2021	PopovBass
DA113 Rev 03 - Section CC	5 October 2021	PopovBass
DA116 Rev 02 - Driveway Section	5 October 2021	PopovBass

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Dwg No. SW1 - Cover Sheet and Notes	14 February 2022	Waterdesign Civil Engineers
Dwg No. SW2 - Stormwater Management Plan	14 February 2022	Waterdesign Civil Engineers
Dwg No. SW3 - Sections and Details	14 February 2022	Waterdesign Civil Engineers
Dwg No. SW4 - Erosion and Sediment Control Plan	14 February 2022	Waterdesign Civil Engineers

Dwg No. SW5 - Roadway / Gutter Catchement Plan	14 February 2022	Waterdesign Civil Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Report	25 January 2021	White Geotechnical Group
BASIX Report No. 1171905_S02	1 July 2021	Frys Energywise

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**
Plant Design Layout (All pages)	Not dated	Wilder Gardens
Plant Colour Code (All pages)	Not dated	Wilder Gardens

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Northern Beaches Waste Management Plan	28 July 2021	Glen Van Den Hoek

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. **No Works on adjoining land**
No Approval is granted under this consent for any works on adjoning land

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 $9,610.00 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 $961,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The Applicant must provide a certificate to ensure the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical group dated 25/1/2022 are to be incorporated into the construction plans. The certificate shall be prepared by a qualified geotechnical engineer.

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

- The first floor balcony located off the master bedroom is to be reduced in depth to 3.0m
- A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern and western edge of the first floor balcony located off the master bedroom 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.
- The sill height of windows W002, W102, W103, and the windows servicing the ensuite and walk-in-robe at first floor level along the eastern elevation are to be a minimum height of 1.65m above the finished floor level or to incorporate obscure glazing 1.65m measured from the finished floor level.

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

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

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 Waterdesign Civil Engineers, job number 2021-001, dated 31/01/2022.

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.

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

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

Reason: To provide public and private safety.

11. **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.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **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: 7 Pitt Road and 13 Pitt Road, North Curl Curl

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.

14. **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

15. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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

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

Reason: Preservation of significant environmental features.

16. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected including:
   i) all trees and vegetation within the site indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
   ii) all trees and vegetation located on adjoining properties,
   iii) all road reserve trees and vegetation.

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

construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development

activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

22. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be

inspected by Council and a satisfactory “Vehicle Crossing Inspection” card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

23. **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.

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. **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.

26. **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.

27. **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)

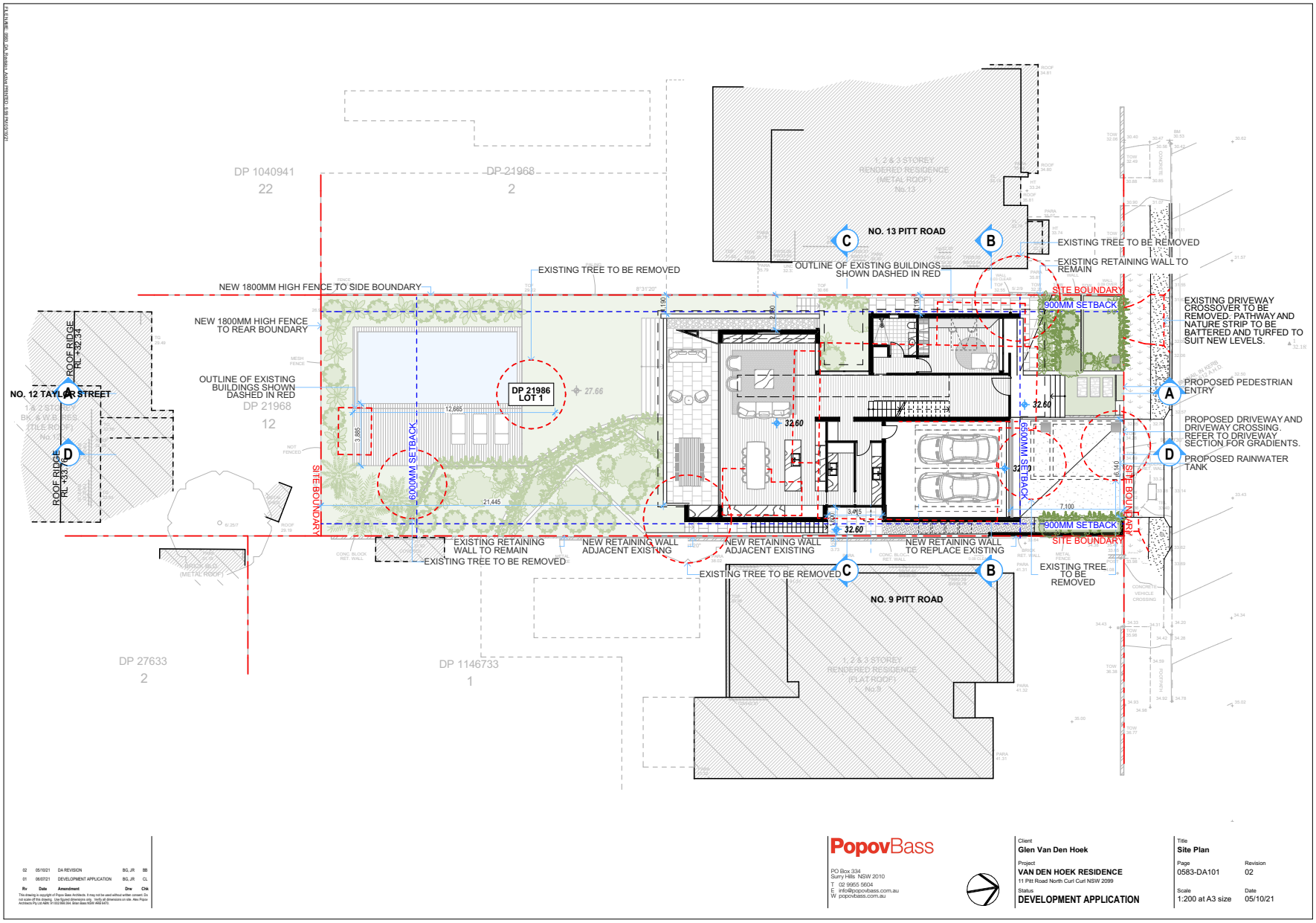
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

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

Reason: To ensure geotechnical risk is mitigated appropriately.

29. **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.



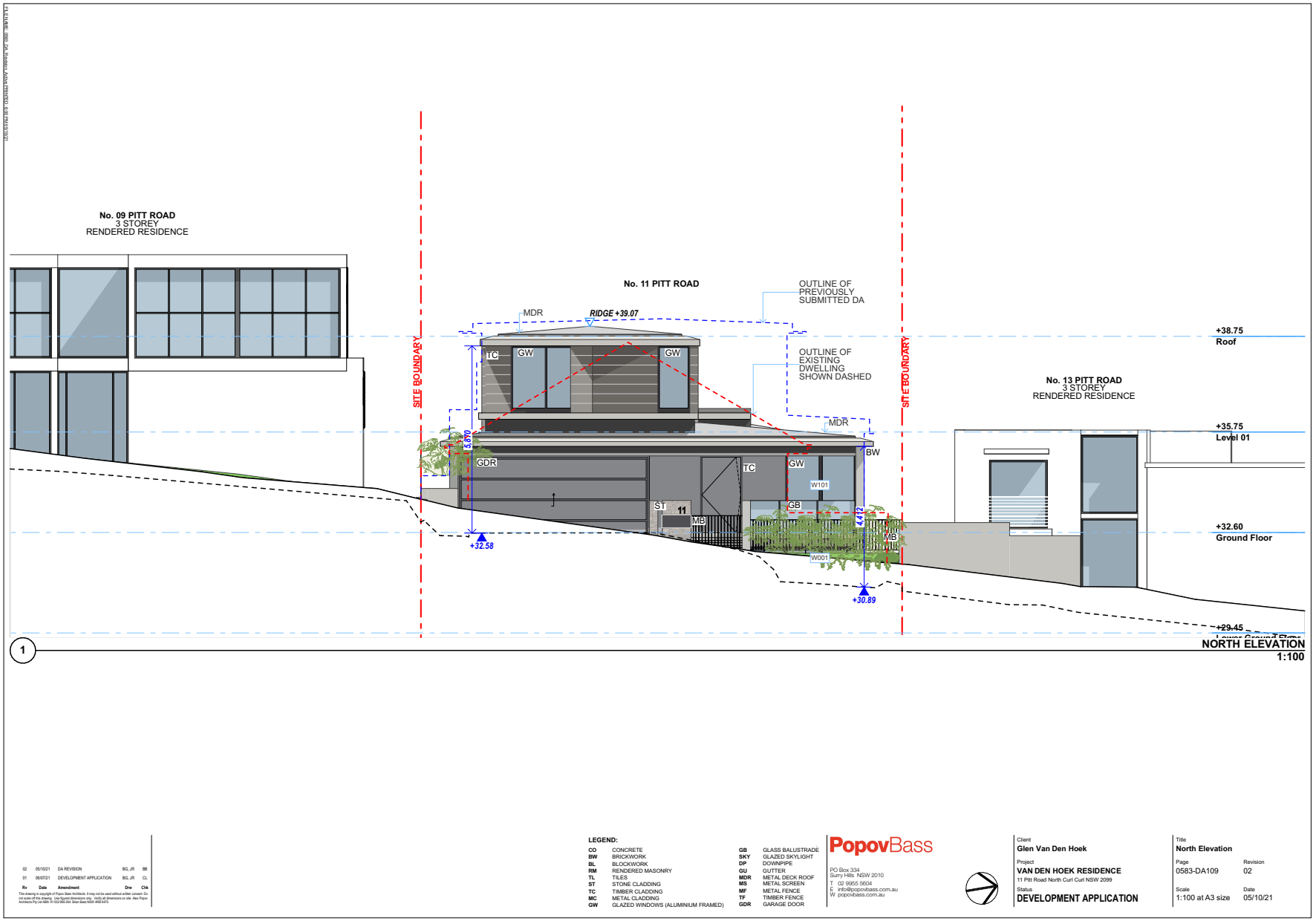
Rv	Date	Amendment	Drw	Chk
02	05/10/21	DA REVISION	BG, JR	BB
01	06/07/21	DEVELOPMENT APPLICATION	BG, JR	CL

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Client	Glen Van Den Hoek
Project	VAN DEN HOEK RESIDENCE 11 Pitt Road North Curl Curl NSW 2099
Status	DEVELOPMENT APPLICATION
Title	Site Plan
Page	0583-DA101
Revision	02
Scale	1:200 at A3 size
Date	05/10/21



Rv	Date	Amendment	Drw	Chk
02	05/10/21	DA REVISION	BG, JR	BB
01	06/07/21	DEVELOPMENT APPLICATION	BG, JR	CL

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LEGEND:

CO	CONCRETE	GB	GLASS BALUSTRADE
BW	BRICKWORK	SKY	GLAZED SKYLIGHT
BL	BLOCKWORK	DP	DOWNPIPE
RM	RENDERED MASONRY	GU	GUTTER
TL	TILES	MDR	METAL DECK ROOF
ST	STONE CLADDING	MS	METAL SCREEN
TC	TIMBER CLADDING	MF	METAL FENCE
MC	METAL CLADDING	TF	TIMBER FENCE
GW	GLAZED WINDOWS (ALUMINIUM FRAMED)	GDR	GARAGE DOOR

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Client: **Glen Van Den Hoek**
Project: **VAN DEN HOEK RESIDENCE**
11 Pitt Road North Curl Curl NSW 2099
Status: **DEVELOPMENT APPLICATION**

Title: **North Elevation**
Page: 0583-DA109
Revision: 02
Scale: 1:100 at A3 size
Date: 05/10/21



Rv	Date	Amendment	Drw	Chk
02	05/10/21	DA REVISION	BG, JR	BB
01	06/07/21	DEVELOPMENT APPLICATION	BG, JR	CL

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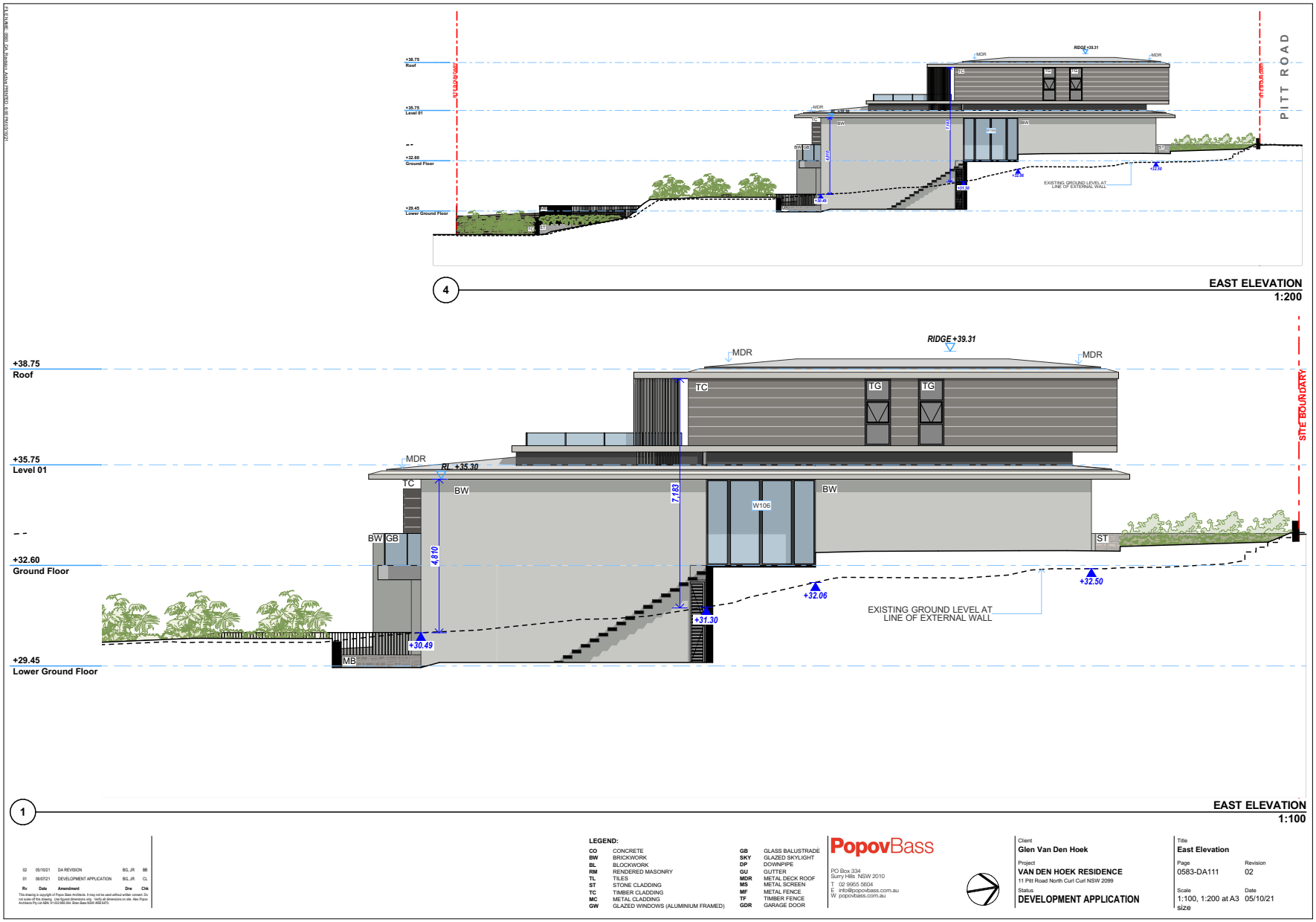
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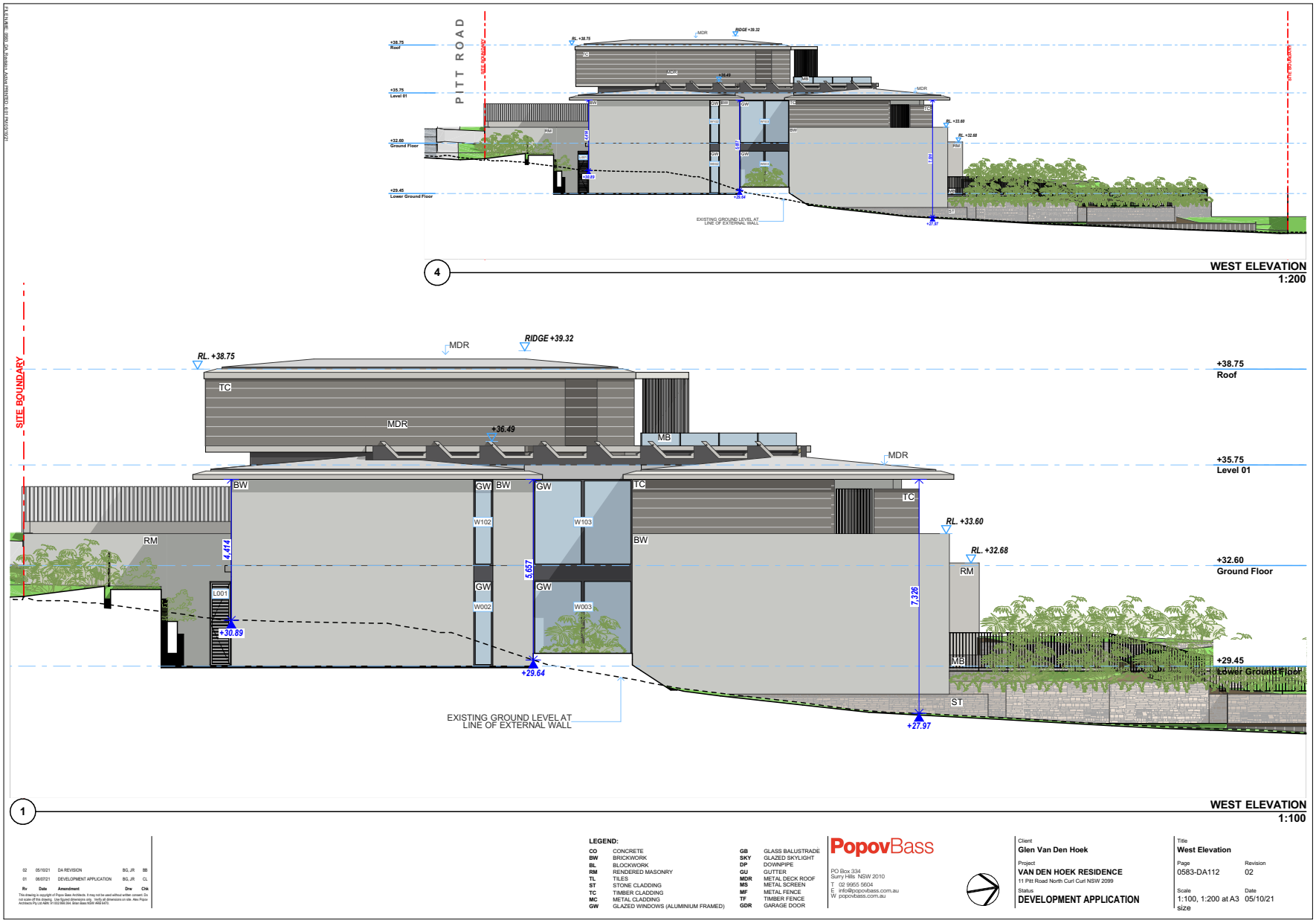
CO	CONCRETE	GB	GLASS BALUSTRADE
BW	BRICKWORK	SKY	GLAZED SKYLIGHT
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Client: **Glen Van Den Hoek**
Project: **VAN DEN HOEK RESIDENCE**
11 Pitt Road North Curl Curl NSW 2099
Status: **DEVELOPMENT APPLICATION**

Title: **South Elevation**
Page: 0583-DA110
Revision: 02
Scale: 1:100 at A3 size
Date: 05/10/21


PITT ROAD
+38.75
Roof
+35.75
Level 01
+32.60
Ground Floor
+29.45
Lower Ground Floor
EXISTING GROUND LEVEL AT
LINE OF EXTERNAL WALL
4
EAST ELEVATION
1:200
RIDGE +39.31
MDR
TC
TG
BW
GB
W106
ST
MB
RL +35.30
7,183
4,810
+30.49
+31.30
+32.06
+32.50
SITE BOUNDARY
1
EAST ELEVATION
1:100
LEGEND:
CO CONCRETE
BW BRICKWORK
BL BLOCKWORK
RM RENDERED MASONRY
TL TILES
ST STONE CLADDING
TC TIMBER CLADDING
MC METAL CLADDING
GW GLAZED WINDOWS (ALUMINIUM FRAMED)
GB GLASS BALUSTRADE
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MS METAL SCREEN
MF METAL FENCE
TF TIMBER FENCE
GDR GARAGE DOOR
02 05/10/21 DA REVISION BG, JR BB
01 06/07/21 DEVELOPMENT APPLICATION BG, JR CL
Rv Date Amendment Drw Chk
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Client
Glen Van Den Hoek
Project
VAN DEN HOEK RESIDENCE
11 Pitt Road North Curl Curl NSW 2099
Status
DEVELOPMENT APPLICATION
Title
East Elevation
Page
0583-DA111
Revision
02
Scale
1:100, 1:200 at A3 size
Date
05/10/21



Rv	Date	Amendment	Drw	Chk
02	05/10/21	DA REVISION	BG, JR	BB
01	06/07/21	DEVELOPMENT APPLICATION	BG, JR	CL

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LEGEND:

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Client: **Glen Van Den Hoek**
Project: **VAN DEN HOEK RESIDENCE**
11 Pitt Road North Curl Curl NSW 2099
Status: **DEVELOPMENT APPLICATION**

Title: **West Elevation**
Page: 0583-DA112
Revision: 02
Scale: 1:100, 1:200 at A3 size
Date: 05/10/21

ITEM 3.6	**DA2021/2188 - 163 WHALE BEACH ROAD WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/407722**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. THAT Council as the consent authority **approves** Development Consent to DA2021/2188 for alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 11909, 163 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2188

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 12 DP 11909, 163 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Alterations and additions to 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:	Colin Neville Swadling Louise Margaret Samuels
Applicant:	Wayne Ellis

Application Lodged:	22/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/12/2021 to 16/12/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 32.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 596,844.00

EXECUTIVE SUMMARY
This 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 11.28m, which represents a variation of 32.8% to the prescribed 8.5m building height limit.

Public exhibition of the proposal resulted in one (1) submission. The submission raised concern with potential privacy impacts as a result of the raised swimming pool at the rear of the dwelling, the non-

compliant building height, works forward of the established rear building line, excessive changes to the landscape and works built without approval.

The matters raised in the submission are detailed in this report, and in summary it was found that the privacy concerns raised were relevant. The applicant was requested to provide amended plans increasing the side building line and landscaped area on the site. Amended plans were submitted increasing the side building line of the Pool Terrace from the eastern side boundary. However, the increased side building line of the Pool Terrace was not considered sufficient and a condition is recommended to increase the side building line of the Pool Terrace and a privacy screen be erected along the eastern edge of the Pool Terrace to maintain privacy between the two properties.

Due to the steep slope of the site, 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 the conditions provided.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks approval for alterations and additions to an existing dwelling. The works include the following:

- New Entry walkway from the carport to a proposed elevator
- Entry Level Additions
  - o New guest room with ensuite
  - o New Lift entry
  - o New deck with louvered roof
- Living Level Alterations
  - o Lift entry
  - o New Kitchen
  - o New glazed balustrade to deck and louvered roof
- Ground Level Alterations
  - o Lift entry
  - o New glazed balustrade to deck
- New Pool and Spa and associated decks.
  - o New concrete floor
  - o New toilet, shower, cupboard and bench
  - o Pool Terrace

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 12 DP 11909 , 163 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Whale Beach Road. The site is irregular in shape with a frontage of 15.365m along Whale Beach Road and a depth of 60.09m. The site has a surveyed area of 891.3m². The site is located within the C4 Environmental Living zone and accommodates three storey dwelling with detached carport at the front. The site is located on the steeply graded lower reaches of a hillslope. The slope falls across the site at an average angle of 25 degrees. A vertical sea cliff falls to the rock platform beyond the lower boundary at the waterfront. The site has landscaped garden at the front and at the rear overgrown lawn area with trees and shrubs along the boundaries. There are no on known threatened species on the site. **Detailed Description of Adjoining/Surrounding Development**

	Adjoining and surrounding development is characterised by one - three storey dwellings of varying architectural design. **Site Inspection** A site inspection was conducted 4 March 2022.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21Development 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to landscaped open s [ace calculation, Coastal Engineers Report on the impact of coastal processes and increased setback to side boundaries to maintain privacy to neighbouring properties. 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 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 02/12/2021 to 16/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Vivienne Ysobel Anne Vanderspuy	161 Whale Beach Road WHALE BEACH NSW 2107

The following issues were raised in the submissions:

- **Building Height**
- **Works to far forward of the established rear building line and impact on privacy**
- **Excessive changes to the landscape and works built without approval**
- **Privacy**

The matters raised within the submissions are addressed as follows:

- **Building Height**
  The submission raised concern that the proposal would exceed the allowable building height control.
  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.

- **Works to far forward of the established rear building line and impact on privacy**
  Concern was raised that the proposed swimming pool and Pool Terrace are to far forward of the established rear building line and that will impact on the privacy of the adjoining properties.
  Comment:
  The proposal complies with the rear building line of the PDCP and there is no requirement for dwellings to maintain an established building line. Privacy has been addressed in more detail under Part C1.5 Visual Privacy. In summary, the recommended condition increasing the side boundary setback and for a privacy screen along the eastern edge of the swimming pool terrace will maintain privacy between the dwellings.

- **Excessive changes to the landscape and works built without approval**
  The submission raised concern that the proposal resulted in excessive changes to the landscape - excavation and removal of trees. The submission also raised concern that there were works built at the rear of the site, a gazebo and stairs without approval and that trees have

also been removed previously impacting on the privacy of nos. 161 and 159 Whale Beach Road.
Comment:
No trees have been requested to be removed as part of the proposal and action on any trees previously removed is outside of the scope of assessment. The application has been reviewed by Councils Landscape Officer and Bushland and Biodiversity Officer who have raised no objections to the proposal subject to conditions.

The swimming pool at the rear of the dwelling and the raised walkway are on piers and footings and unlikely to require any excavation. The excavation required for the Lift is in front of the existing dwelling and in an area of the site previously disturbed and underneath the dwelling. The location of the required excavation is unlikely to excessively change the landscape quality on the site.

The proposal is for alterations and additions to an existing dwelling including the construction of a swimming pool and does not include any additional works such as stairs or Gazebo. A condition will be included in the consent stating that approval is only for works associated with the development application. If there are concerns regarding illegal works being undertaken on the site, a request may be submitted with Council's Compliance Department to investigate.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	This application is for the alterations and additions to an existing residential dwelling, including the construction of a new elevated walkway and swimming pool. Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP controls: • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12.10 Landscaped Area - Environmentally Sensitive Land The Statement of Environmental Effects provided with the application notes that no trees or vegetation is to be removed as a result of proposed works. This statement is largely supported by the Architectural Plan as it is evident no trees are shown to be removed. No Arboricultural Impact Assessment has been provided with the application. Upon further review of the site it is evident a number of existing trees are located within the front setback, within close proximity to the proposed elevated walkway. As this walkway is to be constructed on pier footings, the impacts of this walkway on existing trees is anticipated to be negligible, with all trees viable for retention. It is recommended that pier footing design alongside their location be determined in coordination with an Arborist, ensuring that significant roots are avoided, hence reducing possible negative impacts towards

Internal Referral Body	Comments
	these existing trees. Considering the density of vegetation within this area, it is further recommended that works be supervised by a Project Arborist to ensure existing significant trees are retained and protected. The retention of these trees 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", "to effectively manage the risks that come with an established urban forest through professional management of trees", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation.
NECC (Bushland and Biodiversity)	The application seeks approval for alterations and additions to an existing dwelling, including the construction of an elevated walkway from the existing carport, a lift and a pool and terrace at the lower level. 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 **Pittwater Local Environmental Plan (PLEP)** • 7.6 Biodiversity Protection **Pittwater Development Control Plan (PDCP)** • B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor The proposed terrace and pool located to the north of the existing dwelling has been sited within cleared land. The Statement of Environmental Effects states that no significant trees or vegetation shall be removed as a result of proposed works which appears consistent with the submitted architectural plans. The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	**Updated Comments (28/06/2022):** This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10, 2.11 & 2.12); and

Internal Referral Body	Comments
	• Relevant LEP and DCP clauses. The additional information provided within the "Geotechnical Investigation: Alterations and Additions at 163 Whale Beach Road, Whale Beach" report by White Geotechnical Group (dated 16 June 2022) and the attached "Coastal Engineering Advice on 163 Whale Beach Road, Whale Beach" report by Horton Coastal Engineering (dated 10 June 2022) satisfies the requirements of the Pittwater LEP, DCP and Policy relating to Coastal Risk Planning, Coastline (Bluff) Hazard Controls and Geotechnical Risk Management. The proposed development is therefore supported. It is recommended that the applicant complies with the advice included within the Geotechnical Report. The application meets the requirements of the relevant Environmental Planning Instruments and policies. The application is supported subject to conditions: • Coastal Bluff Engineering Assessment Implementation (prior to construction) • Installation and maintenance of erosion and sediment controls (prior to commencement) Previous Comments (14/12/2021): The application is refused due to lack of information. The subject site is shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014 and the relevant provisions of the Geotechnical Risk Management Policy for Pittwater and the B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to proposed development of the site. Clause 7.5 of the Pittwater LEP 2014: Coastal risk planning (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development— (a) is not likely to cause detrimental increases in coastal risks to other development or properties, and (b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and (c) incorporates appropriate measures to manage risk to life from coastal risks, and

Internal Referral Body	Comments
	(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and (e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and (f) has regard to the impacts of sea level rise, and (g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards. Controls All development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater (see Part B Appendix 5). As per Section 6.5 (i) of the policy, "For coastal bluff areas designated on Pittwater's Coastal Risk Planning Map, a coastal engineer's report on the impact of coastal processes on the site and the coastal forces prevailing on the bluff must be incorporated into the geotechnical assessment as an appendix and the Coastal Engineer's assessment must be addressed through the Geotechnical Report and structural specification. Development must be designed and constructed to ensure that every reasonable and practical means available is used to remove risk to an acceptable level as defined by the Geotechnical Risk Management Policy for Pittwater (see Part B Appendix 5)for the life of the development. The development must not adversely affect or be adversely affected by geotechnical and coastal processes nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical and coastal processes. The DA will be further assessed once the coastal engineer's report is incorporated and appended and recommendations of the report are addressed in structural specification.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. No objection to the application, subject to conditions.

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	The development site adjoins Careel Headland Reserve that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.

External Referral Body	Comments
Aboriginal Heritage Office	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. A436233_02 dated 26 October 2021).

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment:
This clause has been assessed against the subject site and the proposed development and reviewed by Councils Environment and Sustainability team. No issues have been raised in the relation to the proposed development and lands being within the coastal environment area.

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

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

Comment:
This clause has been assessed against the subject site and the proposed development and reviewed by Councils Environment and Sustainability team. No issues have been raised in the relation to the proposed development and lands being within the coastal environment area.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:
the works are visually and physically separated from the foreshore and will not impact upon access to and along the foreshore, result in overshadowing, wind funnelling or view loss towards to the foreshore, distract from the visual amenity of the coastal area, impact upon aboriginal cultural heritage, places or practices, or impact upon cultural and built environmental heritage.

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

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

Comment:
The development is not likely to cause increased risk of coastal hazards on the site or adjoining lands

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for

a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Existing	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.4m (variation 10.58%)	11.288m	32.8%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard:	Height of Buildings
Requirement:	8.5m
Proposed:	11.28m
Percentage Variation to Requirement:	32.8%

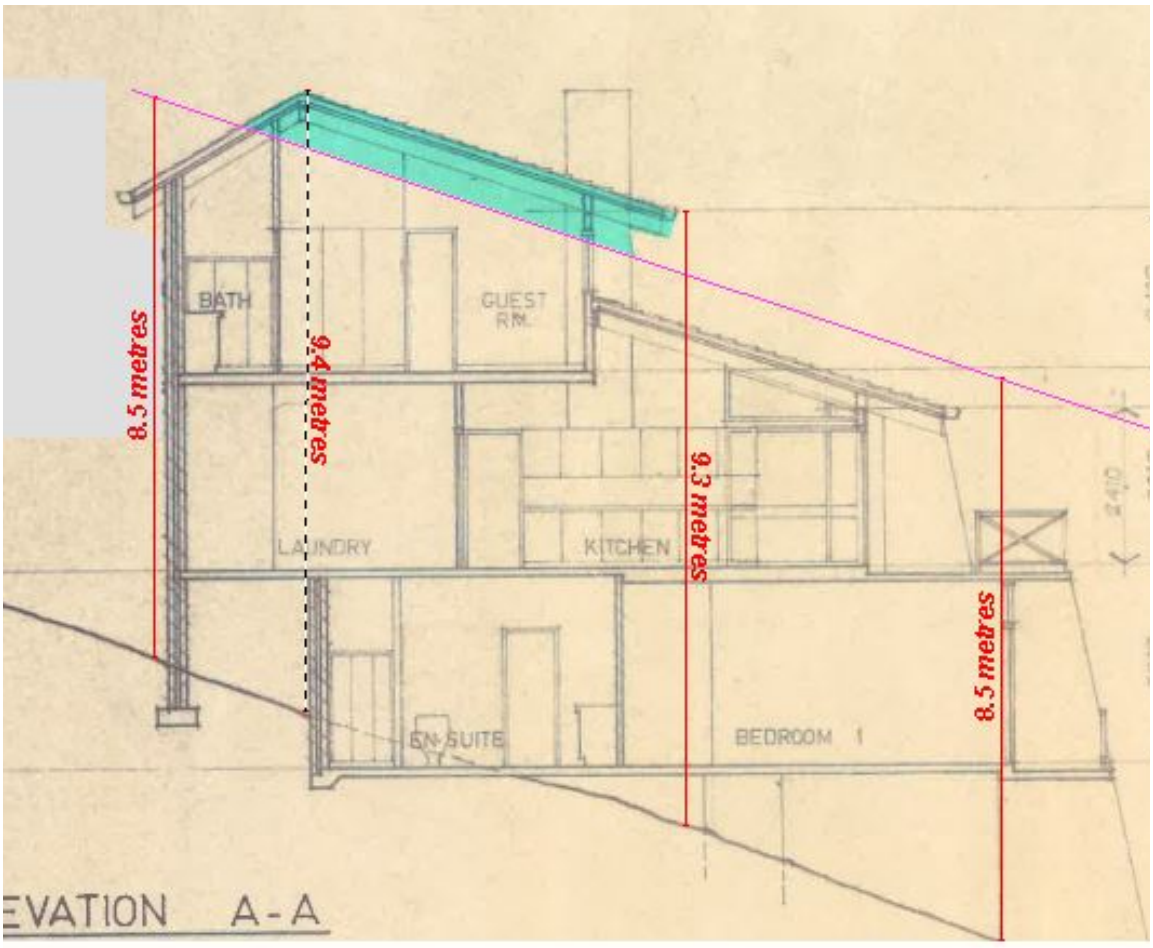


Image 1: *Section of existing dwelling. Building Height non-compliance of 8.5m shown in blue*

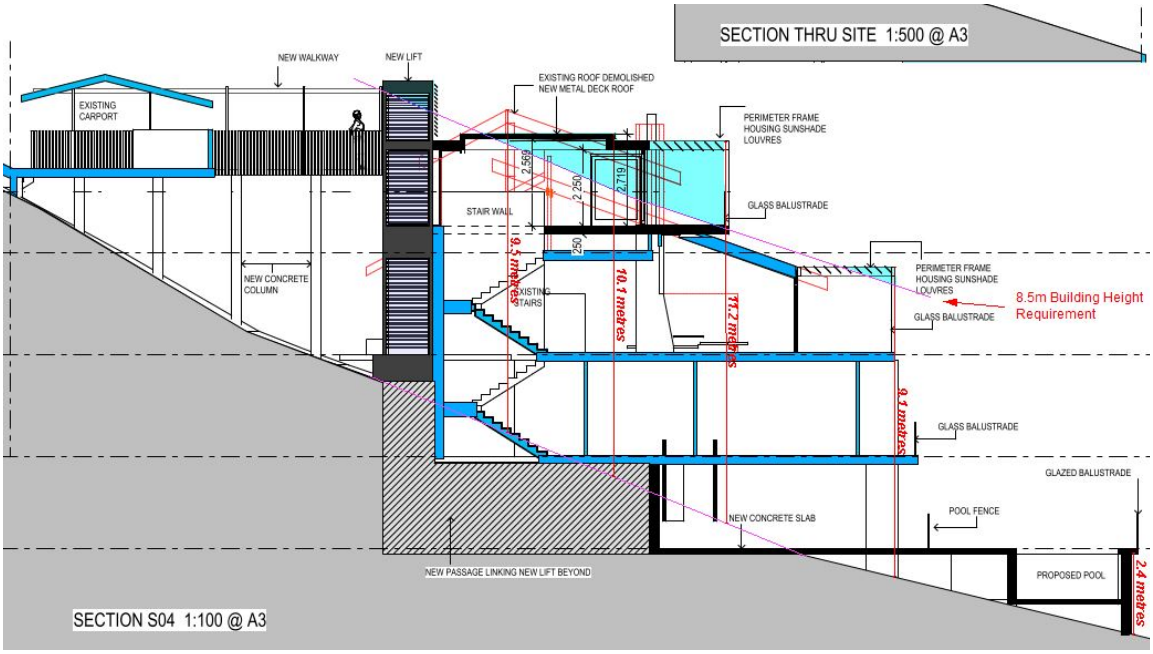


Image 1: *Section through proposed development showing building height non-compliance in blue*

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).

In this regard, the Applicant's written request has not 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 proposed additions are minor in scale, located to the rear of the development and match the existing floor plate of surrounding dwellings.*
- *The existing dwelling has a maximum height of 10.2m. This ridge height will be lowered by the proposal, however the roof over the deck will be of 11.288m height due to the steep nature of the site and the need to have the deck on the same floor plate as the upper floor.*
- *The exceedance in the height control is a direct result of the steep nature of the site and the need for the deck to be situated on the floor plate of the upper floor. The deck is open and the roof structure of light weight construction further reducing any perceived impact.*
- *Due to the steep nature of the site, the building rapidly comes back to compliance with the height control as the building steps up the site.*
- *The development in its current form, with the requested height variation, is consistent with surrounding dwellings in terms of build, bulk and scale and will not have any adverse impacts on surrounding development in terms of overshadowing, privacy, visual dominance, streetscape and Character and views.*
- *The development is generally compliant with all other controls contained in the LEP and DCP and in this instance, due to the existing character of the street and the fact that the development will not adversely impact upon adjoining development, it is considered appropriate to allow a variation to the Height control".*

The assessment concurs with the applicant that the area of non-compliance with the building height does not result in unreasonable amenity impact when considered against the PLEP and P21DCP. The area of non-compliant building height does not have a direct view impact.

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 sits lower than the street and generally cannot be seen form the streetscape.

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 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:
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 steep 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 provide greater functionality than the existing conditions.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
  Comment:
  Due to the elevated nature of the new built elements of the proposed development, it is not expected to cause unreasonable impact to wildlife corridors that the site may have.

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

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

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

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

7.8 Limited development on foreshore area

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

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

Comment:
The proposed development is for a swimming pool.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

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

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

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m	Nil	100%	**No**
Rear Building Line	6.5m	22.0m	N/A	Yes
Side Building Line	West - 2.5m	0.9m	64%	**No**
	East - 1m	0.9m	10%	**No**
Building Envelope	West - 3.5m	Outside envelope	N/A	**No**
	East - 3.5m	Outside envelope	N/A	**No**
Landscaped Area	60%	56.79% (506.22m^2) 6% variation - 62.79% (559.69m^2)	5.35% N/A	**No** Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

Description of Non-compliance

The control requires as follows:

"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".

The proposed swimming pool terrace is setback 2.27m from the eastern side boundary shared with No. 161 Whale Beach Road. The topography of the land slopes down to the rear which results in the structure being elevated above natural ground level. This will result in a structure that overlooks the private open space of No. 161 Whale Beach Road and into the dwelling of that property.

A condition is recommended requiring the swimming pool terrace to be 2.5m from the eastern side boundary to comply with the side boundary building line controls and a privacy screen to be erected along the eastern edge of the pool terrace to minimise the potential overlooking of the private open space and living areas of Nos. 161 and 159 Whale Beach Road.

Merit Consideration

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

- **Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.**
  Comment:
  As a result of the abovementioned impacts, a suitable condition of consent has been included for a privacy screen along the eastern edge of the Pool Terrace to minimise any potential overlooking of the private open space or into the living areas of the dwellings to the east of the site.

  The proposed works to habitable rooms and balconies are acceptable in relation to privacy, in that they orientate views to the rear and do not include new windows to the side elevations. The addition to the Entry Level Balcony is suitably designed in order to provide adequate visual privacy to adjoining neighbours. The existing landscaping along the shared boundary with No. 167 Whale Beach Road will maintain privacy between the dwellings. To the east of the site, the location and height of the balcony and the slope of the land will not result in direct or close views of the private open space or living areas of the No. 159 Whale Beach Road.



Photo 1: *View from the rear yard of No.163 Whale Beach Road to the western side boundary with No.165 Whale Beach Road*



Photo 2: *View from Living Level Balcony looking to the north west*



Photo 3: *View from rear of the site looking to the eastern side boundary shared with No.161 Whale Beach Road*

- ***A sense of territory and safety is provided for residents.***
  Comment:
  A sense of territory and safety will be provided for the occupants of the subject site and adjacent properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1.23 Eaves

Description of Non-Compliance
Clause C1.23 Eaves requires dwellings to incorporate eaves on all elevations with a minimum width of 450mm. The proposed dwelling does not include eaves as part of their design.

The underlying Outcomes of this clause are as follows:

- *Housing that reflects the coastal heritage and character of Pittwater.*
- *Optimise roof forms.*
- *Appropriate solar access and shading is achieved.*

Merit Assessment
The proposed development is compatible with the contemporary form of development in the locality and reflects the coastal character of the area. The design achieves appropriate solar access and shading

and does not generate adverse impacts to surrounding properties.

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

D12.5 Front building line

Description of Non-compliance
The proposed elevated walkway is located within the front building line, which does not comply with the numerical control of 6.5m which does not allow built structures, other than driveways, fences and retaining walls within the front building setback.

It is noted that due to the steep topography of the subject site which slopes down from the street frontage, the elevated walkway will not be readily visible from the streetscape and will result in minimal visual impact, whilst improving pedestrian amenity and accessibility to the site.



Merit Consideration
With regard to the consideration of the variation, the development is considered under the objectives of the control below:

- *Achieve the desired future character of the Locality.*
  Comment:
  The proposed elevated walkway will not be readily visible from Whale Beach Road and therefore is not considered to detract from the visual amenity of the streetscape nor adversely impact upon the desired future character of the Palm Beach locality.

- *Equitable preservation of views and vistas to and/or from public/private places.*
  Comment:
  The proposed located of the elevated walkway at the front of the site will not impact upon the equitable preservation of views and vistas to and/or from public/private places.

- *The amenity of residential development adjoining a main road is maintained.*
  Comment:
  The development does not adjoin a main road.

- *Vegetation is retained and enhanced to visually reduce the built form.*
  Comment:
  The proposed development does not involve the removal of significant vegetation. As such, the existing vegetation, including boundary screen hedging, will be retained to provide visual relief of the built form.

- *Vehicle manoeuvring in a forward direction is facilitated.*
  Comment:
  The application does not alter the existing parking or driveway arrangement.

- *To preserve and enhance the rural and bushland character of the locality.*
  Comment:
  As discussed elsewhere in this report, the proposal does not include the removal of any significant vegetation or canopy trees. As such, the proposal will preserve and enhance the rural and bushland character of the locality.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
  Comment:
  The proposed elevated walkway will only be partially seen from street level, given the steep slope of land away from the street. The proposed elevated walkway will not result in unreasonable visual imposition to the street, and is set below the height of the surrounding natural environment. The elevated walkway will also be partially screened from the street by the existing carport and screen planting. As such, there is not an unreasonable impact on the streetscape.

- *To encourage attractive street frontages and improve pedestrian amenity.*
  Comment:
  As discussed above, the proposed development will not impact the existing street frontage and will improve pedestrian accessibility to the site.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*
  Comment:
  The proposed development within the front setback area is minor in nature and does not create any unreasonable amenity impact upon the street frontage and adjoining properties. As such, the proposal satisfactorily responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental

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

D12.6 Side and rear building line

Description of Non-compliance
Clause D9.7 of the Pittwater 21 DCP requires development be setback at least 2.5m from the northern side boundary and 1.0m from the southern side boundary.

The development proposes the following:

East side setback - 2.27m (Proposed Pool Terrace)
- 0.8m (Living Level Balcony)
- 0.9m (Proposed Entry Level Deck)

West side setback - 1.154m (Proposed Pool Terrace)
- 0.8m (Living Level Balcony)
- 0.8m (Proposed Entry Level Deck)
- 1.1m (Entry Level)

The existing dwelling is setback 0.8m from both the east and west side boundaries.

Due to privacy concerns raised by the adjoining properties to the east, a condition will be included in the consent requiring the swimming pool terrace to have a minimum setback of 2.5m from the eastern side boundary. Screen planting and a privacy screen along the eastern edge of the swimming pool will also be recommended to maintain privacy between sites and comply with the outcomes of the clause D9.7.

Merit Consideration
In considering the merits of the variation, the proposal is assessed against the outcomes of the control as follows:

- *To achieve the desired future character of the Locality.*
  Comment:
  The proposal will maintain the desired future character of the Palm Beach Locality.

- *The bulk and scale of the built form is minimised.*
  Comment:
  The addition to the dwelling will be maintaining the existing setbacks to the east and west boundary. The dwelling incorporates articulated elements and contrasting external finishes, which provides further visual relief when viewed from the adjoining properties. The existing and proposed landscaping along the boundaries will help to minimise the bulk and scale of the encroachment.

- *Equitable preservation of views and vistas to and/or from public/private places.*
  Comment:
  The location, height and design of the proposal will maintain an acceptable view sharing outcome.

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

The proposal provides an acceptable view sharing outcome. The non-compliant side setback does not result in view impact.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*
  Comment:
  The proposed addition to the dwelling and recommended condition is sufficiently separated and screened from living areas and private open space of neighbouring properties to ensure a reasonable level of privacy, amenity and solar access is provided.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*
  Comment:
  The proposed development includes suitable vegetation in the front and rear yards and along the side boundaries, and maintains street vegetation to provide an appropriate outcome for the streetscape.

- *Flexibility in the siting of buildings and access.*
  Comment:
  The proposed development is adequately sited to ensure a reasonable level of amenity and a reasonable visual presentation for the subject site and adjacent sites.

- *Vegetation is retained and enhanced to visually reduce the built form.*
  Comment:
  The proposal includes removal of existing paved surfaces to offset the increased built upon area. The existing landscaping on the site and along the boundaries will screen and visually reduce the built form.

- *To ensure a landscaped buffer between commercial and residential zones is established.*
  Comment:
  Not applicable to the site.

The proposal has demonstrated the objectives of the control are achieved, notwithstanding numerical non-compliance. Therefore, a variation to the control is supported on merit in this particular circumstance

D12.8 Building envelope

Description of Non-compliance:
The proposed addition does not meet the side boundary envelope requirements on the west and east elevation. It should be noted that the existing dwelling does not comply with the side boundary envelope.

Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis.

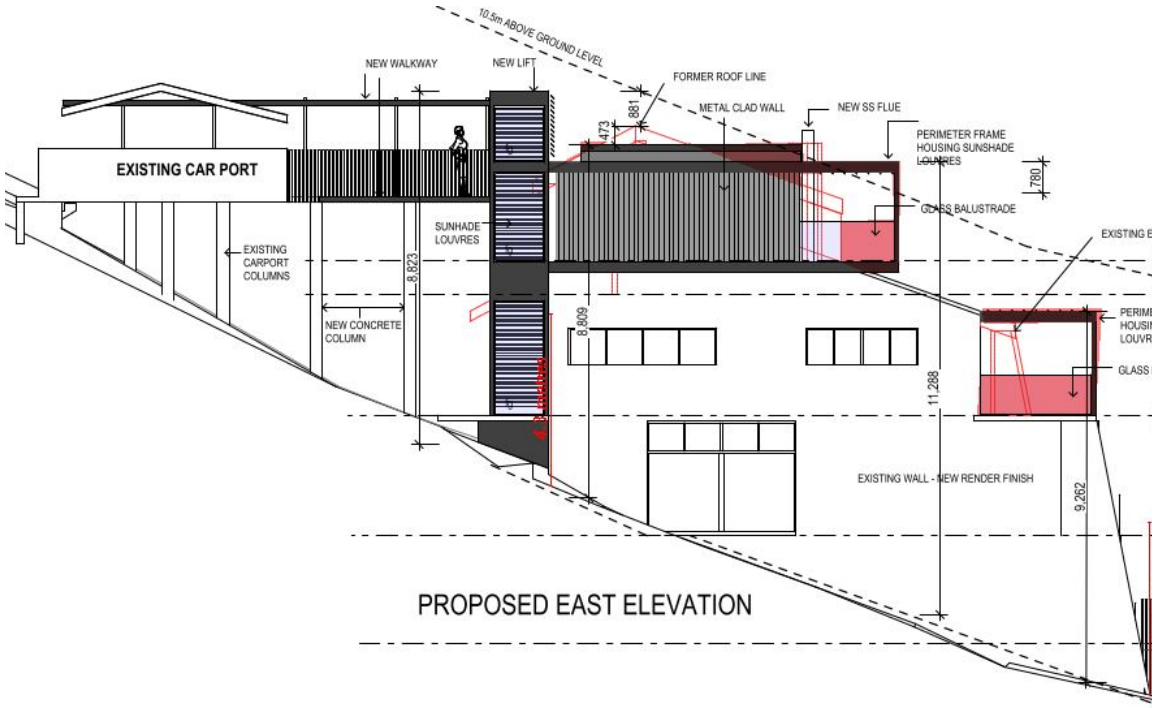


Image 2: *East Elevation - Side Boundary Envelope Encroachment as a result of new works shown in red*



Image 3: *West Elevation - Side Boundary Envelope Encroachment as a result of new works shown in red*

Merit Assessment

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

- ***To achieve the desired future character of the Locality.***
  Comment:
  The proposal will retain the low-density character of the area and does not result in the removal of any significant vegetation. Existing vegetation at the front of the site and the proposed colours and materials will harmonise the proposal with the natural environment. The proposed development is complementary to the streetscape in that it generally retains setbacks consistent with the spatial proportions of the street and it is consistent with the overall intention of the desired future character of the Palm Beach 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:
  Due to the slope of the land, when viewed from the streetscape the proposed development sits comfortably below and amongst the trees in the surrounding natural environment.

- ***To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.***
  Comment:
  The proposed development is primarily sited within the footprint of the existing dwelling. The extension of the dwelling towards the northeast is not considered to cause unreasonable impact to the spatial characteristics of the natural environment. Some excavation is required in front of the dwelling to accommodate the lift. This excavation is within an area of the site that was previously disturbed. The excavation is considered acceptable in the context of the site and locality. The proposal includes comparable setbacks, and bulk and scale to existing and approved developments in the locality. As such, the proposal provides an adequate response and relationship to the spatial characteristics of the existing natural environment.

- ***The bulk and scale of the built form is minimised.***
  Comment:
  The existing dwelling encroaches into the side boundary envelope on both the east and west elevation as a result of the slope of the site. The encroachment into the side boundary envelope on the Living Level is the addition of a pergola roof over the existing balcony. The open nature of the pergola has minimal bulk and scale. On the eastern elevation of the Entry Level, the roof is altered from a Gable roof to flat roof and the balcony extend with a glass balustrade and open pergola roof. The roof height is reduced as a result of the flat roof and open style balcony minimises the overall all bulk and scale of the addition. The encroachment into the side boundary envelope along the western elevation of the living level is articulated with varying setbacks to western side boundary, that along with open balcony provides a minimal bulk and scale.

  Overall the proposed addition is appropriately modulated and articulated, with varied heights and setbacks, open balconies and the use of various colours and materials minimises the visual impact of the built form. The existing landscaping at the front of the site will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. Overall, it is considered that the bulk and scale of the dwelling would not be out of character with the existing site and wider locale.

- ***Equitable preservation of views and vistas to and/or from public/private places.***
  Comment:
  The proposed development is designed and sited so as not to unreasonably obstruct views to or from public or private places.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.***
  Comment:
  The proposed development ensures adequate light, solar access and privacy is obtained between dwellings, subject to conditions. The proposal complies with the requirements of the C1.4 - Solar Access and has been designed so that there are no unreasonable impacts on the adjoining neighbours. Adequate physical separation between the proposed development and habitable areas of the adjoining properties to protect privacy and amenity of the site and adjoining properties has been achieved.

- ***Vegetation is retained and enhanced to visually reduce the built form.***
  Comment:
  Existing trees and vegetation are retained that assist in mitigating the built form of the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance
This clause requires the subject site to have 60% of site area as landscaped area. The subject site as proposed presents a landscaped area of 56.79% (506.22m²) which is a 5.35% variation to the 60% requirement.

Provided the outcomes of this control are achieved, impervious areas less than 1.0m in width and impervious landscape treatments providing these areas are for outdoor recreational purposes only up to 6% of site area can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 559.69m^2, 62.72% of site area, which complies with the requirement 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:

- ***Achieve the desired future character of the Locality.***
  Comment:
  As discussed throughout the report, the proposal will maintain the desired future character of the Palm Beach Locality.

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

Comment:
The proposal includes removal of existing paved surfaces to offset the increased built form upon area of the proposed works. The dwelling incorporates articulated elements and contrasting external finishes, which provides further visual relief when viewed from the adjoining properties. The existing and proposed landscaping along the boundaries will help to minimise the bulk and scale of the encroachment.

- ***A reasonable level of amenity and solar access is provided and maintained.***
  Comment:
  The proposed development is sufficiently separated and screened from living areas and private open space of neighbouring properties to ensure a reasonable level of privacy, amenity and solar access is provided.

- ***Vegetation is retained and enhanced to visually reduce the built form.***
  Comment:
  The proposal includes removal of hard surface to offset the increased built form. Existing and conditioned landscaping along the boundaries will sufficiently screen the proposal and visually reduce the built form.

- ***Conservation of natural vegetation and biodiversity.***
  Comment:
  The proposed works are mostly within the existing building footprint or located over lawn area. The proposal also includes the removal of existing hard surface at the front of the site to increase landscaping on the site. Council's landscape and biodiversity officer support the application subject to conditions.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***
  Comment:
  Stormwater management, including water runoff is not anticipated to be impacted by the development. Conditions are to be imposed to ensure stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

- ***To preserve and enhance the rural and bushland character of the area.***
  Comment:
  The proposed landscaping is considered to appropriately respond to the bushland character of the site and locality.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***
  Comment:
  As stated above, while the proposal does not comply with landscaped area requirements, the proposed landscaping is expected to adequately minimise stormwater runoff and assist with water management. Conditions are to be imposed to ensure stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

In light of the above, the proposal is considered to satisfy the outcomes of the control, thereby allowing for a 6% variation to be included as landscaped area, increasing the total to 559.69m^2, 62.79%.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $5,968 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $596,844.

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.

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, including the recommended conditions increasing the side building line of the Pool Terrace and privacy screen.

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 context of the site and its setting. 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 the objector, including a detailed analysis of 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.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/2188 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 11909, 163 Whale Beach Road, WHALE 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**
1.3/ - 10. Roof	11/04/2022	Wayne Ellis Architect
1.4/ - Pool Level	11/04/2022	Wayne Ellis Architect
1.5/ - Ground Level (1)	11/04/2022	Wayne Ellis Architect
1.6/ - Living Level	11/04/2022	Wayne Ellis Architect
1.7/ - Entry Level	11/04/2022	Wayne Ellis Architect
1.8/ 0 Car Port Level	11/04/2022	Wayne Ellis Architect
1.9/	11/04/2022	Wayne Ellis Architect
1.11/ - Proposed East Elevation	11/04/2022	Wayne Ellis Architect
1.12/	11/04/2022	Wayne Ellis Architect
1.14/ - Proposed West Elevation	11/04/2022	Wayne Ellis Architect
1.16/	11/04/2022	Wayne Ellis Architect

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate Certificate no. A436233_02	26 October 2021	Concept Designs Australia
GEOTECHNICAL INVESTIGATION: Alterations and Additions at 163 Whale Beach Road, Whale Beach J1838.	25th May, 2021	White Geotechnical Group
Coastal Engineering Advice on 163 Whale Beach Road, Whale Beach	10 June 2022	Horton Coastal Engineering

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**
1.20/ - 10. Landscape Proposed	11/04/2022	Wayne Ellis Architect

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 $5,968.44 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 $596,844.00.

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. **Pier Footing Design Near Trees to be Retained**
Pier footing structural layout plans for the external works including the proposed elevated walkway shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer. The Arborist shall review, comment, recommend design revision as required and approve the pier footing layout, to ensure the locations of piers will be manageable in terms of tree protection measures.

The Arborist shall submit certification to the Certifying Authority, that the locations of the pier footings are accepted. The agreed pier footing structural layout plans shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

7. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

8. **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.

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

- The eastern edge of the Pool Terrace is to be setback a minimum of 2.5m from the eastern boundary shared with no. 161 Whale Beach Road.

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

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

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

12. **Privacy Screen**
A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern edge of the Pool Terrace located on the Pool Level 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.

13. **Coastal Bluff Engineering Assessment Implementation**
All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

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 (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)

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **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.

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.

18. **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.

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

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the

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

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

20. **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: 161 and 167 Whale Beach Road, Whale 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.

21. **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

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 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.

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.

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

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.

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), 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.

24. **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.

25. **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.

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

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

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

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

resolve the matter to Council's satisfaction.

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

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. **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.

29. **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.

30. **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.

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. **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.

33. **New Vegetation Planting**
Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Gardening Booklet available on Council's website.

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

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

36. **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.

37. **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.

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. **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.

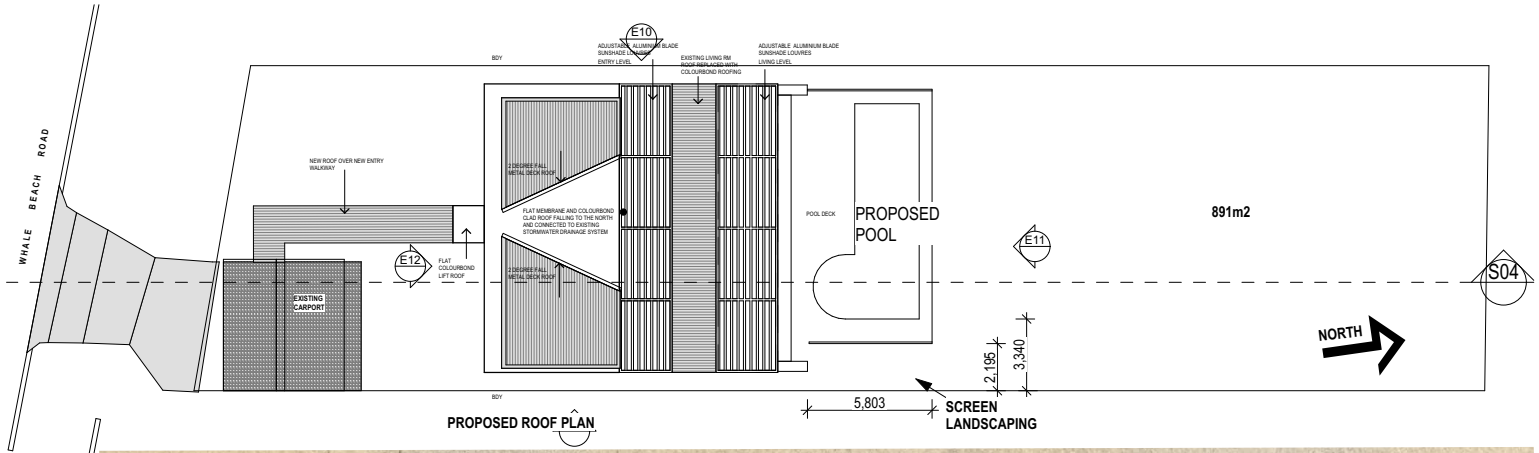
40. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

residential properties.

41. **Consent for Alterations and additions to a dwelling house including a swimming pool**
Consent is granted only for the proposed works under this development application and shown on the Approved Stamped Plans.

Reason: To ensure consent is granted for the proposed works only.



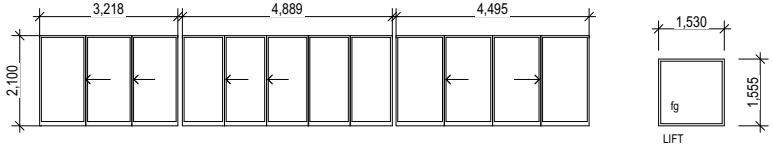
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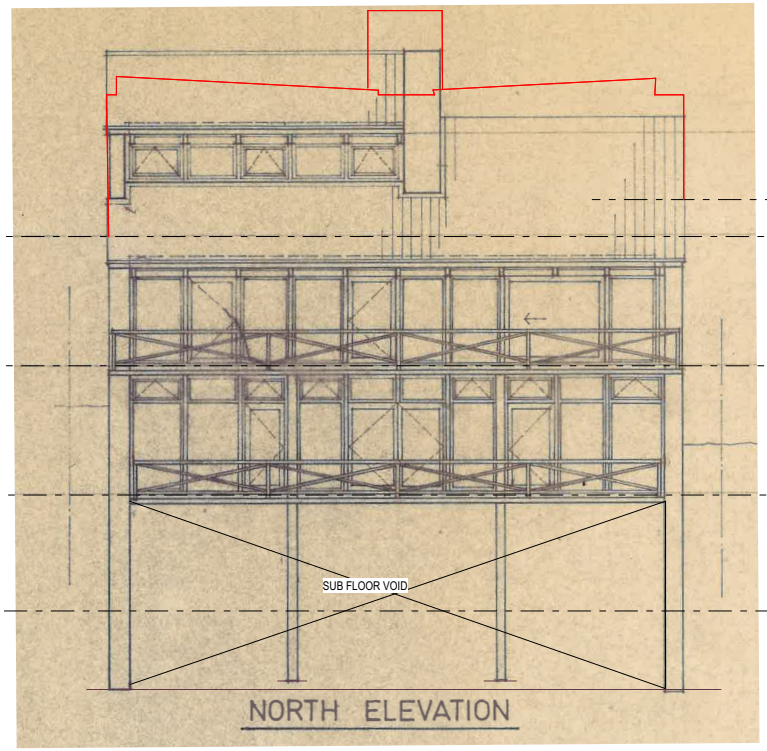
development application 11/04/2022 **PROPOSED ALTERATIONS TO RESIDENCE - 163 WHALE BEACH RD WHALE BEACH.**

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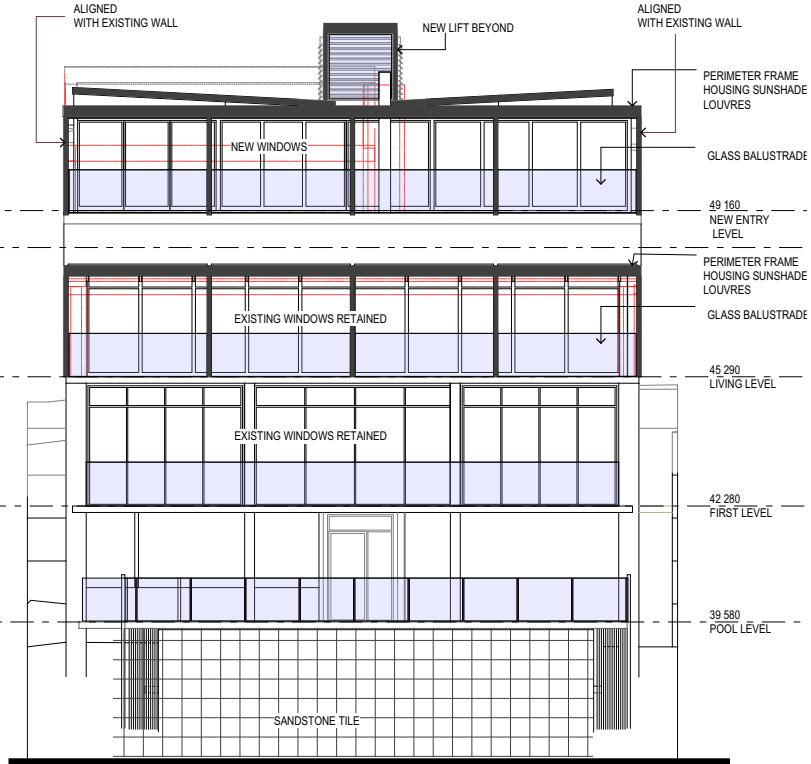
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WINDOW SCHEDULE. NORTH FACING ENTRY LEVEL





NORTH ELEVATION

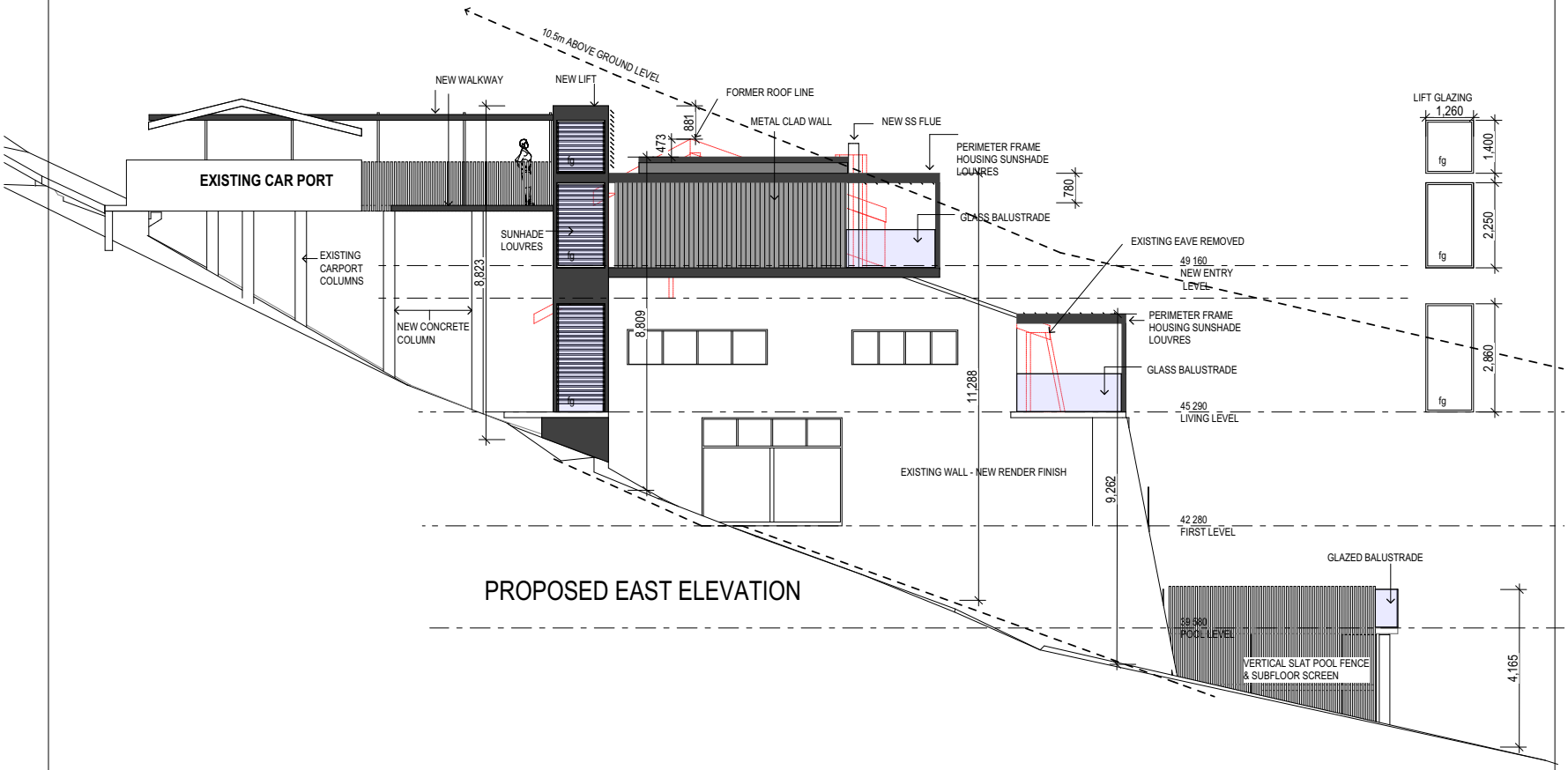


PROPOSED EAST ELEVATION

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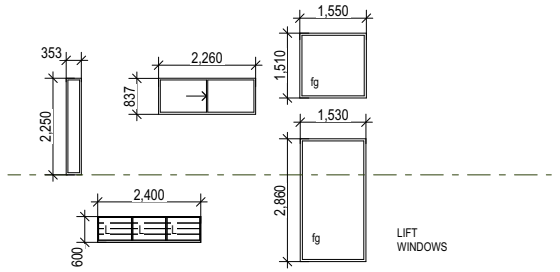
PROPOSED EAST ELEVATION

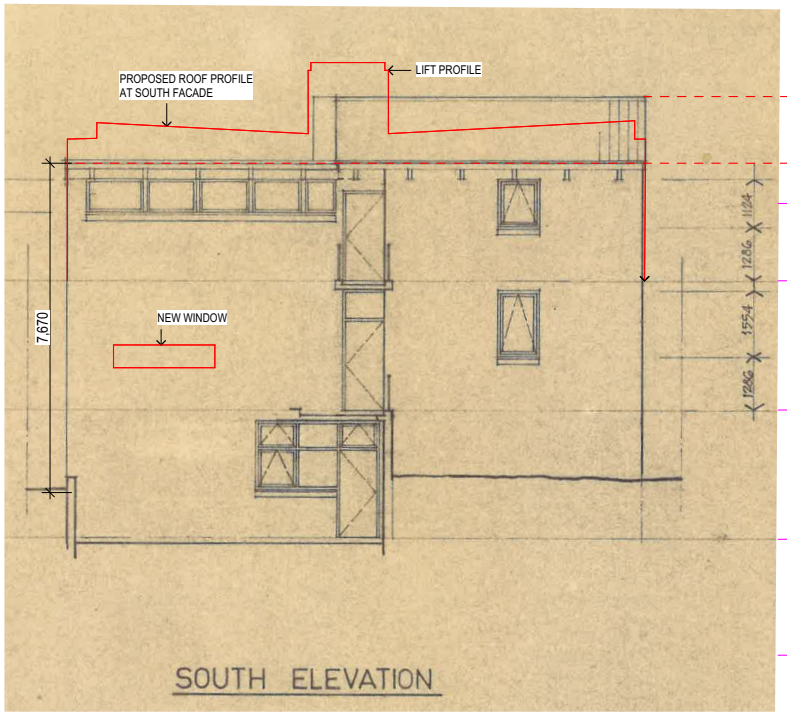
development application 11/04/2022 **PROPOSED ALTERATIONS TO RESIDENCE - 163 WHALE BEACH RD WHALE BEACH.**

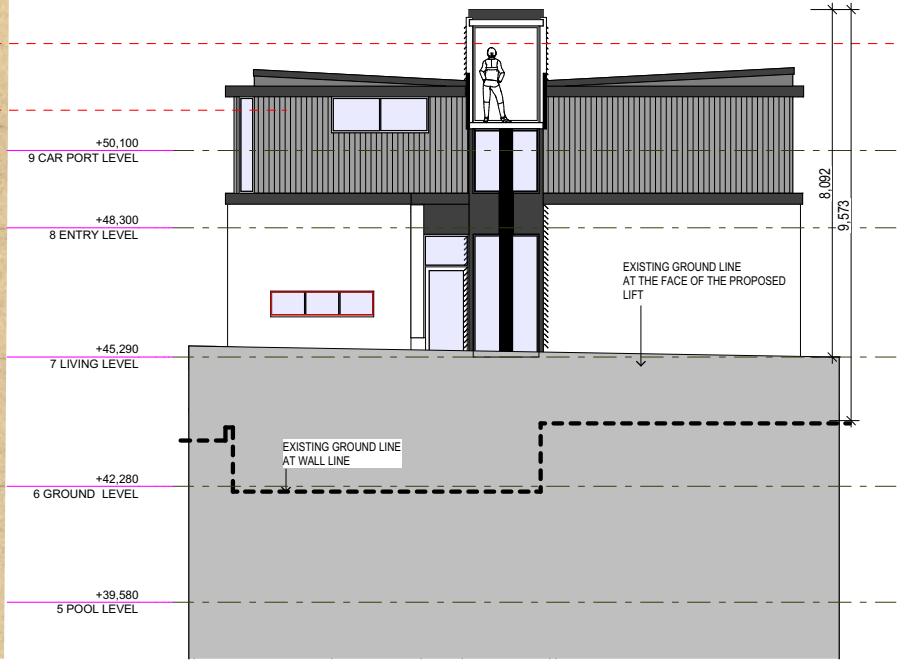
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Proj. No #Pln **Dwg No.** 1.11/ **Scale** 1:100 @ A3
Comp. Ref. 1833 DA REVISED 25 03.pln

WINDOW SCHEDULE. SOUTH FACING



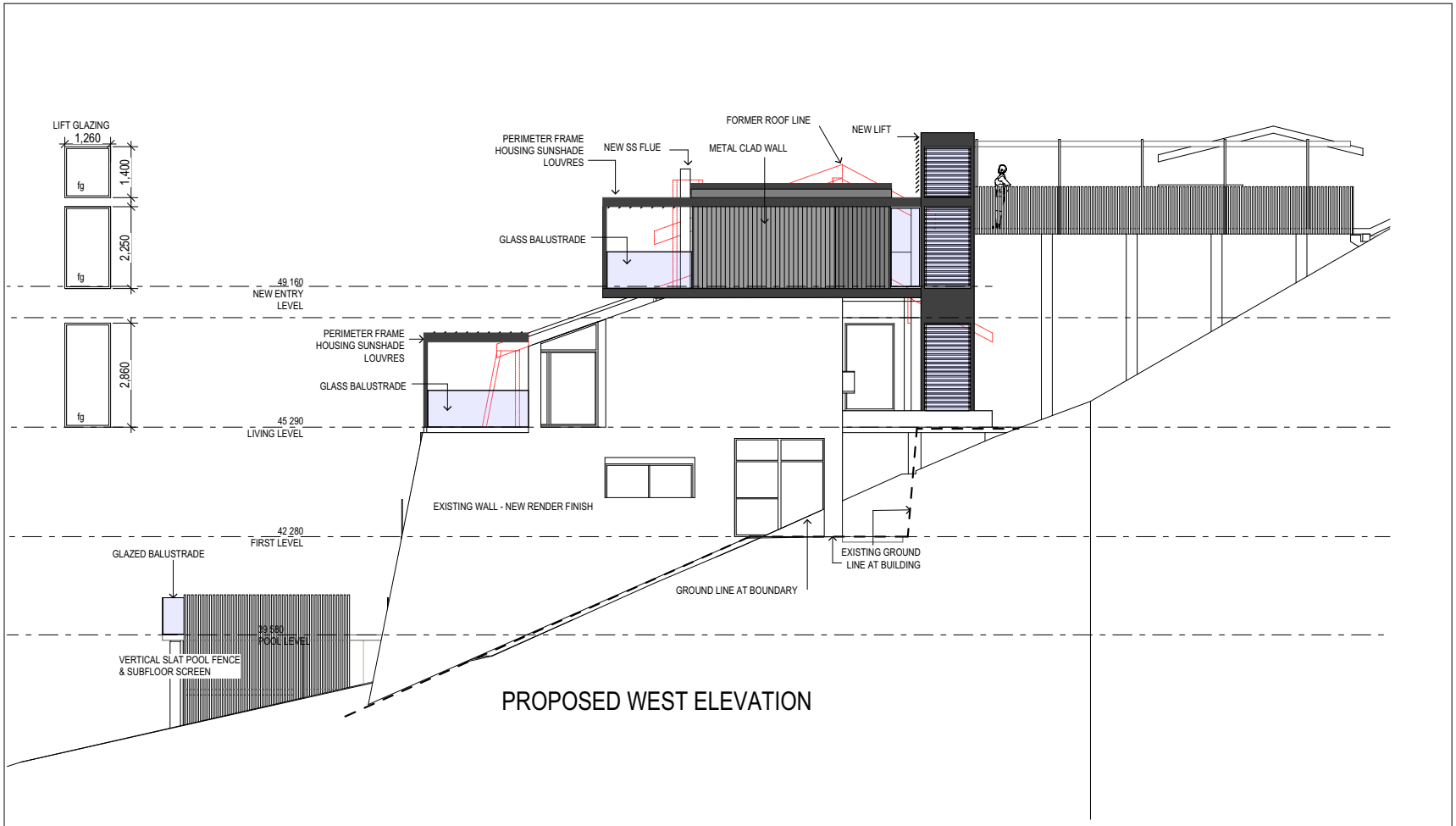




development application 11/04/2022 **PROPOSED ALTERATIONS TO RESIDENCE - 163 WHALE BEACH RD WHALE BEACH.**

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Proj. No #Pln **Dwg No.** 1.12/ **Scale** 1:1, 1:100 @ A3
Comp. Ref. 1833 DA REVISED 25 03.pln



PROPOSED WEST ELEVATION

development application 11/04/2022 **PROPOSED ALTERATIONS TO RESIDENCE - 163 WHALE BEACH RD WHALE BEACH.**

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Proj. No #Pln **Dwg No.** 1.14/ **Scale** 1:100 @ A3
Comp. Ref. 1833 DA REVISED 25 03.pln

The provisions for the E4 Environmental Living zone state;

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: The proposed Alterations and Additions to the existing Single Dwelling are considered to be consistent with the objectives of the E4 – Environmental Living Zone.

As the development utilises the existing developed footprint, is seen that the development will not have an adverse impact on the ecological, scientific or aesthetic values of the land.

2 Permitted without consent

Home businesses; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Places of public worship; Respite day care centres; Roads; Secondary dwellings; Water recreation structures

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Comment: Under subclause 3, Dwelling Houses are permissible with Consent.

Part 4 - Principal Development Standards

Clause 4.3 Height of Buildings.

The subject site is mapped as having a maximum building height of 8.5m.

The proposal seeks a variation to the height controls having a maximum height of 11.288m on the east elevation.

A clause 4.6 Variation is sought to the height variation.

Clause 4.4 Floor Space Ratio

While the Floor Space Ratio Maps do not identify a Floor Space Ratio for the subject site, the development is consistent with the objectives of this clause. The objectives of clause 4.4 state;

(1) The objectives of this clause are as follows:
(a) to ensure that buildings, by virtue of their bulk and scale, are consistent with the desired character of the locality,
(b) to minimise adverse environmental effects on the use and enjoyment of adjoining properties and the public domain,
(c) to minimise any overshadowing and loss of privacy to neighboring properties and to reduce the visual impact of any development,
(d) to maximise solar access and amenity for public places,
(e) to minimise the adverse impact of development on the natural environment, heritage conservation areas and heritage items,
(f) to manage the visual impact of development when viewed from public places, including waterways,
(g) to allow for the reasonable sharing of views.

The minor scale of the development and use of existing structures and build footprint will ensure that the character of the locality is not compromised. The siting of the proposal also ensures that no significant vegetation will be removed.

Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the Pittwater Local Environmental Plan 2014 allows for variations to development standards contained within the plan.

Clause 4.6 states;

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

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

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

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 8.1 or 8.2.

In addressing a variation to a development control in the standard instrument the following questions are to be addressed

1. What is the name of the Environmental Planning Instrument that applies to the land?

The Environmental Planning Instrument relevant to this development is the Pittwater Local Environmental Plan 2014.

ITEM 3.7	**DA2022/0005 - 21 MOORE STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2022/404710**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0005 for alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 2610, 21 Moore Street CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0005

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 7 DP 2610, 21 Moore Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Rod Jonathon Pindar Natalie Chantal Pindar
Applicant:	Rod Jonathon Pindar

Application Lodged:	19/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/02/2022 to 15/02/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.4 Floor space ratio: 44.46%
Recommendation:	Approval

Estimated Cost of Works:	$ 990,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2022/0005 for alterations and additions to a dwelling house including a swimming pool.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (196.6sqm of gross floor area). The proposed FSR equates to 0.58:1 (284sqm), which represents a 44.46% variation to the development standard. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Notwithstanding, Clause 4.1.3.1 - Exceptions to FSR for Undersized Lots of the Manly DCP 2013

stipulates that the 0.4:1 FSR requirement is based off an average site area of 750sqm. The site is an undersized allotment, being 491.5sqm in area. When applying a gross floor area to an average site area of 750sqm, the proposed FSR would be 0.38:1, which complies with the 0.4:1 requirement. The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 - Floor Space Ratio of Manly LEP 2013.

The application was exhibited for 14 days and a total of 7 individual submissions were received in response. The key concern raised from the neighbouring properties relates to view loss. A number of view impact assessments were undertaken from surrounding properties on the northern side of Moore Street. Overall, the amendments to the proposal, which reduced the overall height of the building and modified the roof to a flat roof profile as opposed to a skillion pitched roof, have resulted in acceptable view sharing outcomes, in accordance NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

The proposed development involves variations to the DCP provisions that pertain to wall height, side setbacks and total open space. However, these variations do not result in any unacceptable streetscape or amenity impacts, subject to recommended conditions.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house including a new swimming pool. Specifically, the works consist of:

Lower Ground Floor

• Retain the existing rumpus room, adding a new window on the western elevation.
• Replace the existing staircase, including new internal walls.
• A kitchenette to the rumpus room.
• Convert the existing laundry and WC to a bathroom.
• Extend undercroft to north to create media room and plant.
• Extend the existing bedroom to the rear.

Ground Floor

• Convert the porch and entry to a study.
• Convert bedroom 3 to a new entry and ensuite.
• Retain bedroom 4, adding a new window to the southern wall.
• Convert the sitting room to a laundry / mudroom and powder room.
• Demolish the existing staircase and construct a new staircase to access the lower and upper levels.
• Convert the dining room to a courtyard.
• Reconfigure the split-level kitchen, bathroom and bedroom 1, levelling the floor and realigning to the rear, to create a new kitchen / dining room and lounge.
• A new timber balcony to replace the existing to the rear with a deck on eastern side.

First Floor

• Convert the lounge to bedrooms 2 & 3 and corridor.
• Demolish the existing staircase and construct a new staircase to access the lower level.
• Extend to the east and south and construct a bathroom and master bedroom with ensuite and built-in robe.

Ancillary Site Works

• New entry gates to the front courtyard.
• New landscaping to front courtyard.
• Demolish the existing swimming pool and rear terrace and construct a new concrete pool within levelled lawn area at the rear of the site with timber pool deck.
• New side (west) retaining walls.
• New rear retaining wall to facilitate levelling of rear yard with dense planting of Olive trees along rear boundary.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.21 Flood planning
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.4.2 Alterations and Additions
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 7 DP 2610 , 21 Moore Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Moore Street, Clontarf. The site is regular in shape with a frontage of 12.215m and a depth of 40.325m. The site has a surveyed area of 491.5sqm. The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a three storey dwelling house with an attached double carport within the front setback area and an in-ground swimming pool within the rear yard. The site is devoid of any native canopy planting and contains shrubbery within the rear yard southward of the swimming pool. Additionally, screen planting is located along the front boundary adjacent to the paved courtyard. The site experiences a fall of approximately 7.1m that slopes away from the north-eastern front corner towards the south-eastern rear corner. A sandstone rock shelf runs diagonally across the property between the footprint of the dwelling house and swimming pool. The rear terrace sits on top of the rock shelf and is sited approximately 2.5m above the pool area below. **Description of Surrounding Development** The surrounding built environment is generally characterised by detached low density residential development (i.e. dwelling houses), typically 2-3 storeys in height. Existing development represents both older and modern housing stock.

Map:



SITE HISTORY

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

- **Development Application No. 170/88** for additional upper balcony approved by Council staff under delegated authority on 30 June 1998.

APPLICATION HISTORY

The subject site and the surrounds were inspected on 24 February 2022. To help inform the assessment of the development's impact upon views the applicant was requested to erect height poles to reflect the proposed roofline of the rear addition. In response, height poles were erected and certified as accurate by a registered surveyor. Subsequently, a number of view impact assessments were carried out from various properties on the northern side of Moore Street.

Following the preliminary assessment, Council wrote to the applicant expressing concern with the view impacts arising from the infilling of the void between the existing higher gable roofline and lower gable roofline. Moreover, concern was raised of the bulk and scale of the eastern elevation of the dwelling, which presented as a three storey un-articulated wall.

The applicant subsequently submitted amended plans to modify the roof form of the rear addition from a gable roofline to a skillion roof form. This amendment involved reducing the roof height by 510mm. In addition to the modified roof form, the applicant stepped the uppermost floor in an additional 750mm on the eastern elevation to provide an articulated wall plane. The amended plans did not result in a reduction of the proposed floor space ratio.

The amended plans constitute a reduced environmental impact from the plans originally notified. Therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). Notwithstanding the provisions of the CPP, Council informally notified those who made a submission of the amended plans via email correspondence and afforded

them an additional 7 days to make comment in relation to those plans. The additional submissions have been considered as part of this assessment.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Division 8A 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. Clauses 54 and 109 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans. The additional information has been submitted and assessed accordingly. Clause 92 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. Clause 98 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 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 Manly Development Control Plan 2013 section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the

Section 4.15 Matters for Consideration	Comments
	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 01/02/2022 to 15/02/2022 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 7 submission/s from:

Name:	Address:
Mrs Judith Anne Billingham	20 Allenby Park Parade ALLAMBIE HEIGHTS NSW 2100
Ms Debra Ann Livingston	26 Moore Street CLONTARF NSW 2093
Mr Robert John Lewis Gordon	28 Moore Street CLONTARF NSW 2093
Mr Andrew Peter Bolton	18 Moore Street CLONTARF NSW 2093
Mr Richard Craig Bridges	16 Moore Street CLONTARF NSW 2093
Mr Craig Illtyd Thomas	88 Cutler Road CLONTARF NSW 2093
Mr Malcolm George Saunders	20 Moore Street CLONTARF NSW 2093

Council received 7 individual submissions in response to the proposed development. The following issues were raised in the submissions:

- **View loss**

The submissions raised concerns that the proposed development will create unreasonable view loss from nearby properties.

Comment:

This matter is discussed in detail further in this report relating to Clause 3.4.3 of the Manly DCP 2013. In summary, amended plans were submitted which reduce the overall height of the building and create a flat roof profile as opposed to a skillion pitched roof. These amendments have resulted in an acceptable view sharing scenario, in accordance with the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

- **Solar panels**

  The submissions raised concerns that the proposed solar panels will result in unreasonable solar reflections.

  Comment:

  This matter has been considered and it is concluded that the solar panels will not result in unreasonable glare/reflections. A condition has been included with this consent requiring the roof colour to be within the medium to dark range, which will assist in reducing solar reflection.

- **Non-compliant Building Height**

  The submissions raised concerns that the proposed development exceeds the 8.5m statutory height limit.

  Comment:

  Amended plans have been submitted that complies with Clause 4.3 - Height of Buildings of Manly LEP 2013.

- **Acoustical Privacy Impacts from Swimming Pool**

  The submissions raised concerns that the proposed swimming pool will create unreasonable acoustical privacy impacts to downslope properties.

  Comment:

  Swimming pools are ancillary features within the visual catchment of the site and the use of a swimming pool within a rear yard is not found to be unreasonable. It is noted that the swimming pool complies with the rear setback requirement for swimming pools (excluding the side setback). In addition, a condition has been recommended limiting all sound producing plant, equipment, machinery or fittings to no more than 5dB (A) above the background level when measured from any property boundary and/or habitable rooms.

- **Overlooking from balcony towards rear adjacent properties**

  The submissions raised concerns that the elevated balconies will result in unreasonable levels of overlooking to downslope properties.

  Comment:

The elevated balconies are setback in the vicinity of 13.7m from the rear boundary, which is well in excess of the 8m requirement for dwelling houses. In the instance that any overlooking does occur towards the rear adjacent properties, the significant separation will prevent unacceptable levels of overlooking.

On a separate matter, it is noted that unreasonable levels of overlooking would occur from the elevated balcony off the living area towards the western adjacent property. Hence, a condition for privacy screening along the western elevation of the balcony is recommended. This is discussed in further detail within the section of this report relating to Clause 3.4.2 of the Manly DCP 2013.

- **Damage to retaining wall on southern boundary**

  The submissions raised concerns that the proposal will damage a retaining wall within the rear yard of the subject site.

  Comment:

  A new retaining wall is proposed within the rear boundary to support the swimming pool and associated backfill.

- **Stormwater management**

  The submissions raised concerns of how stormwater will be managed from the proposal.

  Comment:

  Council's Development Engineers have recommended suitable conditions to ensure that stormwater is appropriately managed in accordance with Council's Water Management for Development Policy.

  Conclusion

  The concerns raised within the submissions have been addressed above. The concerns do not warrant refusal of the application or further amendments to the proposal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to an existing dwelling and a new swimming pool. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable • 4.1.9 Swimming Pools, Spas and Water Features The existing property contains existing shrub hedging to the front boundary, and extensive established and managed small trees and shrub planting to the rear of the property. The existing vegetation

Internal Referral Body	Comments
	within the rear and front are proposed for removal. No prescribed trees (ie. protected under the DCP and requiring Council consent ie. trees 5 metres and over are present). Adjoining properties do not contain any prescribed trees and instead established garden planting occurs and standard conditions shall be imposed for protection should the application be approved. The Statement of Environmental Effects notes that the external works includes: new entry gates to the front courtyard, new landscaping to front courtyard, demolish the existing swimming pool and rear terrace and construct a new concrete pool within levelled lawn area at the rear of the site with timber pool deck, new side (west) retaining walls, and new rear retaining wall to facilitate levelling of rear yard with dense planting of Olive trees along rear boundary. Existing ground levels are raised and supported by retaining walling and fencing, and thus the proposed rear of the property including swimming pool and surrounds, with raised ground levels, may present privacy issues to adjoining properties and this matter shall be determined by the assessing planning officer. It appears from the sectional information on DA drawing number DA-17 that the rear boundary existing ground levels are raised more than as listed under DCP control 4.4.5.3 Filling a) Filling must not exceed 1m above natural ground level. The Landscape Plan submitted includes hedge planting to the rear of the property replacing the existing vegetation required for removal, and additionally provides garden planting elsewhere. The proposed hedge planting along the rear is selected as European Olive species. This species is listed in Council's Exempt Species list however under this development application it is assessed as providing an appropriate landscape outcome and thus the Exempt Species provision for any future removal will not be applicable as the landscape design intent shall be preserved, and any future request will require a modification application. Under DCP control 4.1.5 Open Space and Landscaping, subsection 4.1.5.2 (c) Minimum Tree Plantings: Figure 37 - Minimum Number of Native Trees Required, one native tree shall be required for installation within the property, and a condition of consent shall be imposed should the application be approved. Subject to approval from the assessing planning officer, should the application be approved, and as no objections are raised to the Landscape Plan with conditions, Landscape Referral provide conditions of consent.
NECC (Development Engineering)	The submitted stormwater design utilises the existing connection to Council's piped drainage system in Moore St for all the roof and hard paved areas and the pool overflow will connect to the sewer which is acceptable. The proposed impervious area is less than 60% and as such OSD is not required. The existing driveway crossing is to remain which is satisfactory.

Internal Referral Body	Comments
	Development Engineering support the proposal, subject to conditions as recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The application was referred to Augrid, who responded stating that a formal assessment was not required in this instance.

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 this application (see BASIX Certificate No. A426146_02, dated 26 June 2022). A condition has been included with this consent to ensure compliance with the aforementioned 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 application was referred to Augrid, who responded stating that a formal assessment was not required in this instance.

SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (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.

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	8.5m	-	Yes
Floor Space Ratio	0.4:1 (196.6sqm)	0.58:1 (284sqm)	44.46%	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The subject site is subject to an 8.5m height of buildings development standard. Manly LEP 2013 defines building height as follows:

*"**building height** (or height of building) means—*

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like".

When determining the existing ground level on a site relevant case law established within the NSW Land and Environment Court requires Council to establish the existing ground level on the site.

In the case of this application, the site contains a rock shelf that traverses diagonally across the site in a north-west - south-east direction. Figures 1 and 2 depict the rock shelf in question.

***Figure 1:** aerial image depicting rock shelf through the subject site and adjacent properties*

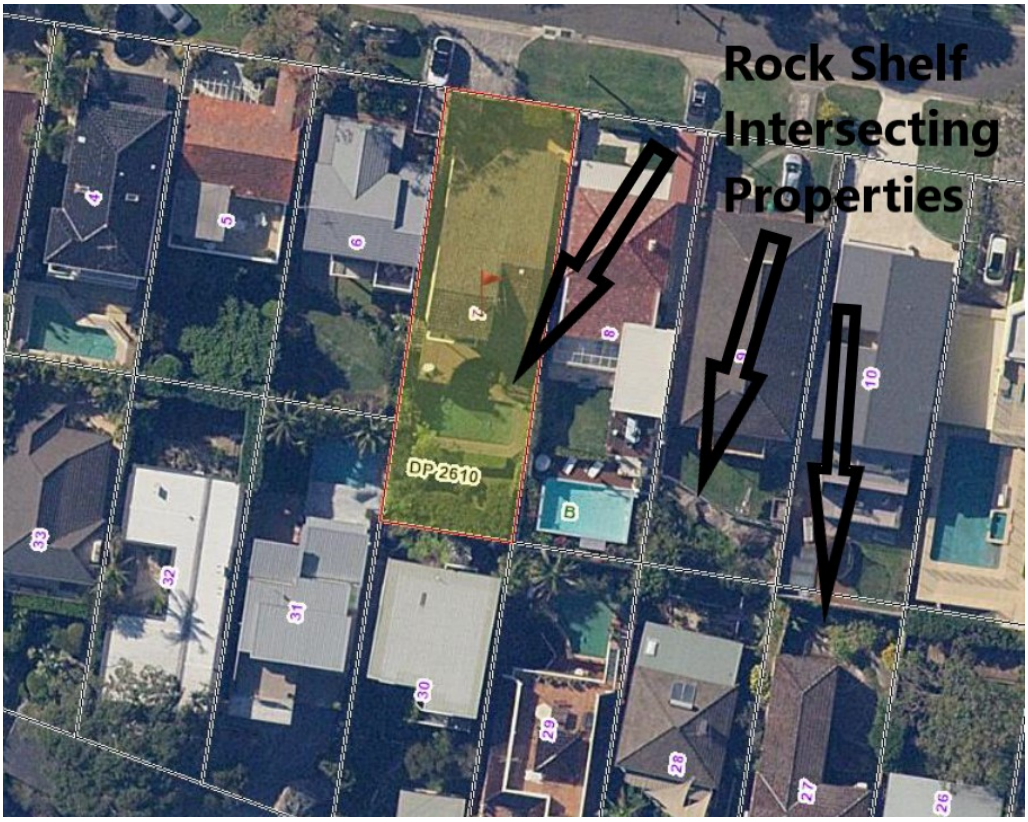


Figure 2: *rock shelf when viewed from pool area looking north*



The finished floor level of the rear terrace, in which the rock shelf is located directly under, is sited at RL 46.5 AHD. The highest point of this rock shelf is sited at RL46 AHD. The south-eastern corner of the upper floor roofline is situated above the RL46 contour and is sited at a height of RL54.5 AHD.

Therefore, the maximum building height of the proposed development is 8.5m, thereby compliant with the height of buildings development standard.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (196.6sqm)
Proposed:	0.58:1 (284sqm)
Percentage variation to requirement:	44.46% (87.4sqm)

The site is subject to a 0.4:1 FSR development standard. The proposed FSR equates to 0.58:1 (284sqm), which does not comply with the development standard.

Notwithstanding, Clause 4.1.3.1 - Exceptions to FSR for Undersized Lots of the Manly DCP 2013 stipulates that the 0.4:1 FSR requirement is based off an average site area of 750sqm. The site is an undersized allotment, being 491.5sqm in area. When applying a gross floor area to an average site area of 750sqm, the proposed FSR would be 0.38:1, which complies with the 0.4:1 requirement.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

standard.

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

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

The applicant's written request argues, in part:

"There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of environmental planning grounds. In particular:

Context
• The area surrounding the subject site is characterised by 2 and 3 storey detached dwelling houses, with a number of dwellings having undergone recent renovations.
• The new works propose a compliant building height and has been designed to remain consistent with the character of the existing dwelling, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.
• Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent.
• The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development
• The proposed development will allow for the modernization of the split-level dwelling, providing a modern, open floor plan, with the principal living areas on the ground floor and the bedrooms on the first floor.
• This represents an efficient use of an existing developed site, with all services readily available.
• The built form proposed is consistent with other dwellings in the locality,
• Given the site context, the proposed variation is considered minor and reasonable, in that it complies with the 300m2 GFA permitted by the Manly DCP for undersized lots and does not result in any unreasonable impacts to neighbouring properties.
• The proposed works will not hinder any future development of the lot or surrounding dwellings,
• The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).
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.

Consistent with Zone Objectives
• The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on

this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled. 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).

Natural Environment
• The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
• The development does not require the removal of any trees.
• The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
• The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare
• The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in a dedicated home office. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome
• The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, compliant with DCP controls and consistent with development in the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation".

Comment:
The justification provided by the applicant is supported in that the applicant's justification to contravene the FSR development standard is well founded, excluding the assertions that Council should vary the FSR development standard as variations to Clause 4.4 - Floor Space Ratio of Manly LEP 2013 have been the subject of recent precedent within the former Manly Local Government Area. Each development application is assessed on its merits and on a site-by-site basis.

It is accepted that the site is an undersized allotment, as defined by the Manly DCP 2013, and that resulting three storey built form is generally consistent with the height, scale and bulk and nearby three storey developments within the visual catchment of the site. It is further accepted that the proposal complies with the exemption FSR provision within Clause 4.1.3.1 - 'Exceptions to FSR for Undersized Lots' of the Manly DCP 2013.

Furthermore, it is also agreed that the FSR breach does not have an adverse impact upon the natural environment, including the amenity of adjacent properties. The proposal is also considered to demonstrate consistency with the objectives of the FSR standard and zone objectives, thereby ensuring the development is in the public interest.

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height of the existing dwelling house and scale of nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building.

In addition to the above, Clause 4.1.3.1 - 'Exceptions to FSR for Undersized Lots' of the Manly DCP 2013 stipulates that the site is an undersized allotment and that the 0.4:1 FSR requirement is typically applied to sites with an average site area of 750sqm. When applying the proposed gross floor area of 284sqm to an average site area of 750sqm the proposed FSR is 0.38:1, which complies with the 0.4:1 requirement.

For the reasons outlined above, it is considered that the bulk and scale of the development is consistent with the existing and desired character of the area.

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

Comment:

The new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building. Thus, the FSR non-compliance 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 development does not result in the removal of prescribed vegetation. In addition, the additions are appropriately scaled and setback from side boundaries to minimise impacts upon adjacent residential development. The development also results in a net increase in deep soil landscaping on the site and provides additional native landscape planting, in turn enhancing the landscape character of the area. Overall, the proposal will maintain an appropriate visual relationship with the surrounding built and natural environment.

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

Comment:

For the purpose of this assessment, views, solar access, visual amenity and privacy have been adopted as environmental factors that contribute to the use and enjoyment of adjoining public and private land.

Views

The proposed development does not adversely compromise views from the public domain. In relation to the development's impacts upon existing water views from various private properties on the northern side of Moore Street, Council's assessment has considered the proposal in accordance with the view sharing principles established within the NSW Land and Environment Court case of *Tenacity Consulting v Warringah [2004] NSWLEC 140*. In summary, the non-compliant FSR results in negligible to minor view loss from private properties on the northern side of Moore Street. In this case, reasonable view sharing has been achieved. This matter is discussed in further detail within the section of this report relating to Clause 3.4.3 - 'Maintenance of Views' of the Manly DCP 2013.

Solar Access

As the subject site and surrounding properties maintain a north-south aspect, the additional overshadowing created from the proposal is not confined to one particular site between 9am - 3pm on June 21. The applicant's shadow diagrams indicate that the development does not eliminate more than 1/3 of existing solar access to adjacent private open space on June 21 (winter solstice), which satisfies the Manly DCP 2013 solar access provision. In addition, adequate solar access has been maintained to windows on adjacent properties that serve habitable rooms.

Visual Amenity

As discussed above, the additional building mass is contained within the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building when viewed from the street and surrounding

properties. It is considered that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context.

Privacy

The additional floor space is appropriately separated from habitable rooms and private open space on adjacent properties to ensure that reasonable levels of visual and acoustical privacy are maintained between buildings. The privacy impacts generated by the elevated decking (which is not included the FSR calculations) is discussed later within this report.

Overall, it is considered that the FSR breach will not preclude the use or enjoyment of surrounding private and public land.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The site is not located within a business zone or local centre.

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 does not alter the residential land use and thus, the development will provide for the housing needs of the community within a low density residential environment.

- *To provide for a variety of housing types and densities.*

  Comment:

  The proposal relates to low density residential development.

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

  Comment:

  The proposal maintained a residential land use.

Conclusion:

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

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

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

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

5.21 Flood planning

The rear south-western corner of the site is identified within a 'low risk flooding precinct'. However, the proposed development, including swimming pool, is located outside of this area and not subject to any flood hazards.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

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

Works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The proposal does not involve significant excavation and the site is located approximately 270m eastward of nearby Class 3 land and elevated approximately 40m higher than the nearby Class 3 land due to the topography. Thus, a preliminary acid sulfate soils assessment report is not required in this instance as the proposed development is not likely to lower the water table on the nearby Class 3 land.

6.4 Stormwater management

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) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

Conclusion

As demonstrated above, the proposed development is consistent with the requirements of Clause 6.4 of Manly LEP 2013.

6.9 Foreshore scenic protection area

The site is located within the Foreshore Scenic Protection Area under Manly LEP 2013. Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

Comment:

The proposed development does not compromise significant view lines from public places (i.e. road reserve) to the foreshore area. Furthermore, the site is located approximately 120m to the north of the foreshore area. The sufficient separation will ensure the development does not result in overshadowing of the foreshore area. The dwelling will retain a three storey appearance from the south and the additional building mass is contained within the existing side boundary setbacks, including increased setbacks on the upper floor, which will ensure that the height, bulk and scale of the dwelling does not detrimentally impact the visual amenity of the harbour or coastal foreshore. Overall, the proposal meets this requirement.

(b) measures to protect and improve scenic qualities of the coastline,

Comment:

The existing dwelling is not visually prominent when viewed from the foreshore area. The proposal maintains a three storey appearance from the south and the additional building bulk is generally contained within the existing building footprint. As such, the proposal will not detract from the scenic qualities of the coastline.

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

Comment:

The proposal does not alter the existing low density residential land use and works are considered to be suitable for the site.

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposal will not create conflicts between land and water based coastal activities.

Conclusion

As demonstrated above, the proposal satisfies the requirements of Clause 6.9 of Manly LEP 2013.

6.12 Essential services

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

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

Comment:

The aforementioned essential services are available for the proposed development. Therefore, the proposal complies with Clause 6.10 of Manly LEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 491.5sqm	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 950sqm of site area	1 dwelling on 491.5sqm allotment - existing and unchanged	N/A	N/A
	Dwelling Size: minimum 134sqm required (based off 5 bedrooms and 5 bathrooms)	284sqm	-	Yes
4.1.2.1 Wall Height	East: 7.7m (based on gradient 1:5)	8.3m	7.79%	**No**
	West: 7.7m (based on gradient 1:5)	7.8m	1.3%	**No**

4.1.2.2 Number of Storeys	2 storeys	3 storeys - existing, however additional floor space provided on third storey	50%	**No**
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	no change to existing scenario	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.77m (1/3 of wall height)	1.35m (new additions lower floors) - 2.1m (new additions upper floor)	up to 51.26%	**No**
	West: 2.6m (1/3 of wall height)	1.65m (new additions)	36.54%	**No**
	Windows: no windows within 3m of side boundaries	9x new windows within 3m of side boundaries	up to 55%	**No**
4.1.4.4 Rear Setbacks (excluding swimming pools)	8m	13.7m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (294.9sqm) of site area	55.14% (271sqm)	8.1%	**No**
	Open space above ground 25% (67.75sqm) of total open space	9.41% (25.5sqm) - area of ground floor elevated deck that has a 3m x 3m trafficable area	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (108.4sqm) of proposed open space	45.02% (122sqm) of proposed open space	-	Yes
	2 native trees	nil (however 1 tree has been conditioned)	100%	**No***
4.1.5.3 Private Open Space	18sqm	> 18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.6m above existing ground level and 0.6m above finished ground following backfill	60%	**No**
	Curtilage: 1m setback from side/rear boundaries	pool decking setback 0.46m from eastern side boundary	54%	**No**
	Water line: 1.5m setback from side/rear boundaries	1.56m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Notes:

1. The wall height has been measured from the underside of the ceiling on the uppermost floor to the ground level below, in accordance with the Manly DCP 2013 definition. The parapet height is excluded from the wall height measurement.

2. Open space areas that are less than 3m x 3m in dimension have been included from the total open space calculations, in accordance with the Manly DCP 2013 total open space definition.

3. A condition has been recommended requiring one locally native canopy tree to be planted on the site.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The following controls are of relevance when considering the proposal's impact upon the privacy of adjacent properties:

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:

There are a number of new windows within 3m of the side boundaries. However, these windows contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings.

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.

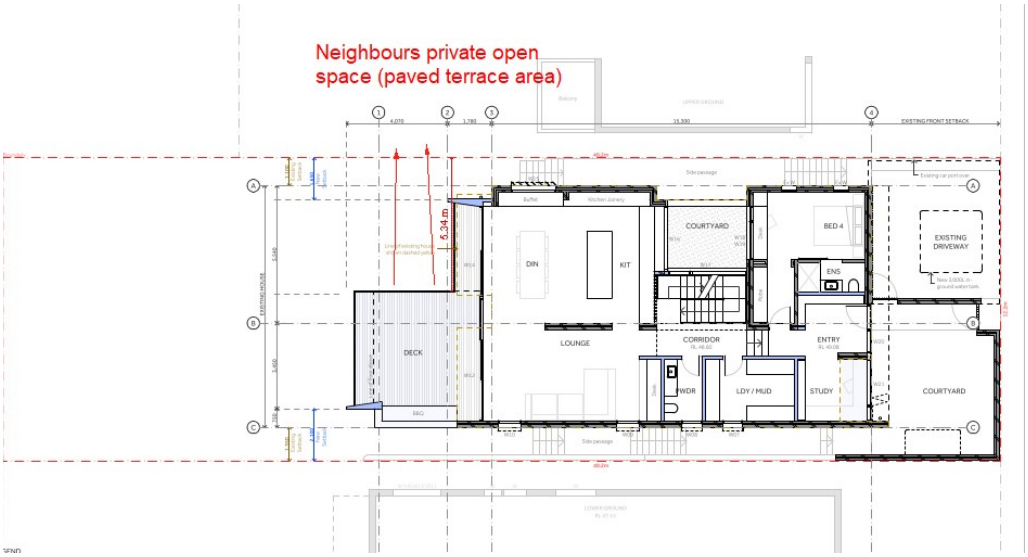
Comment:

Ground Floor Balcony

The proposed development includes a large elevated balcony sited at RL48.6, which is situated 3.3m above the ground level below. The balcony has a trafficable area of 30sqm and is directly accessible from the kitchen, living and dining areas on the ground floor. The balcony is also sited to enable the enjoyment of harbour views towards the south. For these reasons, the balcony in question will receive high volumes of pedestrian movement on a day to day basis. Therefore, any direct overlooking into adjacent properties from this balcony would be unreasonable.

Whilst the eastern part of the balcony is recessed behind wall on the eastern elevation, a significant portion of the balcony protrudes southward (rear) of the western wall of the dwelling house and would allow for direct sight lines into private open space on the western adjacent property (23 Moore Street). Figure 3 below depicts the sight lines that would occur to the west.

Figure 3: *overlooking towards the west from ground floor rear balcony*



This portion of the balcony is devoid of any privacy screening and is located 5.34m from the western side boundary. The AMCORD guidelines (which are generic guidelines that can assist with the assessment of impact) stipulate that direct overlooking towards adjacent private open space within 9m of separation is considered to be unreasonable within low density residential areas.

Given the above, the overlooking impacts are not considered to be acceptable. To mitigate this issue, a suitable condition has been recommended requiring the westernmost edge of the balcony sited at RL48.6 to be affixed with a non-transparent screen to a height of 1.65m above the finished floor level. This will prevent overlooking from this balcony from standing and sitting vantage points. It is further noted that primary harbour views from the dwelling are maintained to the south over the rear boundary. Hence, the provision of privacy screening will not detrimentally impact the amenity of the occupants of the dwelling in relation to views.

First Floor Juliet Balcony

The proposal includes a small juliet balcony on the first floor that affords opportunities for overlooking towards the western adjacent private open space at 23 Moore Street. This balcony is located adjacent to a bedroom and is also setback 5.34m from the western side boundary, which is within the 9m AMCORD privacy separation guideline. Whilst there may be opportunities for overlooking towards the western adjacent private open space from this juliet balcony, the impacts are not considered to be unreasonable as the balcony adjoins a low trafficable area (i.e. bedroom) and the restricted size of the balcony makes it impractical for the occupants of the dwelling to utilise the area frequently. Therefore, any overlooking would occur on an infrequent basis and thus, be more reasonable. This argument is supported within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that *"overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time"*. Therefore, additional screening of the juliet balcony is not required in this instance.

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.

c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.

Comment:

Adequate separation has been afforded from the opposing areas of private open space to ensure that a reasonable level of acoustical privacy is maintained. In addition, a condition has been recommended limiting all sound producing plant, equipment, machinery or fittings to no more than 5dB (A) above the background level when measured from any property boundary and/or habitable rooms.

Conclusion

Having regard to the above assessment, it is concluded that the proposal will satisfy the requirements of this control, subject to a condition requiring a privacy screen to be affixed to the westernmost edge of the elevated rear balcony adjacent to the kitchen, living and dining areas on the ground floor.

3.4.3 Maintenance of Views

Following the public exhibition period a number of submissions were received raising concern of the development's impact upon views towards the Sydney harbour catchment. To assist with the assessment, the applicant erected three height poles to represent the gable roofline that was originally proposed with this application.

Site inspections have been undertaken at the following properties to examine the extent of the view impacts:

- 18 Moore Street.
- 20 Moore Street.
- 24 Moore Street.
- 26 Moore Street.
- 28 Moore Street.

Numerous attempts were made to inspect 16 Moore Street, which is located approximately 42m to the north-east of the site. However, the owner was not able to arrange suitable access for a site inspection. In addition, the occupants of 22 Moore Street, which is located directly opposite the subject site to the north, did not object to the proposed development. As such, this site was not inspected.

Figure 4 below depicts the nearby properties in relation to the subject site and the harbour catchment.

Figure 4: *nearby in relation to subject site and foreshore area*



It is important to note that during the assessment process the applicant submitted amended plans to modify the roofline of the rear addition from a gable roofline to a skillion roof form. As such, the amended roofline is situated 510mm below the apex of the previously proposed skillion roof. This amendment also brought the proposal into compliance with the 8.5m height of buildings development standard. The height poles in the below photos reflect the previously proposed gable roofline. As such, indicative diagrams are drawn on the view impact photos to reflect the modified roof form as perceived from adjacent properties.

The development is considered against the objectives of the control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

18 Moore Street

The views obtained from 18 Moore Street consist of partially obstructed views to the south and south-west. The views encapsulate Chinaman's Beach to the south-east and Balmoral Beach towards the south, including the general foreshore area between these two areas and land-water interface. The partial obstructions to these views include existing vegetation and development located to the south of 18 Moore Street. Distant views towards the Sydney CBD skyline are also obtained to the south-west of this property. Whilst some aspects of these views are partially obstructed, the views are considered to be highly valued.

20 Moore Street

The views obtained from 20 Moore Street consist of partially obstructed views to the south and south-west. The views encapsulate Chinaman's Beach to the south-east and Balmoral Beach (including a small portion of HMAS Penguin naval base) towards the south, including the general foreshore area between these two areas and land-water interface. The views towards Chinaman's Beach are heavily obstructed, whilst the views towards Balmoral Beach contain fewer obstructions. The partial obstructions to these views include existing vegetation and development located to the south of 20 Moore Street. Distant views towards the Sydney CBD skyline are also obtained to the south-west of this property. Whilst some aspects of these views are partially obstructed, the views are considered to be highly valued.

24 Moore Street

The views obtained from 24 Moore Street consist of partially obstructed views to the south encompassing Balmoral Beach and HMAS Penguin naval base. The obstructions to this view corridor are minimal and include existing development, vegetation and a power pole located to the south of 24 Moore Street. The views to the south include the land-water interface of Balmoral Beach. Distant views towards the Sydney CBD skyline are also obtained to the south of this property.This view corridor is

considered to be highly valued.

26 Moore Street

The views obtained from 26 Moore Street consist of generally whole views to the south and south-east. These views encapsulate Balmoral Beach and HMAS naval base to the south, and Cobblers Beach towards the south-east, including the foreshore area between these two areas and the land-water interface. These views in question hold significant value.

28 Moore Street

The views obtained from 28 Moore Street consist of largely unobstructed views to the south and south-east. These views encapsulate Balmoral Beach and HMAS naval base to the south, and Cobblers Beach towards the south-east, including the foreshore area between these two areas and the land-water interface. One key obstruction to this view is a large street tree located within the Council road reserve on the southern side of Moore Street. Distant views towards the Sydney CBD skyline are also obtained to the south of this property. The views in question hold significant value.

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:

18 Moore Street

The dwelling house at 18 Moore Street is three storeys in height. The views towards the south and south-west are obtained from the both the middle and upper floors of this dwelling house. The middle floor accommodates a large entertaining deck and the kitchen, living and dining areas. The upper floor contains a number of bedrooms and a small balcony. The views to the south-west towards Chinaman's Beach are obtained from standing and sitting positions over the western side boundary, whilst the views to the south towards Balmoral Beach are obtained from standing and sitting positions over the front boundary.

20 Moore Street

The dwelling house at 20 Moore Street is three storeys in height. The views towards the south and south-west are obtained from both the middle and upper floors of this dwelling house. The middle floor accommodates a large covered terrace and the kitchen, living and dining areas. The upper floor contains a number of bedrooms and a large terrace area. The views to the south-west towards Chinaman's Beach are obtained from standing and sitting positions over the western side boundary, whilst the views to the south towards Balmoral Beach are obtained from standing and sitting positions over the front boundary.

24 Moore Street

The dwelling house at 24 Moore Street is three storeys in height. The views towards the south are obtained from both the middle and upper floors of this dwelling house. The middle floor accommodates an outdoor terrace and the kitchen, living and dining areas. The upper contains a number of bedrooms and a balcony off a bedroom. The views towards the south (i.e. Balmoral Beach) are obtained from

standing and sitting positions over the front boundary.

26 Moore Street

The dwelling house at 26 Moore Street is three storeys in height. The views towards the south and south-east are obtained from both the middle and upper floors of this dwelling house. The middle floor accommodates a large outdoor terrace and swimming pool on the front elevation, including the kitchen, living and dining areas. The upper floor accommodates a number of bedrooms and a small balcony off a bedroom. The views towards the south (i.e. Balmoral Beach) are obtained from standing and sitting positions over the front boundary, whilst the views towards the south-east (i.e. Cobblers Beach) are obtained from standing and sitting positions over the eastern side boundary.

28 Moore Street

The dwelling house at 28 Moore Street is three storeys in height. The views towards the south and south-east are obtained from both the middle and upper floors of this dwelling house. The middle floor accommodates a large outdoor terrace and swimming pool on the front elevation, including the kitchen, living and dining areas. The upper floor accommodates a number of bedrooms and a second living space. A small balcony off a bedroom on the front elevation is also located on the upper floor. The views towards the south (i.e. Balmoral Beach) are obtained from standing and sitting positions over the front boundary, whilst the views towards the south-east (i.e. Cobblers Beach) are obtained from standing and sitting positions over the eastern side boundary.

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

Comment:

18 Moore Street

When observed from standing positions on the middle floor (i.e. living areas and entertaining balcony) the proposed development obscures small portions of water towards the south-west, excluding the land-water interface. When observed from sitting positions on the middle floor the proposed development will obscure a small portion of the land water interface. The impact from the upper floor is less prominent. It is noted that the primary views to the south (i.e. Balmoral Beach obtained over the front boundary) will be unaffected, with the impact only being confined to the view corridor obtained over the western side boundary. As the modified roof form removes a portion of the higher gable roofline for a horizontal length of 1.3m a small additional water view will be provided from 18 Moore Street.

The distant views of the Sydney CBD skyline also remain unaffected. Figure 5 below depicts the extent of the impact from the middle floor balcony. Figure 6 below depicts the unaffected corridor to the south.

Figure 5: *view impact from No. 18 middle floor balcony (standing position)*



Figure 6: *unaffected view corridor towards Balmoral Beach from No. 18 middle floor balcony (standing position)*



Given the above, the qualitative extent of the view impact from the entire property is considered to be minor.

20 Moore Street

When observed from standing positions on the middle floor (i.e. living areas and large terrace) the proposed development obscures small portions of water and the land-water interface towards the south-west. This impact is slightly more pronounced when observed from sitting positions on the middle floor. When observed from standing and sitting positions on the upper floor (i.e. bedroom areas) the development only obscures a very small area of water, excluding the land-water interface. As the modified roof form removes a portion of the higher gable roofline for a horizontal length of 1.3m a small additional water view will be provided from 20 Moore Street.

It is noted that the views towards Balmoral Beach remain unaffected. The distant views of the Sydney CBD skyline also remain unaffected. Figure 7 below depicts the extent of the impact from the middle floor balcony. Figure 8 depicts the views from the upper floor, which remain largely

Figure 7: *view impact from No. 20 middle floor balcony (standing position)*

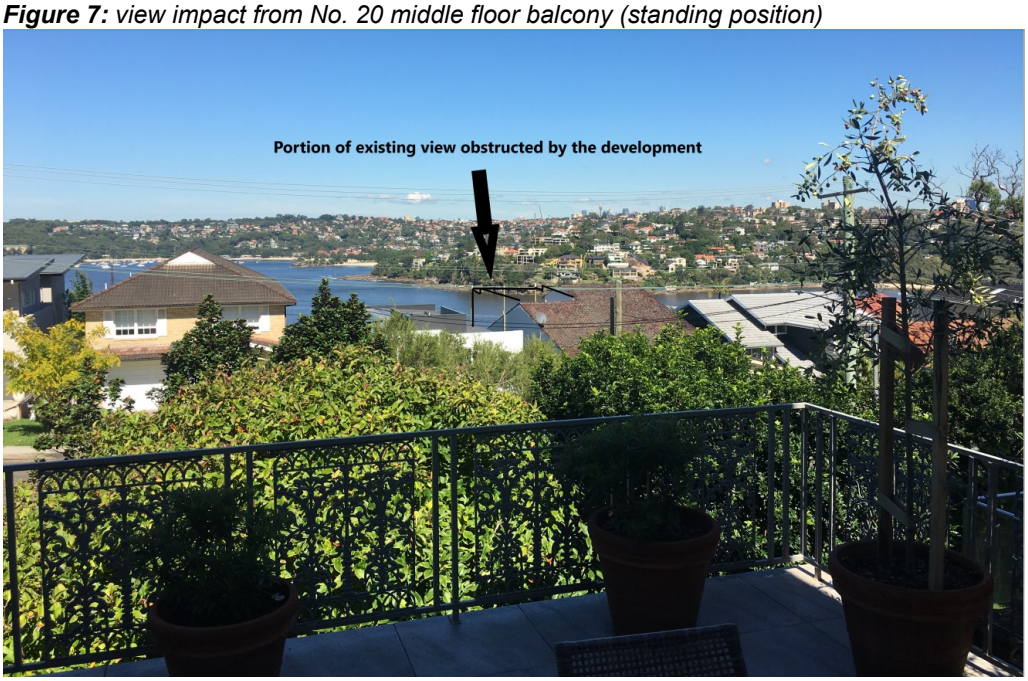


Figure 8: *view impact from No. 20 first floor balcony (standing position)*



Given the above, the qualitative extent of the view impact from the entire property is considered to be minor.

24 Moore Street

When observing from standing positions on the middle floor (i.e. living areas and terrace) the proposed development will obscure of water to the south. However, the proposal will not obscure any of the land-water interface. This impact is slightly more pronounced when observed from sitting positions on the middle floor. When observed from standing and sitting positions on the upper floor (i.e. bedroom areas) the development only obscures a very small area of water, excluding the land-water interface. The distant views of the Sydney CBD skyline also remain unaffected.

As the modified roof form removes a portion of the higher gable roofline for a horizontal length of 1.3m a small additional water view will be provided from 24 Moore Street. Figure 9 below depicts the extent of the impact from the middle floor terrace.

Figure 9: *view impact from No. 24 middle floor terrace (standing position)*



Given the above, the qualitative extent of the view impact from the entire property is considered to be minor.

26 Moore Street

When observing When observing from standing positions on the middle floor (i.e. living areas and terrace) the proposed development will obscure of water to the south. However, the proposal will not obscure any of the land-water interface. This impact is slightly more pronounced when observing from sitting positions on the middle floor. However, the sitting view on the middle floor is already obscured by the existing terrace balustrade. When observed from standing and sitting positions on the upper floor (i.e. bedroom areas) the development only obscures a very small area of water, excluding the land-water interface.

As the modified roof form removes a portion of the higher gable roofline for a horizontal length of 1.3m a small additional water view will be provided from 26 Moore Street. Figures 10 and 11 below depicts the extent of the impact from the middle floor terrace and first floor balcony off a bedroom.

Figure 10: *view impact from No. 26 middle floor terrace (standing position)*



Figure 11: *view impact from No. 26 first floor balcony (standing position)*



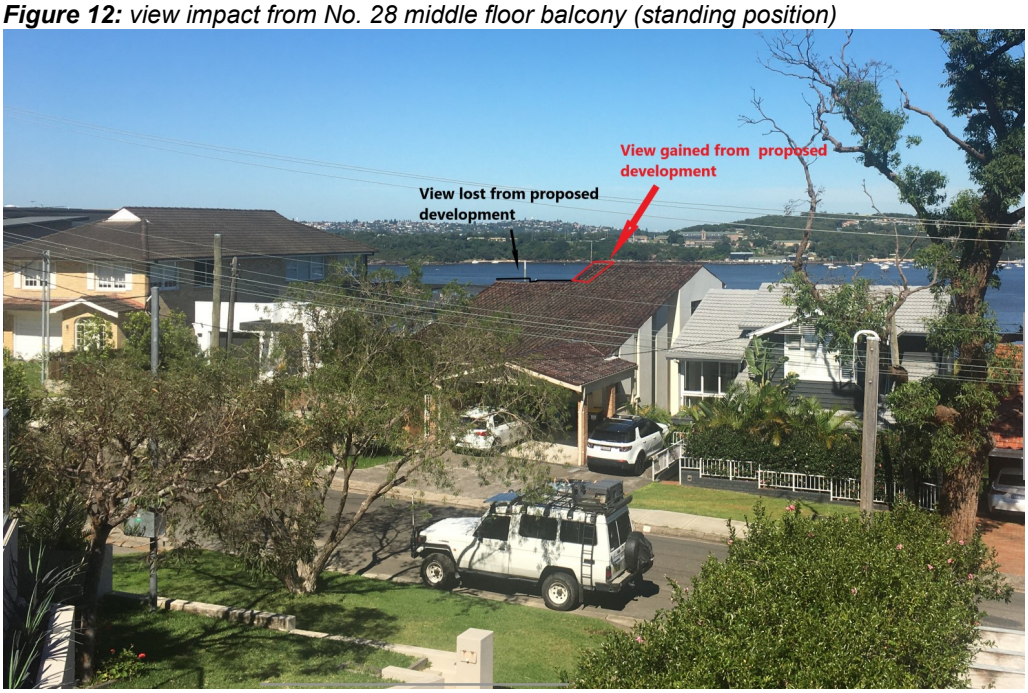
Given the above, the qualitative extent of the view impact from the entire property is considered to be negligible and acceptable.

28 Moore Street

When observing from standing and sitting positions on the middle and first floors the proposal only

obscures minuscule areas of water, excluding the land water interface. In fact, due to the north-western aspect of 28 Moore Street in relation to the subject site the removal of a portion of the existing gable roofline will result in an overall view gain from this property. This is depicted on Figure 12 below.

Figure 12: *view impact from No. 28 middle floor balcony (standing position)*



Given the above, it is considered that the view impact is not even appropriately categorised as negligible and accepatable given there will be an overall view gain through the proposed development.

4. Reasonableness of impact

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

Comment:

The proposed non-compliances related to the view loss are numeric breaches to the FSR development standard and Manly DCP 2013 wall height and side setback provision.

In regards to the FSR non-compliance, it is noted that the site is an 'undersized allotment', as defined by the Manly DCP 2013, and that the quantum of gross floor area complies with the DCP undersized allotment provision. In this case, the applicant has demonstrated that compliance with the FSR standard is not reasonable in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation.

In regards to the wall height non-compliance, it is noted that the eastern elevation of the development

involves a 500mm non-compliance to the wall height provision. Despite this, the development remains compliant with the 8.5m statutory height limit and full compliance with the wall height provision will not derive any material benefit with regards to view sharing.

Whilst the proposal involves variations to the side setback provisions, it is noted that the new rear addition to the building footprint maintains the existing side boundary setbacks of the building, including increased setbacks on the upper floor. This ultimately assists in minimising the view impacts. Furthermore, a skillion roofline has been employed to further negate the view impacts.

Overall, due to the negligible to minor nature of the view impacts, coupled with the fact that appropriate design treatments have been employed to minimise the extent of the view impacts and that the resulting height, bulk and scale of the development corresponds with surrounding residential development on Moore Street, it is considered that a reasonable view sharing outcome has been achieved.

Conclusion

The proposed development demonstrates consistency with the objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

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

Description of non-compliance

The maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- Eastern elevation: 1:5 gradient, which permits a 7.7m wall height.
- Western elevation: 1:5 gradient, which permits a 7.7m wall height.

The maximum wall height of the proposed development is 8.3m on the eastern elevation and 7.8m on the western elevation, which does not satisfy the numeric requirement.

Note: *wall height is measured from the underside of the ceiling on the uppermost floor to the existing ground level. The parapet height is excluded, in accordance with the Manly DCP 2013 wall height definition.*

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed development complies with the height of buildings development standard and the roof form descends in height at the rear of the addition to correspond with the slope of the land. The dwelling house also remains three storeys in height, which is commensurate with the height and scale

of surrounding dwelling houses on Moore Street.

(b) to control the bulk and scale of buildings,

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height and scale of the existing dwelling house and nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building.

(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:

As discussed within the section of this report relating to Clause 3.4.3 of the Manly DCP 2013, a reasonable view sharing outcome has been achieved, in accordance with the planning principles established within the NSW Land and Environment Court case of *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

As the subject site and surrounding properties maintain a north-south aspect, the additional overshadowing created from the proposal is not confined to one particular site between 9am - 3pm on June 21. The applicant's shadow diagrams indicate that the development does not eliminate more than 1/3 of existing solar access to adjacent private open space on June 21 (winter solstice), which satisfies the Manly DCP 2013 solar access provision. In addition, adequate solar access has been maintained to windows on adjacent properties that serve habitable rooms.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The site is not located within a recreation or environmental protection zone. Hence, this objective is not relevant to this application.

Conclusion

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

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report

relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation.

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment of 750sqm. The site is an undersized allotment, being 491.5sqm in area. When applying a gross floor area to an average site area of 750sqm, the proposed FSR would be 0.38:1, which complies with the 0.4:1 requirement.

The proposal therefore complies with this DCP exemption provision.

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

Description of non-compliance

Side Setbacks

The control requires development to be setback at least 1/3 of the adjacent wall height from side boundaries. In applying this principle, development must be setback 2.77m from the eastern side boundary and 2.6m from the western side boundary in order to satisfy the numeric requirement.

The proposed development is setback as follows:

- Eastern elevation: 1.35m (lower and middle floors) - 2.1m (new additions on first floor).
- Western elevation: 1.6m (new additions on all floors).

The proposal therefore fails to satisfy the numeric requirement.

Windows

The control stipulates that windows to habitable rooms must be setback at least 3m from side boundaries. The proposal includes nine (9) new windows within 3m of the eastern and western side boundaries, which does not satisfy the prerequisite.

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 proposal will maintain a part 2-3 storey appearance, which is consistent with the height of the existing dwelling house and scale of nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building. The development also incorporates additional native landscape treatment to enhance the landscaped character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

As discussed earlier within this report, the proposed development does not result in unreasonable overshadowing of adjacent properties and provides a reasonable view sharing outcome. The offending windows within 3m of the side setback areas contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings. Furthermore, the issue of overlooking from the main entertaining deck on the middle floor has been negated through the recommendation of a condition requiring privacy screening to be affixed to the northern elevation of the deck.

In addition to the above, whilst the proposal varies the numeric side setback requirements, the new additions maintain the existing side setbacks of the building, including the provision of additional setbacks on the upper level. This will ensure the development does not detract from the existing rhythm or pattern of spaces with regards to side setbacks. The proposal will also not preclude safe traffic conditions along Moore Street.

Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded with regards to the side setback requirements as the non-compliance does not give rise to unreasonable amenity or streetscape impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal does not necessitate the removal of significant landscape or topographic features. In addition, the proposal complies with the Manly DCP 2013 landscaped area numeric requirement and provisions additional native planting on the site. Adequate areas of outdoor open space are also provided to meet the recreational needs of the occupants within the dwelling.

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

Comment:

The site is not bushfire prone.

Conclusion

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 60% (294.9sqm) of the site area to consist of total open space (TOS). To be included as TOS open space areas must be at least 3m x 3m in dimension and must not relate to parking structures or vehicular access. The application proposes 55.14% of the site area as TOS, which does not satisfy the requirements of the control.

The control also requires two native canopy trees to be located on the site. The site does not contain a native canopy tree. However, a condition has been recommended requiring one native canopy tree to be planted on the site.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal does not necessitate the removal of significant vegetation or topographic features on the site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal complies with the Manly DCP 2013 landscaped area numeric requirement and provides additional native landscape treatment, thereby ensuring an acceptable landscaping outcome.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

As discussed earlier within this report, the proposal will not result in unacceptable amenity impacts, subject to recommended conditions.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Suitable conditions have been recommended with this consent to ensure that stormwater is adequately managed.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal will not lead to a significant spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

Conclusion

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The swimming pool decking is setback 0.46m from the eastern side boundary, which does not comply with the 1m requirement for swimming pool concourses. Furthermore, the finished floor level of the pool concourse is sited 1.6m above the existing ground level, which does not comply with the 1m restriction. However, as fill is proposed within the rear yard the finished floor level will only be 0.6m above the finished ground level.

Merit consideration

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.

Comment:

The swimming pool is adequately setback from the rear boundary and screen planting is proposed around the perimeter of the swimming pool to prevent overlooking to downslope properties. This will be further assisted by the 1.8m high pool fencing at the rear. In relation to the side setback issue, the swimming pool is located below a large retaining wall that divides the subject site and 19 Moore Street (eastern adjacent site). This will prevent direct overlooking between the opposing swimming pool areas.

Furthermore, a condition has been recommended which seeks to limit the noise of sound producing plant to no more than 5dB (A) above the background level, which will minimise the impact of the filter

noise on adjoining properties. Overall, the proposal meets this objective.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.

Comment:

The pool is located in the rear yard and will not adversely impact upon the streetscape.

Objective 3) To integrate landscaping.

Comment:

The applicant proposes additional native landscape treatment on the site. Furthermore, a condition has been recommended by Council's Landscape Officer that requires a local native canopy tree to be planted on the site.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The site is not bushfire prone.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.4.2 Alterations and Additions

The control stipulates that if alterations and additions involve demolition of more than half of the building then the development will be assessed as new work and the controls of this plan will apply to the whole building. In assessing this particular application, it is noted that the proposed development does not demolish more than half of the existing dwelling house and thus, the proposal satisfies the requirement of this control.

Furthermore, a review and of the plans and supporting documentation against the Demolition Planning Principle established in the NSW Land and Environment Court Case of *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187* has concluded that the proposed development has been appropriately categorised as 'alterations and additions'.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal involves filling within the rear yard of the property to a height of approximately 2.2m, which exceeds the 1m requirement.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The filling within the rear yard is not considered to be excessive given the circumstances of the site. Moreover, the application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated 9 December 2021) which states that the proposal will achieve an acceptable level of risk, subject to adherence to the recommendations stipulated within the report. A condition has been recommended which seeks to ensure compliance with the recommendations within the Geotechnical Report.

Conclusion

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $9,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $990,000.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

The proposed development involves alterations and additions to an existing dwelling house including a swimming pool.

The proposed FSR equates to 0.58:1 (284sqm), which represents a 44.46% variation to the development standard. Despite this, the proposed development complies with the Manly DCP 2013 undersized allotment provision for the purposes of calculating FSR and the numeric non-compliance to the FSR development standard does not result in an unacceptable environmental planning outcome.

A detailed view analysis from adjoining properties has revealed that the proposed development, as amended throughout the assessment process, will allow reasonable view sharing to be achieved.

A total of 7 individual submissions were submitted in response to this application. The submissions have been addressed and do not warrant refusal of the application.

When considered on its merits, the proposed development is found to be acceptable and worthy of support. Suitable conditions have been recommended with this consent to negate any adverse impacts to neighbouring properties.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.4 Floor Space Ratio development standard pursuant to Clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0005 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 2610, 21 Moore Street, CLONTARF, 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-04 (Issue C) - Lower Level Demolition Plan	27 June 2022	Natalie Sciberras
DA-05 (Issue C) - Ground Level Demolition Plan	27 June 2022	Natalie Sciberras
DA-06 (Issue C) - Upper Level Demolition Plan	27 June 2022	Natalie Sciberras
DA-07 (Issue C) - Roof Level Demolition Plan	27 June 2022	Natalie Sciberras
DA-08 (Issue C) - Site & Roof Level Plan	27 June 2022	Natalie Sciberras
DA-09 (Issue C) - Lower Level Plan	27 June 2022	Natalie Sciberras
DA-10 (Issue C) - Ground Level Plan	27 June 2022	Natalie Sciberras
DA-11 (Issue C) - Level 1 Plan	27 June 2022	Natalie Sciberras
DA-12 (Issue C) - East Elevation	27 June 2022	Natalie Sciberras
DA-13 (Issue C) - West Elevation	27 June 2022	Natalie Sciberras
DA-14 (Issue C) - North & South Elevations	27 June 2022	Natalie Sciberras
DA-15 (Issue C) - Street Elevation	27 June 2022	Natalie Sciberras
DA-16 (Issue C) - Section AA	27 June 2022	Natalie Sciberras
DA-17 (Issue C) - Section BB	27 June 2022	Natalie Sciberras
DA-18 (Issue C) - Landscape Plan	27 June 2022	Natalie Sciberras

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Drawing No. 02 (Revision B) - Lower Floor Plan	1 November 2021	Quantum Engineers
Drawing No. 03 (Revision B) - Site / Ground Floor Plan	1 November 2021	Quantum Engineers
Drawing No. 04 (Revision B) - First Floor / Roof Plans	1 November 2021	Quantum Engineers
Drawing No. 05 (Revision B) - Stormwater Details	1 November 2021	Quantum Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Investigation Ref. J3941	9 December 2021	White Geotechnical Group
BASIX Certificate No. A426146_02	26 June 2022	Natalie Sciberras Architecture & Interior Design

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	1 November 2021	Rod and Natalie Pindar

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.

4. **Retaining Walls not to encroach over Property Boundaries**
The retaining walls nominated on the plans must be located wholly within the property boundaries. The retaining walls must not encroach onto adjoining land.

Reason: To ensure works do not encroach onto adjoining land.

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $9,900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $990,000.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the proposed buildings. Stormwater shall be conveyed from the roof areas of the site to the existing Council pit adjoining the site in the footpath area of Moore St.

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

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

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

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

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

- The entire westernmost edge of the rear balcony/deck adjacent to the kitchen, living and dining areas must be affixed with a non-transparent screen constructed to a height of 1.65 metres above the finished floor level. The privacy screen must be of a fixed panel or louvre style construction with maximum openings of 30 millimetres.

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

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

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

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

Reason: To provide public and private safety.

11. **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 (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.

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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not impacted by works,
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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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

22. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) one native tree capable of attaining at least 6 metres in height at maturity shall be planted

within the property to either the front or rear, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or the Tree Guide, and the following trees are suggested for consideration: Blueberry Ash - Elaeocarpus reticulatus; Saw-tooth Banksia - Banksia serrata; Magenta Lilly Pilly - Syzygium paniculatum; Golden Penda - Xanthostemon chrysanthus; Weeping Lillypilly - Waterhousia floribunda, and shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
ii) all tree planting listed above in item i) and the proposed Olea shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
iii) mass planting to the front, central and rear gardens as shown shall include shrub planting at minimum 1 metre intervals and a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and all other plants at 4 plants per metre square at a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of 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.

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

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

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

24. **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

25. **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.

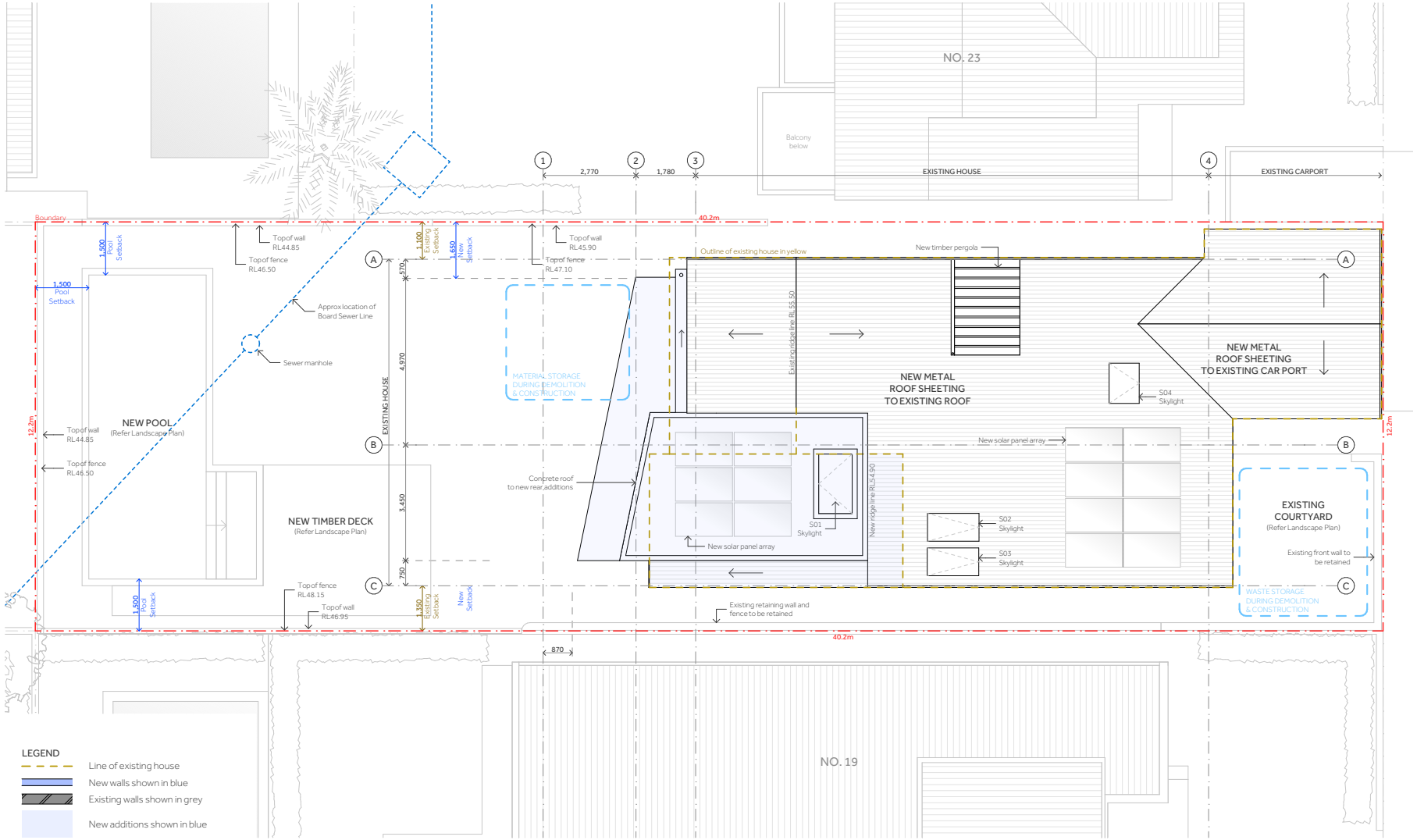
Reason: To maintain local environmental amenity.

26. **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.

27. **Lower Ground Floor not to be used for Separate Occupancy**
The lower ground floor of the dwelling house is not permitted to be used, or adapted to be used, for separate occupancy. This area my not contain separate cooking facilities.

Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

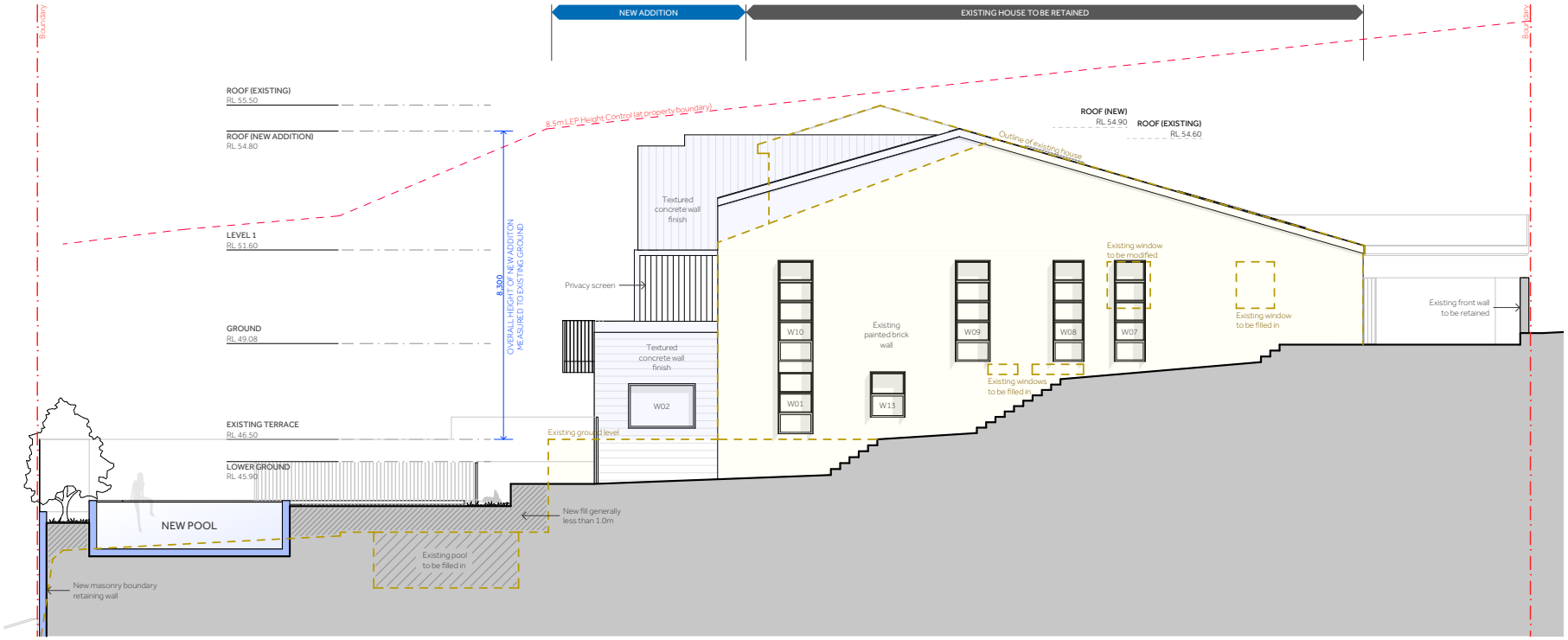


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project Alterations & Additions
address 21 Moore Street
Clontarf
client Rod & Natalie Pindar

Do not scale these drawings. Verify all dimensions on site.

title Site & Roof Level Plan
scale 1:100 @ A3
date 27 June 2022
drawing no. DA-08
issue C



LEGEND

- Outline of existing house
- Existing house shown in yellow
- New additions shown in blue

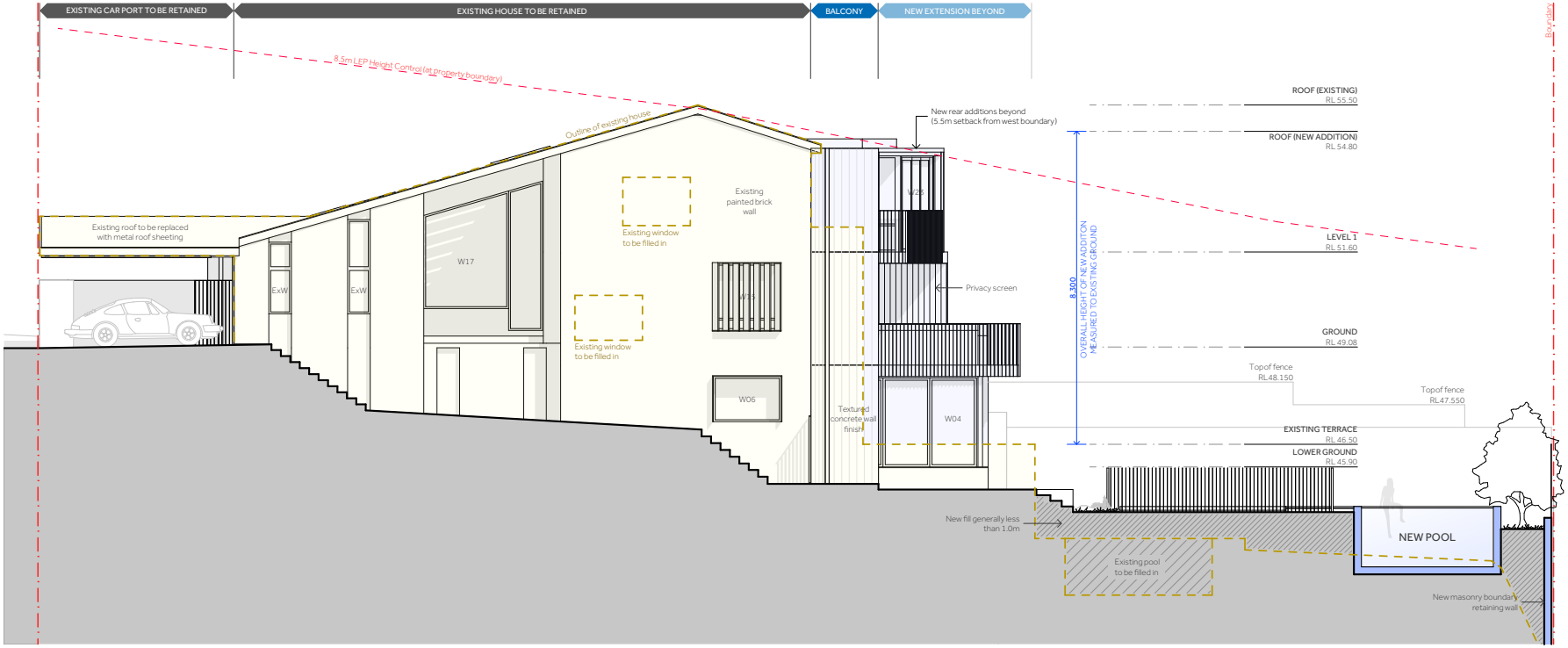
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Do not scale these drawings. Verify all dimensions on site.

title	East Elevation
scale	1:100 @ A3
date	27 June 2022
drawing no.	DA-12
issue	C



LEGEND

- Outline of existing house
- Existing house shown in yellow
- New additions shown in blue

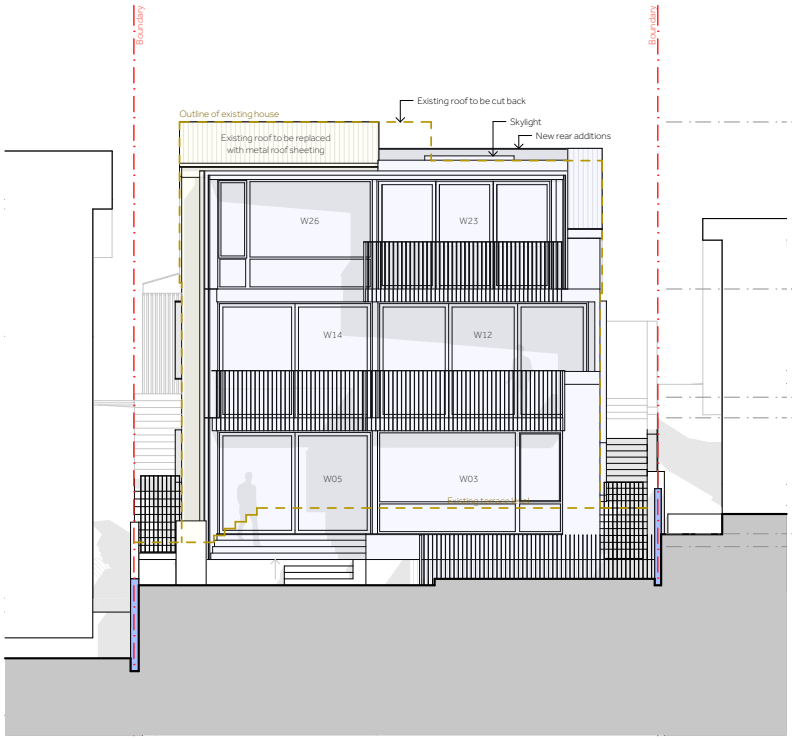
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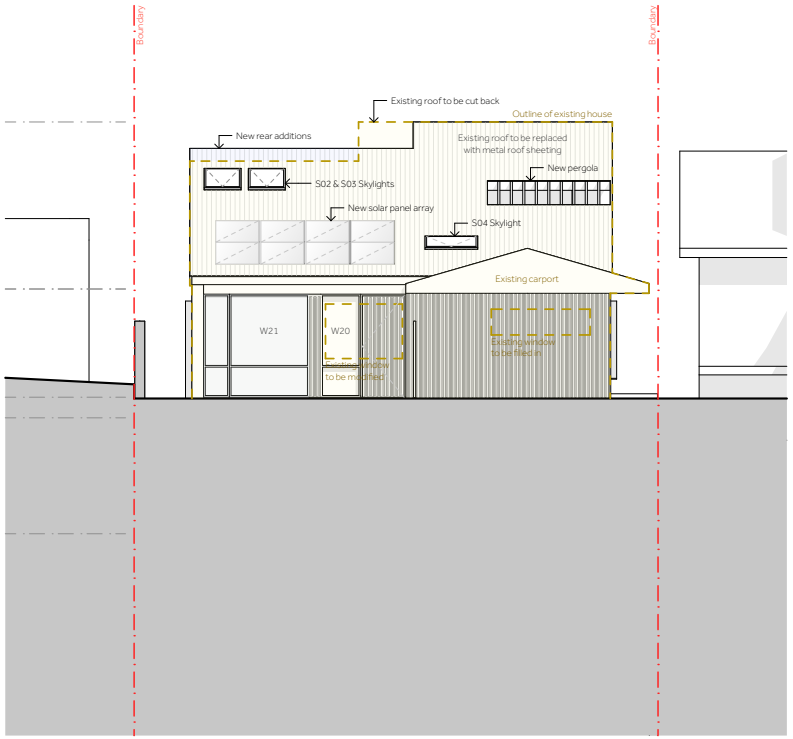
project	Alterations & Additions
address	21 Moore Street Clontarf
client	Rod & Natalie Pindar

Do not scale these drawings. Verify all dimensions on site.

title	West Elevation
scale	1:100 @ A3
date	27 June 2022
drawing no.	DA-13
issue	C



South Elevation



North Elevation

LEGEND

- Outline of existing house
- Existing house shown in yellow
- New additions shown in blue

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Do not scale these drawings. Verify all dimensions on site.

title North & South Elevations
scale 1:100 @ A3
date 27 June 2022
drawing no. DA-14
issue C

Appendix One - Clause 4.6 *Exceptions to Development Standards – Floor Space Ratio*

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

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

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

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

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

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

1.4 What is the development standard being varied?

Cl 4.4 – Floor Space Ratio

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.4:1, this equates to a maximum floor area of 196.6m^2 for the site area of 491.5m^2.

The Manly DCP permits a GFA, based on a lot size of 750m^2, for this undersized lot, which equates to a maximum GFA of 300m^2.

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 284m^2 or FSR of 0.58:1.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 36.4% or 97.4m^2 to the LEP control. The Manly DCP provides exceptions to floor space ratio for undersized lots. The subject site is an undersized lot, mapped with a minimum lot size of 950m^2 and comprising an area of 491.5m^2, as such it qualifies for consideration as an exception.

In this regard the DCP permits an FSR calculation based on a 750m^2 lot size, which equates to 300m² for the site. As noted above, the proposed gross floor area is 284m^2 and therefore complies with the provision of DCP Clause 4.1.3.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).*

*5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the

circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment

The proposed development is for alterations and additions to the existing dwelling to reconfigure the lower ground and ground floors and extend to the south (rear). In addition, an extension to the first floor is proposed to the south and east to create a 5 bedroom dwelling on the site. The new works comply with the building height control for the site and the bulk and scale is of a lesser or consistent scale with surrounding properties.

The proposed variation to the LEP control is 87.4m^2 or 36.4%, however as the subject site is an existing undersized parcel, clause 4.1.3 of the DCP, permits an FSR calculation based on a 750m^2 lot size, which equates to 300m^2 for the site. As noted above, the proposed gross floor area is 284m^2 and therefore complies with the provision of DCP Clause 4.1.3 having a GFA 16m^2 less than permitted. Additionally it is noted that the landscape area increases and complies.

It is considered this objective is met, despite the numerical variation.

(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 built form and massing will be of a consistent or lesser scale than other properties in the locality, increasing in height towards the rear of the lot to accommodate the slope of the site. As works are located to the rear of the lot, the dwelling will retain a single storey presentation to the street.

The new works propose a compliant maximum building height and will not obscure any important landscape or townscape features and will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment

The proposed development is visually appropriate for the locality and will not alter the character of the dwelling presenting to the street. Additional landscaping will be visible.

The proposed works are located at the rear of the site, on the portion of the lot that is already disturbed and it is considered the built form is consistent with new development in the locality and the existing dwelling. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

(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

Not relevant as the subject site is not located in a business zone.

2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

4. ***The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

5. ***The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey detached dwelling houses, with a number of dwellings having undergone recent renovations.

- The new works propose a compliant building height and has been designed to remain consistent with the character of the existing dwelling, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.

- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments (with properties nearby the subject site in Clontarf marked in **bold text**):

DA Number	Address	Description	Variation
DA2020/1477	53 Castle Circuit SEAFORTH NSW 2092	Residential - Alterations and additions,	**FSR Variation of 20%** Control: 0.4:1 (153.28m²) Proposal: 0.48:1 (283m²)
DA2020/1487	**89 Cutler Road CLONTARF NSW 2093**	**Residential - Alterations and additions**	**FSR Variation of 48.8% Control: 0.4:1 (153.28m²) Proposal: 0.6:1 (228.1m²)**
DA2020/1657	18 Baltic Street & 2/18 Baltic Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	**FSR Variation of 16.85%** Control: 0.6:1 (601.95m²) Proposal: 0.7:1 (703.4m²)
DA2021/0617	37 Radio Avenue BALGOWLAH HEIGHTS NSW 2093	Residential - Alterations and additions	**FSR Variation of 11.4%** Control: 0.45:1 (227.43m²) Proposal: 0.5:1 (253.4m²)
DA2020/1058	23 Parkview Road FAIRLIGHT NSW 2094	Residential - Alterations and additions	**FSR Variation of 25.2%** Control: 0.6:1 (161.22m²) Proposal: 0.75:1 (201.8m²)
DA2020/1372	19 - 21A Addison Road and 15 Oyama Avenue MANLY NSW 2095	Residential - Alterations and additions	**FSR Variation of 20%** Control: 0.6:1 (219.42m²) Proposal: 0.72:1 (263.04m²)
DA2020/1419	23 Crescent Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	**FSR Variation of 21%** Control: 0.6:1 (129.5m²) Proposal: 0.75:1 (162.3m²)
DA2020/1745	92 Addison Road MANLY NSW 2095	Residential - Alterations and additions	**FSR Variation of 31.67%** Control: 0.6:1 (187.98m²) Proposal: 0.79:1 (246m²)
DA2020/0702	9 Steinton Street MANLY NSW 2095	Residential - Alterations and additions	**FSR Variation of 22.5%** Control: 0.75:1 (114.225m²) Proposal: 0.91:1 (140m²)
DA2020/0821	32 Beatrice Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 50.6% Control: 0.4:1 (230.28m²) Proposal: 0.6:1 (347m²)
DA2019/1463	95 Gurney Crescent SEAFORTH NSW 2092	Residential - Alterations and additions	**FSR Variation of 59.4%** Control: 0.4:1 (237.8m²) Proposal: 0.63:1 (379m²)
DA2020/0612	**19 Sandy Bay Road CLONTARF NSW 2093**	**Residential - Alterations and additions**	**FSR Variation of 80% Control: 0.4:1 (111.6m²) Proposal: 0.72:1 (201m²)**
DA123/2015	2 Moore Street CLONTARF NSW 2093	New dwelling	**FSR Variation of 29.2%** Control: 0.4:1

			Proposal: 0.53:1
DA2019/0506	19 Moore Street CLONTARF NSW 2093	Residential - Alterations and additions	**FSR Variation of 8%** Control: 0.4:1(196.2m²) Proposal: 0.43:1
DA123/2017	**88 Cutler Road CLONTARF NSW 2093**	**Residential - Alterations and additions**	**FSR Variation of 68.7% Control: 0.4:1 (145.2m²) Proposal: 0.67:1 (245m2)**
DA2018/2004	92 Cutler Road, CLONTARF NSW 2093	Residential - Alterations and additions	**FSR Variation of 12.5%** Control: 0.4:1 Proposal: 0.45:1

- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for the modernization of the split-level dwelling, providing a modern, open floor plan, with the principal living areas on the ground floor and the bedrooms on the first floor.
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other dwellings in the locality,
- Given the site context, the proposed variation is considered minor and reasonable, in that it complies with the 300m^2 GFA permitted by the Manly DCP for undersized lots and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot or surrounding dwellings,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any trees,
- The proposal allows for environmental impacts to be minimised, by locating works on

an already disturbed residential lot.

- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in a dedicated home office. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, compliant with DCP controls and consistent with development in the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone

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

Consistent. The proposed works will allow the current and future housing needs of the residents to be met in their current local community.

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

Not relevant. No change of use is proposed.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

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

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

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

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

Strict numerical compliance with the 0.4:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development to reconfigure the lower ground and ground floors and extend the dwelling to the south and east and a new swimming pool, on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to Cl 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed FSR is compliant with the DCP control for undersized lots,
- The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The works proposed will allow the housing needs of the residents to be met,
- The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.8	**DA2022/0487 - 85 SEAVIEW STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2022/407207**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6 - Floor Space Ratio** **4 ⇩Clause 4.6 - Building Height**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0487 for alterations and additions to a dwelling house on land at Lot 2 DP 925018, 85 Seaview Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0487

Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 2 DP 925018, 85 Seaview Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Benjamin Thomas Mellen Kaitlin Louise Rady
Applicant:	Nigel White

Application Lodged:	23/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/06/2022 to 17/06/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 7.8% 4.4 Floor space ratio: 36%
Recommendation:	Approval

Estimated Cost of Works:	$ 300,858.00

EXECUTIVE SUMMARY

This application seeks consent for alterations and additions to a residential dwelling, comprising a first floor addition and minor reconfiguration of the ground floor to facilitate an internal staircase.

The subject site is located within Area D of the Floor Space Ratio (FSR) map, meaning the maximum FSR is 0.5:1. The proposed FSR is 0.68:1, which exceeds the standard by 36%. As this is more than a 10% variation, the application is to be determined by Council's Development Determination Panel (DDP).

The proposal also exceeds the maximum building height. However, this variation is less than 10%

(being 7.8%).

One (1) submission was received during the notification period. However, this submission is in support of the proposed development.

Notwithstanding the numerical non-compliances to the abovementioned development standards under the MLEP 2013, and the non-compliances to the MDCP, the proposed development is commensurate with single dwelling houses within the locality, and is therefore recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for alterations and additions to a residential dwelling, pursuant to the *Manly Local Environmental Plan (MLEP) 2013*, including the following:

- Ground floor alteration to include the internal staircase.
- First floor addition comprising: two (2) bedrooms, storage, bathroom and a sitting room.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Development Control Plan - 3.8 Waste Management
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 2 DP 925018 , 85 Seaview Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Seaview Street. The site is regular in shape with a frontage of 16.765m along Seaview Street and a depth of 16.115m. The site has a surveyed area of 270.1m². The site is located within the R1 General Residential zone within the *Manly Local Environmental Plan (MLEP) 2013* and accommodates a single storey residential development, one (1) off-street hardstand space sited within a landscaped setting. The site has an easterly orientation and is located on a generally flat block. The site is not known to have any threatened species. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development, however, directly to the north of the subject site is a commercial premises, 'Balgowlah Automotive'.

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:

- **DA312/08** sought consent for alterations and additions to a residential dwelling, including extensions and a timber deck and pergola. This application was approved, subject to conditions, on 8 December 2008.

APPLICATION HISTORY

Additional information was requested on 21 June 2022 which seek to properly detail on plans the subject sites property's boundaries on the proposed first floor plan. An amended set of architectural plans was provided to Council on 22 June 2022.

In addition to the plan discrepancies, issues with the Clause 4.6 documents was identified where the numeric values of the variations to the FSR and Height development standards provided by the Applicant were different to the extent of variation calculated by part of the preliminary assessment. As such, on 27 June 2022, Council requested the Applicant amend the Clause 4.6 documents to be consistent with extent of variation identified by Council for the maximum height of building and floor space ratio. Updated Clause 4.6 documents were provided by the Applicant to Council on the same day.

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	No draft instruments apply to the development.
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 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to showing the property's boundaries on the proposed first floor plan. This information was informally requested, via email, on 21 June 2022. An

Section 4.15 Matters for Consideration	Comments
	amended master set plans were provided to Council on 22 June 2022. Additionally, during the assessment of the Clause 4.6 documents, it was noted that there was a discrepancy between the numeric values provided by the Applicant and Council's preliminary assessment of the height of building and floor space ratio. As such, on 27 June 2022, Council requested the Applicant amend the Clause 4.6 documents to be consistent with Council's numeric values for the maximum height of building and floor space ratio. Updated Clause 4.6 documents were provided to Council on the same day. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 03/06/2022 to 17/06/2022 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 1 submission/s from:

Name:	Address:
Mrs Judith Burns	6 / 445 Sydney Road BALGOWLAH NSW 2093

The submission that was received for this application is in support of the proposed development, acknowledging that the overall design (including the articulation and massing) has been sensitively managed so as to reduce the apparent bulk of the building as it would present to the Seaview Street frontage.

Further, this submission notes that the proposed first floor addition is stylistically consistent with multiple buildings within the wider locality of Balgowlah and, in this instance, would be a positive contribution to the streetscape. This submission further supports relaxation of the maximum allowable floor space ratio (FSR) standard based on the small site area.

These comments are noted.

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 will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards 2021) 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 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. A444944, dated 12 January 2022).

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.

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	9.17m	7.8%	No
Floor Space Ratio	FSR: 0.5:1 (135.05m^2)	FSR: 0:68:1 (185.4m^2)	36%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

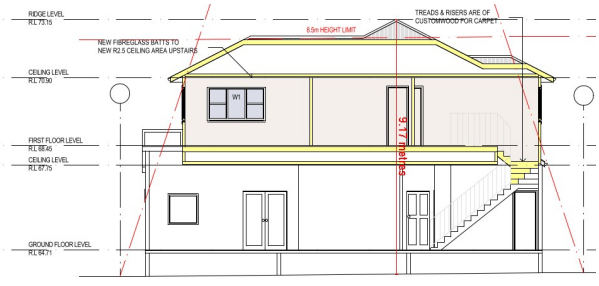
Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.17m
Percentage variation to requirement:	7.8%



SECTION A-A

Image 1. Maximum height of building breach.

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:

"The variation to the building height control by approximately 0.62M arises do [sic] to a raised ground floor which negotiates a cross fall in the site and a peak in the roof ridge. The proposed building height encroachment is minor and contained centrally over the existing dwelling.

No adverse planning consequences (additional overshadowing, privacy, visual impact, urban

design/streetscape, heritage, neighbourhood character) arise as a result of the variation. Rather, in this particular case the variation facilitates the provision of a proportionate built form with a strong streetscape appeal.

The proposed development will sit comfortably in its context in terms of scale, massing and form given the prevalence of 2 storey buildings in the street. The minor variation to the building height standard will not be discernible to the casual observer from a streetscape perspective given that the proposed upper level addition is well setback from the street and is well articulated.

- *The proposed roof design provides interest and expression to the dwelling with high streetscape presentation. The encroachment into the building height plane occurs for a portion of the roof which sits centrally over the dwelling.*
- *The subject site sits on the periphery of a low density zone, which adjoins a higher density zone fronting Sydney Road. The subject site is zoned for a higher density of residential development and the proposal will sit comfortably with existing buildings within the visual catchment.*
- *There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation and design resolution.*
- *There will be no erosion of bushland or scenic quality as a result of the proposed building height.*
- *The additional building height does not add any undesirable bulk to the building when viewed from the public domain given the dwelling is set well back from the street frontage.*
- *The development proffers alternative means of achieving the objective of the building height standard by providing an acceptable residential character without compromising the amenity of the surrounding area in terms of visual impacts.*
- *There would be no purpose served if strict compliance was required by the consent authority given that the proposed dwelling is consistent with the scale of nearby buildings.*
- *...The variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (additional overshadowing and loss of privacy). There are no adverse 'flow on' adverse environmental impacts arising from the variation in this instance.*
- *A compliant development (in relation to building height) would have a similar performance in regards to overshadowing and bulk/scale.*
- *The proposed built form will not be intrusive and will sit well within its setting surrounding the site.*
- *The proposed development will be in the public interest because it is consistent with the objective of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

It is considered that the Applicant's reasoning to vary Clause 4.3 Height of Building of the *Manly Local Environmental Plan (MLEP) 2013* as being acceptable as the portion of the built form that extends beyond the prescribed maximum building height is limited to the roof pitch which is central to the proposed first floor addition. Further to this, strict compliance with this control wouldn't give rise to enhanced amenity (such as privacy and solar access) to adjoining and nearby properties. The generous proposed front setback distances also assist when applying flexibility for the building height standard as it assists in mitigating an obtrusive built form when viewed from the Seaview Street frontage, ultimately resulting in a dwelling size that is commensurate with other two (2) storey dwellings along Seaview Street. It is also noted that the existing hedges along the front boundary line provides an acceptable landscape buffer that, in conjunction with the front setback distances to the proposed first floor level, results in a positive visual interest that is anticipated to contribute to, and enhance, the streetscape character.

As strict compliance with this development standard would not result in an improved amenity impact

upon adjoining properties, it would be unreasonable or unnecessary for Council, as the consent authority, to require a reduced building height that achieves compliance with this development standard.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed roof form is consistent with the existing roof type and pitch. In this instance, the visual appearance of the built form, while technically numerically non-compliant with this development standard, is unlikely to create a visually unappealing dwelling. Further, the encroachment of the building height beyond the maximum height is minor and is sited to the portion of the roof form that sits centrally over the dwelling. The desired future character of the streetscape, and wider locality, is maintained.

b) to control the bulk and scale of buildings,

Comment:

As detailed above, the portion of the built form that extends beyond the maximum allowable building height is sited centrally to the dwelling and is minor. In this instance, the bulk and scale of the dwelling is commensurate with other two (2) storey residential dwellings along Seaview Street.

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 breach to the building height does is not expected to give rise to any unreasonable impacts upon views currently experienced by adjoining or nearby public places and private properties.

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:

Shadow diagrams have been provided with this application and it is noted that the additional shadows cast are not unreasonable and remain compliant with the requirements for solar access as detailed within section 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan (DCP). Further, strict compliance with this development standard is unlikely to reduce the additional shadows cast to neighbouring 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:

The subject site is not located within, or adjacent to, a recreational or environmental protection zone. Therefore, this objective is not applicable, in this instance.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

  Comment:

  The proposed development will not negatively impact upon the housing needs of the community.

- *To provide for a variety of housing types and densities.*

  Comment:

The proposed development maintains housing variety within the residential zone.

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

  Comment:

  The proposed development will continue to provide a single residential dwelling within the zone that will meet the day to day needs of the residents of the dwelling.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

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

Clause 4.4 Floor Space Ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.5:1
Proposed:	0.68:1
Percentage variation to requirement:	36%



Image 2. Ground floor FSR (indicated in blue).

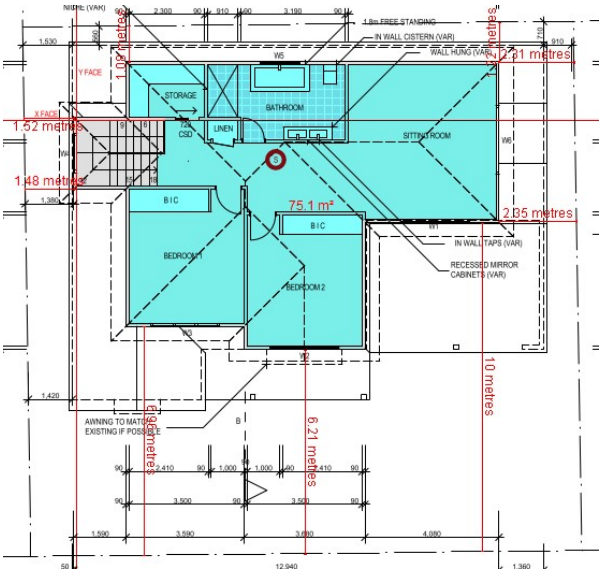


Image 3. First Floor FSR (indicated in blue).

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

standard.

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"The variation to the floor space ratio control by approximately 44.56sqm arises do [sic] to the relatively small site area. The proposed increase in floor space is modest and is reasonably contained within the footprint of the lower level of the existing dwelling. The proposed upper level is to accommodate 2 bedroom [sic], a bathroom and a sitting area.

No adverse planning consequences (overshadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise as a result of the variation. Rather, in this particular case the variation facilities the provision of quality internal spaces and proportionate built form with a strong streetscape appeal.

The proposed development will sit comfortably in its context in terms of scale, massing and form given the prevalence of 2 storey buildings in the street. The minor variation to the floor space ratio standard will not be discernible to the casual observer from a streetscape perspective given that the proposed upper level addition is well setback from the street and is well articulated.

- *The proposed works on-site does not undermine the objective to provide effective control of bulk over future development as the bulk of the building has been minimised through the recessing of the upper level and retention of floor space within the footprint of the existing dwelling.*
- *The subject site is zoned for a higher density of residential development and the proposal will sit comfortably with existing buildings within the visual catchment.*
- *There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation and design resolution.*
- *There will be no erosion of bushland or scenic quality as a result of the FSR.*
- *The additional gross floor area above the maximum permitted under clause 4.4 does not add any undesirable bulk to the building when viewed from the public domain.*
- *The development proffers alternative means of achieving the objective of the floor space ratio standard by providing an acceptable residential character without compromising the amenity of the surrounding area in terms of visual impacts and solar access.*
- *The existing generous street setback and frontage width enables the retention of building proportions and the containment of impacts.*
- *There would be no purpose served if strict compliance was required...the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy).*
- *There are no adverse 'flow on' adverse [sic] environmental impacts arising from the variation in this instance.*
- *A compliant development (in relation to floor space) would have a similar performance in regards to overshadowing and bulk/scale. The building already has a standard roof profile.*
- *No particular benefit would be derived from the strict application of the floor space ratio standard in this instance, particularly in terms of streetscape considerations; strict compliance is therefore unreasonable.*
- *Strict compliance with the floor space ratio control in this instance would not achieve any additional architectural integrity or urban design merit of the development.*
- *The proposed built form will not be intrusive and will sit well within its setting surrounding the site.*
- *The proposed development will be in the public interest because it is consistent with the objective of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

The lot size and shape (which is essentially a square) of the subject site is considered an anomaly within the surrounding residential area, with adjoining properties being considerably larger and a more appropriate shape (i.e. rectangular or battle-axe) for a dwelling. In this instance, compliance with the floor space ratio requirement is considered difficult.

Notwithstanding the variation to the floor space ratio, strict compliance with this standard would not give rise to any enhanced amenity impacts (such as overshadowing and privacy) to adjoining and nearby properties. The articulation of the proposed first floor addition along the eastern elevation, and the general recessed nature of the proposed first floor, allows the built form to present as an acceptable bulk and scale when viewed from public places and private properties, and therefore the variation to this standard is not easily discernible to those passing the subject site.

As detailed above, the proposed development (notwithstanding the variations to Clause 4.3 and Clause 4.4 of the MLEP 2013) will result in a single dwelling that is commensurate with other two (2) storey dwellings along Seaview Street. In this instance, the proposed development will result in a positive built form and design that enhances the character of the streetscape of Seaview Street.

In this regard, the applicant’s written request has demonstrated that the proposed development is an

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

Notwithstanding the numeric non-compliance to this standard, the proposed first floor addition includes generous front setbacks, with a range of distances, that provides for a high level of building articulation. Further, the side and rear setback distances of the first floor addition is appropriately recessed to allow for visual interest in the building, and to mitigate the non-compliant built form. In this instance, the bulk and scale of the proposed development will be commensurate with other two (2) storey residential dwellings along Seaview Street, thereby being consistent with the 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:

Notwithstanding the numeric non-compliance to this standard, the proposed density will be retained as a single residential dwelling, and the bulk in relation to the site area is considered

appropriate and acceptable. Furthermore, the proposal is unlikely to obscure important landscape and townscape features.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

As detailed above, and elsewhere in this report, the proposed development will result in a dwelling that is commensurate in size and design (including roof pitch and design) with other two (2) storey residential dwellings along Seaview Street, and within the wider locality of Balgowlah. For these reasons, and the fact the proposed development will retain the existing vegetation on the site, the resultant relationship between the new development the existing character will be one of a positive nature that does not detract from the desired character of the area.

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

Comment:

The proposed development is sited entirely over the existing building footprint. In this instance, the proposal will result in minimal adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The subject site is located within R1 General Residential zone. Therefore, this objective is not for consideration under this development application.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

  Comment:

  The proposed development will not negatively impact upon the housing needs of the community.

- *To provide for a variety of housing types and densities.*

  Comment:

  The proposed development maintains housing variety within the residential zone.

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

Comment:

The proposed development will continue to provide a single residential dwelling within the zone that will meet the day to day needs of the residents of the dwelling.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

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

6.4 Stormwater management

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) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:
It is not practicable to incorporate on-site stormwater retention into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: As the proposed development is sited entirely over the existing building footprint, the proposal avoids any unreasonable or significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters. In this regard, Council is satisfied that the development will minimise any

significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 270.1m^2	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.6m (based on gradient 1:60)	7.0m	6.0%	No
	S: 6.6m (based on gradient 1:60)	6.8m (max.)	3.0%	No
4.1.2.3 Roof Height	Height: 2.5m	2.02m	N/A	Yes
	Pitch: maximum 35 degrees	26.9 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.2m (based on wall height)	**Northern boundary:** 2.3m	N/A	Yes
		Southern boundary: 1.4m	36.3%	No
	Windows: 3m	**Northern boundary** <3m	N/A	No
		Southern boundary <3m	N/A	No
4.1.4.4 Rear Setbacks	8m	1.0m - 1.22m	84.7%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (148.55m^2) of site area	49.0% (72.8m^2) (existing and unchanged)	50.99%	No
	Open space above ground 25% (37.0m^2) of total open space	20.3% (30.2m^2) (existing and unchanged)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (51.99m^2) of open space	45.5% (67.7m^2) (existing and unchanged)	N/A	Yes
4.1.5.3 Private Open Space	18.0m^2	>18.0m^2 (existing and unchanged)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces (existing and unchanged)	50%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.8 Waste Management

The application is not accompanied by a waste management plan. In this instance, a condition of consent is recommended as part of the draft conditions of approval at the end of the report, to ensure that a waste management plan is prepared in accordance with Council's requirements.

This will ensure that any waste generated from the development will be appropriately disposed of, or used on site.

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

Description of non-compliance

This control requires the maximum wall height to be calculated based on the slope of the land sited under the proposed new wall. The gradient of the land along the northern and southern elevations are

as follows:

- Northern elevation: 1:60
- Southern elevation: 1:60

In this instance, the maximum wall height requirement for both elevations is 6.6m. The proposed development results in the following wall heights:

- Northern elevation: 7.0m (representing a variation of 6.0%)
- Southern elevation: 6.8m (representing a variation of 3.0%)

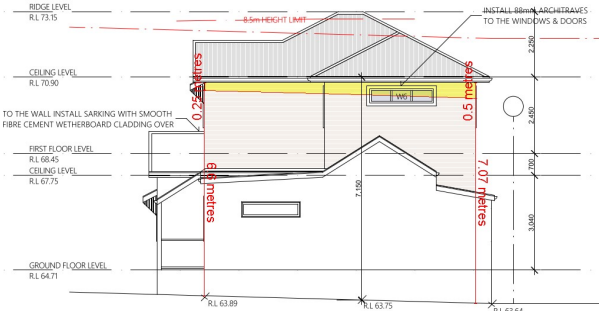


Image 1. Northern elevation wall height exceedance (shown in yellow).

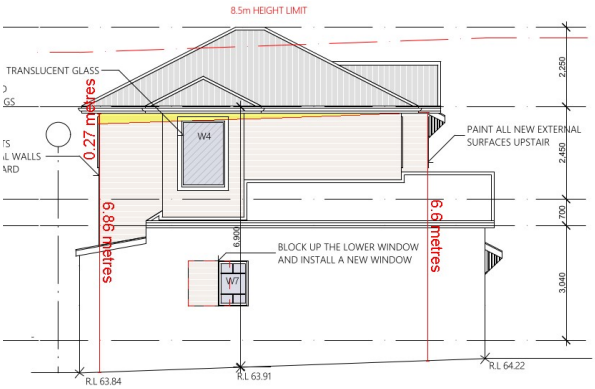


Image 2. Southern elevation wall height exceedance (shown in yellow).

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposed development can be supported on its merits.

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

Description of non-compliance

4.1.4.2 Side setbacks and secondary street frontages
This control requires any part of a building to be setback from the side boundary by no less than one third of the height of the adjacent external wall of the proposed building. In this instance, the required

wall heights are as follows:

- Northern wall: 6.6m (based on a gradient of 1:60)
- Southern wall: 6.6m (based on a gradient of 1:60)

Therefore, the required side setback distance is 2.2m.

The proposed development will result in the following setback distances:

- Northern boundary: 2.3m
- Southern boundary: 1.4m (this presents a variation of 36.3%).

Furthermore, this control requires any additional windows to be setback 3.0m from side boundaries. The proposed development includes one (1) window to the northern elevation (W6), resulting in a setback distance of 2.3m, and one (1) window to the southern elevation (W4), with a setback of 1.4m.

It shall be noted, however, that W4 is sited to the internal staircase and is proposed to be translucent glass, and W6 is a highlight window that has a sill height of 1.7m when measured from the finished floor level of the proposed first floor.

Notwithstanding the positive design inclusions, these windows are technically numerically non-compliant, with variations of 23.3% (W6), and 53.3% (W4).

4.1.4.4 Rear Setbacks

This control requires development to be setback 8.0m from the rear boundary line.

The proposed development will result in a rear setback distance ranging between 1.0m and 1.22m, resulting in a maximum variation of 84.7%.

Strict compliance with this control is difficult due to the site constraints, which are exacerbated by the limited depth of16.115m.

In any case, the above detailed non-compliances are assessed against the underlying objectives of this control below.

Merit consideration:

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

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

Comment:

The non-compliances to the side and rear setback do not create any unreasonable or adverse impacts upon the character of the existing streetscape. Furthermore, the spatial proportions of the less than desired side setback distances does not unreasonably alter the the existing streetscape. The existing hedges that are located along the front boundary line are shown to be retained and thus the landscape character of the street will be maintained and enhanced.

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:

As detailed above, the proposed windows along the northern and southern elevations have been designed in a way that adequately mitigates privacy impacts. The rear setback non-compliance, while numerically significant, will be visually unobtrusive when viewed from the property to the west, being 443 Sydney Road, Balgowlah. This is due to the articulation and modulation of the proposed first floor addition. Further, the one (1) window along the western elevation has a sill height of 1.2m when measured from the finished floor level, and is sited to the main bathroom. The use of a bathroom is generally infrequent and, as such, there is unlikely to be any significant or adverse impact upon the privacy of the occupants of the subject site and those of adjoining properties.

Shadow diagrams have been provided with this application and it is noted that the proposed development achieves compliance with the requirements of this control. The additional shadow cast at 9am on June 21 is sited over the garage of 443 Sydney Road; at 12noon on June 21, the additional shadow is cast to a marginal portion of the front yard of 83 Seaview Street; and, at 3pm on June 21, the additional shadow cast is sited for a portion of the front yard of 83 Seaview Street, the public footpath and the road of Seaview Street.

The non-compliant setback distances to southern side setback and the western rear setback does not give rise to any unreasonable impacts upon existing views to/and from public and private places.

Notwithstanding the numerical non-compliances to these controls, the proposed first floor addition has been designed to complement the existing dwelling, and subsequently being an acceptable addition to the Seaview Street streetscape that is commensurate with adjoining and nearby dwellings. Further, the non-compliant southern side setback allows adequate spatial separation between the adjoining property, thus maintaining an acceptable pattern of buildings.

The existing parking arrangement (including vehicular access to the site) is not proposed to change. This is acceptable.

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

Comment:

The proposed development will continue to allow flexibility throughout the site.

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:

As detailed elsewhere in this report, the proposed development is sited entirely over the existing building footprint, therefore there is unlikely to be any impacts upon the natural features of the site.

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

Comment:

The subject site is not located within bushfire prone land.

Notwithstanding the non-compliance to the abovementioned controls, the proposed development satisfactorily achieves the underlying objectives of this control. The proposal can be supported on its merits.

4.1.5 Open Space and Landscaping

The subject site is located within the OS3 Area of the minimum residential total open space area. As such, the site requires a minimum of 55% (148.55m^2) of total open space, which the site does not currently comply with. The proposed development is sited entirely overly the existing building footprint. Therefore, the existing non-compliance will not be further increased.

As this is an existing non-compliance, a detailed discussion is not required, in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $3,009 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $300,858.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

This proposal, for alterations and additions to a residential dwelling, including a first floor addition comprising two (2) bedrooms, a bathroom, storage space and a sitting area, has been referred to the Development Determination Panel (DDP) due to the numerical non-compliance to Clause 4.4 Floor Space Ratio requirement as stipulated under the *Manly Local Environmental Plan (MLEP) 2013*.

The critical assessment issues are:

- Non-compliant Clause 4.3 Height of Building (7.7% variation)
- Non-compliant Clause 4.4 Floor Space Ratio (36% variation)
- DCP non-compliances: wall height, side and rear setbacks, residential open space area, and parking and access.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0487 for Alterations and additions to a dwelling house on land at Lot 2 DP 925018, 85 Seaview Street, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
1/6 (Issue D) - Site Plan	22 June 2022	Add-Style Home Additions
2/6 (Issue D) - Ground Floor Plan	22 June 2022	Add-Style Home Additions
3/6 (Issue D) - First Floor Plan	22 June 2022	Add-Style Home Additions
4/6 (Issue D) - Section A-A, Section B-B, and North Elevation	22 June 2022	Add-Style Home Additions
5/6 (Issue D) - East Elevation, South Elevation and West Elevation	22 June 2022	Add-Style Home Additions

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
6/6 (Issue A) - Sediment & Erosion	27 January 2022	Add-Style Home Additions

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate A444944	12 January 2022	Marcus Betts
Preliminary Geotechnical Assessment	14 April	White Geotechnical Group

(Ref: J4187)	2022	
Certificate of Existing Structural Adequacy (Job No. 2110128)	29 October 2021	Northern Beaches Consulting Engineers Pty Ltd

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

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

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

2. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than

$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

swimming pools.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $3,008.58 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $300,858.00.

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

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

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

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

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

5. **Security Bond**

A bond (determined from cost of works) of $1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining

the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

7. **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.

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. **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.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Structural Adequacy (alterations and additions)**
Prior to commencement of any works, the Principal Certifier shall be satisfied that those components of the building to be retained and/or altered will be structurally sound to be able to withstand the excavation and demolition process.

Evidence from a qualified practicing structural engineer, demonstrating compliance with the above and detailing, where relevant, means of support for those parts of the retained building shall be provided to the Principal Certifier.

Reason: To ensure that the development can be undertaken in accordance with accepted construction practices as indicated on the endorsed development plans, without the need for modification of the Development Consent.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **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.

13. **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.

14. **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

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

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

maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

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

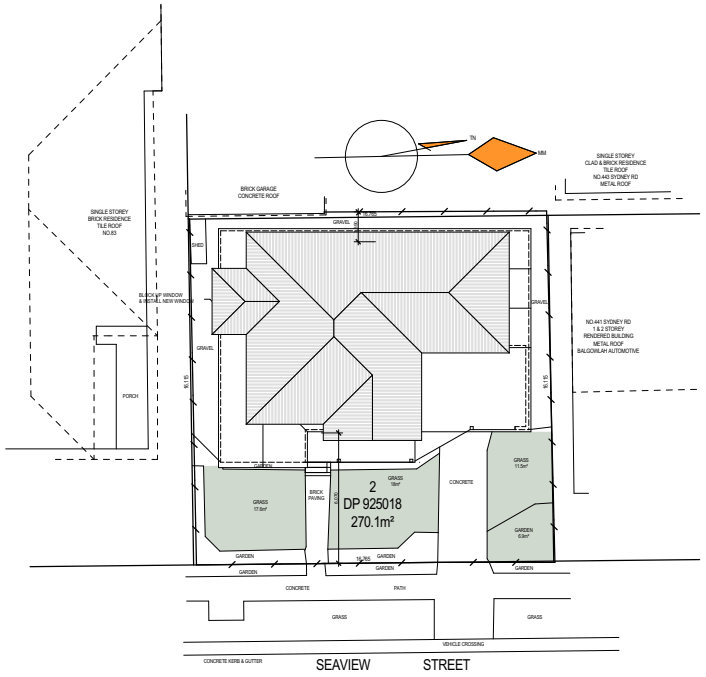
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

16. **Geotechnical Certification Prior to Occupation Certificate**
A suitably qualified Geotechnical Engineer is to provide information and confirmation that the development is consistent with the recommendations of the approved Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk has been mitigated appropriately.



SITE PLAN 1:200



ARTIST'S IMPRESSION

FOR ILLUSTRATION PURPOSES ONLY, NOT TO BE READ AS A WORKING DRAWING

LEGEND & GENERAL NOTES	
(VAR)	VARIATION
O.T.A	OWNER TO ADVISE BUILDER
90PP	90 x 90 PRIMED POST
S.L.	SKY LIGHT
SHW	SHOWER ENCLOSURE
V.	VANITY UNIT
W / C	TOILET SUITE (WATER CLOSET)
B I C	BUILT IN CUPBOARD
ST.	STORE
C.O.S	TO BE CHECKED ON SITE
OPT. #	OPTION
OB+H	OPEN BALUSTRADE AND HANDRAIL
DP	DOWNPIPE
DP&S	DOWNPIPE AND SPREADER

NOTE 1 - ALL DIMENSIONS ARE SUBJECT TO AMENDMENT AFTER A CHECK MEASURE ON SITE.

CONSTRUCTION LEVELS SUBCONTRACTOR TO ENSURE THAT ALL CONSTRUCTION LEVELS MARKED ON PLAN TO BE STRICTLY COMPLIED WITH

OPEN SPACE CALCULATIONS	
SITE AREA	270.1 sqm
FLOOR SPACE RATIO	0.5 : 1
~~MAX GROSS FLOOR AREA~~	
GROUND FLOOR AREA	**105.83 sqm**
FIRST FLOOR AREA	**73.78 sqm**
TOTAL FLOOR AREA	**179.61 sqm**
PROPOSED F.S.R	**0.66 : 1**
LANDSCAPING MIN = 10% REQUIRED	
PROPOSED LANDSCAPING	**54 sqm**
NO CHANGE TO LANDSCAPING	

FRAMING NOTES.	
ROOF PITCH	27°
FRAME HEIGHT	2450mm
EAVE OVERHANGS	450mm
EXTERNAL DOOR AND WINDOW HEAD HEIGHT TO LINE UP	2130mm TO LINE UP
INTERNAL DOOR	2110mm
B.I.C DOOR	2110mm TO LINE UP
DOOR AND WINDOW NIBS	90mm MIN UNLESS OTHERWISE NOTED
FRAME AND TRUSS CENTRES	600mm
DOOR STUD OPENINGS	880mm WIDE UNLESS OTHERWISE NOTED

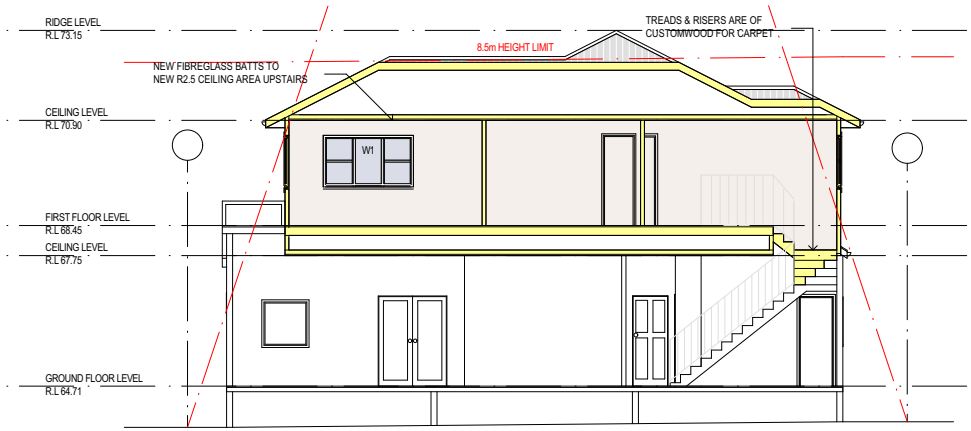
ADD-STYLE HOME ADDITIONS
Upstairs & On Ground Specialists
5/319 CONDAMINE ST, MANLY VALE 2093 | (02) 9907 9055 | www.addstyle.com.au

PROJECT TITLE.
FIRST FLOOR ADDITION AT
85 SEAVIEW ST, BALGOWLAH

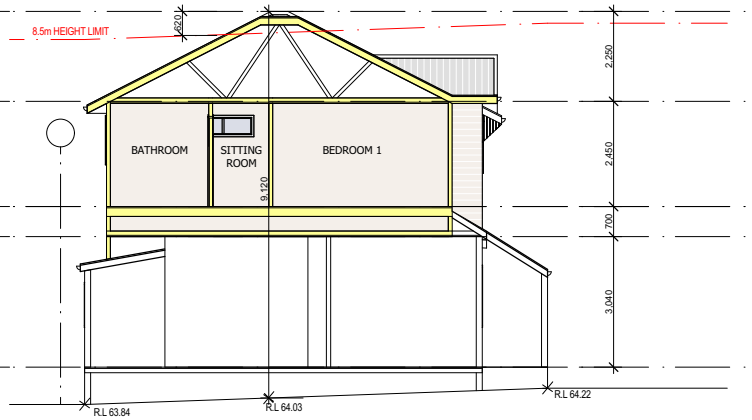
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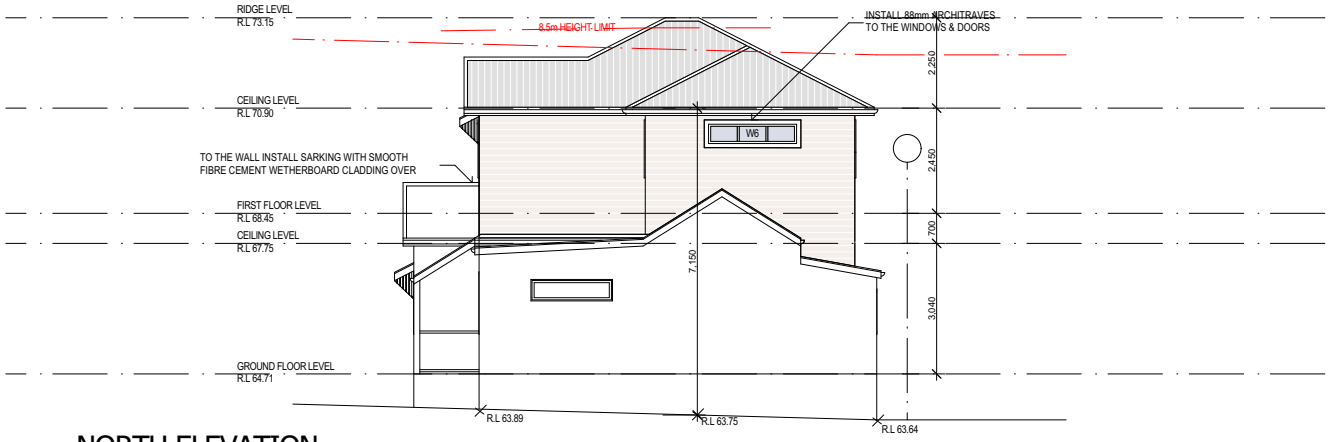
NO.	REVISION	DATE	BY
D	FOR COUNCIL ADDED DETAIL	22/06/22	GK
C	FOR COUNCIL	29/01/22	JP
B	FOR PLAN MEETING	21/12/21	JP
A	FOR PLAN MEETING	22/11/21	JP



SECTION A-A



SECTION B-B



NORTH ELEVATION

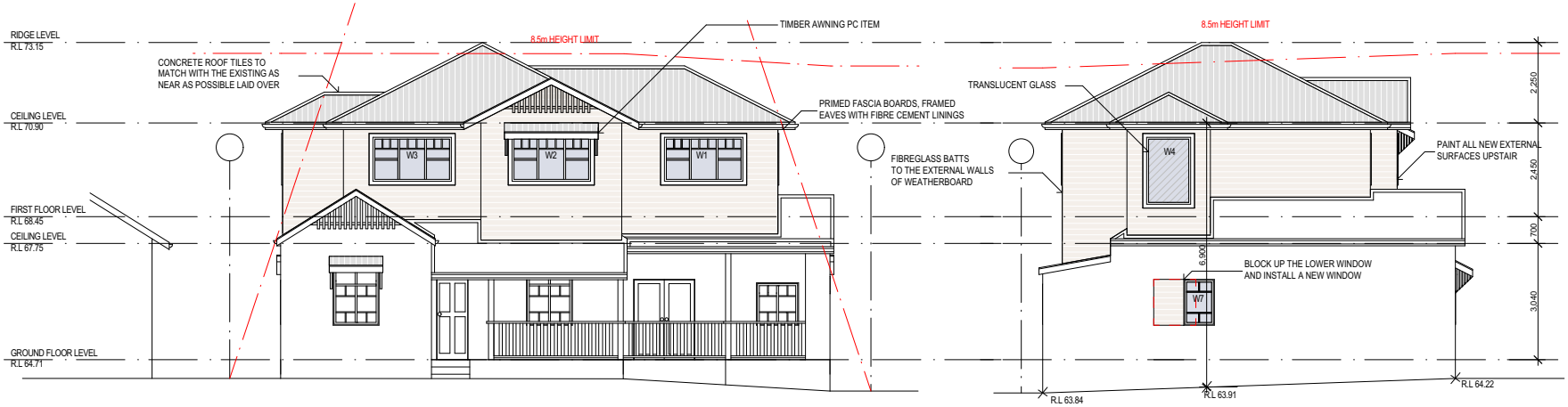
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PROJECT TITLE.
FIRST FLOOR ADDITION AT
85 SEAVIEW ST, BALGOWLAH

DRAWING NO. DA
ISSUE D
PAGE NO. 4 / 6

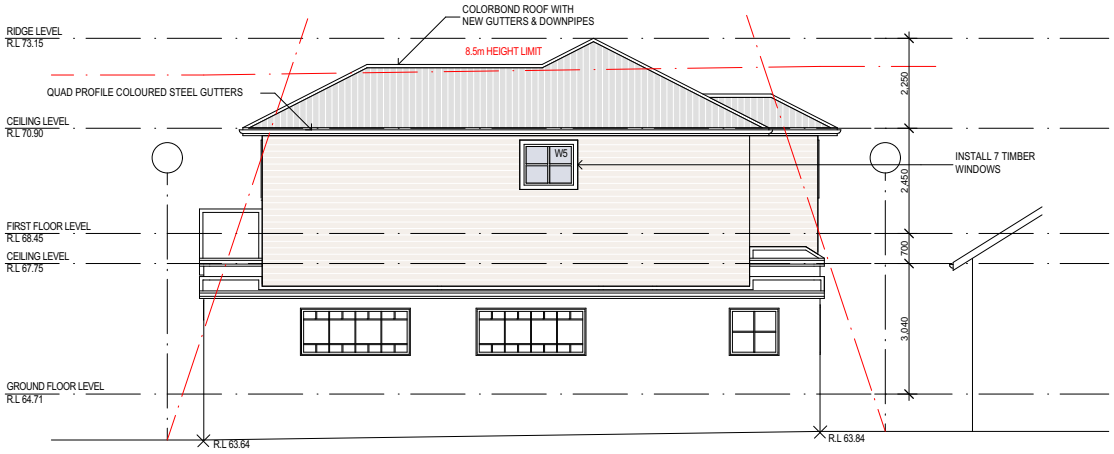
DATE: 09-09-19 **SCALE:** 1:100 **DRAWN BY:** JP **CHECKED:** MB

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A	FOR PLAN MEETING	22/11/21	JP



EAST ELEVATION

SOUTH ELEVATION



WEST ELEVATION

ADD-STYLE HOME ADDITIONS
Upstairs & On Ground Specialists
5/319 CONDAMINE ST, MANLY VALE 2093 | (02) 9907 9055 | www.addstyle.com.au

PROJECT TITLE.
FIRST FLOOR ADDITION AT
85 SEAVIEW ST, BALGOWLAH

DRAWING NO. DA
ISSUE D
PAGE NO. 5 / 6

DATE: 09-09-19 **SCALE:** 1:100 **DRAWN BY:** JP **CHECKED:** MB

NO.	REVISION	DATE	BY
D	FOR COUNCIL ADDED DETAIL	22/06/22	GK
C	FOR COUNCIL	29/01/22	JP
B	FOR PLAN MEETING	21/12/21	JP
A	FOR PLAN MEETING	22/11/21	JP

Appendix A

Clause 4.6 Justification

No 85 Seaview Street Balgowlah

Introduction - Content of the clause 4.6 request

Clause 4.4 of the LEP relates to Floor Space Ratio. The maximum permissible floor space ratio for the subject site is 0.5:1.

The proposed development has a total FSR of 0.68:1 or 185.4sqm being non-compliant with the maximum allowable floor space ratio for the subject site by 50.35sqm or 36%.

Given the above non-compliance with clause 4.4 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the LEP for completeness.

The objectives of clause 4.6 of the LEP 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.

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome**.

The variation to the floor space ratio control by approximately 50.35sqm arises do to the relatively small site area. The proposed increase in floor space is modest and is reasonably contained within the footprint of the lower level of the existing dwelling. The proposed upper level is to accommodate 2 bedroom, a bathroom and a sitting area. Such provides needed space for an expanding family.

A degree of flexibility to the application of the FSR development standard is warranted in this instance.

No adverse planning consequences (overshadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise as a result of the variation. Rather, in this particular case the variation facilitates the provision of quality internal spaces and proportionate built form with a strong streetscape appeal.

The proposed development will sit comfortably in its context in terms of scale, massing and form given the prevalence of 2 storey buildings in the street. The minor variation to the floor space ratio standard will not be discernible to the casual observer from a streetscape perspective given that the proposed upper level addition is well setback from the street and is well articulated.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates a design outcome that does not adversely impact on any adjoining property despite the proposed variation to the floor space ratio standard.

Application of Clause 4.6

(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 4.6(2) of the LEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this does not apply to a development standard that is expressly excluded from the operation of this clause.

Clause 4.4 of the LEP is not expressly excluded from the operation of clause 4.6 and thus Council would have the authority to grant consent to a breach of the specified development standard under clause 4.4 subject to being satisfied of other matters under clause 4.6.

Contravention of a Development Standard

Clause 4.6(4)(a)(i) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that a written request prepared by or for the applicant (as required under clause 4.6(3)) has adequately addressed the matters required to be demonstrated by clause 4.6(3).

The matters required to be demonstrated by clause 4.6(3) are considered below.

(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.

Clause 4.63)(a) - Unreasonable and Unnecessary

Clause 4.6(3)(a) requires the applicant to provide a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether compliance with the development standard is unreasonable or unnecessary in the circumstances.

The term “unreasonable or unnecessary” is not defined in the relevant environmental planning instruments or in the Act. Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49] identifies 5 ways by which strict compliance with a development standard may be unreasonable or unnecessary. This written request adopts the first way identified by Preston CJ.

42……. The 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.
The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, the Chief Judge of the Land and Environment Court stated that the commonly cited tests he set out in Wehbe remain relevant to a consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances under clause 4.6.

Justice Preston’s analysis requires the following questions to be answered.
1. What are the objectives of the development standard?
2. Does the development proffer an alternative means of achieving the objectives of the development? (unnecessary)
3. Would no purpose be served if strict compliance was required? (unreasonable)

Provided below is a commentary in relation to the above three considerations.

1 Objectives of development standard

The objectives of clause 4.4 - FSR control are:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

The proposed works on-site does not undermine the objective to provide effective control of bulk over future development as the bulk of the building has been minimised through the recessing of the upper level and retention of floor space within the footprint of the existing dwelling.

The subject site is zoned for a higher density of residential development and the proposal will sit comfortably with existing buildings within the visual catchment.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation and design resolution.

There will be no erosion of bushland or scenic quality as a result of the FSR.

The additional gross floor area above the maximum permitted under clause 4.4 does not add any undesirable bulk to the building when viewed from the public domain.

Compliance unnecessary

The development proffers alternative means of achieving the objective of the floor space ratio standard by providing an acceptable residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.

The existing generous street setback and frontage width enables the retention of building proportions and the containment of impacts.

As the development proffers alternative means of achieving the objectives of clause 4.4 based on the site context, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority given that the proposed dwelling is consistent with the scale of nearby buildings.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' adverse environmental impacts arising from the variation in this instance.

A compliant development (in relation to floor space) would have a similar performance in regards to overshadowing and bulk/scale. The building already has a standard roof profile.

Despite the floor space ratio variation, a near compliant building height and consistent setbacks is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the strict application of the floor space ratio standard in this instance, particularly in terms of streetscape considerations; strict compliance is therefore unreasonable.

The proposed dwelling design represents a cost effective, orderly and economic outcome for the site.

Clause 4.6(3)(b) - Sufficient Environmental planning grounds

Clause 4.6(3)(b) requires the applicant's written request to demonstrate that that there are sufficient environmental planning grounds to justify contravening the development standard.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that that there are sufficient environmental planning grounds to justify contravening the development standard, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether there are sufficient environmental planning grounds to justify contravening the development standard.

The term "environmental planning grounds" is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meaher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

In this particular case the variation to the floor space ratio control does not impact on the ability to accord with all other development standards and controls.

Strict compliance with the floor space ratio control in this instance would not achieve any additional architectural integrity or urban design merit of the development.

Compliance with the building height control demonstrates that a suitable modulation of built form has been achieved.

The proposed built form will not be intrusive and will sit well within its setting surrounding the site.

In addition, there are no adverse amenity impacts arising, which affect existing residential properties.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

Clause 4.6(4) Public Interest

Clause 4.6(4)(a)(ii) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that 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.

Unlike clause 4.6(4)(a)(i), this requires Council, as consent authority to form a direct opinion of satisfaction the proposed development will be in the public interest (rather than considering whether the applicant's written request demonstrates that the proposed development will be in the public interest).

A consideration of the public interest aspects of the development is provided in the following, to assist Council form the requisite opinion of satisfaction.

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

With regards to the objectives for FSR, it is noted that the scale and form of the building is consistent with surrounding built form.

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is consistent with the objectives as follows:

The proposed development provides an appropriate infill development and contemporary construction.

Provides for the housing need of the community by permitting residentially zoned land to be used for residential purposes of an appropriate low density and scale.

Is not inconsistent with, or incapable of, existing in harmony with other developments in the immediate locality.

The building height, scale and massing of the development is considered to be compatible with the evolving and desired built character of the area.

The floor space ratio variation is of no consequence in respect of the zone objective. Approval of the proposed development will have no impact on any other nearby development opportunities.

The floor space generated on-site does not result in any significant view loss, loss of privacy or overshadowing in the context of the site. There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling heights is proposed inclusive of a standard roof profile.

Having regard to the above the proposal is consistent with the objectives of the floor space ratio control and the objectives of the zone.

Concurrence of the Planning Secretary

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

It is expected that the Council will obtain the concurrence of the Planning Secretary as required (possibly through delegation).

The variation to the floor space ratio standard does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining strict adherence with the development standard or compromised by approving the building.

It is contextually appropriate not to strictly apply the development standard in this instance and it is not an abandonment of the standard.

Conclusion

The proposed dwelling maintains a consistent built form with nearby buildings.

Amenity considerations has been reasonably resolved through design.

Strict compliance with the development standard is therefore unnecessary and unreasonable given the circumstances of the site and design initiatives.

There are sufficient environmental grounds to justify the breach in this instance.

The FSR as construed is in the public interest.

It is recommended that Council invoke its powers pursuant to clause 4.6 and approve the application.

It is noted that Acting Commissioner P Clay (SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112) in a recent consideration in relation to the consideration of clause 4.6, deemed that there is no numerical limitation to the extent of the variation sought. Such will be determined on merit. In consideration of the merits of the application, the proposal is reasonable.

Should you require any further information please contact the undersigned.

Yours Faithfully

Nigel White
Bachelor of Applied Science (Environmental Planning)

Appendix A

Clause 4.6 Justification

No 85 Seaview Street Balgowlah

Introduction - Content of the clause 4.6 request

Clause 4.3 of the LEP relates to building height. The maximum permitted building height for the subject site is 8.5m.

The proposed development has a maximum building height being non-compliant with the development standard for the subject site of 9.17m representing a variation sought of 7.8%.

Given the above non-compliance with clause 4.3 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the LEP for completeness.

The objectives of clause 4.6 of the LEP 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.

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome**.

The variation to the building height control by approximately 0.67M arises due to a raised ground floor which negotiates a cross fall in the site and a peak in the roof ridge. The proposed building height encroachment is minor and contained centrally over the existing dwelling.

A degree of flexibility to the application of the building height development standard is warranted in this instance.

No adverse planning consequences (additional overshadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise as a result of the variation. Rather, in this particular case

the variation facilitates the provision of a proportionate built form with a strong streetscape appeal.

The proposed development will sit comfortably in its context in terms of scale, massing and form given the prevalence of 2 storey buildings in the street. The minor variation to the building height standard will not be discernible to the casual observer from a streetscape perspective given that the proposed upper level addition is well setback from the street and is well articulated.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates a design outcome that does not adversely impact on any adjoining property despite the proposed variation to the floor space ratio standard.

Application of Clause 4.6

(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 4.6(2) of the LEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this does not apply to a development standard that is expressly excluded from the operation of this clause.

Clause 4.3 of the LEP is not expressly excluded from the operation of clause 4.6 and thus Council would have the authority to grant consent to a breach of the specified development standard under clause 4.3 subject to being satisfied of other matters under clause 4.6.

Contravention of a Development Standard

Clause 4.6(4)(a)(i) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that a written request prepared by or for the applicant (as required under clause 4.6(3)) has adequately addressed the matters required to be demonstrated by clause 4.6(3).

The matters required to be demonstrated by clause 4.6(3) are considered below.

(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.

Clause 4.6(3)(a) - Unreasonable and Unnecessary

Clause 4.6(3)(a) requires the applicant to provide a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether compliance with the development standard is unreasonable or unnecessary in the circumstances.

The term "unreasonable or unnecessary" is not defined in the relevant environmental planning instruments or in the Act. Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49] identifies 5 ways by which strict compliance with a development standard may be unreasonable or unnecessary. This written request adopts the first way identified by Preston CJ.

42……. The 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.
The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, the Chief Judge of the Land and Environment Court stated that the commonly cited tests he set out in Wehbe remain relevant to a consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances under clause 4.6.

Justice Preston’s analysis requires the following questions to be answered.
1. What are the objectives of the development standard?
2. Does the development proffer an alternative means of achieving the objectives of the development? (unnecessary)
3. Would no purpose be served if strict compliance was required? (unreasonable)

Provided below is a commentary in relation to the above three considerations.

1 Objectives of development standard

The objectives of clause 4.3 – Building Height control are:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
(b) to control the bulk and scale of buildings,
(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),
(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The proposed roof design provides interest and expression to the dwelling with high streetscape presentation. The encroachment into the building height plane occurs for a portion of the roof which sits centrally over the dwelling.

The subject site sits on the periphery of a low density zone, which adjoins a higher density zone fronting Sydney Road.

The subject site is zoned for a higher density of residential development and the proposal will sit comfortably with existing buildings within the visual catchment.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation and design resolution.

There will be no erosion of bushland or scenic quality as a result of the proposed building height.

The additional building height does not add any undesirable bulk to the building when viewed from the public domain given the dwelling is set well back from the street frontage.

Compliance unnecessary

The development proffers alternative means of achieving the objective of the building height standard by providing an acceptable residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.

The existing generous street setback and frontage width enables the retention of building proportions and the containment of impacts.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority given that the proposed dwelling is consistent with the scale of nearby buildings.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (additional overshadowing and loss of privacy). There are no adverse 'flow on' adverse environmental impacts arising from the variation in this instance.

A compliant development (in relation to building height) would have a similar performance in regards to overshadowing and bulk/scale.

No particular benefit would be derived from the strict application of the building height standard in this instance, particularly in terms of streetscape considerations; strict compliance is therefore unreasonable. Compliance with the building height can be readily achieved by incorporating a lower roof pitch or a flat roof. Such would be a detriment to the aesthetics of the building.

The proposed dwelling design represents a cost effective, orderly and economic outcome for the site.

Clause 4.6(3)(b) - Sufficient Environmental planning grounds

Clause 4.6(3)(b) requires the applicant's written request to demonstrate that that there are sufficient environmental planning grounds to justify contravening the development standard.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that that there are sufficient environmental planning grounds to justify contravening the development standard, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether

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

The term "environmental planning grounds" is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meaher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

Strict compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development.

The proposed built form will not be intrusive and will sit well within its setting surrounding the site.

In addition, there are no adverse amenity impacts arising, which affect existing residential properties. No trees require removal and the site is not flood prone. There are no sensitive land uses adjoining the site which will be adversely impacted by the additional building height.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

Clause 4.6(4) Public Interest

Clause 4.6(4)(a)(ii) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that 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.

Unlike clause 4.6(4)(a)(i), this requires Council, as consent authority to form a direct opinion of satisfaction the proposed development will be

in the public interest (rather than considering whether the applicant's written request demonstrates that the proposed development will be in the public interest).

A consideration of the public interest aspects of the development is provided in the following, to assist Council form the requisite opinion of satisfaction.

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

With regards to the objectives for building height, it is noted that the scale and form of the building is consistent with surrounding built form.

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is consistent with the objectives as follows:

The proposed development provides an appropriate infill development and contemporary construction.

Provides for the housing need of the community by permitting residentially zoned land to be used for residential purposes of an appropriate low density and scale.

Is not inconsistent with, or incapable of, existing in harmony with other developments in the immediate locality.

The building height, scale and massing of the development is considered to be compatible with the evolving and desired built character of the area.

The building height variation is of no consequence in respect of the zone objective. Approval of the proposed development will have no impact on any other nearby development opportunities.

The building height generated on-site does not result in any significant view loss, loss of privacy or overshadowing in the context of the site. There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling heights is proposed inclusive of a standard roof profile.

Having regard to the above the proposal is consistent with the objectives of the building height control and the objectives of the zone.

Concurrence of the Planning Secretary

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

It is expected that the Council will obtain the concurrence of the Planning Secretary as required (possibly through delegation).

The variation to the building height standard does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining strict adherence with the development standard or compromised by approving the building.

It is contextually appropriate not to strictly apply the development standard in this instance and it is not an abandonment of the standard.

Conclusion

The proposed dwelling maintains a consistent built form with nearby buildings.

Amenity considerations has been reasonably resolved through design.

Strict compliance with the development standard is therefore unnecessary and unreasonable given the circumstances of the site and design initiatives.

There are sufficient environmental grounds to justify the breach in this instance.

The building height as construed is in the public interest.

It is recommended that Council invoke its powers pursuant to clause 4.6 and approve the application.

It is noted that Acting Commissioner P Clay (SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112) in a recent consideration in relation to the consideration of clause 4.6, deemed that there is no numerical limitation to the extent of the variation sought. Such will be determined on merit. In consideration of the merits of the application, the proposal is reasonable.

Should you require any further information please contact the undersigned.

Yours Faithfully

Nigel White
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