



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 27 JULY 2022

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 27 July 2022
via teleconference
Commencing at 10:00am**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 JULY 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 13 July 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/2416 - 155 PACIFIC ROAD PALM BEACH - PARTIAL DEMOLITION OF THE EXISTING DWELLING AND THE CONSTRUCTION OF A NEW DWELLING WITH A DETACHED STUDIO AND SWIMMING POOL
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2022/436972
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 DA2021/2416 for partial demolition of the existing dwelling and the construction of a new dwelling with a detached studio and swimming pool on land at Lot 1 DP 1144798, 155 Pacific Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2416
Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 1 DP 1144798, 155 Pacific Road PALM BEACH NSW 2108
Proposed Development:	Partial demolition of the existing dwelling and the construction of a new dwelling with a detached studio and 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:	Joanne Robyn Murphy Lambert-Smith Philip Howard Greaser
Applicant:	Megan Burns
Application Lodged:	10/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/05/2022 to 10/05/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,428,158.00

EXECUTIVE SUMMARY

This Development Application (DA) relates to substantive demolition works and alterations and additions to an existing dwelling, to such a magnitude that the proposal is deemed to be a new dwelling. The DA is referred to the Development Determination Panel (DDP) as there were "5 or more submissions objecting to the proposal".

The proposal includes the renovation and expansion of the existing dwelling, construction of a detached studio, construction of a swimming pool and the demolition of a double carport and two single car

garages, one of which is wholly on Council land and construction of a new driveway within the road reserve.

The exhibition of the DA attracted objections from nine (9) households raising concerns regarding overlooking, physical bulk and scale, impacts on trees, stormwater, the detached outbuilding, and the adequacy of the submitted Geotechnical Report and potential land destabilisation impacts. In summary, these concerns are addressed under their respective clauses within this report, and are generally resolvable by way of condition where relevant.

The proposal as a whole is considered to be appropriate for the site and is without detrimental impacts to neighbours, the environment or the wider locality.

This report concludes with the recommendation that the DDP as the consent authority **APPROVES** the DA.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for substantial demolition works and alterations and additions to an existing dwelling house. The extent of demolition and alteration sought warrants the proposal being assessed as a New Dwelling rather than an application for alterations and additions.

The proposal entails the demolition of a large portion of the existing house, and demolition of a double carport and two detached single garages (one of which sits entirely on Council land); the construction of a part two / part three storey detached dwelling house with an elevated swimming pool; the construction of a detached outbuilding and associated landscaping works throughout.

AMENDED PLANS

During the course of the application amended plans were requested twice.

The first round of plans deleted the aforementioned parking structures and incorporated a double garage and turntable entirely on the site. The plans also amended the internal layout of the building, and changed the footprint of the first floor elements. These plans were renotified to neighbours.

The second round of revised plans only changes one window on the northern elevation of the house. These plans did not necessitate renotification in accordance with Council's Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D12.3 Building colours and materials
Pittwater 21 Development Control Plan - D12.5 Front building line

SITE DESCRIPTION

Property Description:	Lot 1 DP 1144798 , 155 Pacific Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The site is legally identified as Lot 1 DP 1144798 and is known as 155 Pacific Road, Palm Beach.</p> <p>The site falls within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014.</p> <p>The site is irregular in shape with a 28.11m frontage to Pacific Road to the southwest, a 6.215m frontage to Palm Beach Road to the north east and an overall surveyed area of 1,508m².</p> <p>The site presently contains a part-two / part-three storey detached dwelling house with a double carport. The site benefits from two single garages that are built either partially or entirely on Council's road reserve. The gardens of the property are extensively landscaped with numerous pathways and terraces.</p> <p>The property is burdened by an easement (vehicular right of way) on the Palm Beach Road frontage.</p> <p>The site has a steeply falling topography in a northeasterly direction with the Pacific Road kerb being at RL71; front boundary at RL69; rear boundary at RL50; and the frontage to Palm Beach Road at RL25. The site has an overall slope of almost 50m.</p> <p>The site has rock outcrops and large mature vegetation - both native and exotic - throughout.</p> <p>Surrounding properties consist of other residential</p>

properties, generally in the format of large, multi-level detached dwelling houses.

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time, and there are no recent or relevant development applications.

Prior to the submission of this DA, the applicant elected to attend a prelodgement meeting (PLM2021/0293) for the construction of a driveway and garaging. At the time of writing the site has two single garages that are on Council land, and a second carport area that appears to sit within an easement.

The original submission of this DA did not include any changes to parking or access. In the fullness of assessment, Council advised the applicant that it was inappropriate to construct a new dwelling house relying on illegally placed car parking. The applicant therefore amended this current application to include car parking and a new driveway, thereby deleting the garaging on Council's land.

The prelodgement meeting is therefore relevant to the DA.

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

Section 4.15 Matters for Consideration	Comments
	13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested during the course of the application to resolve traffic and parking requirements, as well as concerns raised by Council's Development Engineers.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 22 November 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 03/05/2022 to 10/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Mr Richard Anthony Longes	11 - 13 Palm Beach Road PALM BEACH NSW 2108
Bruce Hancox	7 Palm Beach Road PALM BEACH NSW 2108
Mr Geoffrey Fisher	163 Pacific Road PALM BEACH NSW 2108
Mr Ian Philip Richard Philip	161 Pacific Road PALM BEACH NSW 2108
Mr David William Gibson	9 Palm Beach Road PALM BEACH NSW 2108
Mr Robert Gordon McCaffrey	15 Palm Beach Road PALM BEACH NSW 2108
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
Mrs Beverly Cecile Gibson	PO Box 511 AVALON BEACH NSW 2107

Name:	Address:
Mr John Robert Vickery Lobban Mrs Sandra Carolyn Lobban	101 Florida Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

- **Geotechnical - land slippage, excavation and destabilisation**
- **Stormwater**
- **Detached outbuilding**
- **Tree removal**
- **Visual and acoustic privacy**
- **Impacts to existing right of way**
- **Front setback non-compliance**

The above issues are addressed as follows:

- **Geotechnical - land slippage, excavation and destabilisation**

The submissions raised concerns that the submitted Geotechnical Investigation is inadequate in comprehensively addressing the potential for land slippage and destabilisation both on the subject site and the wider escarpment.

Comment:

The Geotechnical Investigation report (ref: J3887) dated 26 November 2021 by White Geotechnical Group is considered adequate for the purposes of a Development Application. No expert evidence to the contrary of the findings of the Geotechnical Investigation report have been submitted.

The recommendations of this report include conditions which require compliance with the Geotechnical Investigation report to be adhered to and ensure that the recommendations of that report are incorporated in the construction plans prior to the issue of any Construction Certificate.

It is found that the geotechnical concerns are adequately addressed by the submitted report and by way of condition.

- **Stormwater**

The submissions raised concerns that the land is subject to significant water run-off in rain events, and that that water falls onto surrounding properties. Concerns exist that excavation works may exacerbate this existing issue.

Comment:

Council's Development Engineer has reviewed the proposed stormwater concept information and raises no concerns in this regard, subject to conditions as recommended.

- **Detached outbuilding**

The submissions raised concerns regarding the proposed use of the detached outbuilding.

Comment:

The application as submitted included a detached studio in the eastern corner of the site. The revised plans received changed the annotation of the outbuilding to be 'proposed cottage'. It is noted that no request was received to change Council's description of development to include reference to a *secondary dwelling*, nor has a request been made for the building to be used as such.

The outbuilding does not include any kitchen / cooking facilities which can be secured by way of condition, and therefore the building is best described as a *separately accessible structure* pursuant to Clause C1.14 of the Pittwater 21 Development Control Plan 2014 which exists ancillary to the principal dwelling.

- **Tree removal**

The submissions raised concerns that the proposal necessitates tree removal.

Comment:

The application includes the removal of 10 trees. Seven of those trees are exempt species that can be removed without Council consent. The remaining three trees are not exempt, and two of those trees are deemed to be in poor condition. The one remaining tree to be removed is required to accommodate the proposed outbuilding.

Council's Landscape Officer and Bushland Officer have raised no objections to the proposed tree removal, subject to the loss being offset by the planting of new native canopy trees on the site.

Therefore, this matter is addressed by way of condition and does not warrant the refusal of the application.

- **Visual and acoustic privacy**

The submissions raised concerns regarding visual privacy from the outbuilding, the dwelling and the swimming pool, and concerns are raised about the potential acoustic impacts from mechanical ventilation as such systems are not detailed on the plans.

Comment:

Outbuilding

The outbuilding has one highlight, frosted window on its southern elevation positioned approximately 2.0m from the boundary. This window is not deemed to cause a privacy impact.

The windows facing north-east are situated more than 9m from the property boundary. The properties in this direction on Palm Beach Road have their primary orientation to the east / northeast to maximum light and views. The windows from the outbuilding are not considered to cause an unreasonable privacy impact.

The decking on northeastern and southwestern edge of the building is narrow and unlikely to be used for any form of entertaining given its size. The northern portion of decking is not considered likely to generate any visual privacy impacts.

Swimming pool

Concern is raised that the swimming pool may cause an overlooking impact on the adjoining property at 153 Pacific Road. Whilst some views into the gardens of neighbouring properties may be viewable from the proposed pool, the extent of that impact is acceptable. Concerns are also raised about the location of pool equipment and other mechanical ventilation which may acoustically impact on neighbours. This concern can be appropriately addressed via condition.

Dwelling

Concerns have been raised regarding the extent and expanse of windows and balconies on the proposed dwelling, and the impacts which they may have to the privacy of adjoining and nearby properties.

As detailed later in this report, revised plans have been received which delete the primary offending window. Other elements are not deemed to cause an unreasonable degree of overlooking.

All privacy matters are addressed elsewhere in this report and, subject to conditions and the aforementioned revised plans, are acceptable.

- **Impacts to existing right of way**

The submission from No. 11-13 Palm Beach Road raised concerns that the development may impact on their existing enjoyment of an easement located in the northeastern corner of the subject site.

Comment:

No works are proposed in the location of the easement under this application, and nothing in this recommendation shall impede the continued enjoyment of this access. This matter therefore does not warrant the refusal of the application.

- **Front setback non-compliance**

The submissions raised concerns that the proposal breaches the front boundary setback control.

Comment:

This matter is discussed in detail under its respective clause later in this report, but in summary, the variation sought does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks consent for the partial demolition of existing dwelling and construction of new dwelling comprising the retention of substantial portions of the existing dwelling, a detached studio and a swimming pool.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but</p>

Internal Referral Body	Comments
	<p>not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The Arborist's Report prepared by Martin Peacock Tree Care and Landscape Plans prepared by Dangar Barin Smith are noted.</p> <p>The Arborist's Report indicates 10 trees to be removed. 7 of the trees are exempt species. Of the 3 non-exempt species, two are in poor condition and one, <i>Glochidion ferdinandi</i> is to be removed to accommodate the new studio.</p> <p>The comments from Council's Bushland and Biodiversity section are noted and concurred with regarding replacement tree planting and local native species planting. Conditions provided by Bushland & Biodiversity are also concurred with.</p> <p>Additional conditions are recommended to protect existing trees and environmental features. No objections regarding landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for the partial demolition of existing dwelling and the construction of new dwelling comprising the retention of substantial portions of the existing dwelling, together with a detached studio and swimming pool. In addition, the application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> • 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> • B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>The application seeks to remove 10 trees, of which 7 are exempt by species or height:</p> <ul style="list-style-type: none"> • T3 Pittosporum undulatum (exempt by height) • T4 Phoenix canariensis (exempt by species) • T6 Phoenix canariensis (exempt by species)

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • T11 Plumeria acutifolia (exempt by height) • T19 Syzygium australe (exempt by height) • T21 Glochidion ferdinandi • T22 Syncarpia glomulifera • T23 Phoenix canariensis (exempt by species) • T24 Brachychiton acerifolius (exempt by species) • T36 Lophostemon confertus <p>No objection is raised to the removal of T36 by Council's Biodiversity referral team given it is planted outside natural distribution. Further, the proposed removal of T21 & T22 is considered acceptable given the poor health of both trees, and subject to the replacement of both with equivalent, locally-native canopy trees.</p> <p>The submitted Landscape Plan (Dangar Barin Smith 2021) demonstrates that >80% of proposed planting are 'native', however DCP B4.7 requires:</p> <ul style="list-style-type: none"> • <i>Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).</i> <p>The Landscape Plan to be amended such that 80% of proposed plantings are consistent with the locally-occurring community - Pittwater Spotted Gum Forest: https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing</p> <p>The Landscape Plan must also include provision of at least one canopy tree (Corymbia maculata, Eucalyptus botryoides, E.paniculata, E.punctata, E.umbra, or Syncarpia glomulifera) as replacement for the proposed removal of T22. The provision of these replacement plantings ensures consistency with B4.7 of the Pittwater DCP.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>The submitted stormwater plan with the provision of OSD and connection to the existing site drainage system is satisfactory. No objections to approval subject to conditions as recommended.</p> <p><i>Note to Planner: Two of the existing timber garages are located within the road reserve, please refer to road asset team for comments.</i></p> <p>Amended Plans 27/4/2022</p>

Internal Referral Body	Comments		
	<p>The amended plans proposes a new driveway along the length of the entire frontage of the site in the road reserve. Concurrence from Road asset team is required prior to Development engineering providing conditions. (Planner comment 06/05/22: Road Asset response received).</p> <p>Review 16/5/2022 No objections to approval subject to conditions as recommended.</p>		
Road Reserve	No in principal objection to the proposed driveway as requested by Development Engineering team subject to conditioning the requirement for a Road Act application for civil works associated with the driveway. The gate on the driveway should be removed as per PLM notes.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject property is opposite a heritage item		
	House - 130A Pacific Road		
	Details of heritage items affected		
	Details of the item as contained within the Pittwater inventory is as follows:		
	<u>Statement of Significance</u> The House at 130a Pacific Road in Palm Beach, built c1920s as a holiday house, has historic and aesthetic and rare significance as a good example of a Californian Bungalow influenced by vernacular design.		
	<u>Physical Description</u> The site is located on the western side of Pacific Road and is raised above the street level. The rear of the site faces an unmade road (Ralston Road). The property is located on a ridgeline with views to both Pittwater and the Pacific Ocean. The dwelling is single storey at the front and two-storey at the rear. The weekender's typical features are the use of natural materials to harmonise with the natural environment, simple detailing, simple roof structure using timber shingles and stonewall construction with shingle gabled end.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No		
NSW State Heritage Register	No		

Internal Referral Body	Comments
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other N/A
	Consideration of Application
	The proposal seeks consent for alterations and additions to the existing dwelling. The majority of the existing dwelling is located below the road level and this approach is continued through into this proposal except for the upper level studio. That will appear above the road level. The heritage item is located to the west of the site across Pacific Road and is elevated slightly above the road. Given that the bulk of the works are below the road level with the studio being a smaller element above and the physical separation of the site from the item, the proposal is considered to not impact upon the heritage item or its significance.
	Therefore Heritage raises no objections and requires no conditions.
	Consider against the provisions of CL5.10 of PLEP.
	Is a Conservation Management Plan (CMP) Required? No
	Has a CMP been provided? No
	Is a Heritage Impact Statement required? No
	Has a Heritage Impact Statement been provided? No
	Further Comments
	COMPLETED BY: Brendan Gavin, Principal Planner
	DATE: 6 February 2022

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A439470_03 dated 28 November 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.

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
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4.3 - Height of Buildings	8.5m	9.74m	14.5%	No (see Clause 4.3(2D) below)
4.3(2D) - Height of Buildings	10.0m		-	Yes

Consideration against Clause 4.3(2D)

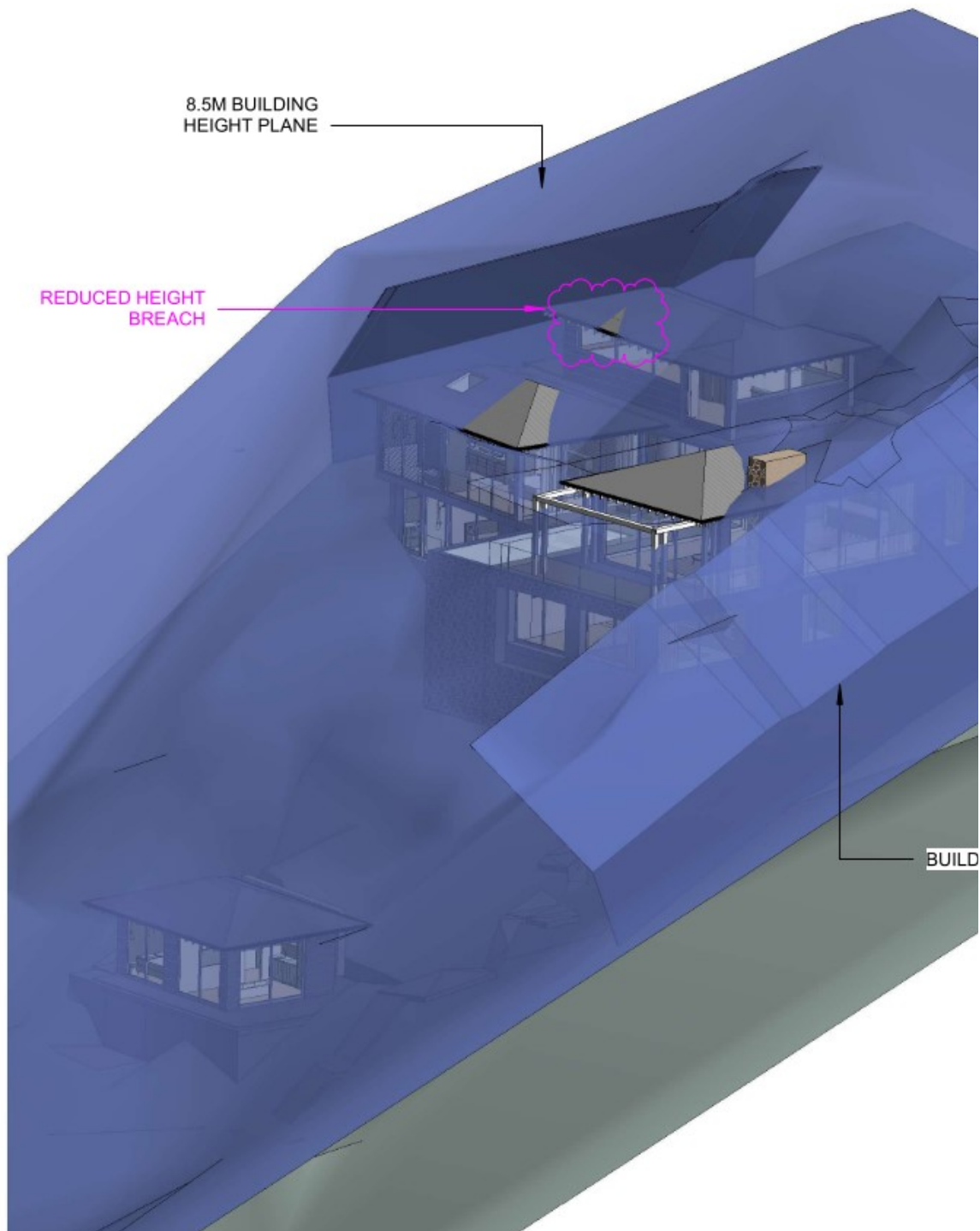
Clause 4.3(2D) stipulates that development on land that has a maximum building height of 8.5 metres may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

(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.

Comment

The extent of building encroachment exceeds a 8.5m height plane but is below a 10m height plane. The areas of encroachment are (generally) limited to roof elements, pergolas and a chimney flue.

Below is 8.5m height plane diagram created by the project architect depicting elements that exceed the plane. The assessment has concluded that the extent of encroachment is appropriately considered 'minor'.



(b) the objectives of the clause are achieved.

Comment

The Objectives of the Clause are addressed as follows:

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

The height of the proposed dwelling house is generally consistent with the development controls and with the proportions of newer dwellings within the locality.

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

The height and scale of the proposal is consistent with what could be developed on adjoining sites under the current planning controls. Numerous other houses on the downwards and upwards slopes of Palm Beach exceed the building height standard. The overall proportions of the development (notwithstanding the variation) are compatible with the height and scale of surrounding and nearby development.

(c) to minimise any overshadowing of neighbouring properties.

The development provides a compliant level of solar access to neighbouring properties.

(d) to allow for the reasonable sharing of views.

View loss is discussed elsewhere in this report. The minor building elements that may impact upon views do not exceed the height limit.

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

The building is designed to step down the slope of the land and does not necessitate an excessive degree of excavation, commensurate to other developments on similarly sloping sites.

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

The building is not considered to have an adverse visual impact when viewed from the public and private domain. The building is largely screened by landscaping, which will continue to grow and further screen the building in longevity.

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

Comment

The slope of the land exceeds 16.7 degrees.

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

Comment

The development is considered to be designed and sited to take into account the slope of the land to minimise the need for cut and fill.

The above considerations confirm that the 10 metre height limit may be applied in this particular instance. Subject to this height control, the development is compliant and no further assessment on building height is required.

Compliance Assessment

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

Detailed Assessment

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

excavation/construction.

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

Comment: Council's Heritage Officer has determined that the proposal will not have an adverse impact on any nearby heritage items.

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

7.7 Geotechnical hazards

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

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

Comment:

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

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

Comment:

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

(b) the consent authority is satisfied that:

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Garage - 5.5m Dwelling - min.3.8m Deck/Stairs - nil	15.4% 41.6% 100%	No No No
Rear building line	6.5m	Dwelling to Palm Beach Road - 76m Studio to boundary of 10 Palm Beach Road - 7.9m to 9m	- -	Yes Yes
Side building line	Northwest - 2.5m	6.1m	-	Yes
	Southeast - 1m	Minimum 1.5m	-	Yes
Building envelope	Northwest - 3.5m	No encroachments	-	Yes
	Southeast - 3.5m	No encroachments	-	Yes
Landscaped area	60% (904.8m ²)	63.7% (961m ²)	-	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
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	No	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

The proposed development is not anticipated to generate any unreasonable view loss impacts from the public or private domain. Generally, properties to the opposite side of Pacific Road are significantly elevated above the proposal and thus maintain views over the roof. Adjoining properties to the north and west generally have their primary views / aspects towards to east / north-east, and therefore the orientation and positioning of the proposal would not unreasonably compromise these existing view aspects.

C1.5 Visual Privacy

Clause C1.5 *Visual Privacy* requires that:

- Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).
- Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.
- Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Comment

The proposed development has extensive glazing to the eastern and northern facades, and includes an elevated swimming pool and deck. The outbuilding includes windows and a deck orientated to the northeast.

The north-facing windows from the living room and the deck look towards No.161 Pacific Road, Palm Beach. The side elevation of the proposal is offset from the boundary by some 6.1m with that setback to be landscaped. These windows generally will overlook the front garden and the flank elevation of the neighbouring house. Amendments to a large window in the living room have been made to break it into two smaller windows to limit opportunities for overlooking.

The windows and the edge of the deck (measuring 3.8m in width) are not considered to directly overlook the private open space of the adjoining properties and are therefore acceptable.

The elevated swimming pool is setback 3.3m from the boundary shared with 153 Pacific Road. That property has windows on all elevations and meandering pathways and terraces throughout. The elevated swimming pool may overlook a portion of the garden area, however the extent of overlooking

is not considered to be significant, and opportunity for downwards views into the property are limited by virtue of the depth of the pool. Similarly, the existence of the pool limits opportunities for downwards views from the deck.

The outbuilding structure is positioned towards the rear boundary of 9 Palm Beach Road to the northeast. This house is set back from the boundary by some 12m, is set down further into the site, and has a primary orientation to the northeast towards the ocean. The windows from the secondary dwelling, and narrow perimeter decking around it are not considered substantial enough to result in any unreasonable privacy impacts to the neighbouring property.

On balance of all factors, the proposal is considered to maintain an appropriate level of privacy to neighbouring properties, and that level will increase as the landscaping on site matures and screens the building.

C1.14 Separately Accessible Structures

The detached outbuilding located to the rear of the site does not include any cooking or kitchen facilities and is therefore not capable of separate habitation, thus the appropriate terminology of the outbuilding is a *separately accessible structure*. Conditions are included in the recommendations of this consent which ensure that the property as a whole is used only as one single dwelling.

C1.19 Incline Passenger Lifts and Stairways

No changes are proposed to the existing inclinator on site.

D12.3 Building colours and materials

Clause D12.3 seeks that buildings are finished in dark coloured tones such as black, brown and green. The existing dwelling house is white painted weatherboard, and this proposal seeks to maintain this existing finish and extend it across the extensions. Along with weatherboard, the proposal includes cement render and stonewall cladding.

Notwithstanding the fact that the colour is inconsistent with the intent of Clause D12.3, the visual impact of the dwelling in the colours proposed is deemed acceptable and consistent with other properties along Pacific Road.

D12.5 Front building line

Description of Non-Compliance

Clause D12.5 of the Pittwater 21 Development Control Plan 2014 prescribes a front boundary setback requirement of either 6.5m, or consistent with the established building line - whichever is the greater.

The size and shapes of neighbouring properties varies greatly which consequently results in a varying front setback alignment along the street. The two neighbouring properties at 153 (south) and 161 (north) Pacific Parade have front setbacks of 30m and 13m respectively.

This proposal, with a garage setback of 5.5m, dwelling setback of 3.8m and decking/stair setback of nil therefore is lesser than the required 6.5m and lesser than neighbouring properties.

Merit Consideration

With regards to the consideration for a variation, the development is considered against the underlying

Outcomes of the Control as follows:

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

Comment:

The relationship of the site to the adjoining road reserve is one of split level, whereby the front decking with a nil setback sits 3m below (RL68.06) the level of the adjoining road (RL71.05). This height difference, combined with the existing landscaped road reserve which is to be retained results in a portion of the non-compliant area being non-discernible from the public domain.

Notwithstanding the variation to the front setback control, the development remains consistent and compatible with 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 development is not anticipated to cause any unreasonable view loss from the public or private domain.

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

Comment:

Pacific Road is not a main road and therefore this objective is not relevant.

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

Comment:

The existing vegetation along the site frontage is to be retained to visually reduce the built form. The development also includes landscaping inward of the site curtilage which ensures that, in the event the landscaping in the road reserve is removed, the proposal will still be appropriately screened by landscaping.

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

Comment:

The development provides a vehicle turntable which ensures that cars can enter and exit in a forward direction.

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

Comment:

The proposal adequately maintains the existing bushland character of the locality.

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

Comment:

The building is of a height lesser than that of existing mature trees.

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

Comment:

The proposal does not change the existing relationship of the dwelling house to the road which is deemed to be acceptable.

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

Comment:

The proposal is designed appropriately to step down the slope of the land to create a relationship to the spatial characteristics of the urban environment.

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

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 \$34,282 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,428,158.

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

PLANNING CONCLUSIONS

The assessment of this proposal has found that the development is appropriate in terms of its proportions, design and impacts for the context of the site. The design is not considered to unreasonably prejudice the level of amenity currently enjoyed by neighbouring properties and will maintain general residential harmony within the streetscape.

Whilst the proposal does breach a number of standards, those breaches are each found to be acceptable on merit and are largely derived from the site's topography and retention of elements of the existing building.

On balance of all factors, the proposal is considered reasonable and this report therefore concludes with the recommendation that the DDP **APPROVES** the development application, subject to conditions as recommended.

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 DA2021/2416 for Partial demolition of the existing dwelling and the construction of a new dwelling with a detached studio and swimming pool on land at Lot 1 DP 1144798, 155 Pacific Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA030 Issue 2 - Site Plan + Site Analysis	19 April 2022	CM Studio
DA050 Issue 2 - Demolition Plan Lower Ground Floor	19 April 2022	CM Studio
DA051 Issue 2 - Demolition Plan Ground Floor	19 April 2022	CM Studio
DA101 Issue 3 - Proposed Lower Ground Floor Plan	19 April 2022	CM Studio
DA102 Issue 4 - Proposed Ground Floor Plan	17 June 2022	CM Studio
DA103 Issue 3 - Proposed Level 1 Plan	17 June 2022	CM Studio
DA104 Issue 3 - Proposed Roof Plan	17 June 2022	CM Studio
DA105 Issue 2 - Cottage Plan + Section D-D	19 April 2022	CM Studio
DA201 Issue 2 - Southwest Elevation	19 April 2022	CM Studio
DA202 Issue 2 - Southeast Elevation	19 April 2022	CM Studio
DA203 Issue 2 - Northeast Elevation	19 April 2022	CM Studio
DA204 Issue 3 - Northwest Elevation	17 June 2022	CM Studio
DA205 Issue 2 - Streetscape Elevation	19 April 2022	CM Studio
DA206 Issue 2 - Cottage Elevations	19 April 2022	CM Studio
DA301 Issue 3 - Section A-A	19 April 2022	CM Studio
DA302 Issue 3 - Section B-B	19 April 2022	CM Studio
DA303 Issue 2 - Section C-C	19 April 2022	CM Studio
DA403 Issue 3 - Schedule of Finishes	19 April 2022	CM Studio
DA601 Issue 2 - Excavation Plan	19 April 2022	CM Studio
DA602 Issue 2 - Excavation Section	19 April 2022	CM Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report	30 November 2021	Martin Peacock Tree Care
BASIX Certificate No. A439470_03	28 November 2021	The House Energy Rating Company of Australia Pty Ltd
Bushfire Risk Assessment	03 December 2021	Bushfire Planning Services
Geotechnical Investigation (ref: J3887)	26 November 2021	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LP01-D9821 Rev. A - DA Cover Sheet	02 December 2021	Dangar Barin Smith
LP02-D9821 Rev. A - Landscape Plan	02 December 2021	Dangar Barin Smith
LP03-D9821 Rev. A - Landscape Plan	02 December 2021	Dangar Barin Smith
LP04-D9821 Rev. A - Landscape Plan	02 December 2021	Dangar Barin Smith

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	29 November 2021	Megan Burns

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

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

2. **Approved Land Use**

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

A dwelling house is defined as: *A building containing only one dwelling.*

(development is defined by the Pittwater Local Environment Plan 2014 (as amended) Dictionary)

Further to this, the outbuilding labelled "cottage" on the approved plans is to be changed to "studio".

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**

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- 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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$34,281.58 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 \$3,428,158.00.

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. **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 26/11/2021 are to be incorporated into the construction and excavation plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

8. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- Provision of at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).

The Landscape Plan to be amended such that 80% of proposed plantings are consistent with the locally-occurring community - Pittwater Spotted Gum Forest:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing>

The Landscape Plan must also include provision of at least one canopy tree (*Corymbia maculata*, *Eucalyptus botryoides*, *E. paniculata*, *E. punctata*, *E. umbra*, or *Syncarpia glomulifera*).

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

9. Traffic Management and Control

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

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

10. Amendments to the approved plans

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

- the gate on the proposed driveway is to be deleted in its entirety.
- the labelling of the outbuilding as a "cottage" is to be changed to "studio".
- the area within the Living Room in the outbuilding is to be labelled "Wet Bar" only and this area is not to have any cooking facilities such as an oven or cooktop.

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

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by RTS Civil Consulting Engineers, job number 211102, drawing number CP100, SW100, SW101, SW102, SW200, dated 30/11/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The plans must include the following details:

1. The existing surface grated drains are to be shown on the stormwater plans. The surface drains must be connected to the existing system.
2. The proposed driveway drainage shall be connected to the existing system

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

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

13. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design for the new works within the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 4 meters wide, detail design shall be provided.
2. Engineering longsections at both edges and centerline of the proposed access driveway to the garage.
3. Structural details for any retaining walls supporting the driveway.
4. Sight distances and safety barriers are to be in accordance with AS/NZS 2890.1:2004.
5. The application is to include a geotechnical report that is prepared by an appropriately qualified Geotechnical Engineer to assess the impact upon the road embankment and

any retaining walls that are to be retained or will be required to support the road as a result of the proposed works.

6. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.
7. Structural Engineer's certification.
8. Gates are not permitted within the road reserve.
9. A landscape plan showing the details of the proposed works in the road reserve.

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

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

14. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

15. **Compliance with Standards**

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

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

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

16. **Sydney Water "Tap In"**

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

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

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

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

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

17. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Tree Removal Within the Property**

This consent approves the removal of the following trees within the property as recommended in the Arboricultural Impact Assessment dated 30 November 2021 prepared by Martin Peacock Tree Care:

- i) T 21 *Glochidion ferdinandi*; T22 *Syncarpia glomulifera*; T36 *Lophostemon conferta*

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

Reason: To enable authorised building works.

19. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Protection of Landscape Features and Sites of Significance**

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

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

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

Reason: Preservation of significant environmental features.

21. **Tree and Vegetation Protection**

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

- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 30 November 2021 prepared by Martin Peacock Tree Care and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

22. **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.

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

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

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

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

24. **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.

25. **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.

26. **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.

27. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

28. **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.

29. **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**

30. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Dangar Barin Smith 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. **New Vegetation Planting**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Final Determination for Pittwater Spotted Gum Forest - endangered ecological community listing:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing>

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.

32. **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.

33. **Priority Weed Removal and Management**

All Priority weeds, including Tree 29 (Small-leaved Privet) as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the site are to be removed.

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

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

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. **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.

36. **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.

37. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to

the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

38. **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.

39. **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.

40. **Removal of All Temporary Structures / Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

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

41. **Landscape Maintenance**

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 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.

42. **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.

43. **Replacement of Canopy Trees**

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

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

Reason: To replace locally native trees.

44. **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.

45. **Geotechnical Recommendations**

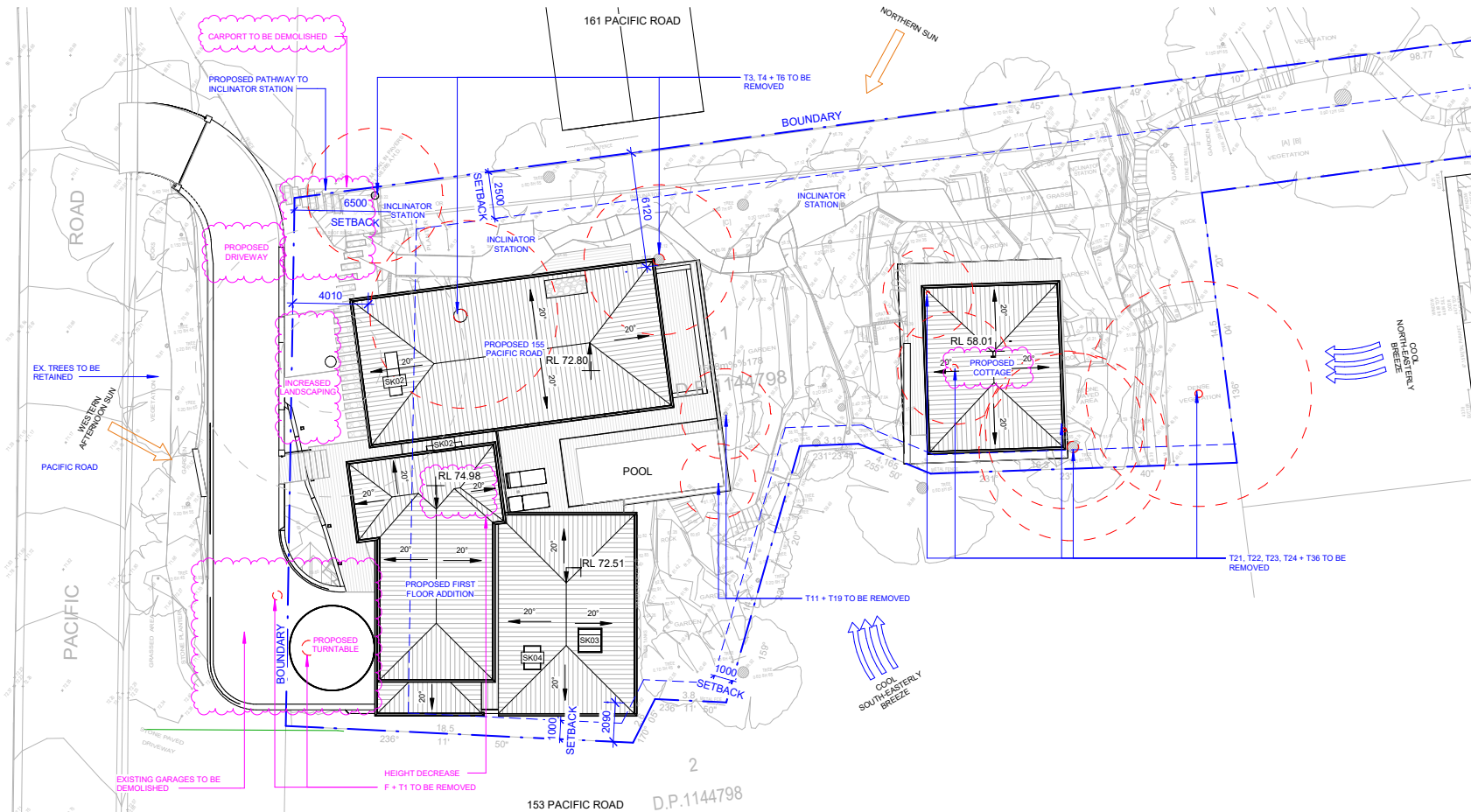
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

46. **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.



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Project:
Greider Lambert-Smith House
155 Pacific Road, Palm Beach

Project number 2021_135

Revisions		
No.	Description	Date
1	DA	2021-11-22
2	Revised DA Set	2022-04-19

Client:
Philip & Jo
Drawing Number:
DA030

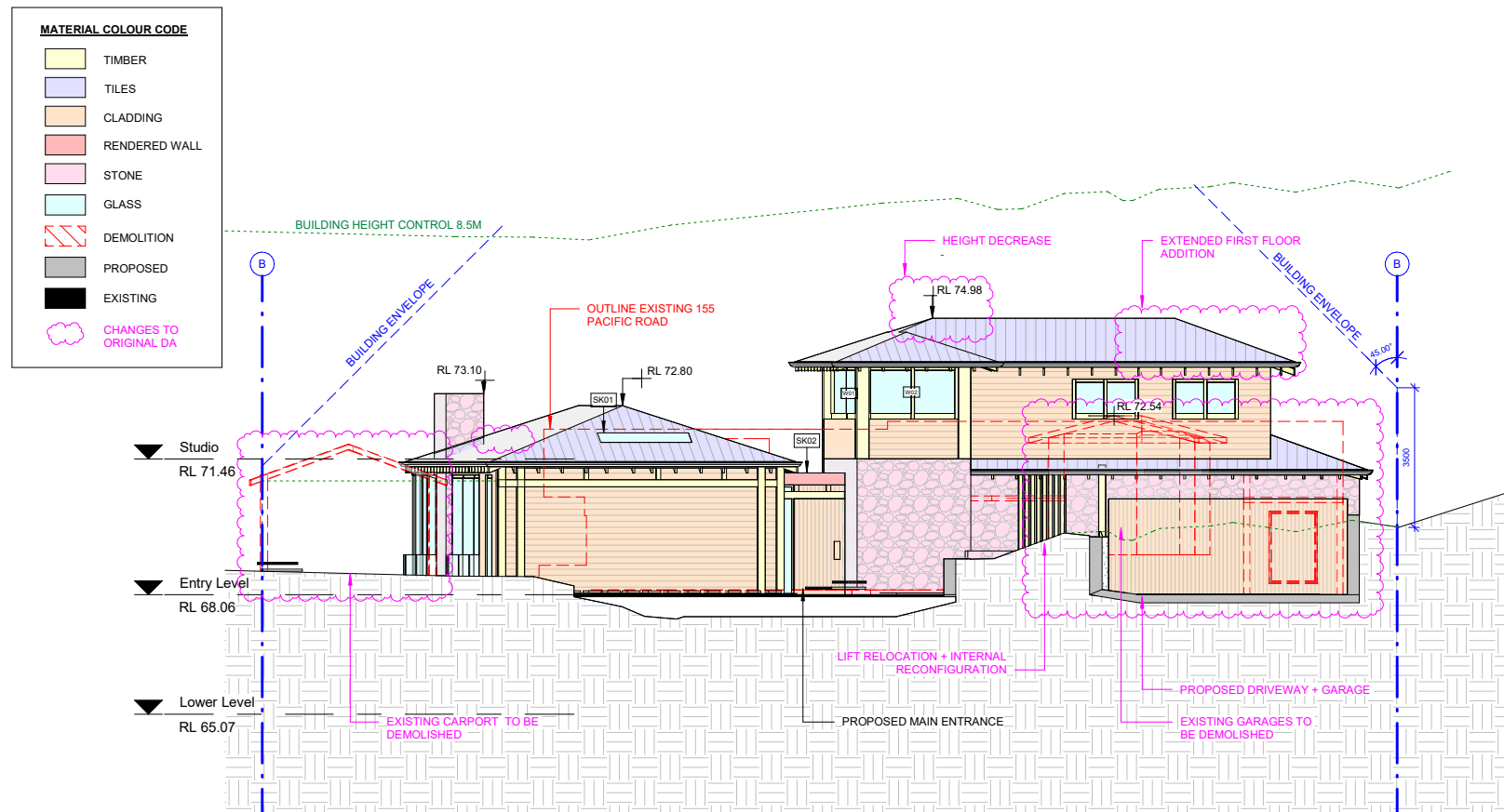
Date 2022-04-19

Issue 2

Drawing:
Site Plan + Site Analysis

Scale 1 : 200 @ A3

Drawn by: EW Checked by: MB



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Project:
Greider Lambert-Smith House
155 Pacific Road, Palm Beach

Project number 2021_135

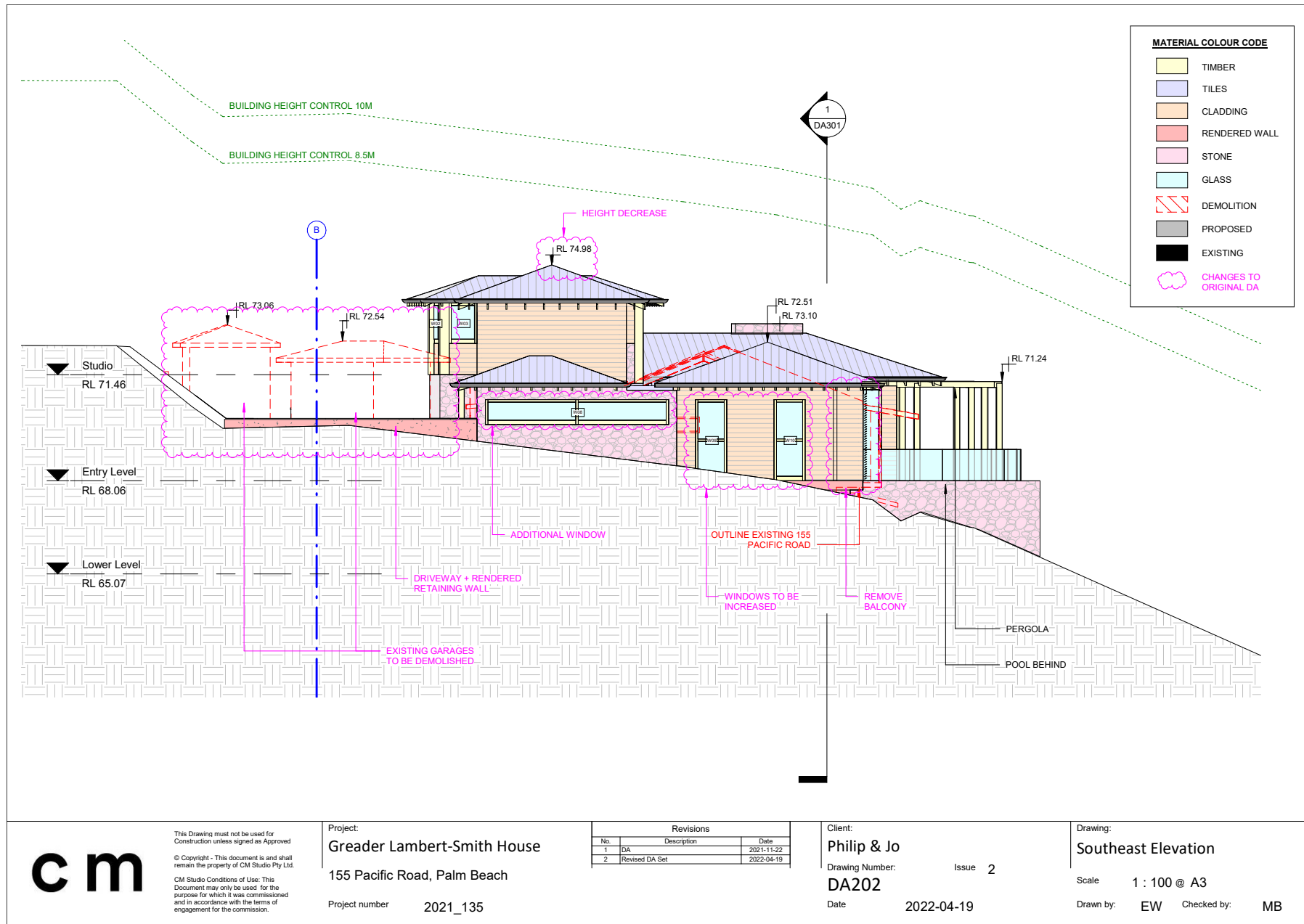
Revisions		
No.	Description	Date
1	DA	2021-11-22
2	Revised DA Set	2022-04-19

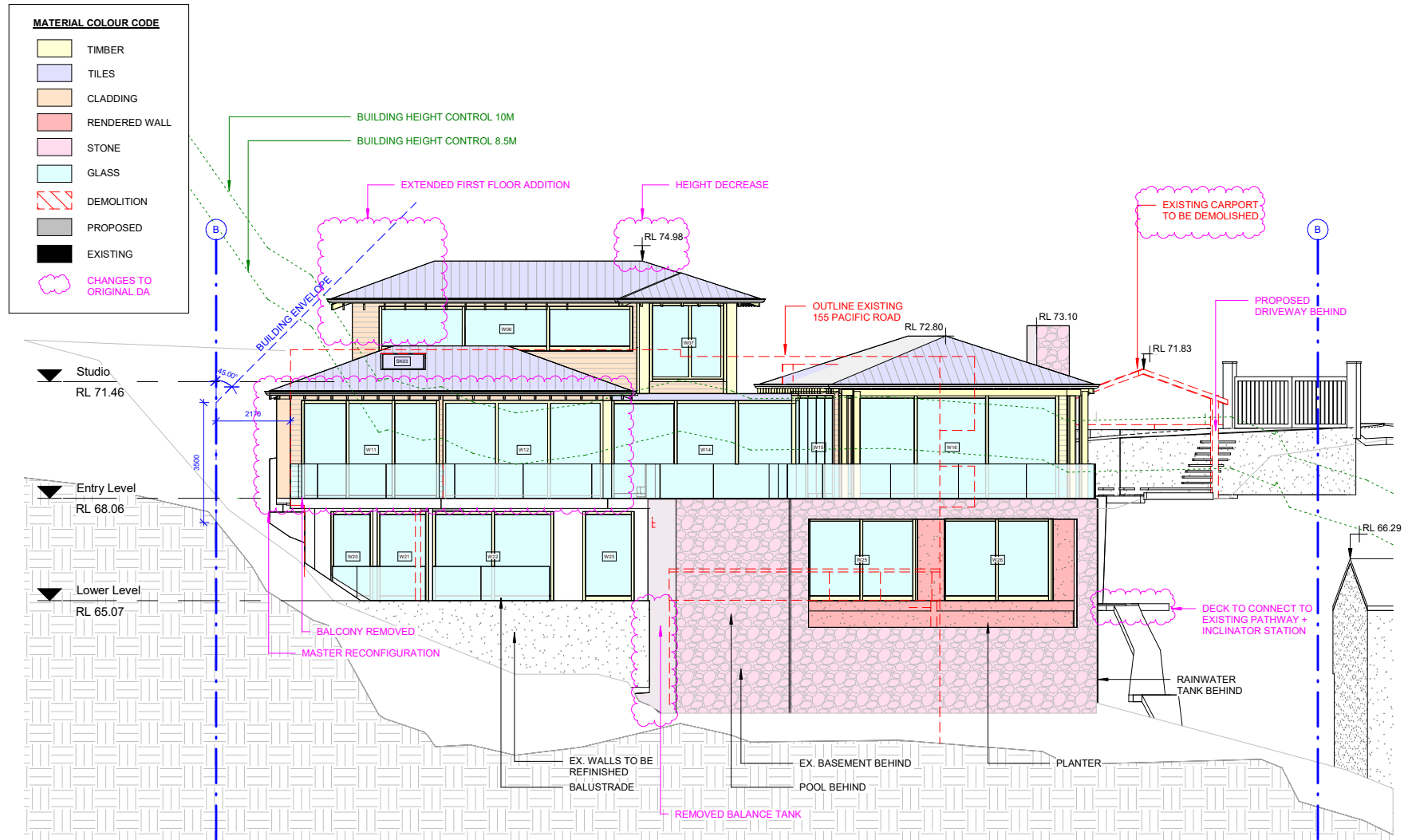
Client:
Philip & Jo
Drawing Number:
DA201
Date 2022-04-19
Issue 2

Drawing:
Southwest Elevation

Scale 1 : 100 @ A3

Drawn by: EW Checked by: MB





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Project:
Greider Lambert-Smith House
155 Pacific Road, Palm Beach

Project number 2021_135

Revisions		
No.	Description	Date
1	DA	2021-11-22
2	Revised DA Set	2022-04-19

Client:
Philip & Jo
Drawing Number:
DA203

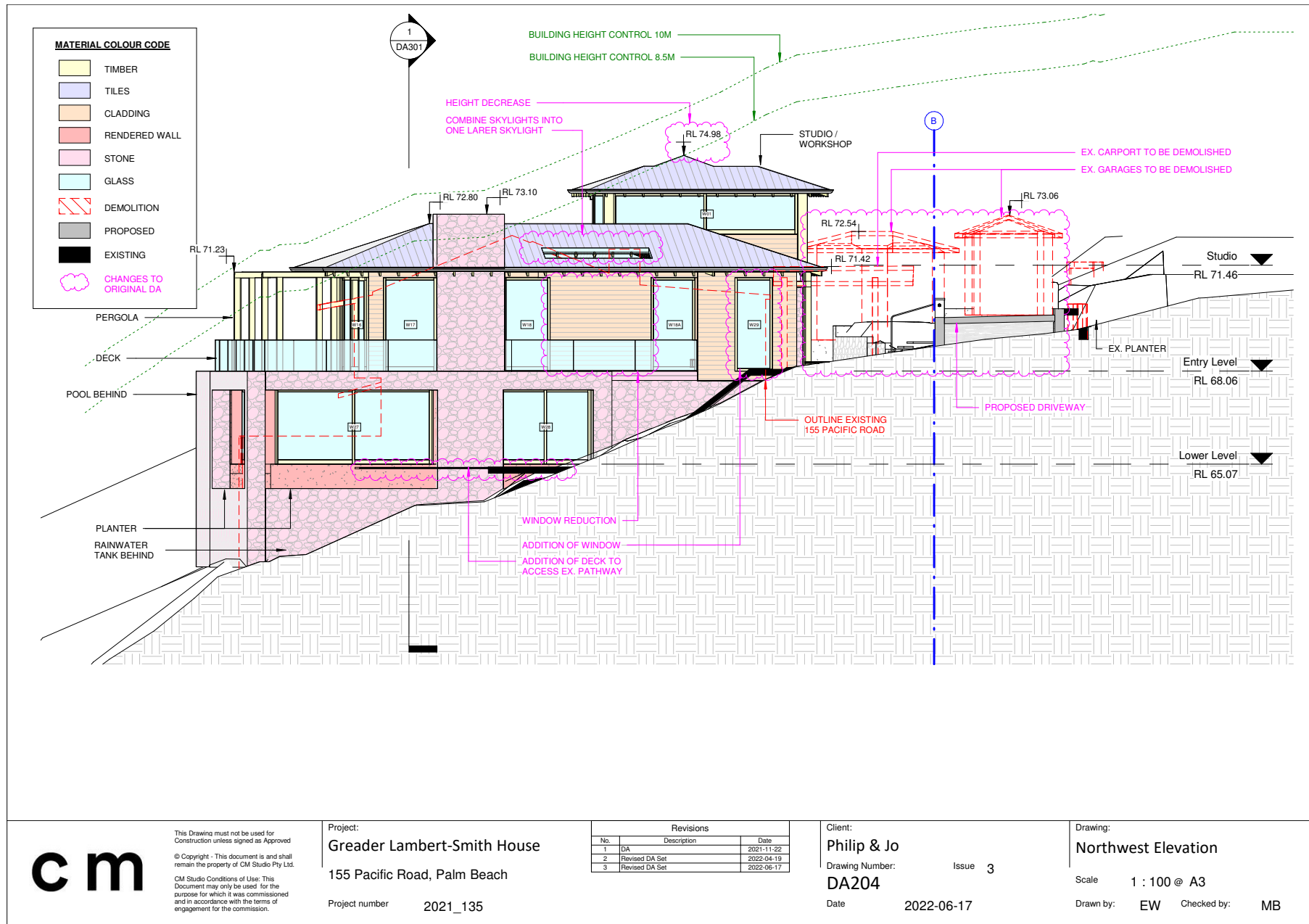
Date 2022-04-19

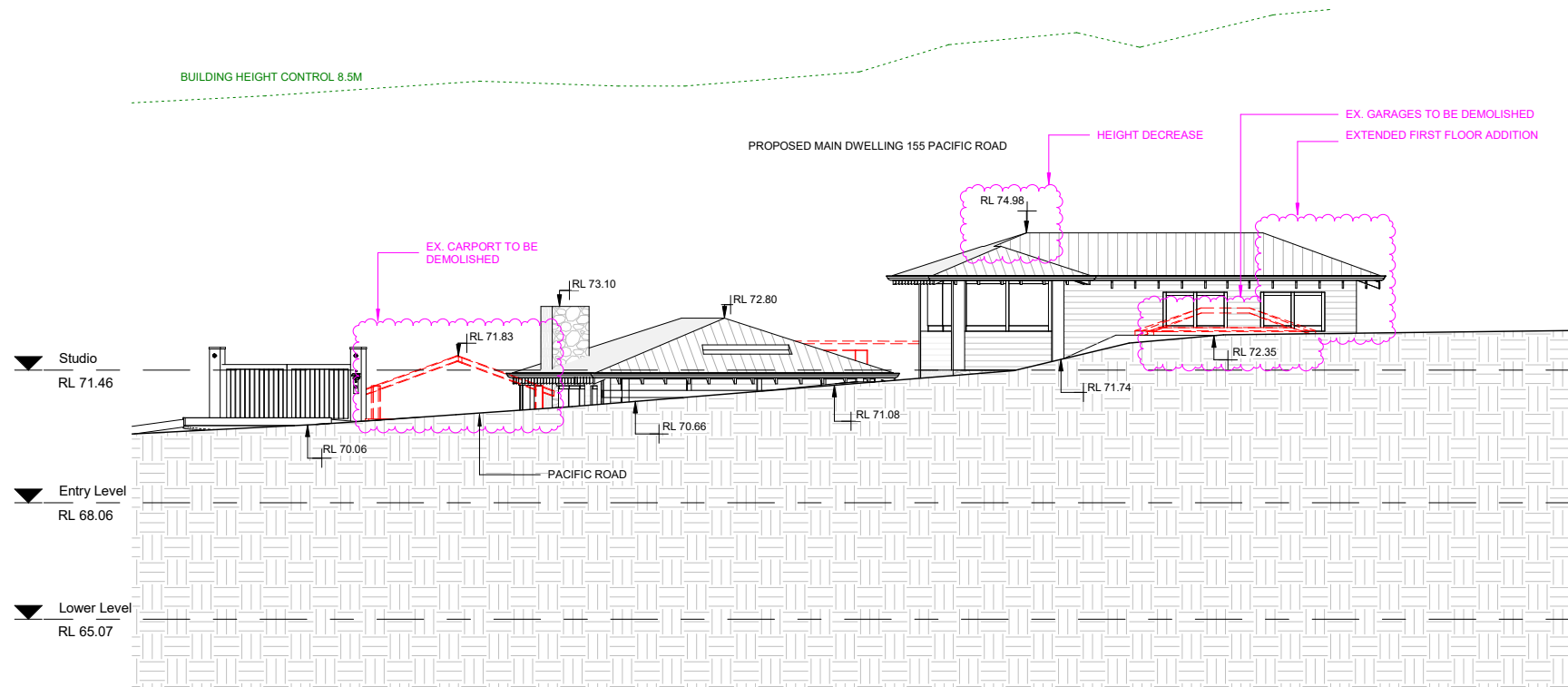
Issue 2

Drawing:
Northeast Elevation

Scale 1 : 100 @ A3

Drawn by: EW Checked by: MB





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Project:
Greider Lambert-Smith House
155 Pacific Road, Palm Beach

Project number 2021_135

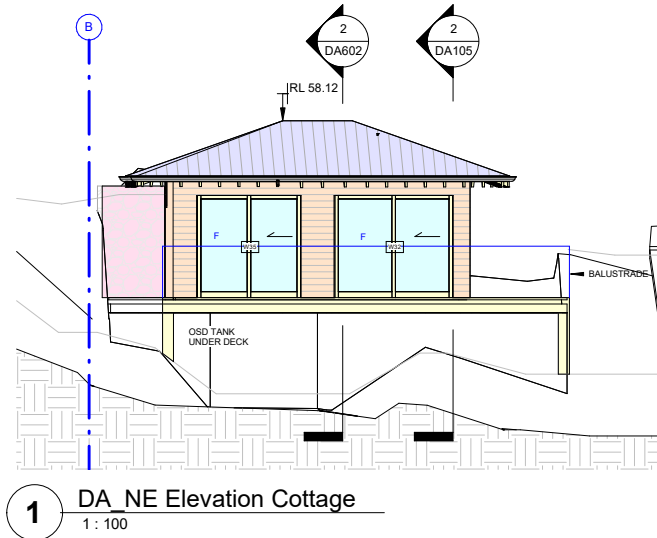
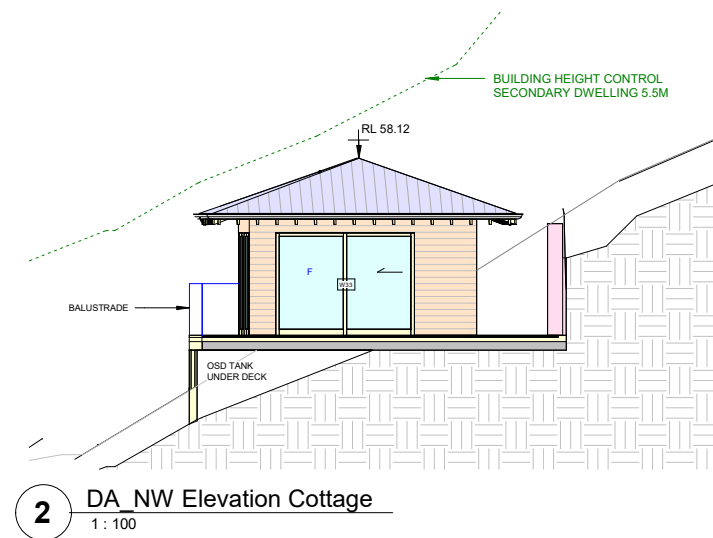
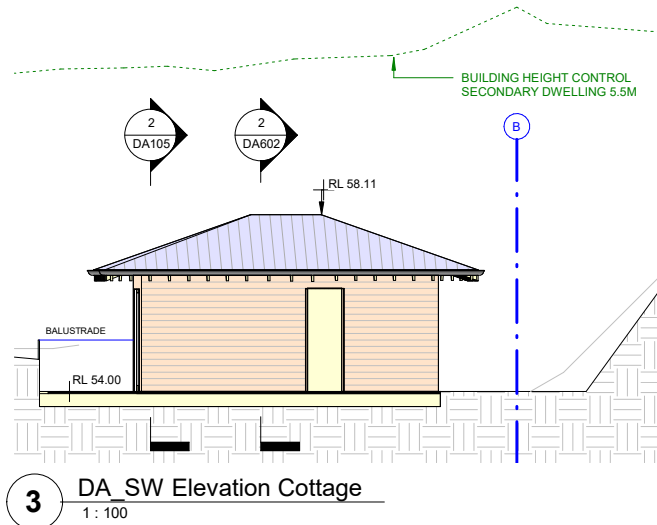
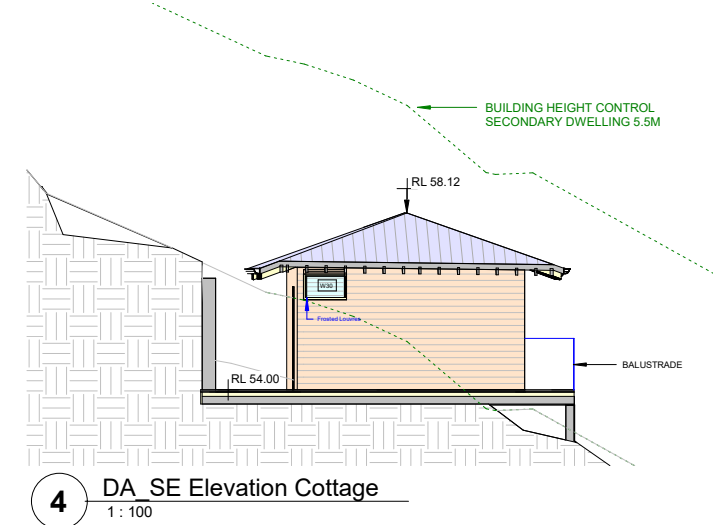
Revisions		
No.	Description	Date
1	DA	2021-11-22
2	Revised DA Set	2022-04-19

Client:
Philip & Jo
Drawing Number:
DA205
Date 2022-04-19

Issue 2

Drawing:
Streetscape Elevation
Scale 1 : 100 @ A3
Drawn by: EW Checked by: MB

MATERIAL COLOUR CODE	
	TIMBER
	TILES
	CLADDING
	RENDERED WALL
	STONE
	GLASS
	DEMOLITION
	PROPOSED
	EXISTING
	CHANGES TO ORIGINAL DA



cm

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Project:
Greaser Lambert-Smith House
155 Pacific Road, Palm Beach
Project number 2021_135

Revisions		
No.	Description	Date
1	DA	2021-11-22
2	Revised DA Set	2022-04-19

Client:
Philip & Jo
Drawing Number:
DA206
Date 2022-04-19

Drawing:
Cottage Elevations
Scale 1 : 100 @ A3
Drawn by: EW Checked by: MB

ITEM 3.2**DA2021/2622 - 65 HILLSIDE ROAD NEWPORT - ALTERATIONS
AND ADDITIONS TO A DWELLING HOUSE INCLUDING A
SECONDARY DWELLING AND SWIMMING POOL****REPORTING MANAGER**

Phil Lane

TRIM FILE REF

2022/437322

ATTACHMENTS

- 1 [↓](#)Assessment Report
- 2 [↓](#)Site Plan and Elevations
- 3 [↓](#)Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/2622 for alterations and additions to a dwelling house including a secondary dwelling and swimming pool on land at Lot 46 DP 9224, 65 Hillside Road NEWPORT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2622
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 46 DP 9224, 65 Hillside Road NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house including a secondary dwelling and 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:	Erik Arthur Salomon Altmann Anita Maria Altmann
Applicant:	Rapid Plans Pty Ltd
Application Lodged:	12/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/04/2022 to 27/04/2022
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 765,000.00

EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to a detached dwelling house.

The proposed additions achieve a maximum building height of 9.9m and result in a notable side boundary envelope variation up to 157.1%. However, variation to Clause 4.3 Height of Buildings PLEP and D10.11 Building envelope of the P21 DCP is permitted in this instance as the building footprint is situated on a slope of 44%.

Notification of the application resulted in eight (8) individual objections to the proposed development. The received submissions raised concern with the following matters;

- Secondary dwelling,
- Built form non-compliances,
- Landscaped area,
- Maximum building height,
- Inclinator,
- Swimming pool,
- Schedule of finishes,
- Excavation,
- Overshadowing,
- Traffic impacts,
- Characterisation of development.

The application has been referred to the Development Determination Panel (DDP) as the development has eight (8) individual objections.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to a detached dwelling house. The works include;

Garage:

- Construction of new bin storage.
- Construction of pergola over existing terrace.

Lower ground floor:

- Construction of rumpus, entry and bathroom.

Ground floor:

- Internal alterations, including a new gym, office, retreat and bathroom.
- Construction of new internal stair.
- 500mm extension of eastern facing balcony.

First floor:

- Internal alterations, including a new laundry, kitchen, cellar and WC.
- Installation of sliding privacy screen to the northern elevation of existing deck.

Second floor:

- Internal alterations, including a new master bedroom, office, ensuite and WIR.
- Enclosure of existing deck.
- Roof alterations.

External:

- Construction of inclinator that runs parallel to the northern boundary.
- Associated landscaping works.

Amended plans

Following a preliminary review of the application Council raised concern with the proposal's streetscape and amenity impacts. Amended plans were received on 31 March 2022, which included removing the secondary dwelling and relocating the swimming pool and inclinator. The revised pool location promoted a formal re-notification of the proposal, as the changes created additional environmental impacts. The re-notification period was from 13 April 2022 to 27 April 2022.

An assessment of the amended plans indicated that the revised design resulted adverse building bulk. As such, an additional set of amended plans were prepared including the removal of the elevated swimming pool. These amended plans were submitted to Council to 01 June 2022. Northern Beaches Community Participation Plan refers to re-notification not being required for amendments where the *"changes result in a lesser or reduction of environmental impacts"*. In this regard, the proposal was not formally re-notified and the amended plans were uploaded to Council's website. These plans have been used to complete the assessment of this proposal.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D10.4 Building colours and materials
Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport

Commercial Centre)

Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 46 DP 9224 , 65 Hillside Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Hillside Road, Newport.</p> <p>The site is regular in shape with a frontage of 12.195m along Hillside Road and a maximum depth of 39.885m along the southern side boundary. The site has a surveyed area of 481.6sqm.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a three (3) storey detached dwelling house. The dwelling contains a number of split levels that are constructed into the sloping site.</p> <p>The front yard contains a double garage with a tiled veranda above. The rear yard is primarily occupied by the existing building, with numerous small trees and shrubs.</p> <p>The site experiences a fall of approximately 21m that slopes from the north-western rear corner towards the eastern front boundary.</p> <p>The site is mapped as being located within the 'Littoral Rainforest Proximity Area' under the provisions of the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP).</p> <p>The site is mapped as being located within the 'Biodiversity' and 'Geotechnical Hazard H1' areas under the provisions of the Pittwater Local Environmental Plan 2014 (PLEP 2014).</p> <p>Detailed Description of Adjoining and Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two (2) and three (3) storey detached dwelling houses, many of which containing split levels that are constructed in the steep topography that is prevalent along Hillside Road.</p>

Map:



SITE HISTORY

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

BC0122/03

Building certificate for a split level rendered dwelling with a metal roof together with a detached garage and storeroom with a concrete roof. This application was approved on 01 March 2004 subject to reinstating the unapproved studio located above the detached garage to storeroom.

BLD2022/01228

Compliance investigation for the conversion of a storeroom to a studio.

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bushfire Planning Services, dated 2 December 2021). The report stated that the bushfire attack level of the site is "BAL-29".

The application was referred to the NSW Rural Fire Service for further assessment under Council's discretion. The NSW RFS requested additional information on 1 February 2022 as the submitted Bush Fire Report did not adequately demonstrate the management of hazards on the lot to the west of subject site. Additional information was provided on 10 February 2022, which addressed the abovementioned issue. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/04/2022 to 27/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Mr Luigi Eero Prezioso	PO Box 410 AVALON BEACH NSW 2107
Mr John William Nolan	42 Hillside Road NEWPORT NSW 2106
Mrs Susan Alison Linda Lawrence	50 Hillside Road NEWPORT NSW 2106
Mr Julian Mark Levy	63 Hillside Road NEWPORT NSW 2106
Doyle Consulting Group	3A Kendall Road CASTLE COVE NSW 2069
Mr Nicholas Walter Holcombe	67 Hillside Road NEWPORT NSW 2106
Mrs Sara Ann Levy	63 Hillside Road NEWPORT NSW 2106
Mrs Diane Louise Nolan	42 Hillside Road NEWPORT NSW 2106

The following issues were raised in the submissions:

- Secondary dwelling,
- Built form non-compliances,
- Landscaped area,
- Maximum building height,
- Inclinator,
- Swimming pool,
- Schedule of finishes,
- Excavation,
- Overshadowing,

- **Traffic impacts,**
- **Characterisation of development.**

The above issues are addressed as follows:

- **Secondary dwelling**

The submissions raised concerns that the proposed secondary dwelling located above the existing garage will result in adverse streetscape and neighbouring impacts.

Comment:

This matter was resolved with the submission of amended plans, which involved the removal of the secondary dwelling.

- **Built form non-compliances**

The submissions raised concerns that the proposal results in numerous built form non-compliances.

Comment:

This matter is discussed in detail under the following sections of this report; D10.7 Front building line, D10.8 Side and rear building line, and D10.11 Building envelope.

In summary, the proposal incorporates sufficient design solutions to minimise the non-compliances on a constrained site, and as a result the bulk and scale of the development does not give rise to any unreasonable impacts upon the adjoining properties.

This matter does not warrant the refusal of this application.

- **Landscaped area**

The submissions raised concerns that the proposal involves a reduction of landscaped area on a site that is currently devoid of significant environmental features.

Comment:

The amended plans included the removal of the proposed swimming pool and associated paved areas, which increased the site's landscaped provision towards existing levels. It is acknowledged that the proposal still results in a minor reduction (0.63% or 3.01sqm) of landscaped area, as such the merits of this non-compliance have been discussed in detail under part D10.13 Landscaped Area - Environmentally Sensitive Land. In summary, the proposal does not involve the removal of any significant vegetation and will enhance the site's natural features with a high quality landscape design.

This matter does not warrant the refusal of this application.

- **Maximum building height**

The submissions raised concerns that the proposed alterations to the upper roof and first floor privacy screen project above the 8.5m height limit.

Comment:

This matter has been discussed in detail under Part 4.3 Height of Buildings of this report. In

summary, variation is afforded to the 8.5m development standard, as the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%) and the additions remain below 10.0m. Furthermore, the areas of non-compliance are relatively minor and remain consistent with the objectives of Part 4.3 Height of Buildings of PLEP2014.

This matter does not warrant the refusal of this application.

- **Swimming pool**

The submissions raised concerns that the proposed pool will result in adverse amenity impacts.

Comment:

This matter was resolved with the submission of amended plans, which involved the removal of the swimming pool.

- **Schedule of finishes**

The submissions raised concerns that the proposed schedule of finishes and materials is incompatible within the locality and will give rise to unreasonable visual impacts, when viewed from the surrounding public and private spaces.

Comment:

Details of the chosen colours have not been adequately provided. Accordingly, a suitable condition has been included with this consent to ensure the chosen colours are consistent with the dark and earthy tones required by Pittwater 21 DCP.

- **Excavation**

The submissions raised concerns that the amended proposal involves additional excavation and the potential impacts this will have on adjoining sites.

Comment:

An addendum to the Geotechnical report was provided by AscentGeo Consulting Geotechnical Engineers (dated 08 June 2022), which indicated that the revised design does not require any modifications to the recommendations contained within the original report. In addition, the Geotechnical Engineer has certified that an acceptable risk is achievable with the amended design.

This matter does not warrant the refusal of this application.

- **Overshadowing**

The submissions raised concerns that the amended proposal will unreasonably overshadowing No. 63 Hillside Road.

Comment:

The applicant has submitted shadow diagrams and detailed analysis of the overshadowing impact of the development and Council are satisfied that the adjoining site's will receive adequate solar access to living room windows and private open space in accordance with the Pittwater 21 DCP.

This matter does not warrant the refusal of this application.

- **Traffic impacts**

The submissions raised concerns that the construction of the proposal will result in adverse traffic impacts for the residents of Hillside Road.

Comment:

Given the scale of works proposed under this application it is not expected to result in any unreasonable construction related traffic impacts. In addition, the submitted plans have indicated a suitable area on the subject site for the storage of construction materials. Furthermore, the application was referred to Development Engineering who raised no concern with the proposal, subject to conditions ensuring that public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

This matter does not warrant the refusal of this application.

- **Inclinators**

The submissions raised concerns that the proposed inclinator will result in unreasonable visual privacy and acoustical impacts to No. 67 Hillside Road, given the proposal's proximity to adjoining living areas.

Comment:

This matter has been discussed in further detail under part C1.19 Incline Passenger Lifts and Stairways of this report. In summary, the amended inclinator design included alterations to the track location, such that it gradually deviates away from the northern boundary as it passes No. 67 Hillside Road's side balcony and ground floor living areas. In addition, imposed conditions will require a 1.7m privacy screen to be affixed to the northern elevation of the inclinator carriage, while ensuring that the incline lift is operated appropriately so as not to cause 'offensive noise'. It is considered, that the proposal as conditioned will not give rise to any unreasonable visual privacy and acoustical impacts to No. 67 Hillside Road.

- **Characterisation of development**

Concern is raised with the development's characterisation of alterations and additions to an existing dwelling.

Comment:

The consideration of the proposal against the planning principle outlined within the Land and Environment Court Case of *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187* shows that the proposal retains key characteristics of the existing dwelling and on-site natural features. As such, it is concluded that the proposal has been correctly exhibited as alterations and additions to a dwelling house.

This matter does not warrant the refusal of this application.

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 objections to approval of the development subject to

Internal Referral Body	Comments
	<p>inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>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.</p> <p>PLANNER COMMENT</p> <p>Amended plans were submitted to Council after the completion of this referral and involved removing the secondary dwelling. As such, the conditions recommended within this referral do not form part of the conditions of consent as they are no longer relevant.</p>
Landscape Officer	<p>The development application is for alterations and additions to an existing dwelling, new incline lift, and associated works, as described in the reports and plans.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan C4 Environmental Living Zone, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.5 Visual Privacy • C1.11 Secondary Dwellings and Rural Workers Dwellings • C1.19 Incline Passenger Lifts and Stairways • D10 Newport Locality <p>No Arboricultural information has been provided however it is noted that no trees are to be removed within the property boundary. One tree, shown in the architectural plans and supported by satellite imagery, has previously been removed.</p> <p>It is noted the landscape open space area has a requirement of 60% for C4 Environmental Living however the existing landscape open space is 39%. The proposal will result in 40% landscape open space and this matter shall be assessed to the planners merit discretion.</p> <p>A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral. The proposed incline lift may directly impact the existing vegetation, which is identified to remain, along the northern boundary. Upon further investigation of available satellite imagery, extensive clearing of this area has already occurred. Should the Development Application be approved, vegetation will be required to be re-established along the northern property boundary to all existing disturbed garden beds, including screen planting, subject to imposed conditions. All other existing vegetation is to be retained and protected subject to imposed conditions. Any on slab landscaping must provide adequate soil depth to establish and maintain plant growth, subject to the imposed conditions.</p> <p>One (1) small native tree, with fire retardant properties, shall be</p>

Internal Referral Body	Comments
	<p>installed to help reduce the impact of the built form and satisfy the Pittwater DCP. The tree shall be installed between the dwelling and garage, subject to imposed conditions.</p> <p>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.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for alterations and additions to an existing dwelling, including, inclinators, granny flat, swimming pool, deck, pergola, and internal refurbishments. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018</p> <ul style="list-style-type: none"> • Clause 11: Development on certain land within coastal wetlands and littoral rainforests area <p>Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> • 7.6 Biodiversity Protection <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> • B4.17 Littoral Rainforest - Endangered Ecological Community <p>Aerial imagery shows the site as being wholly absent of prescribed trees and vegetation, despite the depicted removal of one tree from within the centre of the site within Architectural Plans (Rapid Plans 2021). It is noted that the site benefits from the 10/50 clearing eligibility which would encompass the entire site, therefore no objection is raised to the proposed establishment of an APZ over the entire site. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 13, 14 & 15); and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p>

Internal Referral Body	Comments
	The application is supported without conditions
NECC (Development Engineering)	Applicant seek approval for alteration and addition. Geotechnical Engineer has certifies that an acceptable risk is achievable. No Development engineering objection subject to conditions.
Parks, reserves, beaches, foreshore	<p>The development application is for alterations and additions to a dwelling house including a secondary dwelling, new swimming pool and an incline lift.</p> <p>The property is located downslope of Kanimbla Reserve. No encroachment beyond the property boundaries is permitted.</p> <p>Parks Referral raise no concerns subject to the imposed conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The application was referred to the NSW Rural Fire Service for further assessment under Council's discretion. The NSW RFS requested additional information on 1 February 2022 as the submitted Bush Fire Report did not adequately demonstrate the management of hazards on the lot to the west of subject site. Additional information was provided on 10 February 2022, which addressed the abovementioned issue. The conditions from the NSW RFS have been included as part of the recommended conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A condition has been included in the recommendation of this report requiring an amended BASIX Certificate to be provided prior to the issue of the Construction Certificate.

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Coastal Management) 2018

The site is mapped as being located within the 'Littoral Rainforest Proximity Area' under the provisions of the CM SEPP. Accordingly, the proposal is assessed against Clauses 11 and 15 of the CM SEPP as follows:

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

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

Comment:

The application was referred to Council's Natural Environment team for comment and consideration of the above potential impact. The proposal will not result in impact to the protected native vegetation and it is considered that the proposed development will not significantly impact on that listed above.

Conditions have been included within this consent as further measures to ensure the above is minimally impacted.

The application was also referred to Council's Development Engineer who has included conditions within this consent that will ensure stormwater from the site is appropriately disposed of.

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:

Following a full assessment, Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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:	*10.0m	9.9m	N/A	Yes

*As per Clause 2(D) 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 the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%). The building footprint is situated on a slope of 44%.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Detailed Assessment

4.3 Height of buildings

(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

Comment

The projections above the 8.5m height limit are localised to a portion of the upper roof alterations and first floor privacy screens, as depicted in the below diagram. In this regard, it is considered that the variations to the height standard are minor.

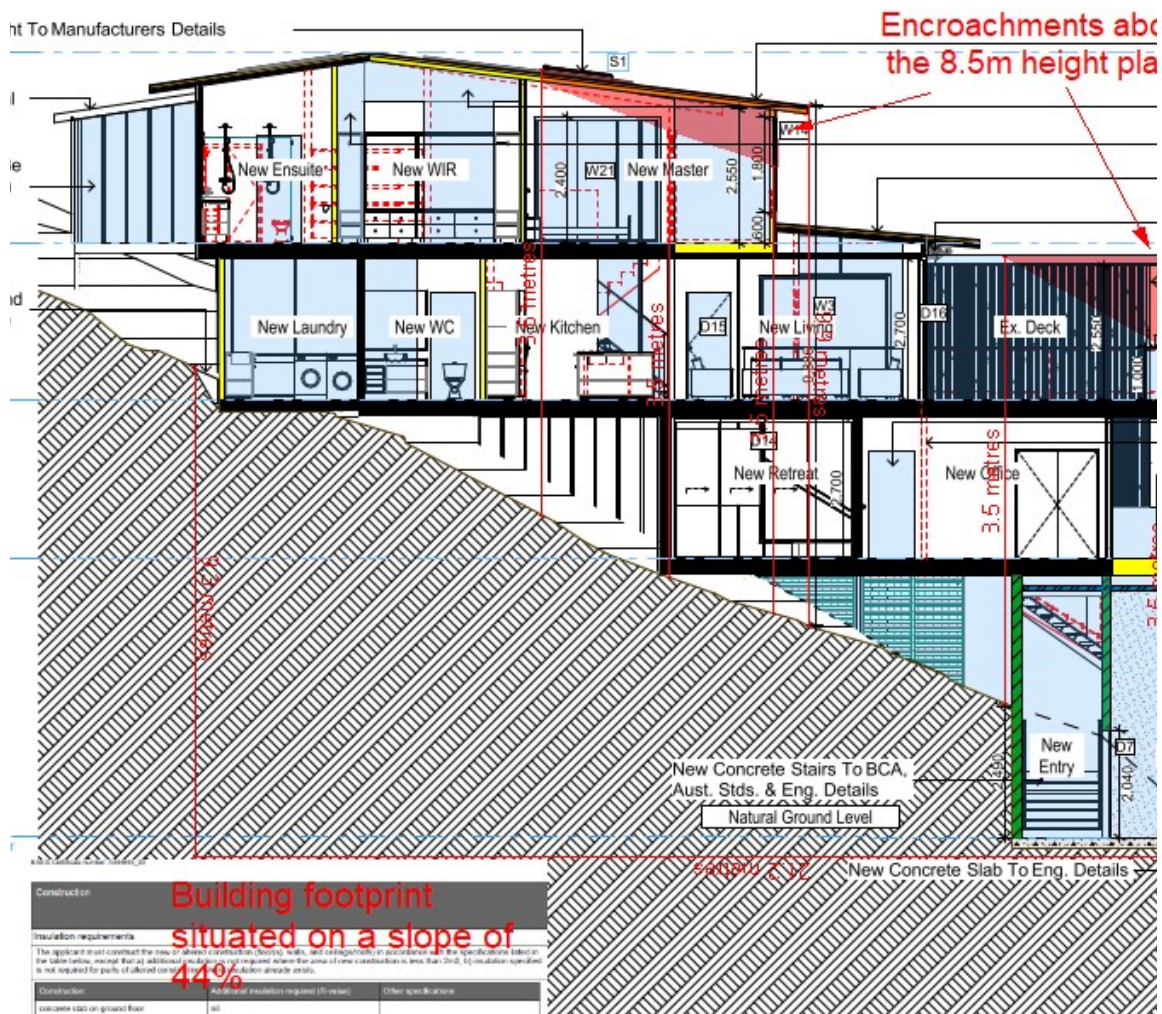


Figure 1. Height plane diagram.

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

Comment

An assessment against the objectives of this clause are detailed below;

(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 additions are appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and changes in materials and roof formation to break up built form. In addition, the proposal has been well designed through sensitively responding to the slope of the land by making appropriate level changes where required and limiting the portions of the development that exceed two-storey. Further, the proposal will provide adequate areas for the retention and establishment of sufficient deep soil planting, particularly around the built form. Overall, the building, by virtue of its height and scale, remains consistent with the desired character of the locality

The development satisfies this objective.

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

Comment

The development is located on the high (western) side of Hillside Road, which is characterised by a fluctuating slope from Kanimbla Reserve. As such, this creates a range of varying built forms along Hillside Road, with regards to height and scale.

The projections above the 8.5m height limit are located at the eastern edge of the upper roof and first floor privacy screens (demonstrated in figure 1 above) due to the topographical nature of the site. These encroachments are considered to be relatively minor and does not result in unreasonable neighbouring impacts. Overall, the proposed height is considered to be compatible and commensurate with the existing built form.

The development satisfies this objective.

(c) to minimise any overshadowing of neighbouring properties,

Comment

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms and private open space of the adjoining properties. In this regard, the proposal satisfies requirements of Clause C1.4 Solar Access of the Pittwater 21 DCP.

The development satisfies this objective.

(d) to allow for the reasonable sharing of views,

Comment

The proposal will allow for a reasonable sharing of views.

The development satisfies this objective.

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

Comments

The proposal has been well designed through sensitively responding to the slope of the land by making appropriate level changes. In addition, the proposal will be constructed relatively within the existing

dwelling's footprint, thereby minimising additional land disturbance.

The development satisfies this objective.

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

Comment

Notwithstanding the sloping nature of the site, the development's design creates additional articulation, and visual interest and the additions are sufficiently set back from the boundaries such that the visual impact of the building will be appropriately managed.

Existing landscaping is retained and additional landscaping will soften and moderate the built form. As a result, the proposal will be sufficiently integrated into the existing landscaped setting.

The development satisfies this objective.

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

Comment

The building footprint is situated on a slope of 44%.

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

Comment

As above, the proposal minimises additional site disturbance and the new dwelling appropriately responds to the slope of the land.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

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

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

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

Comment:

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

disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

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

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

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

Comment:

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

7.7 Geotechnical hazards

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

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

Comment:

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

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

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

site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	0.2m - 0.7m (Pergola)	89% - 97%	No
Rear building line	6.5m	3.6m (First floor laundry) 0.8m (Second floor sauna)	44.6% 87.7%	No No
Side building line	2.5m - North	1.3m (Dwelling)	48%	No
	1.0m - South	1.0m (Dwelling)	N/A	Yes
Building envelope	3.5m - North	Outside envelope (Four encroachments)	Up to 97%	No
	3.5m - South	Outside envelope (Three encroachments)	157.1%	No
Landscaped area	60%	40% (191.2sqm)	33.3%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.19 Incline Passenger Lifts and Stairways

Description of non-compliance

The control requires inclinator lifts to be setback at least 2m from side boundaries. The proposed inclinator is located within the 2m side setback area (northern boundary). Therefore, the proposed inclinator fails to meet the control.

Merit Assessment

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

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.*

Comment:

Due to the constraints of the site, including the footprint of the existing dwelling, compliance with the 2m setback requirement is not achievable.

Therefore, to determine consistency with this outcome the development is considered against the remaining provisions of this control as follows:

- be designed and located so they do not involve excessive excavation, or the removal of

natural rock or trees,

Comment:

The excavation works for footings are not significant. The inclinator does not result in the removal of natural rocks and the development's impact upon vegetation is considered to be acceptable by Council's Landscape Officer.

ii) be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures,

Comment:

The height of the inclinator structure is heavily constrained by the sloping nature of the site and the existing floor levels to which access is proposed to. Notwithstanding, the proposed inclinator track will remain low-lying, as it travels past No. 67 Hillside Road's ground floor living areas and does not exceed the 1.0m height requirement until past the lower ground floor landing (when travelling up-slope). In this regard, the proposal will not give rise to any adverse visual impacts, commensurate to the low density residential context.

iii) be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings,

Comment:

A suitable condition has been included with this consent that requires noise to remain at an acceptable level. Moreover, a privacy screen has been conditioned for the northern elevation of the incline lift to minimise any unreasonable privacy impacts prompted from overlooking.

iv) be painted to blend in with surrounding vegetation and screened by landscaping,

Comment:

The proposal will be finished in dark and earthy tones, which will soften the visual impacts of the incline lift.

vi) be located wholly on private land, and

Comment:

The proposal is located entirely on private land.

vii) have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.

Comment:

A privacy screen has been conditioned on the northern elevation of the incline lift.

Concluding Remarks

Whilst the proposal is numerically non-compliant with the 2m setback requirement, this assessment has concluded that the development is consistent with the remaining controls and outcome of this control. The proposal will provide safe and convenient access across the steep site, with conditions being included to minimise the amenity and acoustic impacts. Therefore, the application is supported on merit, subject to conditions.

D10.4 Building colours and materials

Details of the chosen colours have not been provided. Accordingly, a suitable condition has been included with this consent to ensure the chosen colours are consistent with the dark and earthy tones required by this control.

D10.7 Front building line (excluding Newport Commercial Centre)

Description of non-compliance

The proposed pergola has a varied front setback between 0.2m - 0.7m. This control requires structures to be set back at a minimum of 6.5m.

As discussed in further detail under the 'Site History' section of this report, no approval can be found for the existing studio to which this pergola relates to. In fact, a previous approval (BC0122/03) required this unapproved studio to be reinstated to a minimal storeroom.

The regularisation of this studio space and extension of built form towards the front boundary is not supported under this application. In this regard, imposed conditions will require the pergola structure be deleted from the approved plans.

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:

The proposal as conditioned will maintain the desired future character of the locality.

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

Comment:

The proposal will not result in the loss of views.

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

Comment:

The site does not adjoin a main road and as such, this objective is not of relevance.

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

Comment:

The proposal as conditioned maintains adequate vegetation, which visually commensurate to the built form.

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

Comment:

The existing on site parking will not be altered by this proposal.

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

Comment:

The proposal as conditioned is in keeping within the height and scale of the existing streetscape.

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

Comment:

The proposal as conditioned will not adversely impact the street frontage.

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

Comment:

The proposal as conditioned responds to established development within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported (subject to condition), in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)Description of non-compliance**Side building line**

The control requires structures be setback a minimum of 1m from one side boundary and a minimum of 2.5m from the other side boundary.

The proposed additions are sited 1.3m at its closest point to the northern side boundary, therefore representing a 48% variation of the 2.5m.

Rear building line

The control requires a minimum rear setback of 6.5m.

The proposal involves two encroachments within the rear setback, including the first floor laundry on a 3.6m setback and the second floor sauna that is sited 0.8m from the rear boundary.

It must be noted that the above setback encroachments are consequence of following the existing building alignment. In this regard, variation to the numerical requirement is permitted when the outcomes of this clause are achieved.

Merit consideration

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 is well articulated such that the dominance of the built form is reduced. The

development remains within the maximum allowable building height for constrained sites, and it is also noted that the proposal generally complies with P21DCP landscaped area provisions, so that native vegetation is retained and protected. In turn, the built form will remain sufficiently screened as presented to the public domain and surrounding properties. The proposal is therefore considered to achieve the desired future character of the locality.

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

Comment:

The proposed additions are appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and changes in materials and roof formation to break up built form. In addition, the proposed built form is sensitively staggered down-slope to limit any portion of the development exceeding two storey. Furthermore, the proposal would retain and introduce suitable landscaping to minimise the visual impact of the development from adjoining properties and the public realm. Overall, the proportions of the encroaching elements are not considered to be unreasonably scaled or bulky.

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

Comment:

The proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment:

The proposal is considered to achieve a reasonable level of view sharing as a result of the complimentary siting of the built form, in conjunction with its site-specific design.

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

Comment:

The proposal is considered to provide reasonable amenity for the dwelling occupants and those of adjoining and surrounding properties as a result of adequate building separation, site orientation and aspect and landscape treatment. In addition, the proposal involves affixing new privacy screens to existing balconies, which will assist in enhancing the level of privacy between buildings.

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

Comment:

The proposal has included a detailed landscape plan which seeks to enhance the site's natural features, such that the landscape outcomes of Pittwater 21 DCP are achieved. Furthermore, Council's Landscape Officer has reviewed the proposal and raised no objection subject to conditions requiring protection of existing vegetation and adequate screen planting along the northern boundary. As a result of the site's topography in conjunction with the provision of landscaping, the built form will remain largely consistent as existing when viewed from the streetscape.

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

Comment:

The development has been sited appropriately in accordance with the site constraints and the surrounding residential context, ensuring reasonable amenity can be maintained for the dwelling occupants and those of adjoining and surrounding properties.

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

Comment:

As above, the proposed development will provide high quality landscaping outcomes. In turn, the built form will remain significantly screened from the existing provision of vegetation. In addition, no significant vegetation is required to be removed in order to facilitate the proposed development.

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

Comment:

Not applicable, given the subject site does not adjoin and commercially zoned property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.11 Building envelope (excluding Newport Commercial Centre)

Description of non-compliance

The control requires a building envelope to be projected 45 degrees from a height of 3.5m above ground level at the side boundaries to the maximum building height.

The proposal involves encroachments to the northern and southern side building envelopes as displayed in red within figure 1 and 2 below.

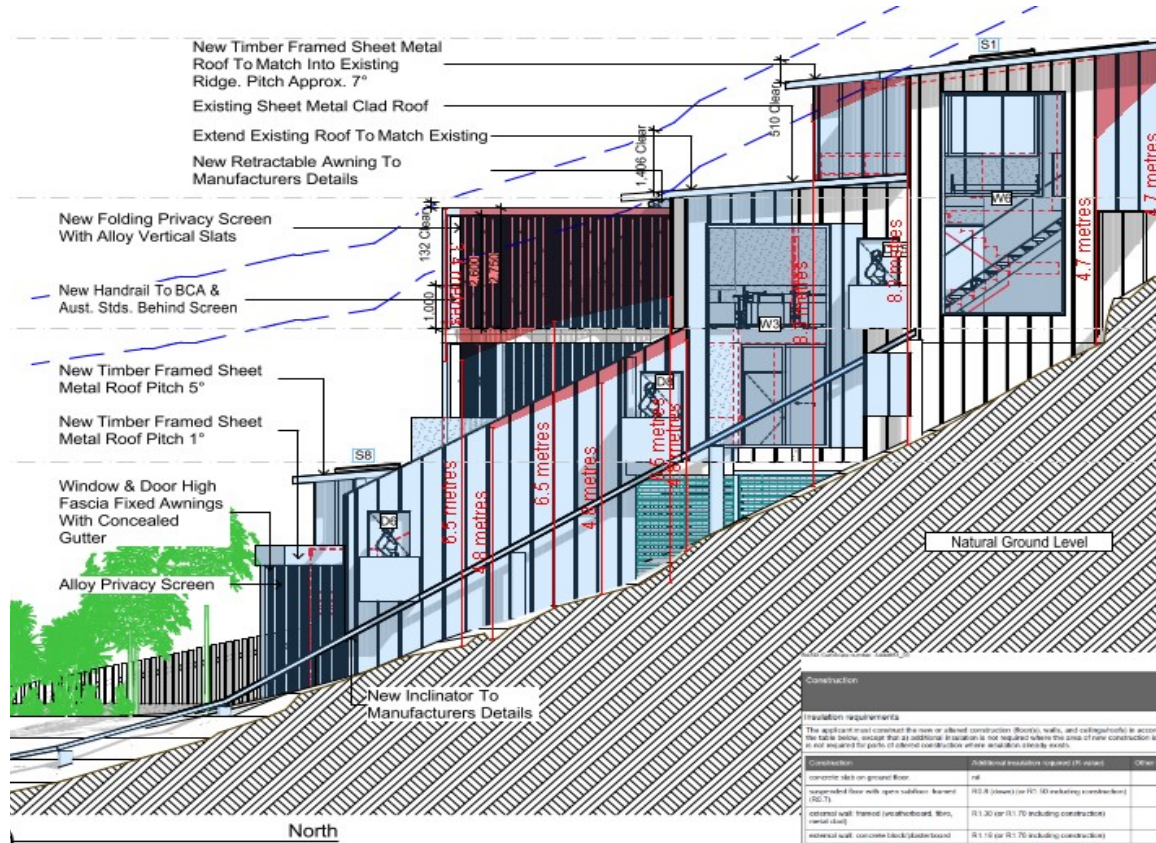
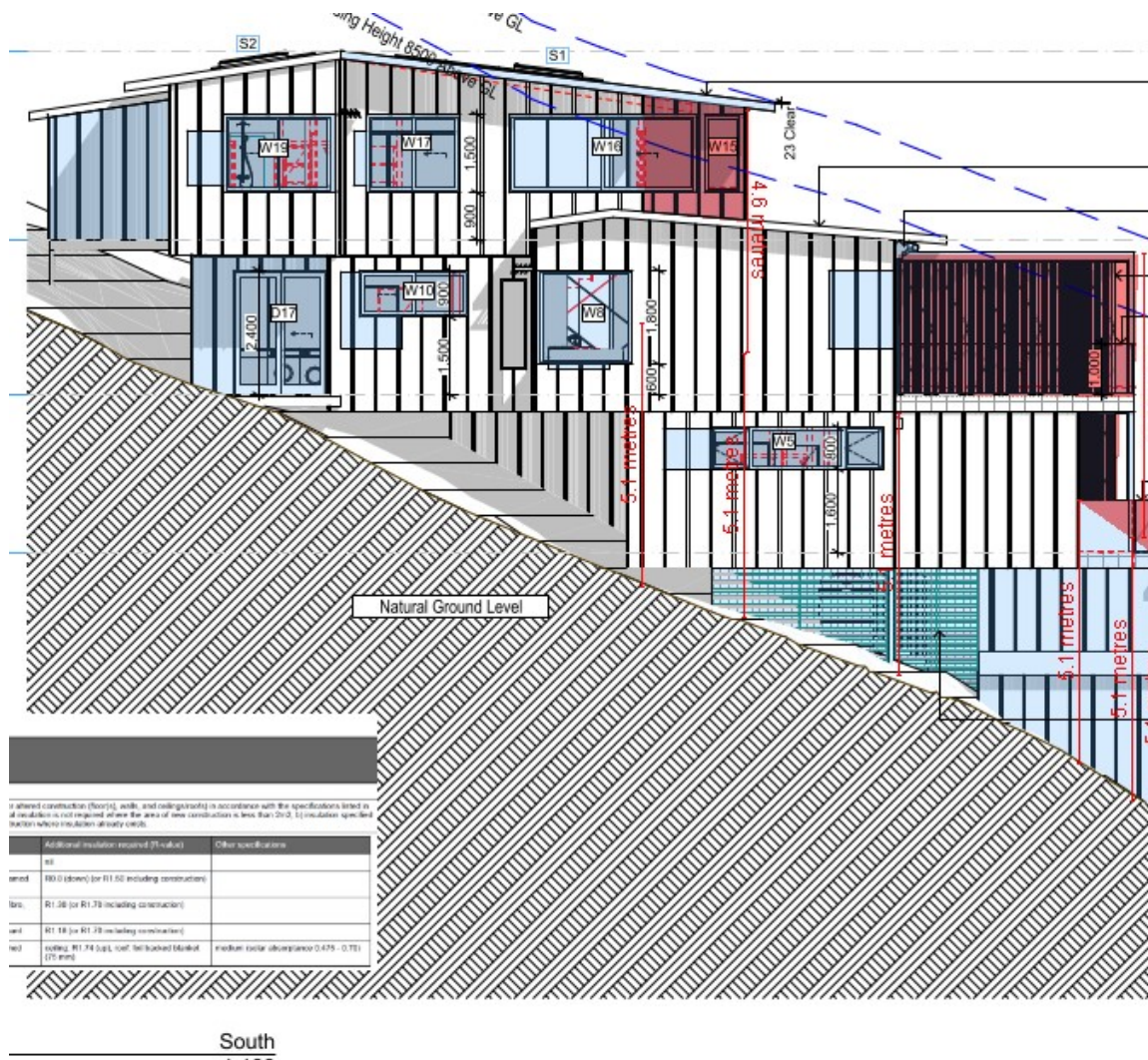


Figure 1. northern side boundary envelope encroachment.



South
Figure 2. southern side boundary envelope encroachment.

It is noted that the control permits a variation to the prescribed envelope where the building footprint is situated on a slope of 16.7 degrees or more, which is relevant to the subject site.

Merit consideration

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

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

Comment:

As discussed throughout this report the proposal remains generally consistent with the desired future character of the locality.

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

Comment:

The subject site does not contain any significant canopy trees that define the natural environment. Notwithstanding, the proposed additions provide a compliant building height for constrained sites, which is compatible with the locality's established building scale and density. In addition, the proposal involves a comprehensive landscaping design, which will enhance the site's natural features. Overall, the works as a whole improve the streetscape.

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

Comment:

The encroachments outside of the prescribed envelopes are consequent of following the existing building lines of the house and the sloping nature of the site. However, by following the existing building line of the house, it is found that the development has a lesser visual dominance compared to a design that did comply, which would result in an awkward building step that would draw more attention to the additions than what is proposed. Notwithstanding this, the additions are not of an excessive scale and are designed in a contextually appropriate way to ensure it is compatible to the streetscape.

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

Comment:

The proposed additions are appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and changes in materials and roof formation to break up built form. In addition, the proposed built form is sensitively staggered down-slope to limit any portion of the development exceeding two storey. Furthermore, the proposal would retain and introduce suitable landscaping to minimise the visual impact of the development from adjoining properties and the public realm. Overall, the proportions of the encroaching elements are not considered to be unreasonably scaled or bulky.

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

Comment:

The proposal will not result in the loss of views.

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

Comment:

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. The proposal involves the construction of new privacy screens to existing balconies, which will enhance neighbouring amenity. Additionally, adequate building separation between the proposed development and habitable areas of the adjoining properties has been maintained to protect privacy and amenity of the site and adjoining properties. Overall, the proposed development ensures adequate light, solar access and privacy is obtained between dwellings.

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

Comment:

The development does not require the removal of significant vegetation. The existing and proposed landscape treatments on site are sufficient and ensure the site is not dominated by

the built form. The application has been reviewed by Council's Landscape Officer who have raised no objection to the proposal subject to recommended conditions for tree protection and adherence to the proposed landscape plan. Overall, it is considered that remaining and proposed vegetation will adequately reduce the visual impact of the built form.

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

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance:

The proposal provides 40% (191.58sqm) of the site towards landscaped area.

The control requires a minimum of 60%.

It is noted that with the inclusion of impervious areas permitted under this control, the total landscaped area is 46% (220.5m²).

The existing provision of landscaped area is 40% (194.21sqm).

Merit consideration:

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

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

Comment:

As discussed elsewhere within this report, the proposal reasonably achieves the desired future character of the Newport locality.

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

Comment:

The proposal achieves general compliance with the relevant development controls used to assess the bulk and scale of a development on a constrained site, including; building envelope and maximum building height. Additional planting is proposed within the frontage, which will reduce the visual impact of the development when viewed from the street. In this regard, it is considered that the bulk and scale of the development is modest and appropriately integrated into the landform and landscape.

- *A reasonable level of amenity and solar access is provided and maintained.*

Comment:

The proposal will allow for sufficient provisions of privacy, amenity and solar access to be maintained throughout the subject site and adjoining properties.

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

Comment:

As discussed elsewhere in this report, the proposal's design is adequately sited to maintain ample landscaped areas around the development that will assist in visually reducing the built form.

- *Conservation of natural vegetation and biodiversity.*

Comment:

The proposed development will enhance the site's natural features with a high quality landscape design; therefore, providing adequate opportunities for natural vegetation and biodiversity.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment:

The proposal has been reviewed by Council's Development Engineer having regard to provisions of stormwater management and has raised no objection to the proposal subject to conditions. In turn, Council can be satisfied that stormwater runoff will be appropriately reduced, preventing soil erosion and siltation of natural drainage channels.

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

Comment:

Development within the subject streetscape and surrounding locale consists of low density residential developments of varying styles and scales within altered landscaped settings, such that the character of the area would not be classified as rural or bushland. However, the site is sufficiently landscaped and the proposed development being within the rear yard will remain unseen as viewed from the streetscape.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

Comment:

The site will remain afforded with sufficient soft surface so as to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 \$7,650 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$765,000.

CONCLUSION

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

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

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

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

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

The proposal seeks consent for alterations and additions to an existing dwelling house.

The development includes several non-compliances, including a breach of the side boundary envelope, landscaped area and front, side and rear building line.

The proposal attracted eight submissions to the formal notification.

This assessment has concluded that the non-compliances are reasonable.

Overall, the proposal will be an upgrade to the existing dwelling, while satisfying the objectives of the zone and being consistent with character of the locality.

Accordingly, the application is recommended for approval subject to conditions.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2622 for Alterations and

additions to a dwelling house including a secondary dwelling and swimming pool on land at Lot 46 DP 9224, 65 Hillside Road, NEWPORT, 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
DA1004 - Rev2: Site plan front	27 May 2022	Rapid Plans
DA1005 - Rev2: Site plan rear	27 May 2022	Rapid Plans
DA1011 - Rev2: Demolition garage	27 May 2022	Rapid Plans
DA1012 - Rev2: Demolition studio	27 May 2022	Rapid Plans
DA1013 - Rev2: Demolition ground floor	27 May 2022	Rapid Plans
DA1014 - Rev2: Demolition first floor	27 May 2022	Rapid Plans
DA1015 - Rev2: Demolition second floor	27 May 2022	Rapid Plans
DA2001 - Rev2: Garage	27 May 2022	Rapid Plans
DA2002 - Rev2: Studio	27 May 2022	Rapid Plans
DA2003 - Rev2: Ground floor	27 May 2022	Rapid Plans
DA2004 - Rev2: First floor	27 May 2022	Rapid Plans
DA2005 - Rev2: Second floor	27 May 2022	Rapid Plans
DA2006 - Rev2: Roof	27 May 2022	Rapid Plans
DA3000 - Rev2: Section 1	27 May 2022	Rapid Plans
DA3001 - Rev2: Section 2	27 May 2022	Rapid Plans
DA3002 - Rev2: Section 3	27 May 2022	Rapid Plans
DA3003 - Rev2: Section inclinator 1	27 May 2022	Rapid Plans
DA3004 - Rev2: Section inclinator 2	27 May 2022	Rapid Plans
DA3005 - Rev2: Section stairs	27 May 2022	Rapid Plans
DA4000 - Rev2: Elevation north 1	27 May 2022	Rapid Plans
DA4001 - Rev2: Elevation north 2	27 May 2022	Rapid Plans
DA4002 - Rev2: Elevation south 1	27 May 2022	Rapid Plans
DA4003 - Rev2: Elevation south 2	27 May 2022	Rapid Plans
DA4004 - Rev2: Elevation east/west	27 May 2022	Rapid Plans
DA5001 - Rev2: Material & colour sample board	27 May 2022	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:

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Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment	2 December 2021	Bushfire Planning Services
Geotechnical Assessment	9 December 2021	Ascent Geotechnical Consulting

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA1015 - Rev2: Landscape plan	27 May 2022	Rapid Plans

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22 December 2021	Rapid Plans

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW RFS	Response RFS Referral	27 February 2022

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house*

A dwelling house is defined as:

"means a building containing only one dwelling"

(development is defined by the Pittwater Local Environmental Plan 2014 (as amended) Dictionary)

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

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

4. **No Approval for Studio Use**

No retrospective approval is granted under this Development Consent for the 'studio' located above the garage.

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

5. **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.

6. 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

7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$7,650.00 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 \$765,000.00.

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.

8. 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

9. **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 succulents,
- 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.

10. **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 existing 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.

11. **Geotechnical Report Recommendations have been Incorporated into Designs and**

Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Acent Geotechnical Consultant dated 9 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.

12. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

13. Amendments to the approved plans

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

- The pergola located above the existing front terrace is to be deleted.
- The northern elevation of the inclinator lift must be affixed a 1.7 metre high privacy screen (measured from the finished floor level). The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 30mm), 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: To ensure development minimises unreasonable impacts upon surrounding land.

14. BASIX Certificate

An amended BASIX Certificate to be prepared for the approved plans referenced in Condition No.1.

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.

15. Compliance with Standards

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

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

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

16. **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)

17. **Sydney Water "Tap In"**

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

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

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

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

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

18. **External Colours and Finishes**

The external colours and finishes to the external walls and roof shall have a medium to dark range (BCA classification M and D). Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure building colours and materials compliment and enhance the natural landscapes and 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

19. **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.

20. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

21. **Road Reserve**

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

Reason: Public safety.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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

27. **Required Screen Planting**

Screen planting shall be planted in accordance with the following:

- i) Along the northern boundary starting 2 metres east of the first inclinator stop (D6) and finishing at least 2 metres west of the last inclinator stop (D15). Appropriate species shall be selected to ensure sustained growth and adaptability to the site conditions,
- ii) be a suitable pot size so that plant height is at least 1.5 metres at installation.

The selected planting is to comprise of species capable of attaining a height of 2.6 metres at maturity.

Plants are to be installed at minimum 1 metre intervals and in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Reason: To maintain environmental amenity.

28. **Landscape Completion**

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

- i) All new landscaping and any vegetation re-establishment of disturbed areas, is to incorporate a minimum 80% locally native species as a proportion of the total number of plants and species. Locally native species are to be consistent with the Littoral Rainforest Endangered Ecological Community and the Northern Beaches Native Plant Species Guide - Pittwater Ward,
- ii) mass planting (other than the required screen planting) shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iii) one (1) small native tree, with fire retardant properties, shall be planted between the dwelling and garage to achieve at least 6 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, Council's Tree Guide, or consistent with the Littoral Rainforest Endangered Ecological Community, and in accordance with iv), v) and vi),
- iv) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- v) 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,
- vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

conditions of consent.

Reason: Environmental amenity.

29. **Stormwater Disposal**

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

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

30. **New Vegetation Planting**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Littoral Rainforest Endangered Ecological Community (per <https://www.northernbeaches.nsw.gov.au/node/16568>).

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.

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. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

34. **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.

35. **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.

36. **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.

37. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife in accordance.

38. **Incline Lift Noise**

The incline lift 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. The assessment shall include all mechanical features of the incline lift.

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

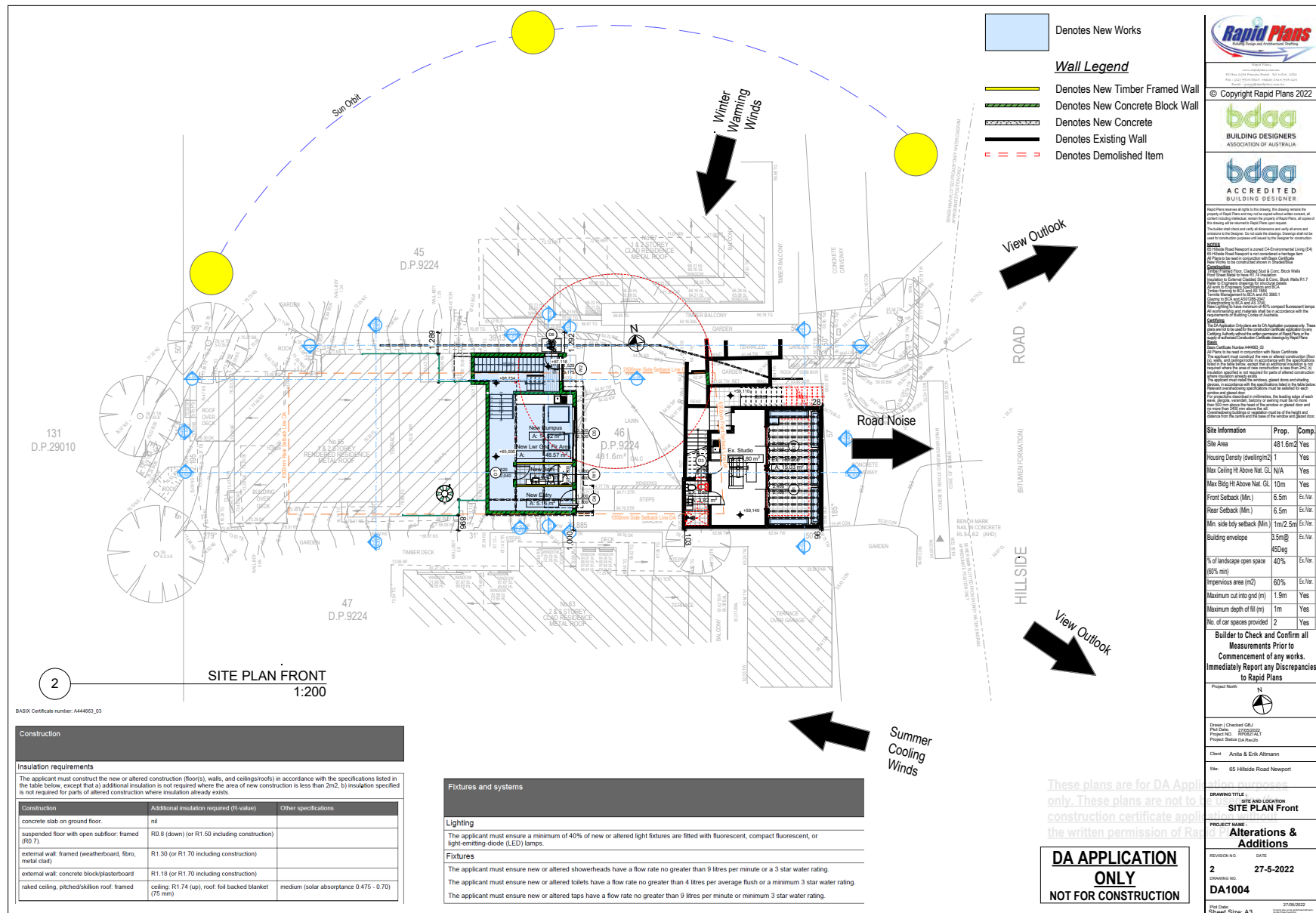
39. **Incline Lift hours of Operation**

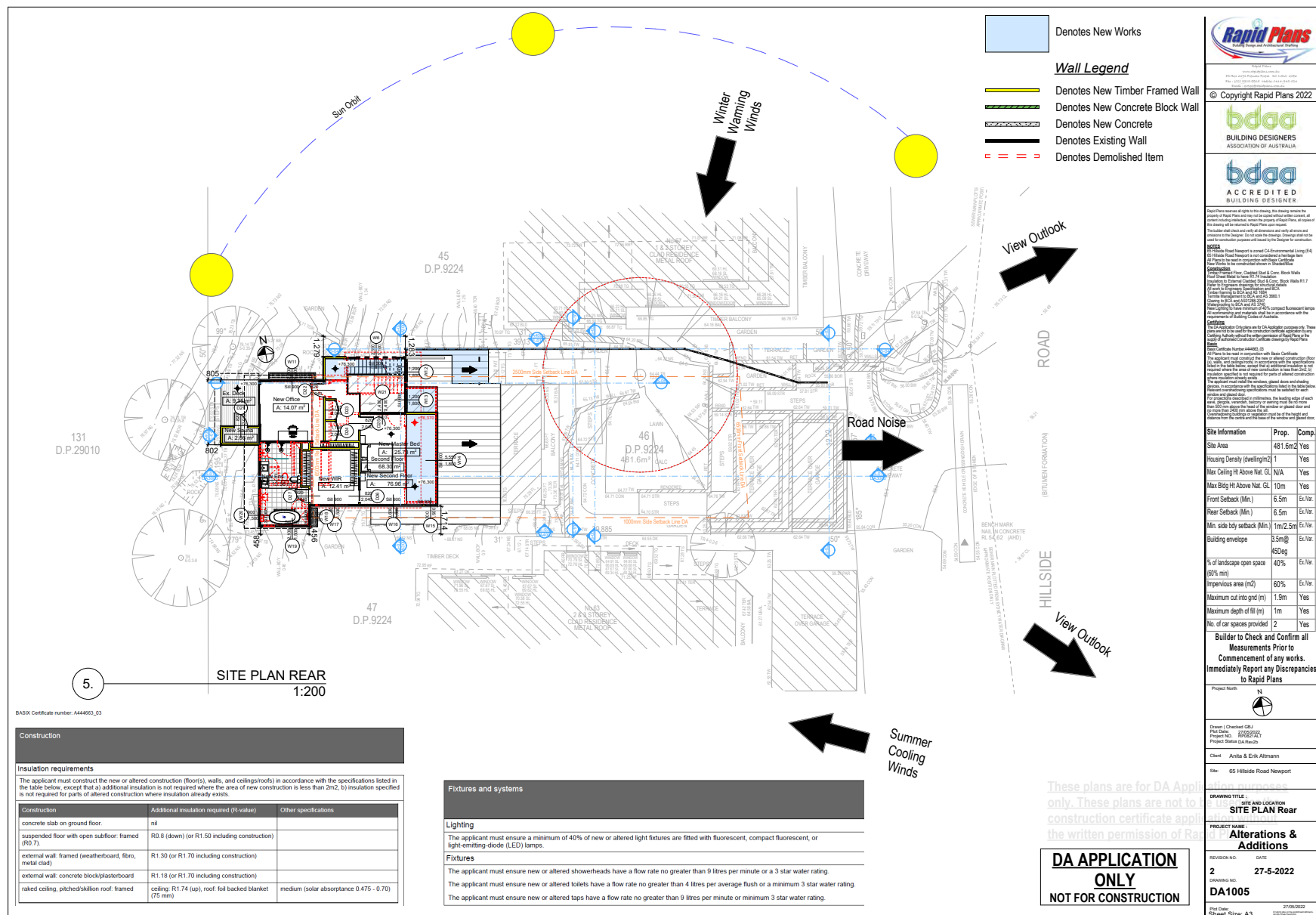
Use of the Incline lift is restricted to between the hours of:

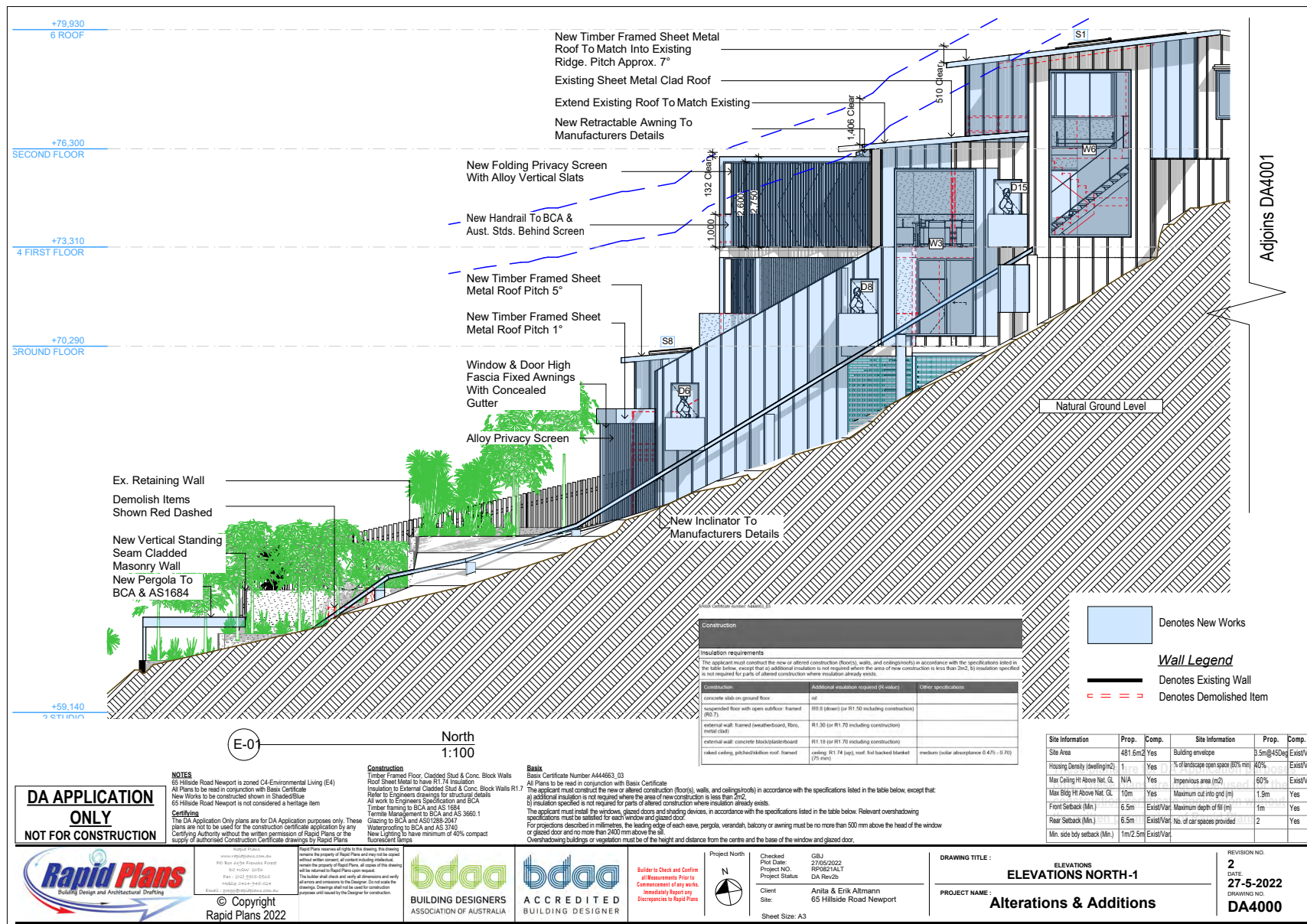
- 7:00am to 10:00pm Monday to Saturday
- 8:00am to 10:00pm Sunday

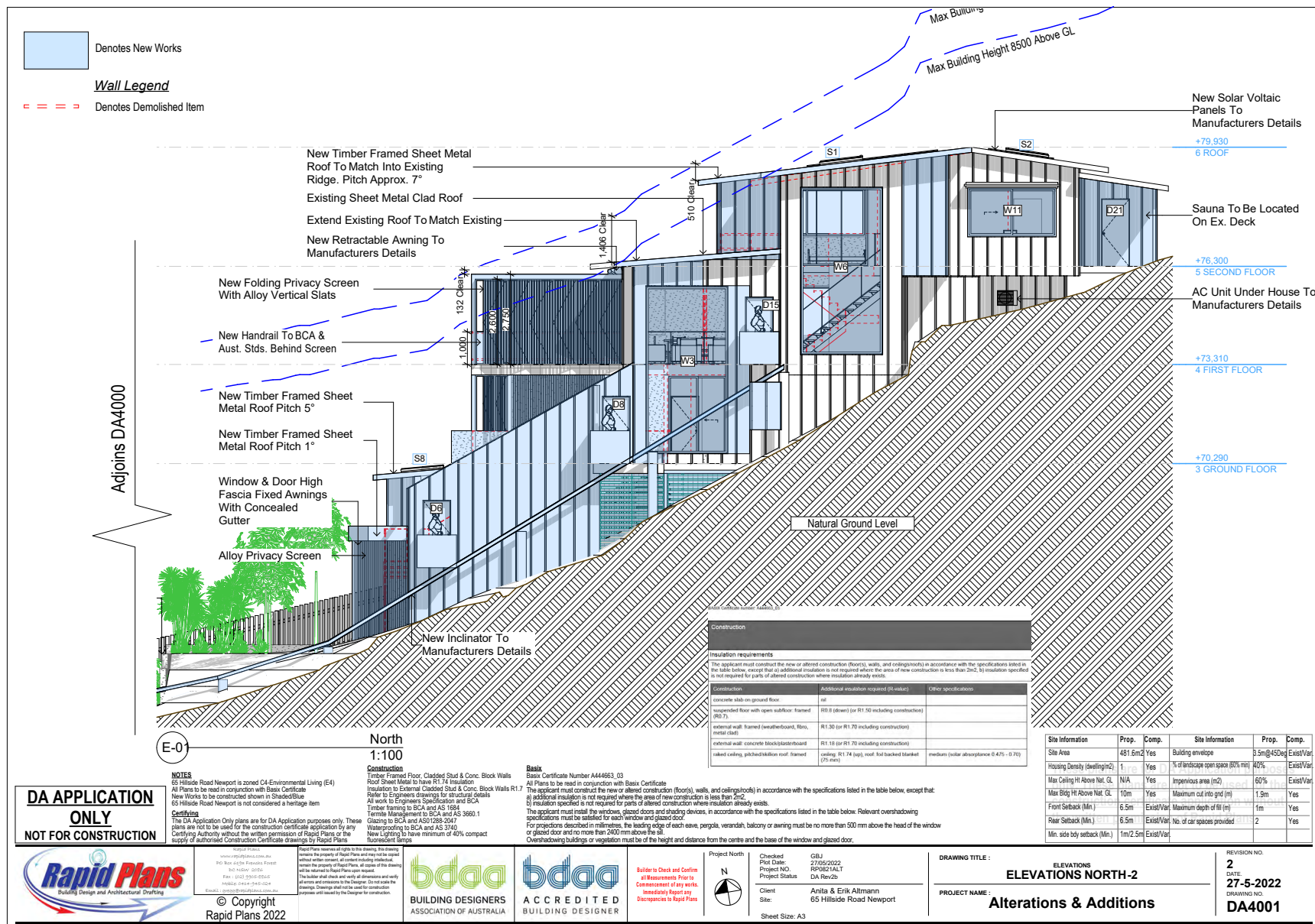
The inclinor must only be used between the hours of 10:00pm and 7:00am in an emergency.

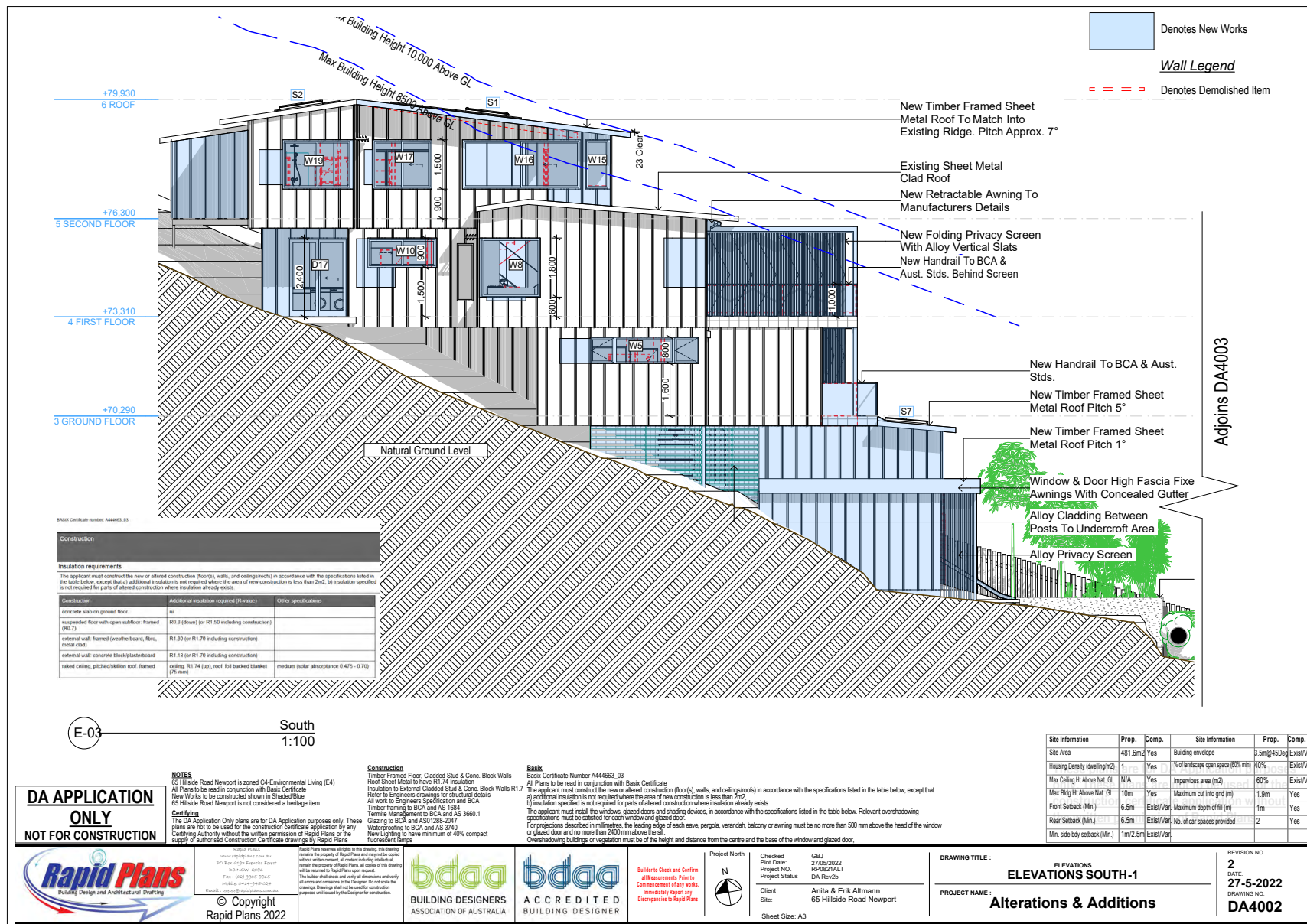
Reason: To protect the amenity of adjacent residences during night hours.

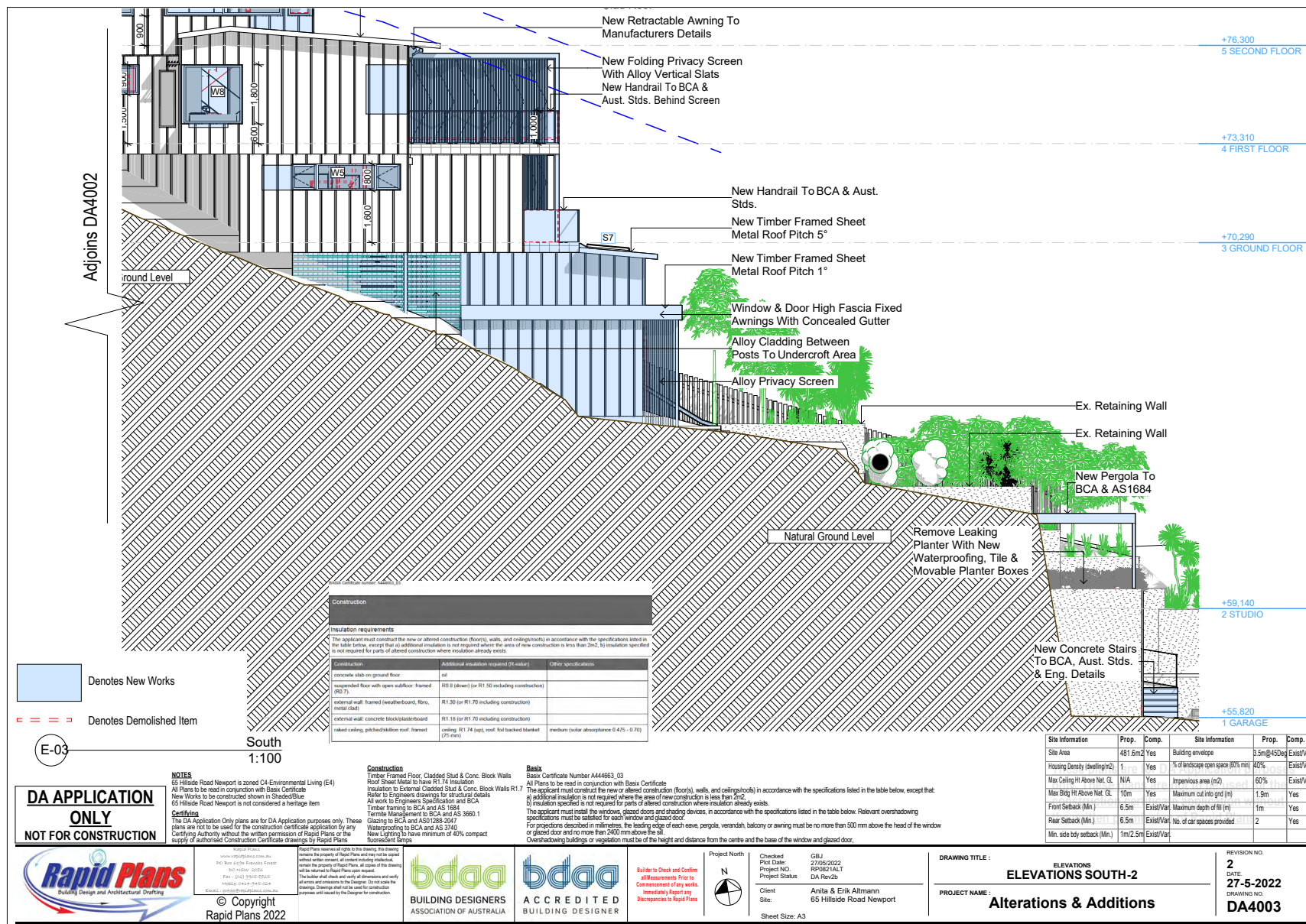
















**Clause 4.6 Variation
To Development Application
For
65 Hillside Road,
Newport
NSW 2106
For
Mr & Mrs Altmann**

RAPID PLANS

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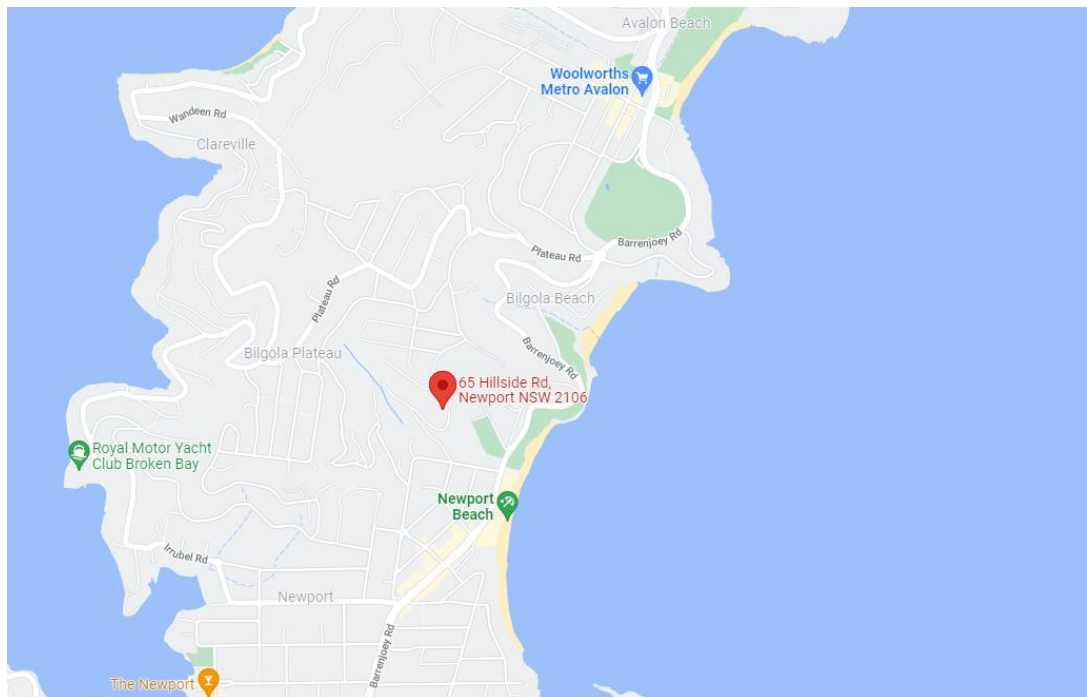
1 INTRODUCTION

This report pertaining to Clause 4.6 Variation accompanies the Development Application for the proposed alterations & additions & a secondary dwelling at 65 Hillside Road in Newport.

1.1 Site

The residence is located on the western side of Hillside Road in the residential neighbourhood of Newport.

LOCATION PLAN



1.2 Local Authority

The local authority for this site is:
Northern Beaches Council (Pittwater)
Civic Centre, 725 Pittwater Road,
Dee Why NSW 2099
DX 9118 Dee Why
Telephone: 9942 2111

1.3 Environmental Planning Instrument that Applies to the Land

Pittwater Local Environment Plan 2014

1.4 Zoning of the land

C4 Environmental Living (E4)

1.5 Objectives of the 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.

Comment:

It is considered that the proposed development meets the objectives of the Zone C4 Environmental Living. This opinion is justified on the basis that this application provides for the owner's housing needs within the low-density area that is consistent with surrounding properties elevated decks & staggered dwelling layouts. The proposal allows front areas to be usable for the owners to assist in day to day living without adversely impacting the low-density environmental aspects as no substantial vegetation is proposed for removal. The works proposed will significantly improve the design and aesthetic quality of the site with the built form outcome complimenting newer style properties along Hillside Road.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

2 Clause 4.6 Variation to Development Application

4.6 Exceptions to development standards

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

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

2.1 Development Standard Being Varied

After reviewing Pittwater Council LEP 2014 we advised that a Clause 4.6 Exception to Development Standard is required due to:

- This development is classified as a non-complying development due to the upper roof addition being over the 8.5m building height
- The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

2.2 Clause of the Development Standard listed in the Environmental Planning Instrument

- Pittwater LEP 2014 Part 4 4.3 Height of Buildings

2.3 Objectives of the Development Standard

- to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality
- to ensure that buildings are compatible with the height and scale of surrounding and nearby development
- to minimise any overshadowing of neighbouring properties
- to allow for the reasonable sharing of views
- to encourage buildings that are designed to respond sensitively to the natural topography
- to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items

Comment:

It is considered that the proposed development meets the objectives of the height of buildings development standard. This opinion is justified on the basis that this application is compatible with surrounding properties that have substantial height & scale namely both adjacent properties along Hillside Road on the western side with the properties built along the escarpment all enjoying expansive elevated decks with protruding roof lines. The visual impacts are minimised as the existing dwelling is located farther up the slope than the adjacent dwellings that provides a reduced streetscape in relation to viewing the main dwelling with the proposal maintaining the scenic quality of the Newport area. With the existing location of the subject & adjacent dwellings enjoying an elevated position there is no adverse impact of view lines with privacy improved as well as the shadow cast from the proposed works having little impact on surrounding properties.

2.4 Numeric value of the development standard in the environmental planning instrument

PLEP2014 Height = 8.5m

2.5 Proposed numeric value of the development standard in your development application

Proposed Upper Floor Roof Height South= 10.104m

Proposed Upper Floor Roof Height North = 8.819m

Proposed Height Privacy Screen Ground Floor = 9.868m (measured at the outer corner)

2.6 Percentage variation between the proposal and the environmental planning instrument

Proposed Upper Floor Roof Height South = 0.189%

Proposed Upper Floor Roof Height North = 0.037%

Proposed Height Privacy Screen Ground Floor = 0.161% (measured at the outer corner)

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

The proposal is to enclose the existing deck area to the upper floor with the existing deck over the height limit to begin with. The minor variation in this case is very moderate in comparison as the proposal is for a wall to enclose the deck & not increase size of the footprint of the deck area. The privacy screen slides horizontally & would be unreasonable to force the height to 8.5m above GL as it would inhibit privacy between the dwellings that is currently an issue from the existing deck area. This application is actually in keeping with a low-density residential environment desired by Council in this area as well as the objectives of the zone. The development has no negative consequence of significance as a result of this minor noncompliance, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height standard given that the resulting development will be absent of any negative environmental or planning outcomes. The proposal would be indiscernible to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the streetscape and general locality along Hillside Road.

- *Streetscape* – The visual quality of the streetscape is to be enhanced with the height affected alterations to the front of the dwelling providing minimal increase in bulk as the addition is to enclose an existing deck area that can barely be seen from the street as shown by the red arrow below. The proposed addition will complement the existing built form along Hillside Road with the proposed additions providing a generally consistent pattern of development with regard to adjoining front building setbacks & height, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape & is not out of character for the neighbourhood. These characteristics for the building height conform to the C4 Environmental Living residential requirements for the Newport area & modifying the structure would, in our opinion, contravene the C4 zoning objectives by adversely affecting the streetscape along Hillside Road & the desired future character of the area.

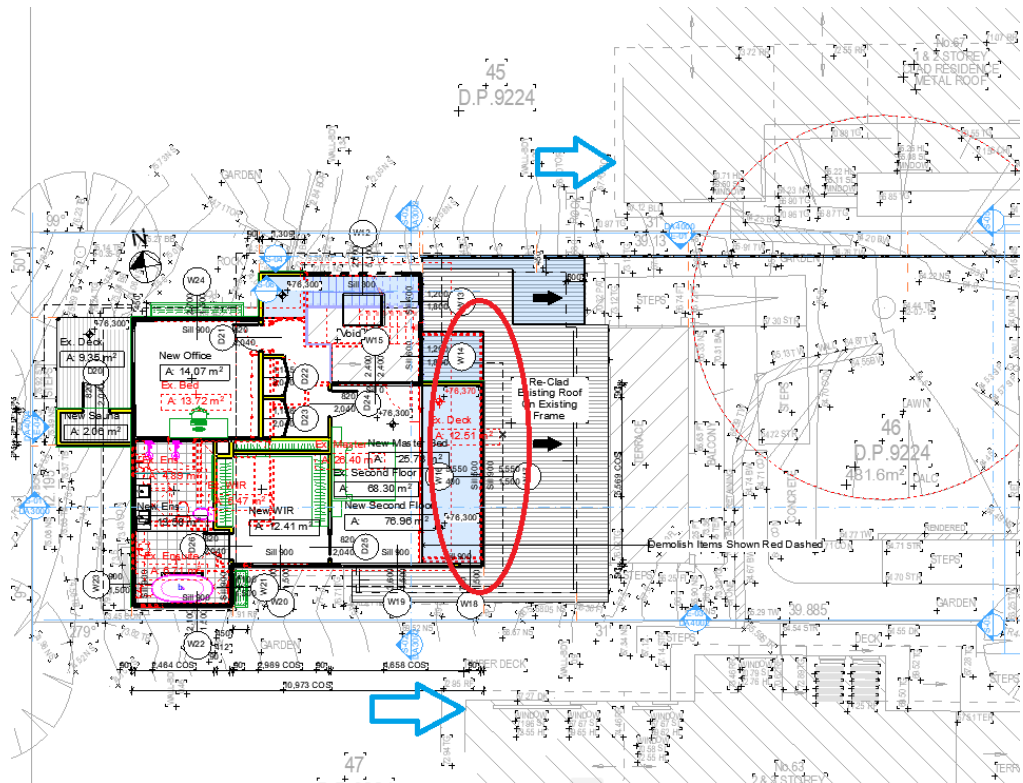


- *Bulk & Scale* is maintained for the area. Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is to be maintained throughout the development.

There is no adverse visual impact as viewed from Newport Beach to the east with surrounding foreshores to maintain their existing visual amenity.

The existing topography & built form prevents the proposed roofs from adhering to the 8.5m building height. This is largely due to the existing end of roof having been constructed above the height limit ranging from 8.8m up to over 9.45m above ground level. For example, to make the ridge over the master bed compliant it would need to be lowered 1604mm to the height line, which would have the internal floor to ceiling out of code & less than the minimum 2.4m floor to ceiling. It would be unreasonable to force a lowering of the roof as it would not only have differing ceiling heights internally, but the design of the dwelling would also be adversely impacted as viewed externally with the area internally deemed unusable. The proposal is a design option that supports a preferred planning outcome of a traditional stepped beach cottage design that compliments the existing dwelling & the surrounding neighbourhood. The intention is to provide a balance between the proposed additions to the existing landscaping & built form.

- Openness - A sense of openness has been maintained with the proposal to work with the existing topography. As the property has a steep incline to the rear an inclinor is proposed to assist in navigating the site up to the main dwelling. The proposed design creates flow between the internal & external areas for the owners with elements of the proposal over the height limit to continue to allow for a sense of openness to support the desired future character of the Newport low density area & to improve privacy & amenity between the neighbouring properties.
- *Public & Private Views* - The view lines are maintained for the subject & surrounding dwellings as the main dwelling is located farther uphill than the adjacent properties. The proposed Granny Flat encloses the existing terrace using a flat roof & is located towards the front boundary away from other dwellings. The upper roof has little impact with no dwellings looking in the vicinity of the height encroachment. The plan screenshot below indicates the height encroachment area shown with a red circle & rear of the surrounding dwellings indicated by blue arrows.



65 Hillside Road highlighted with roof area of height encroachment circled in red

- *Site Access & Circulation* is maintained with the vehicular access drive to Hillside Road to continue to allow for parking for 2 vehicles & the pedestrian access to the front door on the eastern side of the dwelling to remain unchanged. Pedestrian access is improved with the proposed inclinator allowing easy access up the steep site. It is anticipated that the proposed development will have no detrimental impact on traffic flow.

2.8 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

The proposal extends the existing built form of the subject property with well-designed additions improving on the ageing dwelling. The proposed works add to the already renovated dwellings along Hillside Road, and as such strict compliance in this regard would limit the objects being fully attained. The proposed works provide a more efficient and orderly development on the land that is of high-quality architectural

design which maximises the sites development potential along with providing appropriate housing stock within the locality.

2.9 Is the development standard a performance-based control?

The objectives of the development standard provide the controls to allow a performance-based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider “compliance to the standard unreasonable in the circumstances of the development”.

2.10 Would strict compliance with the standard be unreasonable or unnecessary?

Yes, please refer to answer in 2.7, 2.8 and 2.9 preceding.

2.11 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

The following environmental planning grounds justify contravening the development standard.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides onsite parking.
- The proposal provides improved housing in a low-density environment.

The variation to the maximum building height requirement is, in our opinion, acceptable and there are appropriate planning grounds in support of the non-compliance.

CONCLUSION

2.12 Summary

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining, where possible, the conditions set out by Pittwater Local Environment Plan 2014. The proposed works included in this report are, in our opinion, reasonable in relation to the existing built works & do not adversely impact the surrounding properties whilst justifying the environmental planning grounds for Northern Beaches Council. We consider that the proposal will impose minimal impact and maintains the streetscape & character of the neighbourhood & request that council support the Clause 4.6 Variation of the Development Application.

ITEM 3.3	DA2021/2390 - 29 MONASH CRESCENT CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Phil Lane
TRIM FILE REF	2022/438843
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2021/2390 for alterations and additions to a dwelling house on land at Lot 55 DP 9745, 29 Monash Crescent CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2390
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 55 DP 9745, 29 Monash Crescent CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	John Thomas Nestel
Applicant:	Campbell Architecture
Application Lodged:	08/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/12/2021 to 19/01/2022
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.4 Floor space ratio: 37.08%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,719,408.00

EXECUTIVE SUMMARY

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

Four submissions were received in objection to the development raising concerns including floor space ratio non-compliance, privacy, solar access, view loss and built form non-compliance. One submission was submitted in support of the application.

The proposed application seeks a variation to the Floor Space Ratio development standard pursuant to Clause 4.6 of the Manly LEP 2013.

A detailed assessment has been conducted and the proposal is found to be consistent with the objectives of relevant standards and controls, with no matters that would warrant the refusal of the

proposed development.

The application proposes a variation to the Floor Space Ratio development standard of more than 10% (89sqm or 37.08%), as such the application is referred to the Development Determination Panel, with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

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

The works incorporate the following:

- First floor addition, including:
 - Master bedroom with terrace
 - 3 bedrooms
 - 2 bathrooms
 - Study;
 - Void
- Ground floor alterations;
- New windows;
- Associated landscaping;
- Demolition works; and
- Ground floor deck;

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 55 DP 9745 , 29 Monash Crescent CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Monash Crescent, Clontarf.</p> <p>The site is regular in shape with a frontage of 15.24m along Monash Crescent and a depth of 42.28m. The site has a surveyed area of 602m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a dwelling house.</p> <p>The site is relatively flat with the rear boundary adjoining Middle Harbour Reserve (Clontarf Beach).</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development on both side of Monash Crescent.</p>

Map:



SITE HISTORY

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

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

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 17 March 2022 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to Flood planning, floor space ratio non-compliance, view loss and built form non-compliance. Following receipt of the letter the applicant advised that they intended to amend the development application. Council agreed to accept amendments to the application.

The applicant subsequently provided amended plans to address the concern raised on 7 April 2022. The proposed amendments included alterations to the first floor addition. The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal as the plans reduce the scale of the works. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly 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)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to view loss and flood planning.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000</p>

Section 4.15 Matters for Consideration	Comments
	<p>requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (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 14/12/2021 to 19/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Neil Edward Cooke	2 Ellery Parade SEAFORTH NSW 2092
Mrs Sarah Clare Day Mr Stephen Lawrence Day	27 Monash Crescent CLONTARF NSW 2093
Gat & Associates Pty Ltd	PO Box 96 HABERFIELD NSW 2045
Mr Ronald Rene Nathans	36 Monash Crescent CLONTARF NSW 2093
Ms Bonnie Susan Redman	34 Monash Crescent CLONTARF NSW 2093

The following issues were raised in the submissions and each have been addressed below:

- **Floor Space Ratio;**
- **Bulk and Scale;**
- **Solar Access;**
- **View Loss;**
- **Privacy (visual and acoustic);**
- **Built form non-compliance;**
- **Insufficient information;**
- **Landscaping**
- **Streetscape.**
- **Green roof and garage**

The matters raised within the submissions are addressed as follows:

- **Floor Space Ratio**
Comment:
Concern is raised in regards to the proposed non-compliance with the Floor Space Ratio development standard under Clause 4.4 of the MLEP 2013. The matter of non-compliance with the Floor Space Ratio Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the MLEP 2013 section of this report). In summary, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.4 and Clause 4.6 of the MLEP 2013 and that compliance with the standard is unreasonable and unnecessary and that there is sufficient environmental planning grounds to justify and support the variation in this instance.
- **Bulk and Scale**
Comment:
Concern is raised in regards to the overall bulk of the dwelling house. This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is not unreasonable in this residential setting. The size and scale of proposed dwelling house is consistent with neighbouring properties along the western side of Monash Crescent. The

proposed built form non-compliance and resultant bulk and scale are considered to be appropriate in this residential context and satisfies the requirements and objectives of the Manly DCP (MDCP) 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **Solar Access**

Comment:

Concerns have been raised in relation to the potential overshadowing created by the proposed development. A detailed assessment has been undertaken against the solar access provisions within this report. In summary, the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of Clause 3.4.1 of the Manly DCP.

- **View Loss**

Comment:

Concern was raised in regards to loss of water views from private open space from the adjoining properties to the south, north and east. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*' in this report (refer to Clause 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Privacy (visual and acoustic)**

Comment:

Concern was raised about privacy impacts (acoustic and visual) from the proposed dwelling particularly to outdoor living areas. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report.

- **Built form non-compliance**

Comment:

Concern is raised in regards to the extent of built form (setbacks, open space) non-compliance proposed under this application. This matter is addressed in detail elsewhere within this report (refer Clause 4.1 of Manly DCP 2013 section of this report). Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Insufficient information.**

Comment:

The documentation and plans submitted are sufficient for the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

- **Landscaping**

Comment:

Concern was raised in regards to the level of landscaping proposed across the site. The proposal has been assessed in detail against Clause 4.1.5 of the Manly DCP in this report, noting suitable landscaping across the site. The application was referred to Council's landscape architect for comment, with no objection raised with regard to tree planting and removal, subject to relevant conditions of consent.

- **Streetscape**

Comment:

Concern has been raised stating the proposed development will be inconsistent with the character of the street. It is disagreed that the proposed development is not inconsistent with the scale of the development in the street noting the array of different scale dwelling houses. The proposal is not considered to be inconsistent with the character of the locality.

- **Green Roof and garage**

Comment:

Concern has been raised with regards to the use of the proposed green roof on top of the garage along the northern boundary of the site. Concern is raised that it may be used as a living area. To ensure that the green roof is not used as a living area for the occupants a condition of consent has been imposed to ensure the roof is not trafficable, with access to the roof for maintenance purposes only.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>Environmental Health have been requested to review the proposed development for any issues relating to acid sulfate soils. It is noted that a solid fuel heater is proposed with the development but has not been assessed as part of this referral.</p> <p>Based on the provided geotechnical report by Crozier Geotechnical consultants there appears to be no acid sulfate soils based on the provided boreholes.</p> <p>The statement of environmental effects also advises that no excavation is proposed for the development.</p> <p>Based on this Environmental Health has no objections and requests that a condition is imposed relating to unexpected finds for acid sulfate soils .</p>
Environmental Health (Solid Fuel/Oil Heater)	<p>Environmental health have been requested to provide comment on the proposed development relating to the proposed solid fuel heater. It is unclear if the fireplace flue exhaust location on the plans is within 6000 mm (horizontally) from a neighboring structure, as such it may not comply with the distance criteria listed in AS 2918:2018.</p> <p>The provided plans also do not make it clear if the flue structure is within 3000mm of the roof line of the proposed building which also must be demonstrated. The applicant has not demonstrated that the proposed solid fuel heater will comply with the emission reduction requirements set out in Australian Standards 4012 and 4013.</p> <p>To have a solid fuel heater incorporated into the development the</p>

Internal Referral Body	Comments
	<p>applicant is required to provide further information or advise if they wish to remove the solid fuel heater and instead rely on a more environmental friendly heating source for the development the produces less particulate pollution.</p> <p>The proposal is not supported until the applicant demonstrates that the flue exhaust complies with AS 2918:2018 and details are supplied of the proposed solid fuel heater unit to be installed that demonstrates compliance with AS 4012 & 4013.</p>
Landscape Officer	<p>The development application is for alterations and additions to the existing dwelling, including associated external works. A Landscape Plan and a Flora and Fauna Report accompany the application and are assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable <p>The existing property contains a managed landscaped setting with no natural landscape features nor prescribed trees.</p> <p>A Landscape Plan is submitted enhancing the landscape setting, and includes hard and soft landscape proposals and generally no objections are raised by Landscape Referral. Conditions shall be imposed on the proposal for the green roof garden over the Garage to facilitate appropriate construction to support the landscape design, as well as impose a condition that the proposed tree planting is separated by distance to soften the built form to satisfy the landscape controls of the DCP.</p> <p>The Flora and Fauna Report concludes that there is no impact to marine vegetation, native vegetation, undeveloped headlands and rock platforms, and Landscape Referral raise no concerns. Additionally there is no existing trees or vegetation within adjoining properties likely to be impacted by the development works.</p> <p>Subject to conditions of consent, Landscape Referral raise no objections.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks approval for the demolition of existing roof & garage and construction of new garage, upper storey & roof and new rear deck over existing & landscaping throughout.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Coastal Environment Area <p>Manly Local Environmental Plan (MLEP)</p> <ul style="list-style-type: none"> Clause 6.5 (Terrestrial Biodiversity) <p>Manly Development Control Plan (MDCP)</p> <ul style="list-style-type: none"> Clause 3.3.1. a) iv) Landscaping Design <p>The application is accompanied by a Flora and Fauna Assessment including 'Test of Significance' prepared in accordance with Section 7.3 of the BC Act. An ecological impact assessment with test of significance for the endangered bandicoot population has been submitted with the DA and concludes that the proposal will not have a significant impact on the population. Given that the proposal is located outside the known habitat area, no objection is raised to the conclusions of the Project Ecologist.</p> <p>As the proposal is located largely within the existing footprint, and does not require the removal of prescribed trees or vegetation, nor is it likely to impact on soft open space or nearby biodiversity values, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>Coastal Management Act 2016</p> <p>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.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP applies for this DA. As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GSA Planning dated</p>

Internal Referral Body	Comments
	<p>November 2021, Council accepts the assessment that the DA satisfies the requirements under Clause 15 of the CM SEPP. As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 The subject site is located within/adjacent to the W2 (Environmental Protection) Zone. On internal assessment it is determined that the objectives and assessment criteria of the zone have been met.</p> <p>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 Landscape character Assessment The subject site is located within the Landscape Character Type 6. On internal assessment it is determined that the proposed development satisfies the relevant criteria.</p> <p>Manly LEP 2013 and Manly DCP The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>Foreshores Scenic Protection Area Management As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GSA Planning dated November 2021, Council accepts the assessment that the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application complies with the requirements of Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>Referral Body Recommendation Supported subject to conditions</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The site abuts Sydney Harbour and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the harbour, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Subject to conditions, this application is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Sydney Harbour.</p>
NECC (Stormwater and	The front of the property is within the Medium Flood Risk Precinct,

Internal Referral Body	Comments
Floodplain Engineering – Flood risk)	with a 1% AEP flood level of 2.4m AHD. The proposed development generally complies with the flood requirements of the DCP and LEP, subject to conditions.
Parks, reserves, beaches, foreshore	<p>The development site adjoins the Clontarf foreshore that is located downslope of the property.</p> <p>An existing encroachment exists including foreshore retaining wall, stairs, path and garden planting, 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.</p> <p>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.</p> <p>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.</p> <p>Public access to the foreshore is not impacted by the proposed works.</p> <p>Parks Reserves and Foreshores Referral raise no concerns.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is within the vicinity of two heritage items</p> <p>I1 Harbour Foreshores - Municipal boundaries along the harbour</p> <p>I42 Clontarf Reserve (listing includes open space located directly to the north of 31 Monash Crescent)</p>
	Details of heritage items affected
	<p>Details of the items as contained within the Manly inventory is as follows:</p> <p>Harbour Foreshores <u>Statement of Significance</u> Natural landscape type - Aesthetic.</p> <p><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.</p> <p>Clontarf Reserve <u>Statement of Significance</u> Pleasure grounds dating from the 1860's.</p>

Internal Referral Body	Comments		
	<u>Physical Description</u> Level area of sandy ground and open space used as a park. Cultural plantings of Moreton Bay Figs and remnant indigenous specimen trees of Banksia integrifolia. Beach, grassed area parking area and swimming enclosure. Intrusion of sewer structure with side plantings of Ficus Hillii and waterside plantings of Norfolk Island Pine.		
	<u>Other relevant heritage listings</u>		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	The Middle Harbour Syphon located within Clontarf Reserve is on the register however
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	<u>Consideration of Application</u>		
	The proposal seeks consent for alterations and additions to the existing dwelling. The Harbour Foreshores listing is located to the south of the property, while Clontarf Reserve is located to the north across 31 Monash Crescent. Given no works are proposed to the existing rear retaining wall and landscaping is retained, it is considered there is no impact to the Harbour Foreshores listings or its significance. Given the physical separation to Clontarf Reserve and the dwelling in between, it is considered that there is no impact to this item and its significance.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of MLEP.		
	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		
<u>Further Comments</u>			
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 17 December 2021			

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 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. A4326666_02 dated 30 November 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

Provided that conditions of consent are satisfied, the proposal will not adversely nor unreasonably affect the biophysical, hydrological and ecological environments. Existing public access to the foreshore area will not be affected by the proposal. Subject to conditions, the proposal will also have no impact on indigenous heritage.

- (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:

Provided that conditions of consent are satisfied, the siting of the proposed development will not have foreseeable adverse impacts with regard to the matters raised within clause (1).

14 Development on land within the coastal use area

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

Comment:

The building position is within an established urban zone and does not create any adverse environmental impacts on the coastal environment or unreasonable visual impacts on public places.

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 house is sufficiently setback from the foreshore area to comply with the objectives and requirements of the SEPP to ensure no increased risk. The site is subject to SEPP Coastal Management (2018) as the boundary extends along the Middle Harbour Foreshore area. The site is readily visible from the harbour area due to the adjoining shoreline area to the rear of the site. The proposal is in close proximity to similar density development and various buildings in the vicinity that have a westerly outlook (to the water). The proposal has been considered in the context of the SEPP requirements.

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

SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(2) (aims of the Chapter), Section 10.11 (nominated planning principles), Section 10.20 (relating to public access to and use of foreshores and waterways), Section 10.21 (relating to maintenance of a working harbour), Section 10.23 (relating to interrelationship of waterway and foreshore uses), Section 10.23 (relating to foreshore and waterways scenic quality), Section 10.24 (relating to maintenance, protection and enhancement of views) and Section 10.24 (relating to boat storage facilities) has been undertaken.

10.23. Foreshores and Waterways Area

The planning principles for land within the Foreshores and Waterways Area are as follows:

- (a) development should protect, maintain and enhance the natural assets and unique environmental*
- (b) public access to and along the foreshore should be increased, maintained and improved, while*
- (c) access to and from the waterways should be increased, maintained and improved for public*
- (d) development along the foreshore and waterways should maintain, protect and enhance the*
- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand*
- (f) public access along foreshore land should be provided on land used for industrial or commercial*
- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should*
- (h) water-based public transport (such as ferries) should be encouraged to link with land-based public*
- (i) the provision and use of public boating facilities along the waterfront should be encouraged.*

Comment:

The proposal will not alter any public access to or along the harbour foreshore for recreational or commercial use.

10.23. Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows-

- (a) the scale, form, design and siting of any building should be based on an analysis of:*
 - (i) the land on which it is to be erected, and*
 - (ii) the adjoining land, and*
 - (iii) the likely future character of the locality,*
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and*
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

Comment:

The proposal is not considered to substantially alter the appearance of the foreshore area in the vicinity of the site. The proposed works to the foreshore area are relatively remaining within the existing dwelling house building footprint. The proposed dwelling house is compatible with the established and future character of the locality.

The proposal is considered to be consistent with the above provisions of the Chapter. Given the scale of the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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	8.3m	-	Yes
Floor Space Ratio	FSR:0.4:1 240sqm	FSR: 0.54:1 329sqm	37.08%	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
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	FSR:0.4:1 240sqm
Proposed:	FSR: 0.54:1 329sqm
Percentage variation to requirement:	37.08%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"Through its thoughtful design, the proposal integrates seamlessly with the foreshore, public domain and surrounding residential development in the area. Compliance with the FSR standard would result in a reduction to the residential floorspace on the site, in an area with predominantly high-quality, two storey residential dwellings. This does not result in a better planning outcome. Additionally, it has been

demonstrated that the proposal has been thoughtfully designed to maintain amenity to surrounding development.

Strict compliance would not result in a better outcome for development. It would force a building on the site to be incompatible with the overall bulk and scale of adjoining and nearby existing and approved developments, which would be discordant in the streetscape and when viewed from the foreshore. Strict compliance would also prevent the size and quality of residential accommodation on the site, which will reduce internal amenity for residents.

Flexibility in this circumstance will provide a better outcome from development. The proposed additional FSR allows the built form to be compatible in the Monash Crescent streetscape and provides consistency with the desired future character of the area. The proposal improves the site in accordance with Object (c) of the Environmental Planning and Assessment Act 1979, to "promote the orderly and economic use and development of land". The proposal is an elegant and well-designed response to the site and surrounding foreshore setting.

Accordingly, in our opinion, the additional FSR is compatible with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b)."

Planner's Comment

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the usability of the dwelling and such building is an orderly response to the development of the site;
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e. solar access, privacy and view loss) to neighbouring properties.
- The development promotes the proper construction and maintenance of buildings, in so far as the bulk and scale of the proposed development is consistent with the streetscape, notwithstanding the non-compliance with the standard.

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

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

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

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

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives of

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed development is suitably articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed dwelling remains largely consistent with the existing building. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The proposal is consistent with clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2

Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The development is for residential use.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposed development is located entirely within the subject site and is consistent with low density residential development within the immediate vicinity. The development will have a negligible impact on the nearby foreshore.

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

Comment:

The works will have a negligible impact on the scenic foreshore protection area in which the site is located and will not compromise any special ecological, scientific, cultural or aesthetic 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 proposed works would have no impact on tree canopies. The subject site is not in close vicinity of any important trees. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore. The proposed built form, as amended will fit comfortably within its surrounds.

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

Comment:

The proposed works are located near the foreshore however by design and as conditioned will have no impact on natural features. The generous setback proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the the harbour.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate,*

and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.

Comment:

The proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

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

Comment:

The development does not significantly alter the existing landscape component for the site and will have no impact on adjoining reserve (Clontarf Beach).

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management 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: 602sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	South-east: 6.5m	6.35m	-	Yes
	North- west: 6.5m	6.3m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.32m, consistent with prevailing setback	-	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	South-east: 2.11m (based on wall height)	First floor - 1.18m	43%	No
	North- west: 2.1m (based on wall height)	First floor - 0.9m	57%	No
	Windows: 3m	Ground floor No side boundary facing first floor windows	N/A	N/A
4.1.4.6 Setback for development adjacent to LEP Zone RE1	8m (rear boundary)	Beach Deck: 1.3m - 3.4m Dwelling - 5.4m - 6.1m	83% 32.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% (361.2sqm) of site area	40.4% (243.4sqm)	32%	No
	Open space above ground 25% of total open space	8.7% (21.2sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	55% 135.2sqm	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Xm	(27%) 4.2m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	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
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

Two properties (Nos. 27 and 31 Monash Crescent) raised concern with the proposed shadowing impact of the proposed development.

The proposed development eliminates more than one third of the existing sunlight accessing the private open space of adjacent property (No 27 Monash Crescent) from 9am to 3pm on the winter solstice (21 June), inconsistent with numeric requirement of Clause 3.4.1.1 a) of the Manly Development Control Plan.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

No.27 Monash Crescent, Clontarf

The proposal provides equitable access to sunlight for the southern adjoining property. It is important to note that the southern adjacent site is particularly vulnerable to further shadowing than what is currently experienced given the east-west orientation of the allotments along Monash Crescent and the fact that the subject site currently accommodates a single storey dwelling house. The proposed dwelling house complies with the Height of Buildings development standard, however varies the Floor Space ratio development standard. The first floor addition complies with the rear setback control and the dwelling

provides a first floor side setback of 1.18m from the southern boundary. The proposed development will overshadow the private open space of the adjoining property at all hours (9am- 3pm) during the winter solstice. However, the level of sunlight access retained to this area between 9am and 3pm is considered to be a reasonable and equitable provision of sunlight for the site in this residential setting. For these reasons, Council is satisfied that this objective is achieved.

No. 31 Monash Crescent, Clontarf

No 31 Monash Crescent is located to the north of the subject site. The proposed private open space and living room windows will not lose any direct sunlight to these area during the winter solstice as a result of the proposed development. The development complies with this control for this property.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

Whilst the impact to the adjoining properties to the south is acknowledged, the properties will maintain sunlight to the ground and first floor living areas for reasonable portions of the day during mid-winter. Furthermore, occupants will have access to areas of private open space in direct sunlight throughout the entirety of the day.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The first floor has minimised floor to ceiling heights at ground and first floor level and incorporated a roof form to reduce the shadowing impact to the living room windows and principal outdoor living area of the adjoining southern property

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

3.4.2 Privacy and Security

Description of non-compliance

Concern is raised in regards to the ground floor beach deck, clothes drying area and first floor bedroom terrace and the associated impacted upon privacy to adjoining properties.

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:**Beach deck and first floor balcony**

Concern is raised in regards to the proposed beach deck and proposed first floor terrace proposed to the rear of the dwelling. From a view of what is visible from the site it is evident there are some sight lines into windows and rear yards of the adjoining northern and southern property. However, the sightlines are not the dominant views (which is directly to the rear of the subject site to the west) and inevitable given the siting of the dwellings and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Reasonable visual privacy is maintained between the subject site and neighbouring properties. The replacement of the ground floor beach deck does not provide an area with sufficient elevation that would give rise to an opportunity for overlooking. As such, additional screening is not required.

Other

External stairs and access along the south-west and rear side of the dwelling house will not result in any unreasonable visual privacy impacts to adjoining properties. The intensity of use of the external staircase to the first floor terrace/master bedroom is not high and will purely be utilised for access from the dwelling house to the rear yard and foreshore. It should be noted that the first floor master bedroom window of the adjoining property to the south No. 27 Monash Crescent is extremely vulnerable to potential overlooking between these two dwellings and the expectation of complete privacy to this window is not deemed reasonable in this residential context.

The clothes drying court while located close to the northern property boundary is located at ground floor level is a low usability. The use of the drying court is unlikely to result in any unreasonable privacy impacts to adjoining property to the north.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The provision of increased screening to either the ground floor beach deck or first floor bedroom balcony will compromise significant view lines from the subject site or adjacent properties and a such is not warranted in this instance.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the passive surveillance of the street.

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

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received three submission from the occupants of No. 31, 27 and 36 Monash Crescent, Clontarf raising view loss as a concern.

Upon lodgment of the amended plans, height poles were requested on site. Height poles were erected on site and certification of the heights and position of the poles was provided to Council.

Merit consideration:

The development is considered against the Objectives of the Control:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposed development will result in a minor loss of view from neighbouring properties to Middle Harbour. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

- *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).*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

No. 27 Monash Crescent, CLONTARF

Views affected from this property are harbour views filtered through existing development as shown below.

No. 31 Monash Crescent, CLONTARF

Views affected from this property are harbour views filtered through existing development as shown

below.

No. 36 Monash Crescent, CLONTARF

Views affected from this property are skyline and bush land (Parriwi Junction) filtered through existing development as shown below.

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

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

Comment to Principle 2:

No. 27 Monash Crescent, CLONTARF

Existing views from this property are obtained from all areas facing west, including the ground living rooms and balconies and first floor bedroom and balconies from a standing position. Due to the elevation of the property, the views from the first floor bedrooms are more wide ranging than those enjoyed on the lower level. The views that will be impacted by the proposed development are over the northern side boundary. Harbour views from the ground floor living rooms and private open space and first floor bedroom and balconies to the west and south remain unaffected from the proposed development and will be retained in full. The views affected from this property are taken from both a sitting and standing position.

No. 31 Monash Crescent, CLONTARF

Existing views from this property are obtained from all areas facing west, including the ground living rooms and balconies and first floor bedroom from a standing position. Similarly to No. 27, due to the elevation of the first floor the views from the first floor master bedroom is more wide ranging than those enjoyed on the ground level. The views that will be impacted by the proposed development are over the southern side boundary. Harbour views from the ground floor living rooms and private open space and first floor bedroom and balconies to the west and north remain unaffected from the proposed development. The views affected from this property are taken from both a sitting and standing position.

No. 36 Monash Crescent, CLONTARF

Existing views from this property are obtained from the first floor living room and balcony to the west. The views that will be impacted by the proposed development are over the western front side boundary. Distant view of Mosman and skyline views from the first floor living room and private open space will be impacted by the proposed development as result for the first floor addition. The views affected from this property are taken from a standing position.

3. Extent of impact

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

Comment to Principle 3:

No. 27 Monash Crescent, CLONTARF

The impact of the development upon harbour views is demonstrated in the images attached, below. No. 27 Monash Crescent, Clontarf currently have extensive views to the Harbour. Panoramic views are taken from the ground living rooms and balconies as well as the first floor living room master bedroom and bedroom balcony. Views to the north from the first floor bedroom window will be lost to a moderate extent. Qualitatively and in consideration of the collective existing views available from this property, the extent of view loss is minor, noting that western views from the ground floor living room and principle private open space will be retained in full and harbour views looking south will still be retained in full.



Photo 1 - View looking north from the first floor bedroom



Photo 2 - View looking north from the first floor bedroom



Photo 3 - View looking north from the first floor bedroom



Photo 4 - View looking west from first floor living



Photo 5 - View looking west from first floor living



Photo 6 - View looking north from ground floor private open space

No. 31 Monash Crescent, Clontarf

No. 31 Monash Crescent, Clontarf currently have substantial views to the Harbour. Panoramic views are taken from the ground living rooms and terrace as well as the first floor bedroom. Views to the south from the first floor bedroom window will be lost to a negligible extent. Views from the first floor hallway (see photo 10) over a side boundary will be impacted to a severe extent. A hallway is not a highly valued room and views over a side boundary are difficult to protect, noting any first floor element would impact this view. The extent of view loss is deemed minor, noting that southern and western views from the ground floor living room and principle private open space harbour views will be retained in full.



Photo 7 - View looking south from ground floor private open space



Photo 8- View looking south from first floor master bedroom



Photo 9- View looking south from master bedroom bathroom



Photo 10- View looking south from the first floor hallway

No. 36 Monash Crescent, Clontarf

The proposed development is likely to result in minor loss of distant views to bushland and Parriwi Junction, however the skyline retained in full. Noting the existing views from this property, the proposed development on a whole will have a negligible to minor impact upon the amenity of this dwelling. The likely impact is not considered to be unreasonable, as a similar impact would otherwise arise with a compliant built form.



Photo 11 - View looking west from the first floor balcony

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more 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 question of a more skilful design has been considered in that a close analysis of the plans identifies the only opportunity to retain the existing view lines from No. 27, 31 and 36 Monash Crescent is to limit the built form of the first floor to the front of the site, This is considered unreasonable in this instance given the siting of the existing dwelling house.

The proposed development complies with the required building height. The proposal also provides greater rear setback than that of the existing ground floor. As a result, the design has allowed additional views to be obtained from the neighbouring houses that obtain views over the rear subject site. Of relevance to view sharing, the development has been found to exhibit non-compliance with the Floor Space Ratio development standard and side setback DCP non-compliance.

In consideration of the existing views it is noted that the views in question is severely vulnerable to any significant development of the subject site, with any ground and first floor addition likely to disrupt existing water view. While it is acknowledged that the proposed development breaches the Floor Space Ratio development standard and side setback controls. The total severity of impacts upon water views is not considered to be unreasonable. A more skilful design is not likely to be able to achieve a reasonable scaled development while reducing view impacts to neighbouring properties.

Overall, the application has demonstrated that disruptions to views from adjacent development

have been reasonably minimised, and view sharing between properties has been achieved.

- *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.*

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

4.1.3 Floor Space Ratio (FSR)

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

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.53m from the south-east boundary and 2.53m from the north-west boundary.

Clause 4.4.4.4 of the Manly DCP requires development be setback 8m from the rear boundary.

The development proposes the following:

South-east side setback- First floor: 1.18m (up to 43% variation to the numeric control).

North -west side setback- First floor: 0.9m (up to 57% variation to the numeric control).

Rear Setback - 5.4m - 6.1m (dwelling), 1.2m -3.4m (beach deck) (32.5% - 83% variation to the numeric control).

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed development includes the addition of a first floor that is consistent with the streetscape character of the locality. The proposed first floor enhances the streetscape and provides the desired spatial proportions of the street and street edge. The proposed first floor balcony located on the south-west corner is consistent with first floor balconies facing the Harbour. The landscape character of the street remains unchanged with the existing landscaping in the front setback area retained.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed deck maintains suitable levels of privacy and solar access for adjoining properties. In regards to views, there will be no unreasonable loss of view as a result of the proposed first floor addition as discussed in detail in this report.

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

Comment:

The proposal is designed to retain the existing side setbacks and due to the nature of the existing site, the proposal is considered to be appropriate in this instance.

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 significantly alter the existing landscaping on the subject site and subsequently does not result in the removal of existing vegetation or trees. 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.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 60% (361.2sqm) of the site area be total open space. The proposed total open space is 40.4% (243.4sqm), non-compliant with the numeric control. This represents a 32% variation to the numeric control.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposed development does not require the removal of any significant vegetation and demonstrates compliance with the landscaped area requirement. The development therefore adequately retains the landscape features of the site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

Significant landscaped areas are proposed to the front and rear of the dwelling house at ground level.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The proposed works will retain privacy to adjoining properties. There is no unreasonable overshadowing impact that will result from the proposed works.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposal provides compliant landscaped open space and would therefore reasonably maximise opportunity for water infiltration in this situation, subject to conditions imposed by Council's development engineers.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

Conditions of consent can be imposed to ensure appropriate maintenance regimes to minimise the spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The subject site is not located within the close vicinity of any wildlife corridor.

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

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 \$17,194 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,719,408.

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

Conclusion

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

This assessment has considered submissions received and addressed the particular issues raised within these submissions and conditioned accordingly.

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is sympathetic of the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval (subject to conditions).

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2021/2390 for Alterations and additions to a dwelling house on land at Lot 55 DP 9745, 29 Monash Crescent, 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 01/ Issue C	7 April 2022	Campbell architecture
DA 02/ Issue C	7 April 2022	Campbell architecture
DA 03/ Issue C	7 April 2022	Campbell architecture
DA 04/ Issue C	7 April 2022	Campbell architecture
DA 05/ Issue C	7 April 2022	Campbell architecture

DA 06/ Issue C	7 April 2022	Campbell architecture
DA 07/ Issue C	7 April 2022	Campbell architecture
DA 08/ Issue C	7 April 2022	Campbell architecture
DA 09/ Issue C	7 April 2022	Campbell architecture
DA 10/ Issue C	7 April 2022	Campbell architecture
DA 22/ Issue C	7 April 2022	Campbell architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Flood Risk Management Plan/ Issue B	16 February 2022	SGC
BASIX Certificate No. A432666_02	20 November 2021	Campbell Architecture
Flora and Fauna Assessment Report	November 2021	Narla Environmental
Geotechnical Investigation	November 2021	Grozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LP 01	15 November 2021	Mariko Fraser
LP 02	15 November 2021	Mariko Fraser

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	9 November 2021	Hugh Campbell

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

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

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
 - (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$17,194.08 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 \$1,719,408.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **On Slab Landscape Works to green roof**

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.

A minimum of 300mm soil depth shall be provided over slab for the green roof, in addition to the separate planter as proposed on the Landscape Plan.

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

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

7. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to a scour and erosion control device prior to discharging to the ocean.

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. Flooding

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage in the front yard which results in a net loss of storage below the 1% AEP flood level of 2.40m AHD.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 2.90m AHD of shall be designed and constructed with flood compatible materials.

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level of 2.90m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 2.90m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Fencing – F1

New fencing (including pool fencing, boundary fencing and gates) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level of 2.40m AHD. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 2.90m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

9. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

10. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

11. 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.

12. **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.

13. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

14. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

15. **Compliance with Standards**

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

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

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

16. **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)

17. **Sydney Water "Tap In"**

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

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

- "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

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: 27 and 31 Monash Crescent, Clontarf

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Road Reserve**

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

Reason: Public safety.

22. **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 SGC Consulting 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.

23. **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.

24. **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.

25. **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.

26. **Requirement to notify about new acid sulfate soils evidence**

Any new information revealed during any excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: Protection of the environment

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

27. **Landscape Completion**

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

- i) no landscape works are permitted beyond the legal boundaries,
- ii) the proposed three (3) *Tristania laurina* trees within the front setback shall be planted at a minimum 4 metres apart from each other, and shall be a minimum planting size of 75 litres, and 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, and at least 1.5 metres from common boundaries,
- iv) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

28. **Stormwater Disposal**

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

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

29. **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.

30. **Certification of Services**

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level of 2.90m AHD and any existing electrical devices, wiring and the like located below the FPL are protected from water or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

31. **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.

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

Before demobilising from the site and once vegetation cover has been re-established across 70

percent of the site, the applicant is to remove all temporary sediment and erosion controls.

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

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

Reason: Protection of the receiving environment

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

33. **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.

34. **Flood Management**

Storage of Goods (G1)

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 2.90m AHD unless adequately protected from floodwaters in accordance with industry standards.

Flood Effects Caused by Development (A2)

There shall be no filling of the land in the front yard below the 1% AEP flood level of 2.40m AHD, or restriction of flood waters from entering the front yard.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

35. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

36. **Geotechnical Recommendations**

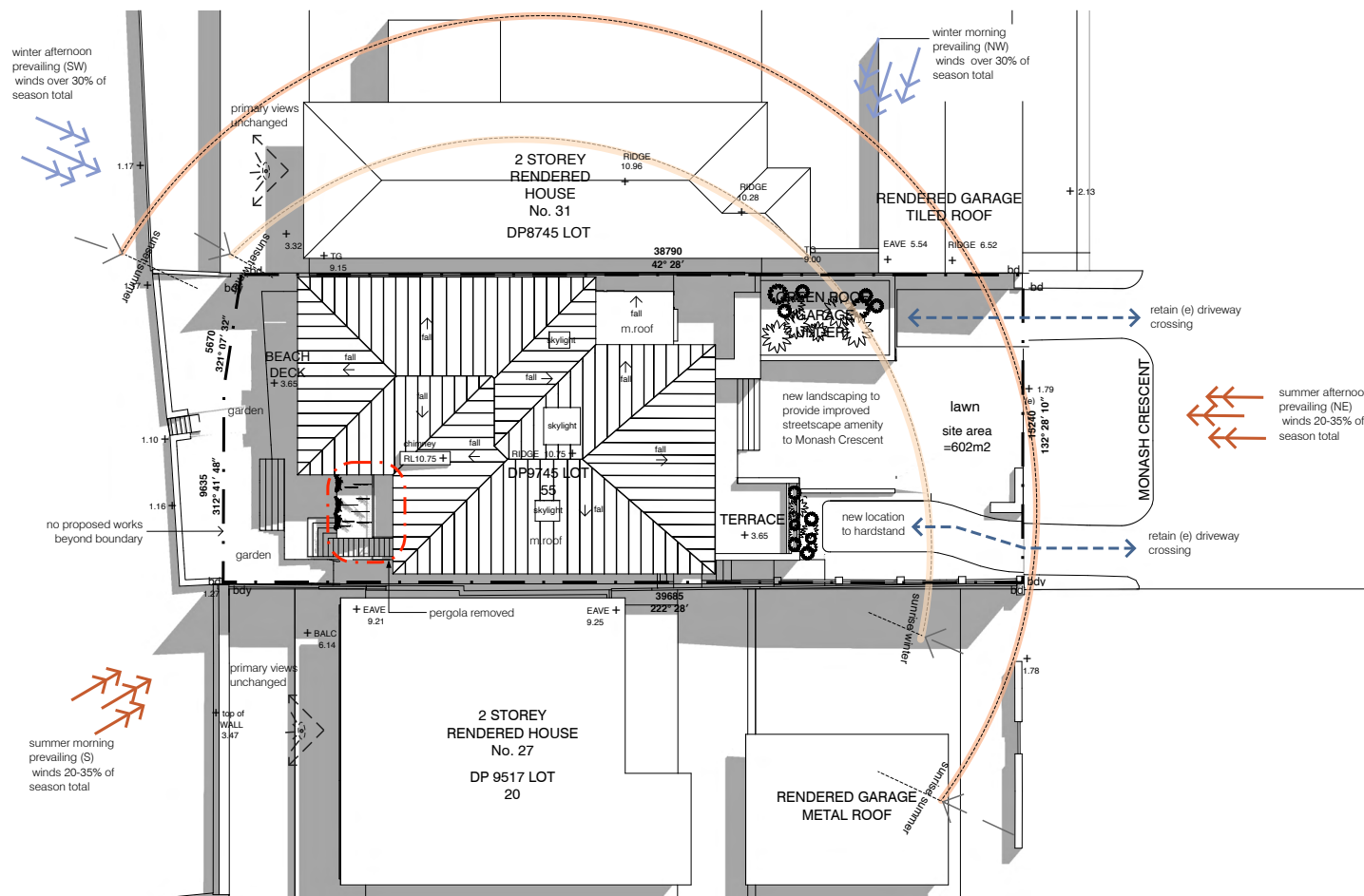
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

37. **Green Roof**

The green roof is to be non-trafficable and accessed only for maintenance of the proposed garden.

Reason: To ensure compliance with the terms of this consent

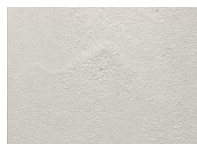


01 site plan

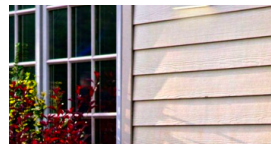
02 materials & finishes



metal roof



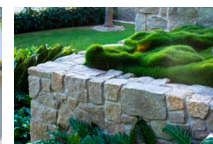
textured render



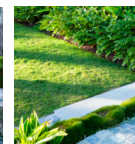
timber cladding



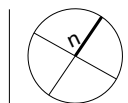
glazed timber doors & windows



stone & landscaping



0 10m



date	description
10/11/21	issue for DA
21/02/22	flood revision
07/04/22	balcony & facade revision

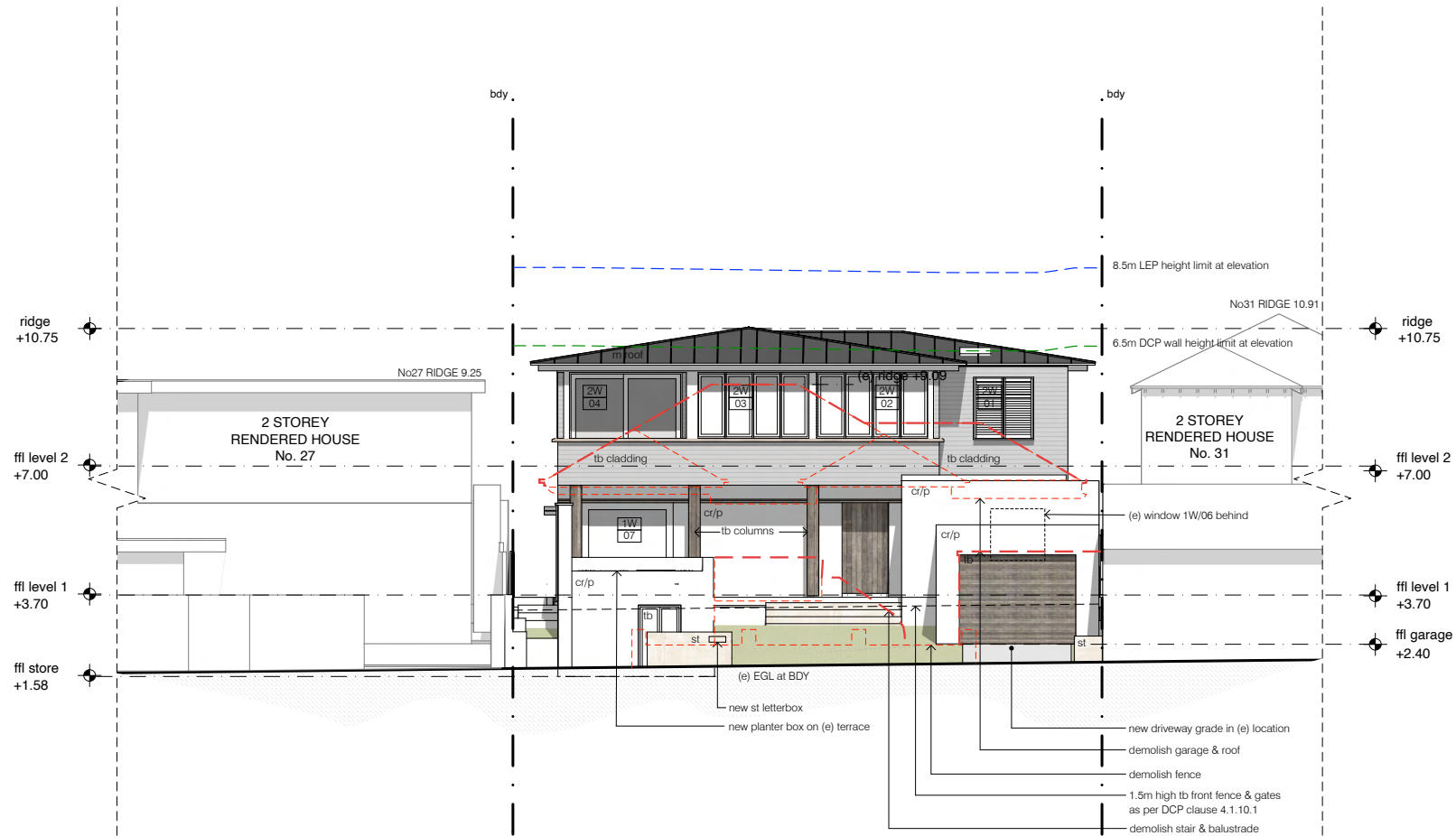
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date	description
10/11/21	issue for DA
21/02/22	flood revision
07/04/22	balcony & facade revision

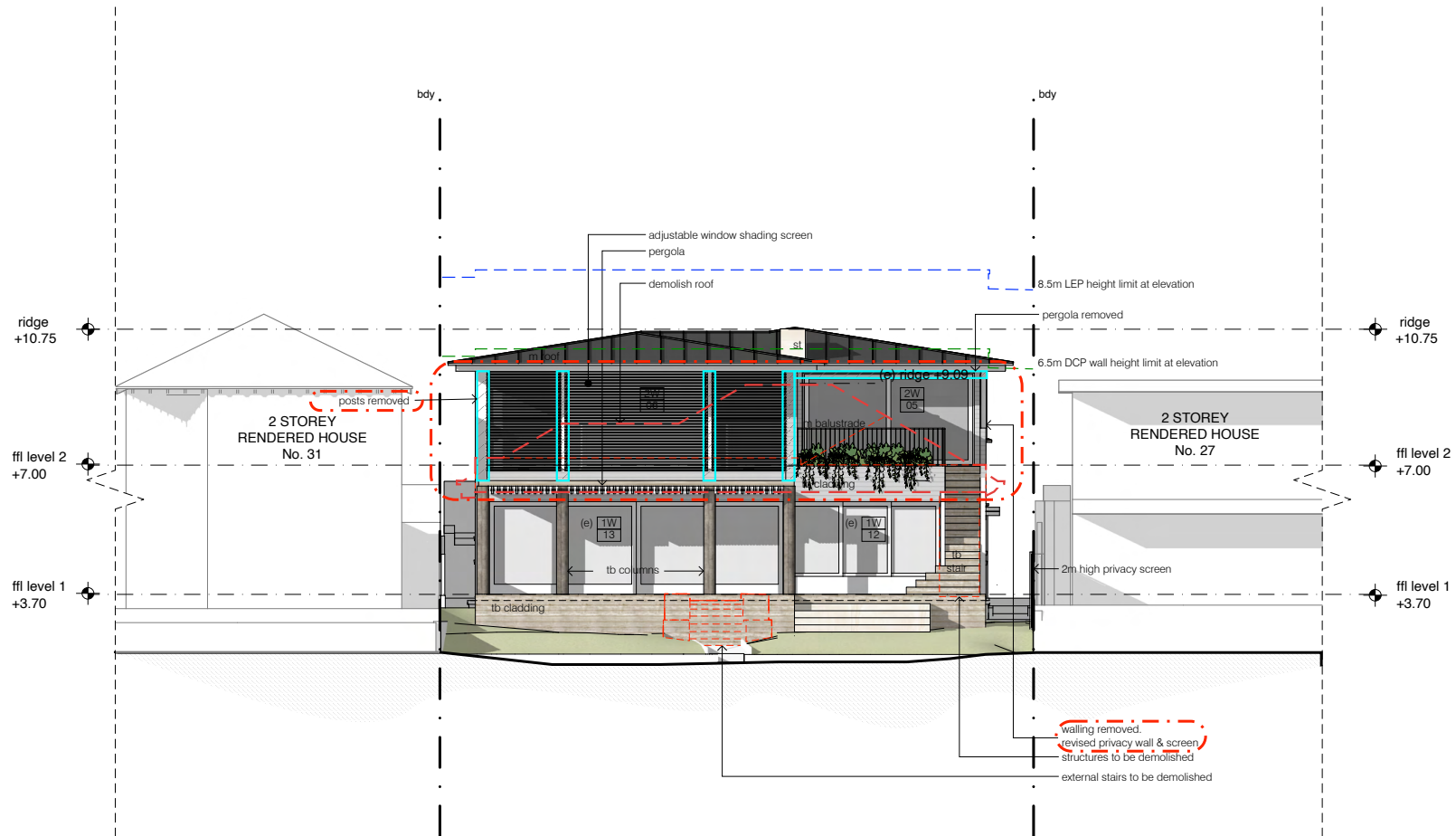
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issue	date	description
	10/11/21	issue for DA
	21/02/22	flood revision
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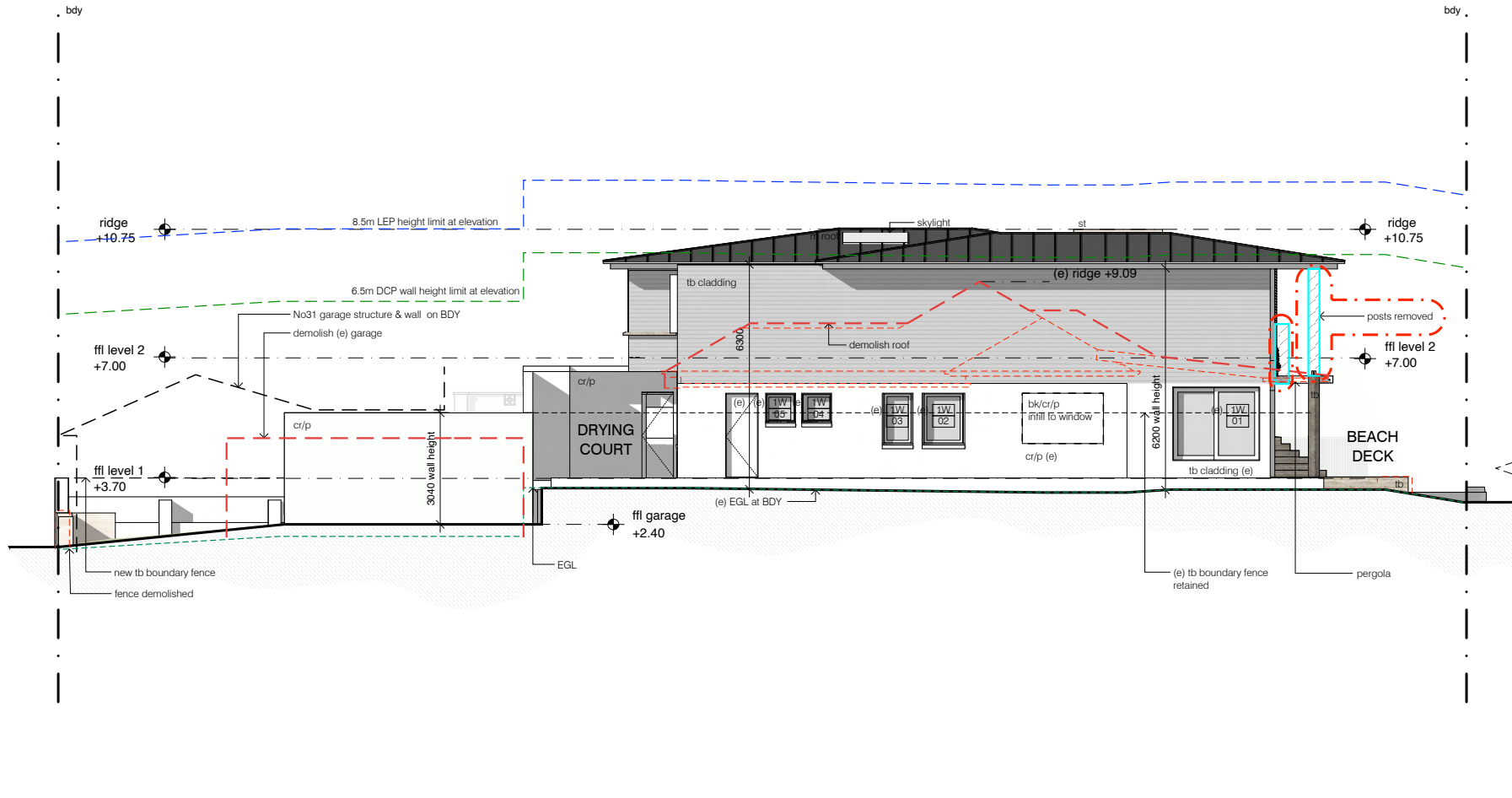
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issue	date	description
1	10/11/21	issue for DA
2	21/02/22	flood revision
3	07/04/22	balcony & facade revision

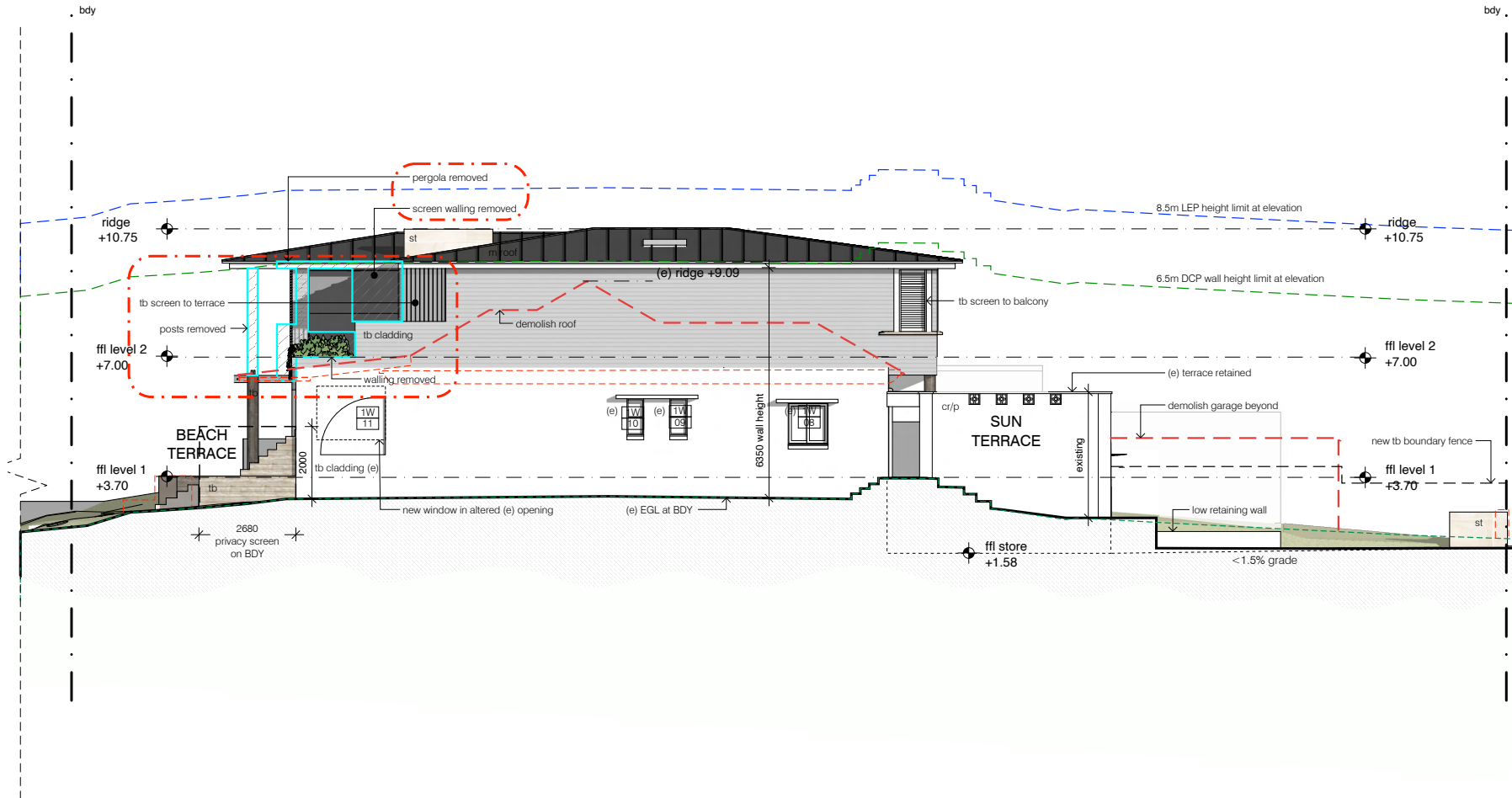
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MANLY LEP 2013

Clause 4.6 Exceptions to Development Standards – Floor Space Ratio (FSR)

Alterations and Additions to an Existing Dwelling at

**No. 29 Monash Crescent,
Clontarf**

Prepared for:

John and Lara Nestel

29 Monash Crescent

Clontarf NSW 2093

Prepared by:

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MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: John and Lara Nestel

SITE ADDRESS: No. 29 Monash Crescent, Clontarf

PROPOSAL: Alterations and additions to an existing dwelling

1. (i) Name of the applicable planning instrument which specifies the development standard:

Manly Local Environmental Plan (LEP) 2013

(ii) The land is zoned:

E3 Environmental Management. The objectives of the E3 Zone are as stated:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

(iii) The number of the relevant clause therein:

Clause 4.4 – Floor Space Ratio which is stated as follows:

- (1) The objectives of this clause are as follows—
- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
 - (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
 - (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
 - (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
 - (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
- (2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio. This Clause operates in conjunction with the FSR Map which indicates a maximum 0.4:1 applies to the subject site. Clause 4.4 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The subject site has an area of 602m², which results in a maximum GFA of 240m² based on the 0.4:1 standard. The proposed alterations and additions result in an increased GFA of 298.5m² and FSR of 0.5:1 (rounded up from 0.4958:1), which is a 24.38% departure from the standard (see **Figure 1** on the following page). Despite this departure from the LEP standard, 'Clause 4.1.3.1 – Exceptions to FSR for Undersized Lots' in the Manly DCP 2013, must also be considered. This Clause allows for smaller residential lots such as the subject site to have a higher FSR than permitted in the LEP. The Clause is as follows:

Note: On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

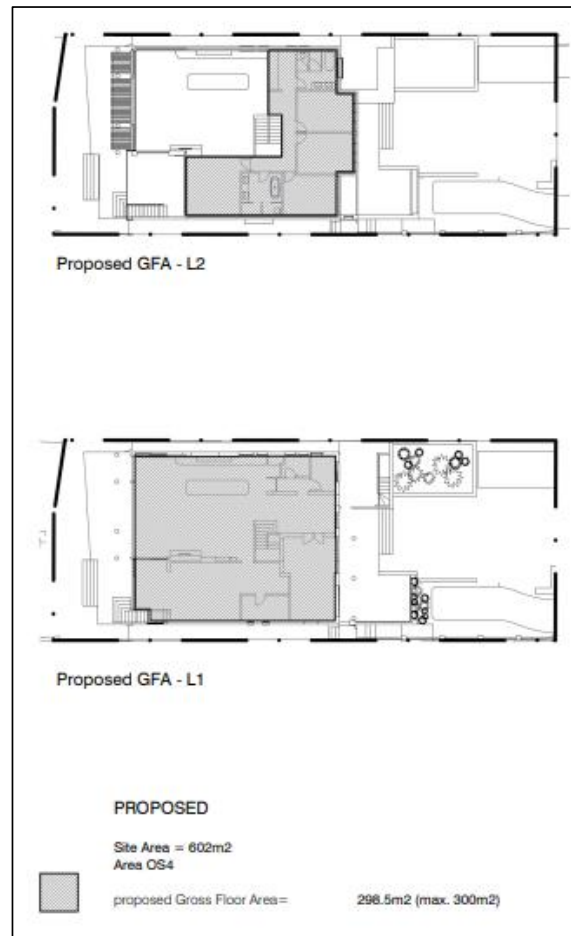
The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).

- a) The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.

Figure 30 - Extent of FSR Variation for Undersized Lots

Subzones on the LEP Lot Size (LSZ) Map	Maximum variation to FSR for undersized lots
Area 'C' on the LEP LSZ map	Calculation of FSR based on 250 sqm lot size/ site area
Area 'D' on the LEP LSZ map	Calculation of FSR based on 300 sqm lot size/ site area
Area 'I' on the LEP LSZ map	Calculation of FSR based on 500 sqm lot size/ site area
Area 'M' on the LEP LSZ map	Calculation of FSR based on 600 sqm lot size/ site area
Areas 'R', 'T' & 'U' on the LEP LSZ map	Calculation of FSR based on 750 sqm lot size/ site area

Based on the LEP Lot Size Map, the above Clause would allow the calculation of FSR to be based on a lot size of 750m² (site classified as Area R on Lot Size Map). This would equate to a maximum permitted GFA of 300m², which the proposal complies with. The proposed FSR is consistent with both the LEP FSR and zoning objectives, and DCP FSR objectives, which is discussed throughout this report.



Source: Campbell Architecture

Figure 1: Proposed GFA Calculations

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the FSR development standard to the proposed development in the circumstance of this particular case. Given that the site is identified as being undersized, and Clause 4.1.3.1 of the DCP allows for a variation to the FSR, the additional FSR is acceptable in the circumstances of this case. The proposed FSR will facilitate a built form that complies with the height development standard, and key building envelope controls of the DCP.

Compliance with the FSR standard would not result in a better planning outcome. It would result in a building on the site to be incompatible with the bulk and scale of nearby existing and approved developments, which would be discordant in the streetscape; and reduce the potential for the site to accommodate the proposed dwelling, which is a size and scale that meets the needs of residents.

To refuse this application would prevent the orderly and economic use and development of the land. Accordingly, in our opinion, as the proposal is consistent with the objectives of Clause 4.6, the variation is acceptable in this instance.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the additional FSR. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered on the following pages.

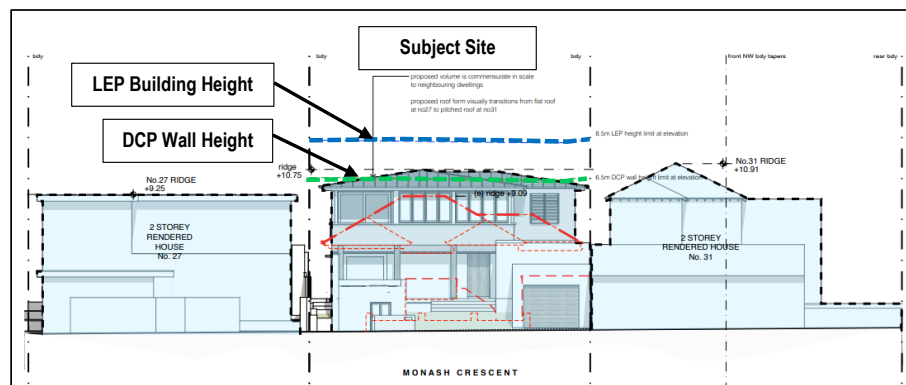
Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's departure from the applicable LEP FSR development standard, the proposal is consistent with the desired low density character of the area. The proposal provides a bulk and scale that is generally consistent with that envisaged by Council's controls, and this is acknowledged by the DCP's concession for additional FSR for smaller lots. Reasons why the proposed development is consistent with the objectives of the FSR standard are explained below.

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The proposed FSR will facilitate alterations and additions to an existing dwelling, to accommodate a two storey dwelling with a well-resolved internal layout, that is consistent with surrounding development in the streetscape on both sides of Monash Crescent. Development to the north and south at Nos. 27 and 31 Monash Crescent all have a consistent two storey massing in the streetscape, with garages in the front setback. The proposed built form provides a subtle transition between these adjoining developments and complies with the LEP height of building standard and DCP wall height control in order to restrain the height, bulk and scale (see **Figure 2**).

Developments further to the south contain two storey dwellings at Nos. 23 and 25 Monash Crescent and beyond, with a large three storey dwelling at No. 21 Monash Crescent. Dwellings opposite the site at Nos. 34 and 36 Monash Crescent are also two storeys.



Source: Campbell Architecture

Figure 2: The Proposed Bulk and Scale in the Streetscape

The proposal and associated FSR will therefore ensure the existing and desired streetscape character is retained.

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,

Compliance with key building envelope controls of the LEP and DCP ensures the bulk and scale is acceptable for the site and does not obscure nearby landscape features. The subject site is a small lot and classed as 'undersized' in the DCP. The proposed FSR meets the requirements of Clause 4.1.3.1 of the DCP which then allows an increased FSR equivalent to a GFA of 300m² on the site. Accordingly, the concession can be applied to this site, and to the proposal.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

The proposal, despite the additional FSR above the LEP standard, provides increased landscaping on site compared to the existing situation. The proposal is consistent and compatible with neighbouring dwellings when viewed from street, given its compliance with majority of building envelope controls in the LEP and DCP, in particular the FSR exception in the DCP.

The proposal is also accompanied by a Flora and Fauna Assessment Report prepared by Narla Environmental (separately submitted), which confirms the proposal is appropriate in terms of landscaping and biodiversity.

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

The proposed FSR complies with DCP Clause 4.1.3.1 and has been sympathetically designed to by setting the building bulk behind the foreshore building line. Given there is no existing access through the site from the street to foreshore at the rear, there will be no effect on access or use of the beach or public domain.

In terms of the amenity of adjoining land, the proposal has been designed to minimise potential overlooking to private open space and windows of adjoining dwellings. The shadow diagrams prepared indicate that the proposal, despite the additional FSR, will meet the DCP requirements for maintaining solar access to private open space and windows for No. 27 Monash Crescent, with no effect on No. 31 Monash Crescent. The proposal will facilitate adequate view sharing for distant views, and views from neighbouring development. Irrespective of the additional FSR, any potential effects on views across the site are minimised, given the compliant building height, wall height, and setbacks in that location.

Accordingly, the proposed development, despite the additional FSR, has been designed to maintain existing environmental conditions for the 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.

N/A – The proposal is not in a business zone.

Accordingly, although the proposal is greater than the FSR control for a large lot, this is unlikely to have any effect as the design is generally contained within a compliant building envelope.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible in the E3 Environmental Management Zone; is consistent with the zone objectives; and with the surrounding density and scale in the area. The proposal satisfies the 'unreasonable and unnecessary' Test 1 established by the Court in *Wehbe*.

This report demonstrates that the proposed additional FSR is compatible with the existing and desired future character of the area. The proposal's built form complies with the key building envelope standards and controls, including the LEP building height standard, to ensure it does not dominate the streetscape. The works result in a dwelling compatible with nearby existing and approved development, including Nos. 21 to 27, and No. 31 Monash Crescent, as well as dwellings opposite the site at No. 34 and 36 Monash Crescent. Therefore, the proposed height, bulk and scale will provide consistency in scale and transition in the built form along Monash Crescent.

Nearby approvals that have contravened the LEP FSR standard but are similarly on undersized lots and comply with the relevant FSR DCP control, includes a new detached two storey dwelling at No. 9 Monash Crescent, Clontarf. Despite the 0.4:1 FSR standard, Council approved the dwelling with an FSR of 0.56:1 as it complies with the additional permitted floor space as per Clause 4.1.3.1 of the DCP, and its objectives. The proposal for the subject site similarly achieves the objectives of this DCP clause, with these objectives and our responses as follows:

- | | |
|--|--|
| <p><i>Objective 1)</i></p> <p>Response:</p> | <p><i>To ensure the scale of development does not obscure important landscape features.</i></p> <p>The proposed alterations and additions to accommodate a two storey dwelling provides an acceptable scale of development, which is consistent with surrounding development along Monash Crescent. The site is not considered to contain any important landscape features, however the proposal and associated FSR will retain the provide increased landscaping on site compared to the existing situation, and the bulk and scale of the development will facilitate an appropriate interface with the adjoining foreshore.</p> |
| <p><i>Objective 2)</i></p> <p>Response:</p> | <p><i>To minimise disruption to views to adjacent and nearby development.</i></p> <p>It is anticipated that given the generally flat topography of the surrounding area and the elevated existing dwelling with pitched roof, its orientation, and the surrounding built form, that views across the site would likely be available from more elevated development further to the north-east along Amiens Road, and beyond. Given the height of the existing building, it is considered views from upper balconies of the dwelling directly opposite the site are less likely to be water views. Accordingly, the additional FSR is unlikely to affect views from adjacent and nearby development.</p> |
| <p><i>Objective 3)</i></p> <p>Response:</p> | <p><i>To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.</i></p> <p>The shadow diagrams and Section 5.3.2 of the SEE (separately submitted) demonstrate that the proposal, despite the additional FSR, meets the DCP requirements for solar access to neighbouring private open space and windows to living areas. The proposed dwelling has also been designed to allow natural lighting to living areas, terraces, and other areas of private open space on site.</p> |

Through its thoughtful design, the proposal integrates seamlessly with the foreshore, public domain and surrounding residential development in the area. Compliance with the FSR standard would result in a reduction to the residential floorspace on the site, in an area with predominantly high-quality, two storey residential dwellings. This does not result in a better planning outcome. Additionally, it has been demonstrated that the proposal has been thoughtfully designed to maintain amenity to surrounding development.

Strict compliance would not result in a better outcome for development. It would force a building on the site to be incompatible with the overall bulk and scale of adjoining and nearby existing and approved developments, which would be discordant in the streetscape and when viewed from the foreshore. Strict compliance would also prevent the size and quality of residential accommodation on the site, which will reduce internal amenity for residents.

Flexibility in this circumstance will provide a better outcome from development. The proposed additional FSR allows the built form to be compatible in the Monash Crescent streetscape and provides consistency with the desired future character of the area. The proposal improves the site in accordance with Object (c) of the Environmental Planning and Assessment Act 1979, to "promote the orderly and economic use and development of land". The proposal is an elegant and well-designed response to the site and surrounding foreshore setting.

Accordingly, in our opinion, the additional FSR is compatible with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the E3 Zone, as discussed below:

Objective: *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*

Response: The proposal has been designed to comply with the foreshore building line, and key building envelope controls being the LEP height standard, DCP setbacks and wall height, and the DCP exception for FSR on undersized lots. The building footprint is largely the same as the existing. Therefore, the additional FSR in this instance will not affect the ecological values of the adjoining foreshore area.

Objective: *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Response: The proposed FSR will not adversely affect the ecological, scientific, cultural and aesthetic values of the site, locality and foreshore area.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the LEP development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The additional FSR will enhance the amenity and functionality of the proposed residential dwelling and maintain existing amenity for neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the additional FSR, the proposal will appear consistent in the streetscape. It will comply with the FSR envisioned for the site as per the DCP.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The proposal's FSR contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the E3 Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
	Is it a development standard (s.1.4)	1	Yes	
	What is the development standard	1	Clause 4.4: FSR	
	What is the control	1 & 2	0.4:1	
[14]	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
[15], [25]	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
[16] - [22]	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the departure from the standard. 	YES
[23] – [24]	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed FSR facilitates a low-density development that protects the environmental values of the area, consistent with the planning objectives of the area; The proposed FSR complies with the objectives and requirements of Clause 4.1.3.1 of the Manly DCP 2013, which permits additional FSR on undersized lots and is applicable to the subject site; The proposed FSR will provide a dwelling that is compatible with the bulk and scale of surrounding existing and approved development; and The proposed FSR will facilitate to the economic and orderly development of the land. 	YES
[26]	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the FSR standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the E3 Zone.	YES

[28]	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES
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ITEM 3.4	REV2022/0010 - 16 ALAMEDA WAY WARRIEWOOD - REVIEW OF DETERMINATION OF APPLICATION DA2021/1670 FOR CONSTRUCTION OF A SECONDARY DWELLING
REPORTING MANAGER	Phil Lane
TRIM FILE REF	2022/438891
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2022/0010 for review of determination of application DA2021/1670 for construction of a secondary dwelling on land at Lot 10 DP 227843, 16 Alameda Way WARRIEWOOD, subject to the conditions set out in the Assessment Report.



REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2022/0010
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 10 DP 227843, 16 Alameda Way WARRIEWOOD NSW 2102
Proposed Development:	Review of Determination of Application DA2021/1670 for construction of a secondary dwelling
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Miroslav Mile Stojic
Applicant:	Miroslav Mile Stojic
Application Lodged:	10/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	01/07/2022 to 15/07/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 195,320.00

EXECUTIVE SUMMARY

This development application seeks review of the determination of DA2021/1670, for Construction of a secondary dwelling, which was refused by the Development Determination Panel (DDP) on 9 February 2022 based on the location and tandem arrangement of the proposed off-street parking.

The review application has removed the proposed off-street parking that was initially located forward of the existing dwelling and is reliant upon the existing garage, and existing informal parking arrangement on the existing internal driveway.

In accordance with the DDP Criteria, any application for the review of a determination in relation to a DA previously determined by the DDP is required to go the DDP for determination. DA2021/1670 was



initially referred to DDP as in accordance with Council's Management of Conflict of Interest guidelines, the applicant and property owner of the subject site is a non-planning member of Council staff and a submission in objection to DA2021/1670 was received.

The review was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

Critical assessment issues included off-street vehicle parking requirements, secondary dwelling control, rear setback control, and building envelope control. Notwithstanding, the variations to the controls have been assessed against the outcomes of the controls and the variations 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 application seeks a review of Development Determination Panel refusal of DA2021/1670, for the Construction of a secondary dwelling.

The Panel refused the application for the following reason:

Pursuant to Section 4.15(1) (a) (iii) and (b) of the Environmental Planning and Assessment Act, 1979 and Section B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan, the proposed parking for the existing and proposed development is contrary to the stated outcomes of Section B6.3, in that the location and tandem arrangement will have a detrimental impact on the streetscape and the character of the locality and is not provided in a practical and convenient manner.

The application is accompanied with amended plans, that include the following:

- Deletion of tandem parking located forward of the principal dwelling;
- Retention of the existing detached garage in lieu of proposed storage room; and
- Construction of a secondary dwelling above existing detached garage.

ASSESSMENT INTRODUCTION

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

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



- determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings
 Pittwater 21 Development Control Plan - D14.8 Side and rear building line
 Pittwater 21 Development Control Plan - D14.11 Building envelope

SITE DESCRIPTION

Property Description:	Lot 10 DP 227843 , 16 Alameda Way WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-eastern side of Alameda Way.</p> <p>The site is irregular in shape with a curved frontage of 15.645m along Alameda Way and a maximum depth of 49.62m. The site has a surveyed area of 872.9m².</p> <p>The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house, and detached garage currently on the site.</p> <p>The site slopes from the front south-western boundary upwards to the rear north-eastern boundary over approximately 10 metres.</p> <p>The site contains garden beds, lawn areas, and trees. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses varying in architectural style and design.</p>

Map:



SITE HISTORY

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

DA2021/1670

Development Application for Construction of a secondary dwelling.
Refused on 9 February 2022 by Development Determination Panel.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 9 February 2022 and the notice of determination was issued on 14 February 2022. The review was lodged on 10 June 2022 and is to be considered by Development Determination Panel by 14 August 2022, which is within 6 months of the date of determination.

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

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



report.

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

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 01/07/2022 to 15/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The development is for construction of a secondary dwelling, as described and illustrated in the reports and plans.</p> <p>Council's Landscape Referral staff have assessed the proposal against the following Pittwater 21 DCP Controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D14 Warriewood Locality <p>No significant trees or vegetation is proposed to be removed, which is supported. All trees proposed to be retained shall be protected, subject to the imposed conditions. No stockpiling of materials is permissible within the tree protection zone of trees to be retained.</p>
NECC (Development Engineering)	<p>The small car space shown in the architectural plans in front of the proposed garage is not approved.</p> <p>Note to planner: Please delete small car space indicated in front of the proposed garage as grades of the driveway does not comply for a</p>



Internal Referral Body	Comments
	parking space.

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.1183223S_03 dated 6 June 2022).

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

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	Compliant. The proposed development would result in the existing principal dwelling and addition of a

	secondary dwelling on the land.
b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	Not relevant. There is no floor space ratio control for the subject site under Pittwater Local Environmental Control Plan 2014.
c) The total floor area of the secondary dwelling is: i) no more than 60m ² , or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	Compliant. The total floor area of the secondary dwelling is less than 60m ² .

Clause 53 – Non-discretionary development standards	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	Compliant. The site area is greater than 450m ² .
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Compliant. The number of parking spaces on the site is unaltered with the proposed development.

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.

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:	5.5m (Subclause 2FA)	5.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (South-West)	28.8m	-	Yes
Rear building line	6.5m (North-East)	5.37m	17.38% (1.13m)	No
Side building line	2.5m (South-East)	10.8m	-	Yes
	1m (North-West)	1.0m	-	Yes
Building envelope	3.5m (South-East)	Within envelope	-	Yes
	3.5m (North-West)	Outside envelope	17.78% (0.8m)	No
Landscaped area	60% (523.74m ²)	60% (524m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.14 Warriewood Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 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	No	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
C1.11 Secondary Dwellings and Rural Worker's Dwellings	No	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic protection - General	Yes	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	Yes	Yes
D14.8 Side and rear building line	No	Yes
D14.11 Building envelope	No	Yes
D14.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Description of non-compliance

B6.3 Off-Street Vehicle Parking requires two (2) off-street parking spaces for a dwelling house, and an additional third car parking space for a secondary dwelling.

The review application has removed the proposed parking that was initially located forward of the existing dwelling and is reliant upon the existing garage, and the existing informal parking arrangement



on the existing driveway.

The proposal retains the existing parking space located in the detached garage. As outlined on the Garage Plan, a second car space is shown as per the existing informal arrangement outside the garage. However, as noted by Council's Development Engineer the car space is not compliant with the required grades, and therefore the car space is not considered to be included as a off-street parking space. A condition has been recommended for the applicant to remove the small parking space from the approved plans.

Furthermore, under the Housing SEPP, the parking requirements for a secondary dwelling under Clause 53(b) outlines the following:

The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

Therefore, whilst the proposal provides one (1) existing off-street parking space, the proposed car spaces are unaltered as a result of the proposed secondary dwelling. A detailed assessment has been undertaken assessing the proposal against the outcomes of the control and it is considered the proposal meets the outcomes and is therefore supportable.

Merit consideration

The proposed development will be considered against the underlying outcomes of the control as follows:

- ***An adequate number of parking and service spaces that meets the demands generated by the development.***

Comment:

The proposal provides for one (1) off-street parking spaces on site in the existing garage. A site inspection identified that on-street parking in the nearby vicinity of the development and on surrounding streets is readily available. Therefore, the existing car parking arrangement is considered acceptable in meeting the demands of the proposed development.

- ***Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.***

Comment:

The proposal will continue to provide functional parking that will not alter the rainwater runoff or result in adverse visual or environmental impacts. The proposal will continue to maximise pedestrian and vehicle safety.

- ***Safe and convenient parking.***

Comment:

As stated above, the subject site provides for safe and convenient parking for the residents in the existing garage.



C1.11 Secondary Dwellings and Rural Worker's Dwellings

Description of non-compliance

The proposal is for a new secondary dwelling located above an existing detached garage.

The control states that a secondary dwelling above a detached garage is not supported.

The proposal has been assessed against the outcomes of the control and in this instance the proposal is supportable as the outcomes have been met.

Merit consideration

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

- ***Limitation of the visual bulk and scale of development.***

Comment:

The proposal is compliant with the maximum height of buildings for secondary dwellings. Whilst the proposal obtains a minor numerical breach to the north-western facade, it is considered the overall bulk and scale is reasonable in this instance. The proposal has been designed to be integrated above the existing garage, and therefore it is considered to be designed appropriately to mitigate any unreasonable visual bulk and scale.

- ***Provision of design flexibility for second storey development.***

Comment:

The proposed development provides a design that is effectively integrated into the slope of the land. The proposal demonstrates that a secondary dwelling can be incorporated into a part one and two storey structure whilst limiting the overall footprint for development on the site.

- ***Restriction of the footprint of development site.***

Comment:

The proposed location of the secondary dwelling has restricted the footprint building above the existing garage to retain a compliant landscaped area.

- ***Retention of natural vegetation and facilitation planting of additional landscaping.***

Comment:

The proposal is compliant with the 60% Landscaped Area requirements under Pittwater 21 Development Control Plan. Furthermore, Council's Landscape Officer has reviewed the proposal and is supportive of the proposal subject to recommended conditions.

- ***Provision of rental accommodation.***

Comment:

The proposed secondary dwelling has the provisions to be used as rental accommodation.



D14.8 Side and rear building line

Description of non-compliance

The minimum rear building line for built structures, other than driveways, fences and retaining walls is required to be 6.5m.

The proposed secondary dwelling is located 5.37m to the rear building line, presenting a variation of 17.38% (1.13m).

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:

The proposed secondary dwelling is consistent with the desired future character of the Warriewood Locality. The location of the proposed secondary dwelling is significantly distanced from the streetscape and therefore, the proposal will not cause any unreasonable hindrance to the desired future character.

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

Comment:

The bulk and scale of the proposed secondary dwelling is minimal demonstrating compliant maximum height of buildings to a secondary dwelling and compliant side setbacks. The integration of the proposed secondary dwelling above the garage, has been designed appropriately to mitigate any unreasonable bulk and scale.

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

Comment:

The proposal will not result in any unreasonable impact to views and vistas to and/or from public and private places.

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

Comment:

The proposed development will not cause any detrimental impact to view sharing as the proposal has been sited and positioned appropriately.

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

Comment:

The rear setback encroachment will not result in adverse amenity impacts to the adjoining neighbours. It is noted that a reasonable level of privacy, amenity, and solar access as demonstrated by the accompanied shadow diagrams will be provided and maintained to adjoining residential properties.



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

Comment:

The proposal provides a more than compliant landscaped area to allow for substantial landscaping. The proposal is sited below the mature tree canopy level and as the proposal is located at the rear of the subject site there will be no adverse impacts to the existing streetscape.

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

Comment:

Flexibility in the siting of the proposed secondary dwelling is considered suitable in this instance, as the proposal has been designed around the existing detached garage, resulting in limited excavation.

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

Comment:

Vegetation has been retained to visually reduce the built form of the proposed secondary dwelling.

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

Comment:

The rural and bushland character of the locality will not be adversely impacted as a result of the proposed development.

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

Comment:

This outcome is not applicable as the subject site does not adjoin a commercial zone.

D14.11 Building envelope

Description of non-compliance

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

The proposed secondary dwelling encroaches beyond the prescribed envelope control along the north-western elevation (see Figure 1) by up to 0.8m in height for a length of 8.5m, which represents a maximum variation of 17.78%.

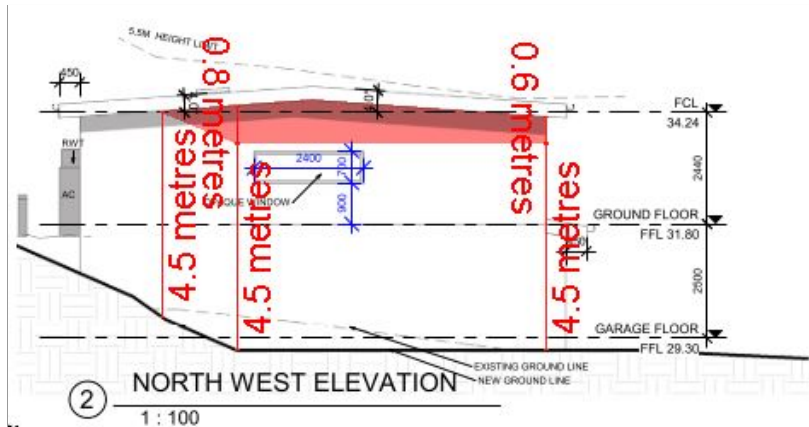


Figure 1. North-West Elevation (red highlighting numerical non-compliance with building envelope control)

A detailed assessment has been undertaken against the outcomes of the control. It is considered that despite the numerical envelope breach, the proposal is consistent with the outcomes of the control and is therefore supportable.

Merit consideration

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

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

Comment:

The proposed development is located at the rear of the subject site and will therefore be largely screened by the existing principal dwelling. The proposed secondary dwelling is considered to be consistent with the desired future character of the Warriewood Locality and therefore the proposal is supportable in this circumstance.

- ***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 proposal demonstrates compliance with the maximum height of buildings for secondary dwellings and as the proposal is located at the rear of the dwelling, it is not likely to detract from the existing streetscape. The proposal is located below the height of the trees and does not require removal of any significant vegetation.

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

Comment:

The proposal responds to, reinforces and sensitively relates to the existing natural environment as the proposal demonstrates a compliant landscaped area that includes retention of existing garden beds, plantings, and trees.



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

Comment:

The proposal is considered to mitigate any unreasonable bulk and scale through the compliant height of building and compliant side setbacks.

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

Comment:

There are no significant view corridors or vistas that will be unreasonable hindrances as a result of the proposed secondary dwelling.

- ***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 not expected to result in any unreasonable impact upon the existing level of privacy, amenity, and solar access to the subject site and adjoining sites.

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

Comment:

The proposal retains vegetation that will assist in visually reducing the built form of the proposed secondary dwelling.

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 \$ 977 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 195,320.

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 review of the determination, for Construction of a secondary dwelling has been referred to the Development Determination Panel (DDP) due to DA2021/1670 previously being determined by DDP as the applicant and property is a non-planning member of Council and a submission was received to DA2021/1670. In accordance with the DDP criteria, any application for the review of a determination in relation to a DA previously determined by the DDP is required to go the DDP for determination.

The development application was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

The critical assessment issues included off-street vehicle parking requirements, secondary dwelling control, rear setback control, and building envelope control. In this circumstance, the outcomes 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 Council as the consent authority grant Development Consent to REV2022/0010 for Review of Determination of Application DA2021/1670 for construction of a secondary dwelling on land at Lot 10 DP 227843, 16 Alameda Way, WARRIEWOOD, 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
Site and Roof Plan - 1, Issue D	9 May 2022	RK Designs
Ground Floor Plan - 2, Issue D	9 May 2022	RK Designs
Garage Plan - 3, Issue D	9 May 2022	RK Designs
Elevations and Section - 4, Issue D	9 May 2022	RK Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
Title Page, Notes & Details - SW001	26 August 2021	Modular Engineers Pty Ltd
Site Stormwater Plan - SW002	26 August 2021	Modular Engineers Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (No.1183223S_03)	6 June 2022	RK Designs
Geotechnical Report	27 August 2021	White Geotechnical Group
Proposed External Material and Colour Finishes Schedule	30 August 2021	RK Designs

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	23 August 2021	RK Designs

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,	EDMS Reference	Dated
--------------------------	-----------------------	--------------



Authority or Service		
Ausgrid	Ausgrid Referral Response	1 July 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**.

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

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

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

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

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

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 \$976.60 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$195,320.00.

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



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

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

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

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

7. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

8. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. **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 27/8/22 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of



the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Amendments to the approved plans**

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

- Deletion of small car space from Garage Plan - 3, Issue D.

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. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

13. **Compliance with Standards**

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

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

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

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (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)

15. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site, 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.

17. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

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

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

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

Reason: Protection of trees.

18. **Road Reserve**

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

Reason: Public safety.

19. **Survey Certificate**

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



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

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

20. **Installation and Maintenance of Sediment Control**

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

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

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

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

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

22. **Waste Management Confirmation**

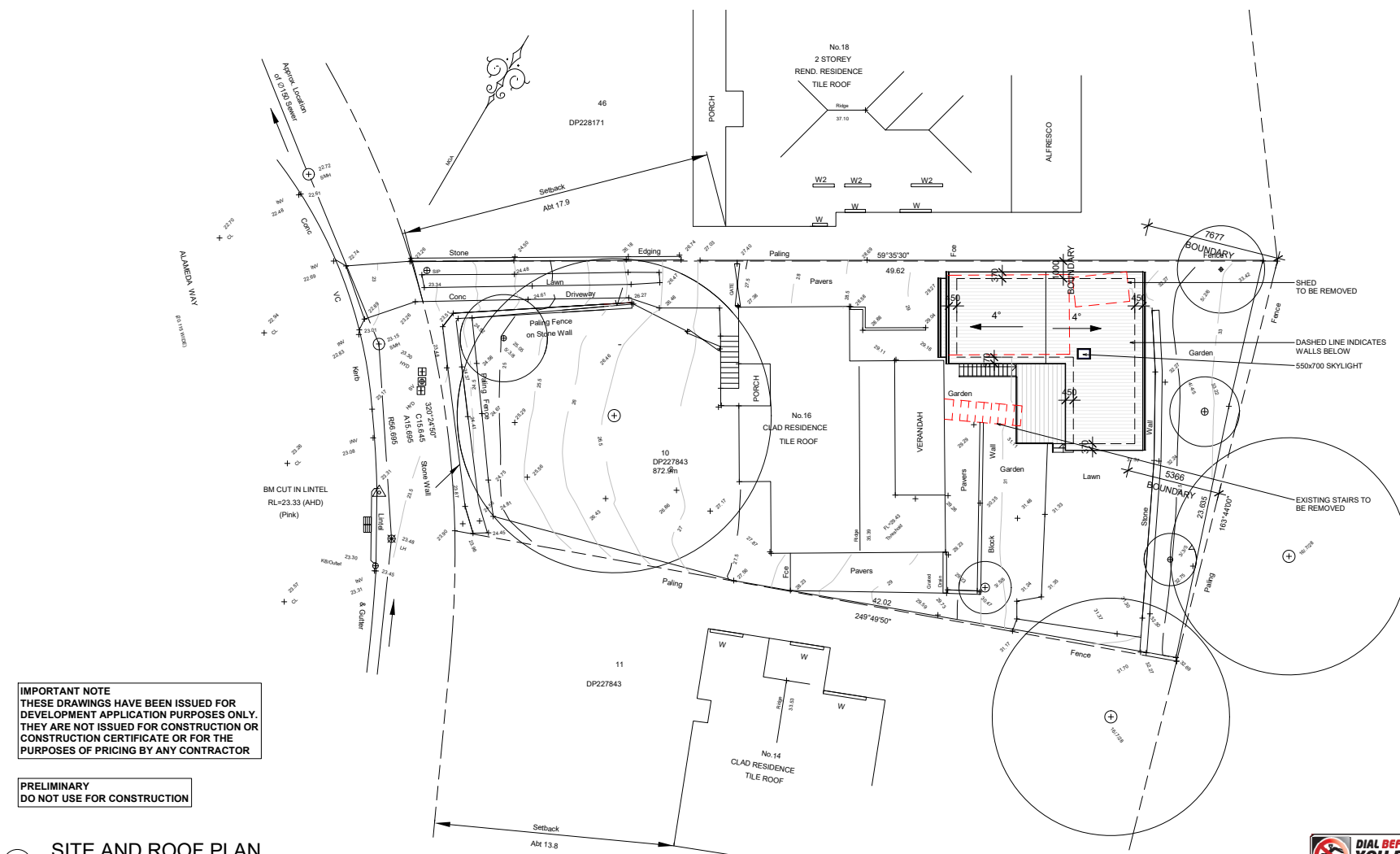
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in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

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

23. **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.



IMPORTANT NOTE
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DEVELOPMENT APPLICATION PURPOSES ONLY.
THEY ARE NOT ISSUED FOR CONSTRUCTION OR
CONSTRUCTION CERTIFICATE OR FOR THE
PURPOSES OF PRICING BY ANY CONTRACTOR

PRELIMINARY
DO NOT USE FOR CONSTRUCTION

1 SITE AND ROOF PLAN
1 : 200



GENERAL NOTES

All dimensions are to be confirmed on site by the builder/subcontractor. Any incongruities must be reported to the Designer before commencement of any work.
No Survey has been made on the boundaries, all bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used, the boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor.
In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the Designer before proceeding further with any work.
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.
Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	amendment
LS	19/02/21	A	ISSUE FOR DA
LS	22/11/21	B	ISSUE FOR ADDITIONAL INFO
LS	10/12/21	C	ISSUE FOR ADDITIONAL INFO
LS	09/05/22	D	ISSUE FOR DA REVIEW

project
**PROPOSED CONSTRUCTION OF A GRANNY FLAT AND
ATTACHED STORAGE AT 16 ALAMEDA WAY,
WARRIEWOOD NSW 2102 LOT 10 DP 227843**

client
MILE STOJIC

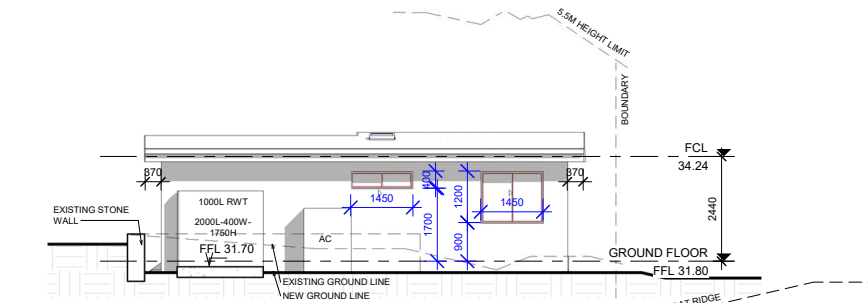


drawing
SITE AND ROOF PLAN
project no
21-18
date
19/02/21
sheet no.
1
scale @ A3 issue
1 : 200 D RK

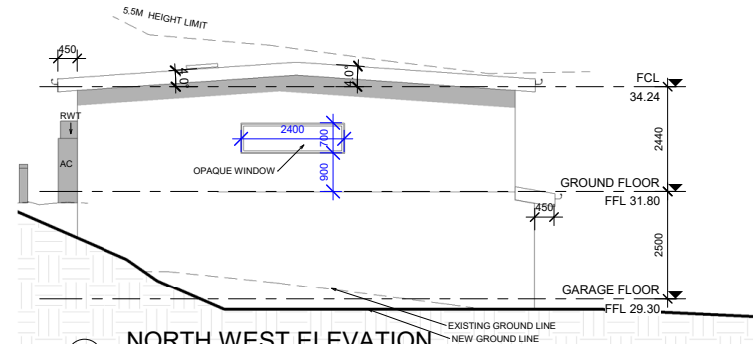


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abr. 393 300 330 53
spaces designed for life

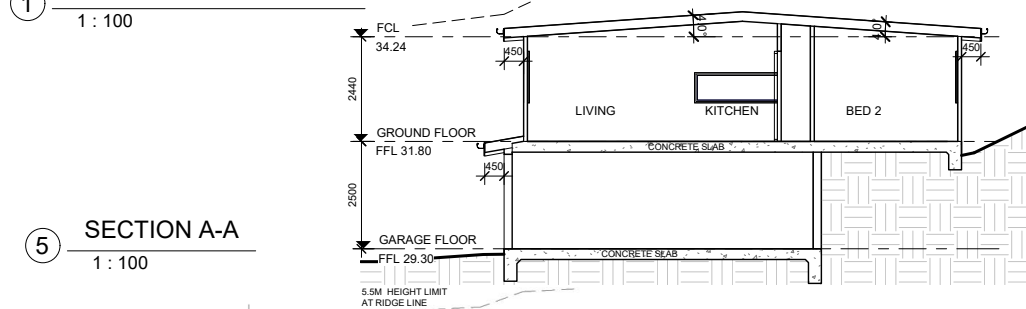
**RK
DESIGNS**



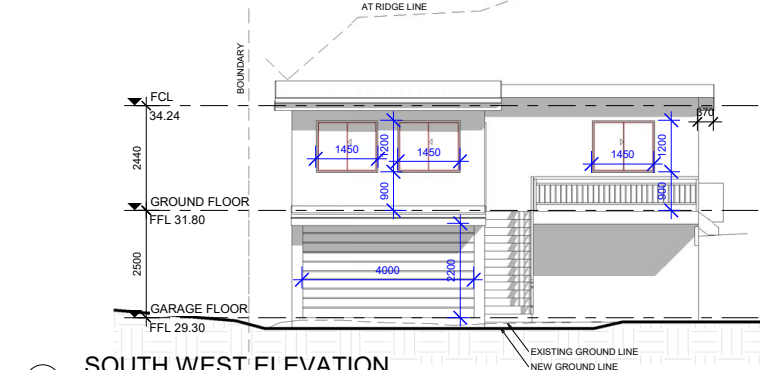
1 NORTH EAST ELEVATION
1 : 100



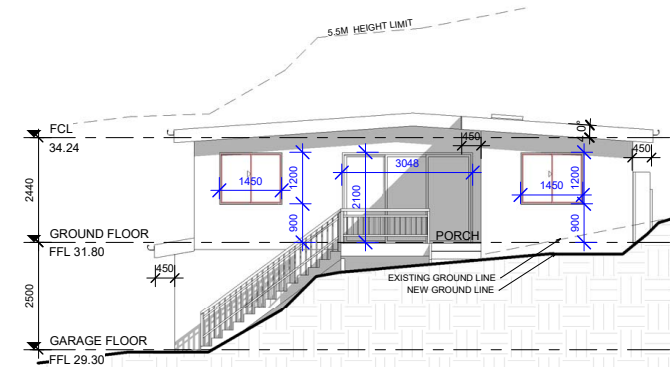
2 NORTH WEST ELEVATION
1 : 100



5 SECTION A-A
1 : 100



4 SOUTH WEST ELEVATION
1 : 100



3 SOUTH EAST ELEVATION
1 : 100

IMPORTANT NOTE
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GENERAL NOTES
All dimensions are to be confirmed on site by the builder/subcontractor. Any incongruities must be reported to the Designer before commencement of any work.
No Survey has been made on the boundaries, all bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used, the boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor.
In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the designer before proceeding further with any work.
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.
Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	amendment
LS	19/02/21	A	ISSUE FOR DA
LS	22/11/21	B	ISSUE FOR ADDITIONAL INFO
LS	10/12/21	C	ISSUE FOR ADDITIONAL INFO
LS	09/05/22	D	ISSUE FOR DA REVIEW

project
PROPOSED CONSTRUCTION OF A GRANNY FLAT AND ATTACHED STORAGE AT 16 ALAMEDA WAY, WARRIEWOOD NSW 2102 LOT 10 DP 227843

client
MILE STOJIC



true north

drawing
ELEVATIONS AND SECTION

project no 21-18 date 19/02/21 sheet no 4 scale @ A3 issue 1 : 100 D RK



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spaces designed for life

**RK
DESIGNS**

Clause 4.6 Variation – Height of Buildings
Pittwater Local Environmental Plan 2011

PROJECT
**PROPOSED CONSTRUCTION OF
A GRANNY FLAT AND STORAGE AREA**

PROPERTY
**16 ALAMEDA WAY,
WARRIEWOOD 2102**

CLIENT
MILIE STOJIC

JOB NO
21-18

DATED
7 September 2021

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RK
DESIGNS

**REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS
UNDER CLAUSE 4.6 PITTWATER COUNCIL LEP 2014****APPLICANT NAME:** Milie Stojic**PROPERTY ADDRESS:** 16 Alameda Way, Warriewood**PROPOSED DEVELOPMENT:** A secondary dwelling and attached storage area**DATE:** 27 August 2021**DEVELOPEMNT STANDARD:** Clause 4.3 of PLEP 2014 Height of Building

We are seeking approval to vary Clause 4.3 Height of Buildings development standard of Pittwater Council Local Environmental Plan 2014.

THE SITE AND EXISTING BUILDING

The property is located at 16 Alameda Way, Warriewood, NSW 2102. The block of land is approximately 872.9sqm in site area, faces west on Alameda Way. The site slopes down towards the western (front) boundary.

A two-storey dwelling exists on the property. There is a vehicle crossing on Alameda Way and a driveway which runs along the northern boundary that leads into the paved parking area. Refer to image 1 and 2.



Image 1. 16 Alameda Way, Warriewood

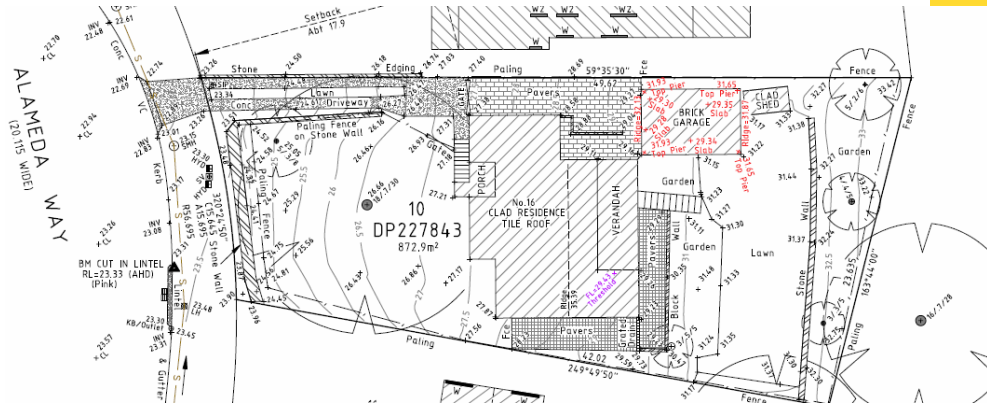


Image 2. Survey



Image 3: Existing slope of land



Image 4: Existing slope of land

3.0 EXISTING STREETScape

To the immediate north of the subject property, at 18 Alameda way, Warriewood, two- storey dwelling exists. Refer to image 3.



Image 3. 18 Alameda Way, Warriewood

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To the immediate south of the subject property, at 14 Alameda way, Warriewood, single- storey dwelling exists. Refer to image 4.



Image 4. 14 Alameda way, Warriewood

Across the road of the subject property, at 9 Alameda Way, Warriewood, a two-storey dwelling exists. Refer to image 5.



Image 5. 9 Alameda Way, Warriewood

To the rear of the subject property, at 46& 48 Elimatta Road, Mona Vale, two- storey dwellings exist. Refer to image 6.



Image 6. 46 & 48 Elimatta Road, Mona Vale

The remainder of Alameda Way is an amalgamation of one and two- storey dwellings in a wide range of architectural styles, character, materials, finishes, bulk and scale. Refer to image 7 and 8.



Image 7. Streetscape of Alameda Way, Warriewood



Image 8. Streetscape of Alameda Way, Warriewood

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**HEIGHT OF BUILDINGS**

As per Clause 4.3(2FA), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.

OBJECTIVES OF CLAUSE 4.3 HEIGHT OF BUILDINGS ARE TO

- 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.

The dictionary to the LEP defines building height to mean:

- 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,
- 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.



Figure 1. 5.5 metres height plane on 3D Model

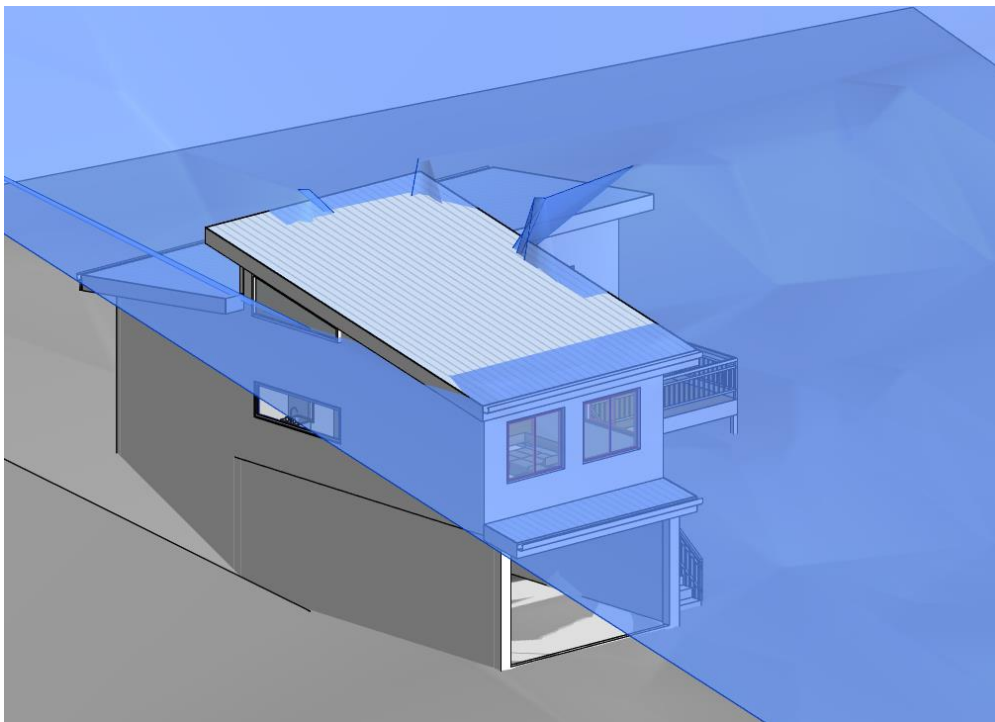


Figure 1. 5.5 metres height plane on 3D Model



From an analysis of the architectural plans and available survey information, and as indicated on the 3D height plane at Figure 1 and 2 over the page, we confirm that the development results in a building height breach of a maximum of 950mm along the North West of the roof form and maximum of 1450mm at the ridge line from the South West. This presents maximum non-compliance of between 950mm (17.2%) and 1450mm (26.3%).

The height of the development is contextually appropriate and will not be perceived as inappropriate or jarring in its context.

It has been determined that the majority of the development sits comfortably below the 5.5 metres height standard with the exception of the North West edge of the roof form. The maximum building height in this location is 6.7 metres. The balance of the development sits well below the maximum prescribed building height by up to 2 metres.



CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 of PLEP provides:

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 a particular circumstance.
- Pursuant to clause 4.6(2) consent may, subject to this clause be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

- Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstration:
 - 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(4) States consent must not be granted for development that contravenes a development standard unless:
 - a) the consent authority is satisfied that
 - the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - b) the concurrence of the Planning Secretary has been obtained
- Clause 4.6(5) states that in deciding whether to grant concurrence, the Planning Secretary must consider:
 - a) whether a 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.



HEIGHT OF BUILDINGS STANDARD AND OBJECTIVES:

This standard and the associated objectives, have been previously identified. Having regards to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Comment: In the context of the steep topography of the site (gradient of 20%) the extent of noncompliance is appropriately described as minor. The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the adjoining properties at 18 Alameda Way, Warriewood, the principal dwelling and the adjoining properties from the back. We have formed the considered opinion that the building height and roof form proposed are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality noting that required excavation is significantly less than propose a height complying development. It will help to retain the existing landscape and trees on site. Informing such opinion, we rely on the photomontage in figure 9,10 and 11 below.



Image 9: Existing slope of the subject property and the adjoining property at 18 Alameda Way.



Image 10: Existing slope of the subject property.



Image 11: the adjoining properties from the back.



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

Comment: The breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development, and associated extent of height noncompliance as previously noted in objective no.1. Therefore, the proposal is consistent with this objective.

- c) to minimise any overshadowing of neighbouring properties,
d) to allow for the reasonable sharing of views

Comment: The proposed works have been designed to preserve generous side setbacks particularly to the south east since there is a single storey dwelling exists at 14 Alameda Way to maintain shared views from neighbouring dwellings and minimise overshadowing. Also, the proposed structure has been located to ensure that there is minimal overshadowing resulting from the proposal as any overshadowing falls for the most on the subject properties roof space or within the existing shadow cast by the existing residence. Subsequently solar access to existing dwellings, public reserves and streets be maintained. The proposed work has been carefully located forward on existing footprint of the principal dwelling and consolidated to one side to ensure the property maintains public and private view corridors and view sharing.

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

Comment: The site falls towards the street, which presents a challenge to a compliant roof height for the development, 950mm up to 1450mm. To comply with the height, sufficient amount of excavation is inevitable that will affect natural topography.

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

Comment: The development will not have any direct or adverse impacts on any heritage items of the conservation areas and heritage items.



Clause 4.6(3)(b) of PLEP requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard.

There are a number of environmental planning grounds that support a variation to the maximum building height control in this instance to secure a better outcome for and from the development.

In this regard, it is considered the proposal to be of a skilful design which responds appropriately and effectively to the topography with the minor breach to the roof not resulting in any significant amenity impacts nor be readily discerned from the street or adjoining properties.

As a result, there are no adverse amenity impacts such as overshadowing or view loss associated with the proposed variation to the height of buildings control, when considering the site context.

The proposed sitting of all new built forms on the site has been carefully considered to ensure that all significant landscape elements are retained and remain visually prominent.

Also, strict compliance with the height control will inevitably lead to a reduction in a ceiling height and this, in turn, will not comply with the Australian Standards and it is not a desirable outcome for the development since it would decrease the amenity of the development.

It is considered that these environmental planning grounds are particular to the circumstances of the site and support the proposed variation to the maximum building height standard. The proposal promotes good design and amenity and as such there is no planning purpose in strictly upholding the development standard. It is a better planning outcome to permit a variation to Clause 4.3 in this instance. It is considered that enforcing compliance will lead to an environmental planning outcome that is suboptimal when compared with the environmental planning outcome that would be secured by the adoption of the applicant's proposal.



CONCLUSION

It is submitted that a variation to Pittwater Council LEP 2014 is warranted for this project. The non-conformity does not impact adjacent properties and complies with the standards objectives while providing better utilization of the existing property for the changing demands of the occupant. We have also minimised this non-compliance by limiting floor to ceiling heights to the minimum 2.44m.

As demonstrated above, strict compliance with this standard is “unreasonable” to this Development Application as the proposed works comply with all the objectives of this height control and will have no impact on the amenity of surrounding neighbours in terms of view less, privacy or increased overshadowing.

It is our opinion that there are sufficient environmental planning grounds to justify contravening the development standard and compliance with this standard is unreasonable and unnecessary, and as such, we request a variation to the standard.

We, therefore, request in light of the above information and the considered design that the variation to Clause 4.3 (Height of buildings) be granted in accordance with Clause 4.6 (Exceptions to development standards) in the Pittwater Council’s LEP for the proposed development in relation to proposed building height

ITEM 3.5	DA2022/0095 - 13 BARRABOOKA STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2022/433799
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans and Elevations 3 ↓ Clause 4.6 - Floor Space Ratio 4 ↓ Clause 4.6 - Height of Buildings

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 DA2022/0095 for alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 2610, 13 Barrabooka Street CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0095
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 11 DP 2610, 13 Barrabooka Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lisa Ann Dunn
Applicant:	Lisa Ann Dunn
Application Lodged:	22/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/03/2022 to 17/03/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 30.59% 4.4 Floor space ratio: 67.41%
Recommendation:	Approval
Estimated Cost of Works:	\$ 766,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel for consideration of Development Application DA2022/0095 for alterations and additions to an existing dwelling house including a new swimming pool.

The maximum building height of the proposed development is 11.1m, which represents a 30.59% variation to the 8.5m height limit set by Clause 4.3 - Height of Buildings of Manly LEP 2013. However, this element of the building is situated 1.82m below the existing ridge level of the dwelling house.

The proposed Floor Space Ratio (FSR) for the development measures at 0.699:1 (315sqm), which represents a 67.41% variation to the 0.4:1 FSR limit set by Clause 4.4 - Floor Space Ratio of Manly LEP 2013. Despite this, the vast majority of the additional gross floor area proposed is located within the existing building envelope.

The application is referred to the DDP on the basis of the development involving variations to the height and FSR development standards that exceed 10%. Despite the significant variations proposed, the applicant has demonstrated that compliance with both Clauses 4.3 and 4.4 of Manly LEP 2013 is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the respective variations.

The proposed development involves variations to the Manly DCP 2013 wall height, side setback, rear setbacks and total open space provisions. Despite this, the existing side setbacks are maintained and the proposal provides adequate outdoor open space to meet the recreational needs of the occupants of the dwelling. The wall height non-compliance on the northern elevation is prompted by the sloping topography. An improved landscaping outcome is also achieved through the provision of additional native landscaped treatment within the rear yard, as detailed on the Landscape Plan. The variations to the DCP numeric requirements do not prompt any unreasonable impacts to adjoining properties.

When considered on its merits, it is concluded that the proposal will have an acceptable impact upon the surrounding environment and streetscape, noting that the existing building envelope is largely retained. This will ensure that the resulting height, bulk and scale of the development maintains an appropriate visual relationship with surrounding development, whilst also minimising adverse amenity impacts to neighbouring properties in terms of solar access, view sharing, privacy and visual bulk. Suitable conditions are recommended with this consent to prevent overlooking into the northern adjacent property from the swimming pool terrace.

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. The works consist of:

External Works

- Demolish existing swimming pool.
- Construct a new swimming pool, terrace and external stairs.
- New passenger lift.

Lower Ground Floor

- Alterations and additions to existing lower ground floor to provide for extension of rumpus room, guest room, bathroom, laundry, cellar and plant room.

Ground Floor

- Alterations and additions to existing ground floor to provide for minor alterations to internal walls, new ensuite to bedroom 2, new access hallway to new passenger lift and new privacy screens to existing balcony.

First Floor

- Alterations and additions to existing first floor level to provide for new sitting room, bedroom with ensuite, cloak room, powder room, open plan living, dining and kitchen with butler's pantry, extension of existing balcony, new privacy screening and planter box, internal stairs, and a new roof.

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.

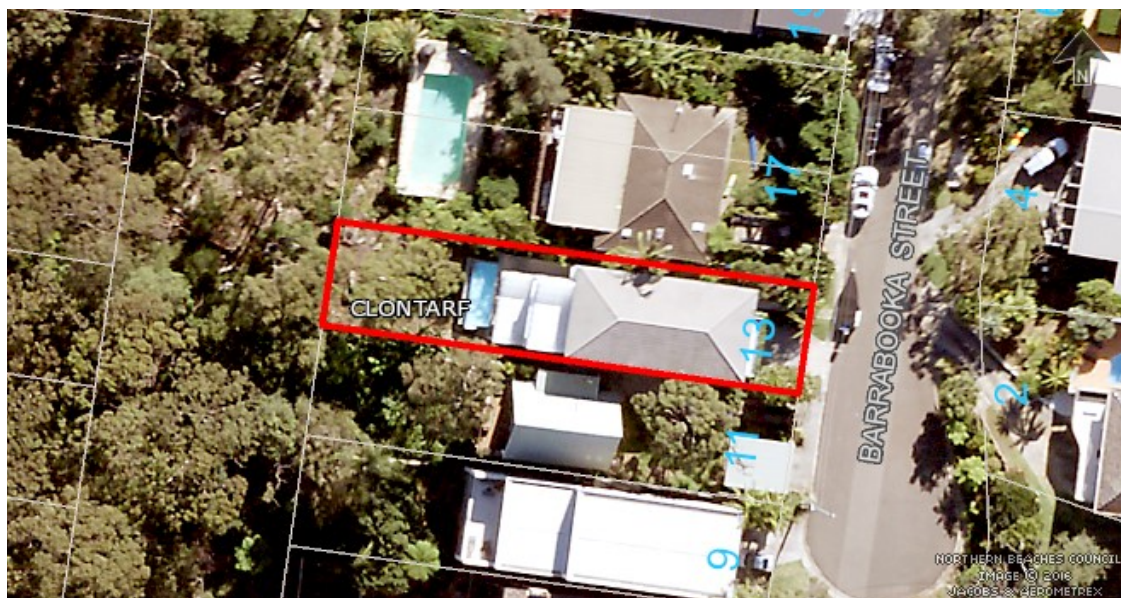
SUMMARY OF ASSESSMENT ISSUES

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 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 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 - 4.1.3 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 - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 11 DP 2610 , 13 Barrabooka Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of Barrabooka Street, Clontarf.</p> <p>The site is regular in shape with a frontage of 10.365 metres and respective depths of 45.375 metres and 45.385 metres along the northern and southern side boundaries. The site has a surveyed area of 470.4m².</p> <p>The site is located within the C3 Environmental Management zone pursuant to Manly LEP 2013 and accommodates a three storey dwelling house including an above-ground swimming pool to the rear of the dwelling.</p> <p>The site contains a small tree within the south-eastern front corner and a Sydney Red Gum within the rear yard approximately 12 metres in height. Numerous exposed rock outcrops are also located within the rear yard. The site backs onto densely vegetated bushland located within the C2 Environmental Conservation zone.</p> <p>The site experiences a fall of approximately 14.2 metres that slopes away from the front boundary (east) towards the rear boundary (west). This represents an approximate slope of 31.2%.</p> <p>The site is environmentally constrained with geotechnical, biodiversity and bushfire hazards.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses) within vegetated settings on sloping sites. The scale of surrounding development is typically 2-3 storeys in height.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. There are no recent previous applications on the site.

APPLICATION HISTORY

A site inspection was undertaken on 8 April 2022.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant raising concern with the following aspects of the proposal:

Privacy

Concern was raised of the elevated pool terrace, which is elevated approximately 2 metres above the natural ground level. Whilst the southern elevation is noted for containing a privacy screen, the northern elevation is devoid of screening. As a consequence, direct sight lines would be provided into the swimming pool area on the northern adjacent site (15-17 Barrabooka Street). The applicant was requested to provide privacy screening along the entire northern elevation of the pool terrace.

Arborist Report

The development (including retaining walls and fill) is within close proximity to an existing Sydney Red Gum tree within the rear yard. An arborist report had not been provided to assess the development's impacts upon the Sydney Red Gum Tree.

Landscape Plan

Council's Landscape Officer requested that a detailed landscape plan be submitted with the application in accordance with Council's lodgement requirements.

Subsequently, the applicant submitted an arborist report, amended plans and a detailed landscape plan

to respond to the Landscape Officer's referral comments. Council's Landscape Officer had raised concern of the retaining wall and fill and the potential impact that these aspects would have on the existing gum tree within the rear yard. The submitted arborist report did not address these aspects of the proposal and whether they would compromise the health of the gum tree. Accordingly, a condition is recommended with this consent to delete the retaining wall below the pool and the associated backfill to ensure the retention of the gum tree.

In regards to the privacy screening, the amended plans did not include privacy screening on the elevation plans. However, the applicant provided written email correspondence (dated 30 May 2022) to Council stipulating that they support the imposition of a condition for privacy screening along the northern elevation of the pool terrace. Accordingly, a suitable condition is recommended in this regard and a detailed discussion has been provided later within the section of this report relating to Clause 3.4.2 of the Manly DCP 2013.

In addition, revised Clause 4.6 written requests were submitted by the applicant to ensure the height and floor space ratio calculations correlated with Council's assessment.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)	<p><u>Division 8A</u> 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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an arborist report, landscape plan, amended plans and revised Clause 4.6 requests. This information has been received and assessed accordingly.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been</p>

Section 4.15 Matters for Consideration	Comments
	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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

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

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to the existing dwelling, as described and illustrated in the reports and plans. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral. External works proposed includes demolition of the existing pool, construct a new pool and associated terrace, new stairs to rear yard, and a new passenger lift.</p> <p>Council's Landscape Referral section have considered the application against the zone C3 Environmental Management objectives of Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • DCP section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • DCP section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. <p>The landscape outcome of the zone C3 Environmental Management objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment.</p> <p><i>updated comments 6 June 2022:</i> An updated Landscape Plan and a Arboricultural Impact Assessment titled Tree Assessment & Management Report is submitted. The Arboricultural Impact Assessment considers the impact of the development proposal upon one Sydney Red Gum within the property identified as tree 1 and one Sydney Red Gum with adjoining property at 11 Barrabooka St identified as tree 2. It is determined that tree 1 is worthy of being retained and is isolated from the proposed works, and that retention without compromise to its Useful Life Expectancy is identified in the report, and conditions shall be imposed for the implementation of arboricultural works as recommended in the Arboricultural Impact Assessment.</p> <p>The existing Sydney Red Gum within adjoining property at 11 Barrabooka St is assessed as isolated from the proposed works adequately and subject to tree protection measures retention is able to be managed. It is noted in the report that the Sydney Red Gum is in a state of decline, and it is determined that the proposed works are unlikely to further impact the tree.</p> <p>The updated Landscape Plan responds to the concerns raised</p>

Internal Referral Body	Comments
	<p>previously with the exception that the proposal continues to include changes to the existing ground level within the tree protection zone of the existing Sydney Red Gum within the property identified as tree 1, including retaining walling within the structural root zone.</p> <p>The Arboricultural Impact Assessment does not include commentary regarding the impact of fill for a lawn area to RL 42.75 and construction of retaining walling to TW42.70 in close proximity to tree 1, all which is likely to impact tree 1. It is noted that the Arboricultural Impact Assessment utilises the Master Set plans which show existing ground levels around existing tree 1 remaining. To ensure the preservation of tree 1, Landscape Referral shall impose conditions that the existing ground levels shall be maintained and the walling and fill shall be deleted, should the application be approved. Other proposed works as represented in the Landscape Plan are supported subject to conditions of consent.</p> <p><i>previous comments:</i></p> <p>The Statement of Environmental Effects notes that the proposed works are mainly within the existing footprint and there is no impact to existing trees. However it is noted that the pool is proposed within 5 metres of the existing Gum within the rear of the property as well as the existing Gum within the adjoining property at 11 Barrabooka St, and in accordance with Council's DA Lodgement Requirements a Arboricultural Impact Assessment shall be submitted to assess impact and recommend tree protection measures including advising of setback distances to development where appropriate.</p> <p>The Landscape Plan includes changes to the existing ground level within the tree protection zone of the existing Gum within the rear of the property, including retaining walling within the structural root zone, and such proposed works may impact the retention of the existing Gum, and this is not supported by Council. Due to the proximity to the foreshore area, any new landscape planting shall be locally native species, and the Landscape Plan shall provide such information including a selection of native species to be included in any new landscaping, or an indication of the existing planting retained. As indicated natural landscape features such as rock outcrops shall be retained and incorporated into the landscape scheme. The Landscape Plan shall provide an indication of compliance with DCP clause 4.1.5 Open Space and Landscaping, 4.1.5.2 (c) Minimum Tree Plantings, where two native trees are required within the property.</p> <p>To continue the landscape assessment, the matters raised above shall be addressed, including the submission of a Arboricultural Impact Assessment and an updated Landscape Plan.</p>
NECC (Bushland and Biodiversity)	<p>Updated Biodiversity Referral (7 June 2022)</p> <p>These updated biodiversity referral comments are based upon consideration of the following additional information:</p> <ul style="list-style-type: none"> • Tree Assessment and Management Report (Aura Tree

Internal Referral Body	Comments
	<p>Services, May 2022)</p> <ul style="list-style-type: none"> Amended Landscape Plan (The Garden Social, 1 April 2022) <p>The submitted arborist report provides for targeted tree protection measures to enable retention of Trees 1 and 2 (both <i>Angophora costata</i>). As identified by the Landscape Referrals Section, the arborist report appears to be based upon the architectural plans rather than the landscape plans, which include ground level changes and retaining wall construction in the rear section of the yard between the new pool and the boundary. Deletion of these elements by way of consent condition will serve to protect existing trees and achieve compliance with Manly LEP Clause 6.5 Terrestrial Biodiversity.</p> <p>The subject site is identified on the Northern Beaches Bushfire Prone Land Map and as such, must comply with the requirements of Planning for Bushfire Protection 2019. The submitted bushfire report (Ronald Coffey, 26 January 2022) states: "<i>Although the Asset Protection Zone requirements are listed as a recommendation, the site has been landscaped and is maintained to a standard that complies with the requirements of 'Planning for Bushfire Protection 2006' for Inner Protection Area Requirements</i>". It is therefore assumed that no additional vegetation removal is proposed to give effect to APZs required for the proposed development.</p> <p>The submitted landscape plan has satisfactorily addressed relevant objectives around protection of natural values on the site and the adjoining reserve.</p> <p>Original Biodiversity Referral (9 May 2022) There is insufficient information to assess the proposal against relevant biodiversity provisions at this time.</p> <p>As identified by Council's Landscape referrals section, the proposal may result in impacts to protected native trees which have not been assessed in an Arboricultural Impact Assessment ('arborist report'). In order to assess compliance with Manly LEP Clause 6.5 (Terrestrial Biodiversity), potential impacts to native trees must be adequately justified in an arborist report. Upon receipt of this additional information, the Biodiversity assessment will recommence.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p>

Internal Referral Body	Comments
	<p><i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP). Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Foreshores and Waterways area pursuant to SEPP (Biodiversity and Conservation) 2021. Hence, only Clause 2.12 of the R&H SEPP apply for this DA.</p> <p><u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated February 2022, the DA satisfies requirements under Clause 2.12 of the R&H SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience and Hazards) 2021.</p> <p><i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></p> <p>Harbour Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence, Chapter 10 of this Policy is applicable in assessing this DA.</p> <p><u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated February 2022, it is</p>

Internal Referral Body	Comments
	<p>determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area</p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p><u>Comment:</u></p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated February 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly LEP and DCP 2013.</p>
NECC (Development Engineering)	<p>The proposed development does not require OSD and disposal in accordance with Council’s policy is acceptable. The existing driveway is to remain which is also acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The site is near Middle Harbour and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the harbour, or the quantity and quality of surface and ground water flows that it receives.</p> <p>The site is part of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and water quality management should be considered.</p> <p>The stormwater system appears to be a split system with part of the property draining to Barrabooka Street and the remaining dispersed within the rear, Western portion of the site. The flow spreader/infiltration system is subject to conditions.</p>

Internal Referral Body	Comments		
	<p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>Subject to conditions, this application is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Middle Harbour.</p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>This application has been referred as it is within the vicinity of Item I38 - Natural landscape, Dobroyd Headland and Grotto Point, Sydney Harbour National Park. This landscape heritage item extends around the headland, coming within 20 metres of the subject site to its west (unformed House Street) and 20 metres to its east (opposite side of Barrabooka Street).</p>		
	Details of heritage items affected		
	<p>Details of this heritage item in the vicinity, as contained within the heritage inventory, are:</p> <p>Item I38 - Natural landscape, Dobroyd Headland and Grotto Point, Sydney Harbour National Park</p> <p><u>Statement of Significance</u></p> <p>Natural Landscape. Aesthetic, scientific.</p> <p><u>Physical Description</u></p> <p>Natural landscape; Prominent visual landform of headland, cliffs; upper slopes with indigenous vegetation communities. Provides a natural visual backdrop or foreground to the cultural aspects of the built environment of Manly. Important viewing position within Sydney Harbour area.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
Consideration of Application			
<p>This application is for alterations and additions to an existing dwelling house, including internal alterations, rear extension on lower level, installation of a lift, new balconies as well as demolition</p>			

Internal Referral Body	Comments
	<p>of the existing pool and construction of a new pool and associated landscaping.</p> <p>All works are contained within the site and largely within the existing built footprint. As a result, there will be no impact upon the natural landscape areas which form heritage Item I38.</p> <p>Therefore, no objections on heritage grounds and no conditions required.</p> <p>Consider against the provisions of CL5.10 of MLEP2013: Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
NSW Rural Fire Service – local branch (s4.14 EPAA)	<p>The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:</p> <p>Asset Protection Zones <i>Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.</i></p> <p>1. From the start of building works, and in perpetuity to ensure ongoing protection from the impact of bush fires, the entire property must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA the following requirements apply:</p> <ul style="list-style-type: none"> • tree canopy cover should be less than 15% at maturity; • trees at maturity should not touch or overhang the building; • lower limbs should be removed up to a height of 2m above the ground; • tree canopies should be separated by 2 to 5m; • preference should be given to smooth barked and evergreen trees; • large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings; • shrubs should not be located under trees; • shrubs should not form more than 10% ground cover; • clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation. • grass should be kept mown (as a guide grass should be kept to no

External Referral Body	Comments
	<p>more than 100mm in height); and</p> <ul style="list-style-type: none"> • leaves and vegetation debris should be removed. <p>Construction Standards <i>The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:</i></p> <p>2. New construction must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant BAL-FZ requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of Planning for Bush Fire Protection 2019.</p> <p>Water and Utility Services <i>Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.</i></p> <p>3. The provision of water, electricity and gas must comply the following in accordance with Table 7.4a of Planning for Bush Fire Protection 2019:</p> <ul style="list-style-type: none"> • reticulated water is to be provided to the development where available; • all above-ground water service pipes external to the building are metal, including and up to any taps; • where practicable, electrical transmission lines are underground; • where overhead, electrical transmission lines are proposed as follows: <ul style="list-style-type: none"> ○ lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and ○ no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines. • reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used; • all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side; • connections to and from gas cylinders are metal; • polymer sheathed flexible gas supply - lines are not used; and • above-ground gas service pipes are metal, including and up to any outlets. <p>General Advice – Consent Authority to Note</p> <ul style="list-style-type: none"> • The NSW RFS recognises that the site is constrained and that the proposed development falls within the Flame Zone. Flame Zone development is high risk development; consequently, in situations such as this, the NSW RFS seeks to improve the overall fire safety of the existing development. This requires greater emphasis on

External Referral Body	Comments
	<p>construction standards, landscaping, siting, and vegetation management practices to ensure improved levels of protection are afforded to the development, its occupants and fire fighters. The Service has undertaken a merit based assessment of the proposal and provides the above advice in accordance with Planning for Bush Fire Protection 2019.</p> <p>Comment:</p> <p>These recommended conditions from the NSW RFS have been included in the recommended conditions of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with this application (refer to BASIX Certificate No. A403933_03, dated 24 January 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 5.0 metres 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 5.0 metres 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 (Biodiversity and Conservation) 2021

The subject property is located within the Foreshores and Waterways Area. Therefore, the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(2) (aims of the Chapter), Section 10.11 (nominated planning principles), Section 10.20 (relating to public access to and use of foreshores and waterways), Section 10.21 (relating to maintenance of a working harbour), Section 10.23 (relating to interrelationship of waterway and foreshore uses), Section 10.23 (relating to foreshore and waterways scenic quality), Section 10.24 (relating to maintenance, protection and enhancement of views) and Section 10.24 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the Chapter. Given the scale of the works, a proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

2.10 Development on land within the coastal environment area

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

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

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

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

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

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

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

Comment:

The site is located within the Foreshores and Waterways Area. Hence, this clause is not applicable.

2.11 Development on land within the coastal use area

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

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

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that—

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

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

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

Comment:

The site is located within the Foreshores and Waterways Area. Hence, this clause is not applicable.

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

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

Comment:

The proposal has been designed to respond to the environmental constraints of the site and it is considered that the development is unlikely to cause increased risk of coastal hazards within the locality.

Conclusion

As demonstrated above, the proposal satisfies the relevant provisions within Chapter 2 of this SEPP.

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:	8.5 metres	11.1 metres	30.59%	No
Floor Space Ratio	0.4:1 (188.16m ²)	0.669:1 (315m ²)	67.41%	No

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 - Height of Buildings

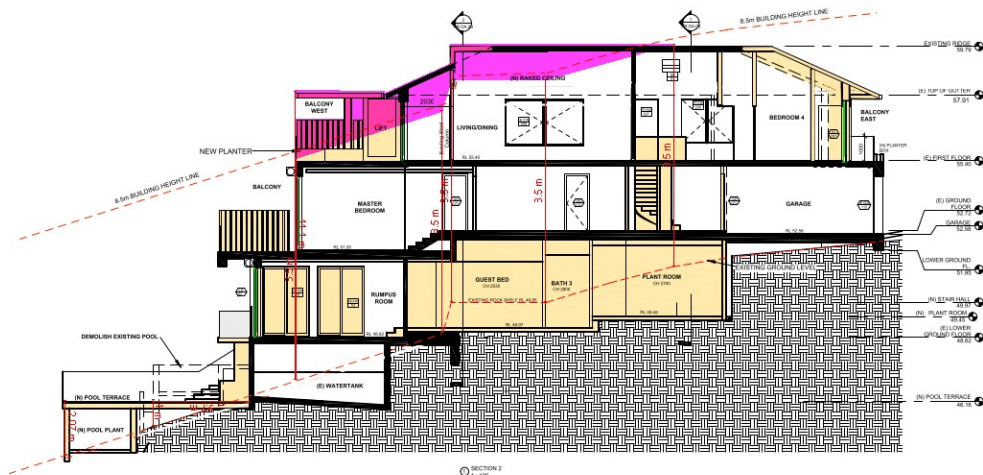
Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5 metres
Proposed:	11.1 metres
Percentage variation to requirement:	30.59%

The proposed pergola over the uppermost floor rear balcony has a maximum height of 11.1 metres, which represents a 30.59% variation to Clause 4.3 of Manly LEP 2013. It is important to note that the pergola sits 1.82 metres below the ridge line of the existing dwelling house roofline, which is sited at RL59.79 AHD. Furthermore, a portion of the existing roofline currently protrudes above the 8.5 metres height plane.

The proposal also seeks to replace the existing roof to the same height of RL59.79. As a result, a portion of this roof will protrude above the 8.5 metres height plane. Figure 1 below depicts the extent of the development that exceeds the 8.5 metres height plane.

Figure 1: areas of the building that exceed the 8.5 metres height plane



It is important to note that for the purposes of calculating the maximum building height of the development, existing ground level has been established using extrapolated levels taken from existing ground levels that surround the existing building envelope, per the principle established in the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070.

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 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 environmental planning grounds to justify contravening the development standard.

The low pitch roof form maintains modulation and architectural relief to the building's facade, and distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- *The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Barrabooka Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new works which exceed the maximum building height control will not exceed the ridge height of the existing dwelling and are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, by providing solar protection to the existing open terrace from the main living level which is consistent with the Objective 1.3 (g) of the EPA Act.*
- *The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by largely maintaining the existing roof form which will reduce the impact on the views and outlook for the uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the maximum building height and manages the

bulk and scale and maintains views over and past the building from the public and private domain".

Comment:

The justification provided by the applicant is supported in that the applicant's justification to contravene the building height development standard is well founded.

In particular, it is agreed that the new works that exceed the 8.5 metres height plane do not exceed the ridge level of the existing building and will not increase the perceived bulk and scale of the existing three storey dwelling house.

Furthermore, the height non-compliance will not compromise any significant view corridors and the provision of a pergola over the first floor terrace will provide for greater solar protection for the occupants of the dwelling house, whilst not compromising the amenity of neighbouring properties.

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 C3 Environmental Management 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 new works do not exceed the ridge level of the existing dwelling house. The rear additions step down in height with the slope of the land, whilst the dwelling will maintain a three storey form that is compatible with the scale of nearby development. The proposal is considered to achieve this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposed development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the side walls are retained. The vast majority of the additional gross floor area is contained within the existing building footprint, whilst new articulated elements are incorporated on the front and rear facades to reduce the bulk and scale of the building. Overall, the proposal satisfies this objective.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

Due to the general slope of the site towards the west, the adjoining properties on the western side of Barrabooka Street enjoy views towards The Spit and Mosman. The proposal will provide for a low profile roof form which will allow for suitable views to be maintained through and over the site. Furthermore, the proposal does not compromise any significant views from the public domain. It is considered that the proposal achieves this objective.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

North facing windows at 11 Barrabooka Street (southern adjacent dwelling) are already significantly overshadowed by the existing dwelling house. The proposal results in negligible changes to existing solar access to these windows. Furthermore, the elevated rear balcony (i.e. private open space) on the southern adjacent dwelling maintains direct sunlight at 12pm and 3pm on June 21, which is consistent with the level of solar access currently provided to this area. The proposal is considered to achieve this objective.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

As noted above, the proposal does not exacerbate the perceived bulk and scale of the existing dwelling house, noting that the existing ridge level is retained, the side walls are maintained, and the additional building mass is largely contained within the existing footprint. Furthermore, conditions have been recommended to ensure the retention of existing canopy trees on the site.

Notwithstanding this, the additional native landscape treatment proposed in the development will result in an improved landscaping outcome on the site. Overall, the proposal satisfies this objective.

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 proposal provides for alterations and additions to an existing dwelling which are largely contained within the existing building footprint and will not see the removal of any significant vegetation. Furthermore, the additional native landscape treatment incorporated into the development will result in an improved landscaping outcome for the site. Overall, it is considered that this objective is achieved.

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

Comment:

The proposed development does not significantly alter the bulk, scale and intensity of the existing building. The low density land use will be maintained subsequent to the development. Overall, the proposal will not have an adverse impact upon the ecological, scientific, cultural or aesthetic values of the zone.

- *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 require the removal of any significant vegetation. The landscaped character of the site is enhanced through the provision of additional native landscape treatment. The development is also sufficiently separated from the foreshore and the existing building envelope is largely unaltered. This will ensure that the development does not dominate the scenic qualities of the area.

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

Comment:

The proposal retains existing prescribed vegetation on the site, including the rock outcrops within the rear yard. It is considered that the proposal satisfies this objective.

- *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:

Suitable conditions are recommended with this consent to reduce stormwater runoff towards downslope properties and the foreshore area.

- *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 new works will not exceed the ridge height of the existing dwelling and maintain consistency with the two and three storey scale of existing surrounding development. Furthermore, the proposal does not necessitate the removal of prescribed vegetation on the site and the rear additions step down in height with the slope of the land to ensure an appropriate response to the topography. Overall, the proposal meets this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone and the objectives of Clause 4.3 - Height of Buildings 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 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:	0.4:1 (188.16sqm)
Proposed:	0.669:1 (315sqm)
Percentage variation to requirement:	67.41%

The proposed floor space ratio (FSR) of the development equates to 0.669:1 (315sqm), which represents a 67.41% variation to Clause 4.4 of Manly LEP 2013.

It is important to note that the existing dwelling has a non-compliance FSR of 0.585:1 (275m²), which represents a 46.15% variation to the development standard. Furthermore, approximately 39m² of the additional gross floor area proposed 40m² additional gross floor area proposed) will be located within the existing building footprint or excavated below the existing dwelling within the subfloor.

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 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 environmental planning grounds to justify contravening the development standard.

The low pitch roof form maintains modulation and architectural relief to the building's facade, and distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- *The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Barrabooka Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.*
- *The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining the existing overall ridge height, with a sympathetic roof form which will reduce the impact on the views and outlook for uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control".

Comment:

The justification provided by the applicant is supported in that the applicant's justification to contravene the FSR development standard is well founded.

In particular, the additional gross floor area proposed by the development is contained within the existing building footprint or excavated to sit within the subfloor, thereby ensuring the proposed additions will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern. The additional floor space is not considered to create adverse building bulk.

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

Therefore, the applicant's written request has adequately demonstrated that there are sufficient

environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the FSR development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the side walls are retained. The vast majority of the additional gross floor area is contained within the existing building footprint, whilst new articulated elements are incorporated on the front and rear facades to reduce the bulk and scale of the building. Overall, the proposal satisfies this objective.

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

Comment:

The proposed development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the side walls are retained. The additional bulk is generally concealed by the existing building and therefore, 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 additional gross floor area is predominantly located within the existing building footprint and will not alter the perceived bulk and scale of the what presents as an existing three storey dwelling house. In this regard, the proposal will continue to maintain an appropriate visual relationship with the surrounding area. Furthermore, the additional native landscape treatment proposed will ensure an improved landscaping outcome for the site. Overall, the proposal achieves this objective.

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

Comment:

The existing building envelope is largely retained and the additional FSR does not contribute to unreasonable amenity impacts, specifically with regards to solar access, views, privacy and visual bulk. As such, the FSR non-compliance will not preclude 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:

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

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 proposal provides for alterations and additions to an existing dwelling which are largely contained within the existing building footprint and will not see the removal of any significant vegetation. Furthermore, the additional native landscape treatment incorporated into the development will result in an improved landscaping outcome for the site. Overall, it is considered that this objective is achieved.

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

Comment:

The proposed development does not significantly alter the bulk, scale and intensity of the existing building. The low density land use will be maintained subsequent to the development. Overall, the proposal will not have an adverse impact upon the ecological, scientific, cultural or aesthetic values of

the zone.

- *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 require the removal of any significant vegetation. The landscaped character of the site is enhanced through the provision of additional native landscape treatment. The development is also sufficiently separated from the foreshore and the existing building envelope is largely unaltered. This will ensure that the development does not dominate the scenic qualities of the area.

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

Comment:

The proposal retains existing prescribed vegetation on the site, including the rock outcrops within the rear yard. It is considered that the proposal satisfies this objective.

- *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:

Suitable conditions are recommended with this consent to reduce stormwater runoff towards downslope properties and the foreshore area.

- *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 new works will not exceed the ridge height of the existing dwelling and maintain consistency with the two and three storey scale of existing surrounding development. Furthermore, the proposal does not necessitate the removal of prescribed vegetation on the site and the rear additions step down in height with the slope of the land to ensure an appropriate response to the topography. Overall, the proposal meets this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone and the objectives of Clause 4.4 - Floor Space Ratio of Manly LEP 2013.

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

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

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

5.10 Heritage conservation

The site is located in close proximity to Heritage Item I38 - Natural landscape, Dobroyd Headland and Grotto Point, Sydney Harbour National Park, as identified within Schedule 5 of Manly LEP 2013. Therefore, the provisions of this clause must be considered.

Council's Heritage Officer has reviewed the application and is satisfied that the works will not detract from the heritage significance of the nearby heritage item. Therefore, the proposal satisfies the requirements of Clause 5.10 of Manly LEP 2013.

6.2 Earthworks

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

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been recommended to delete the retaining wall and backfill below the swimming pool to ensure the long term retention of the Sydney Red Gum within the rear yard.

(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 recommended to delete the retaining wall and backfill below the swimming pool to ensure the long term retention of the Sydney Red Gum within the rear yard.

(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:

Conditions are recommended which mitigate and reduce sedimentation and stormwater runoff towards the foreshore area.

(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.

Conclusion

Having regard to the above assessment, it is concluded that the proposed development satisfies the relevant considerations within Clause 6.2 of Manly LEP 2013.

6.5 Terrestrial biodiversity

The site is identified on the Manly LEP 2013 Biodiversity Map. Therefore, the provisions of this clause apply.

The objective of this clause is to maintain terrestrial biodiversity by:

(a) protecting native fauna and flora, and

- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must 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*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development does not result in the removal of prescribed vegetation on the site and is unlikely to adversely impact upon local biodiversity. Council's Bushland and Biodiversity Officers have reviewed the application and are satisfied that the proposal will not impact upon local biodiversity, with suitable conditions being recommended to further negate any adverse impacts.

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 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:

Based on the findings above, it is concluded that the development is appropriately designed, sited and will be managed to avoid any significant environmental impacts.

Conclusion

As demonstrated above, the proposal satisfies the relevant considerations within Clause 6.5 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 70 metres to the east 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 west and the additional building mass is contained within the existing side boundary setbacks and does not exceed the existing ridge level, which will ensure that the height, bulk and scale of the dwelling does not detrimentally impact upon 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 west 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: 470.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1150m ² of site area	1 dwelling on a 470.4m ² site - existing and unchanged	N/A	N/A
	Dwelling Size: minimum 129m ² gross floor area required (based off 5 bedrooms and 4 bathrooms)	315m ² gross floor area	-	Yes
4.1.2.1 Wall Height	North: 8 metres (based on 1:4 gradient)	9.6 metres	20%	No
	South: 8 metres (based on 1:4 gradient)	unchanged	N/A	N/A
4.1.2.2 Number of Storeys	2 storeys	3 storeys - existing and unchanged	N/A	N/A
4.1.2.3 Roof Height	Height: 2.5 metres	1.86 metres	-	Yes
	Pitch: maximum 35 degrees	< 35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6 metres	no change to existing	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 3.2 metres (1/3 of wall height)	1.1 metres	65.63%	No
	South: 2.91 metres (1/3 of wall height)	1.07 metres	63.23%	No
	Windows: no windows within 3 metres of side boundaries	8x new windows within 3 metres of side boundaries	65.33%	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8 metres (rear boundary)	7.25 metres (pool) - 14.85 metres (dwelling)	9.38%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (282.24m ²) of site area	41.52% (195.3m ²)	30.8%	No
	Open space above ground 25% (48.83m ²) of total open space	23.91% (46.7m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (78.12m ²) of open space	94.73% (185m ²)	-	Yes
	2 native trees	2 native trees	-	Yes
4.1.5.3 Private Open Space	18m ²	> 18m ²	-	Yes

4.1.9 Swimming Pools, Spas and Water Features	1 metres height above ground	2.07 metres	107%	No
	1 metres curtilage/1.5 metres water side/rear setback	1.3 metres (curtilage) - 1.5 metres (water line)	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	No	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)	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)	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

The control stipulates that development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees, understorey vegetation and remnant native ground cover species. The Landscape Plan (prepared by The Garden Social, dated 1 April 2022) indicates a large retaining wall with associated backfill below the footprint of the swimming pool. Council's Landscape Officer is concerned that these elements would affect the long term retention of the existing Sydney Red Gum within the rear yard. The Arborist Report submitted with this application has not addressed whether the retaining wall and backfill will have an adverse impact upon the existing gum tree.

To ensure the long term retention of the Sydney Red Gum, a suitable condition has been recommended by Council's Landscape Officer which requires the deletion of the retaining wall and associated fill within the rear yard. The natural ground level within this area is to be either mass planted or may be grassed over the existing levels.

Subject to this recommended condition, the proposal will ensure the long term retention of the existing Sydney Red Gum.

3.4.2 Privacy and Security

Description of non-compliance

The control aims to minimise a loss of privacy to surrounding development through good design. The proposal includes a number of elevated terrace areas on the rear (west) elevation. Whilst the larger terraces on levels 2 and 3 contain privacy screening on the northern and southern elevations, the large pool terrace is devoid of screening on the northern elevation. As a consequence, direct sight lines would be provided into the swimming pool area on the northern adjacent property (15-17 Barrabooka Street).

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The overlooking is not considered to be reasonable in this case as the pool terrace is approximately

20m² in area (i.e. conducive for high frequency use), is elevated approximately 2 metres above natural ground level and is located approximately 5m to the south of the adjacent swimming pool area.

To mitigate the overlooking into the adjacent private open space, a Condition is recommended with this consent requiring the entire northern elevation of the pool terrace sited at RL46.16 AHD to be affixed with a 1.65 metres high privacy screen. The screen is to be either solid panel construction or louvre construction with maximum openings of 30 millimetres. The provision of this screen will mitigate direct overlooking from standing and sitting positions and will not significantly compromise solar access to the subject pool terrace area.

Subject to this recommended condition, the proposal will achieve this objective.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

As noted above, the privacy screen will not significantly compromise solar access to proposed pool terrace area. Furthermore, as the water views are located to the west of the site the provision of the privacy screen along the northern elevation of the pool terrace will not compromise potential view lines from the subject site.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for passive surveillance of the street.

Conclusion

Based on the above assessment, it is concluded that the applicable objectives of the control are achieved, subject to the recommended Condition.

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

Description of non-compliance

The control limits the external wall height of the dwelling house to 8 metres (based off a 1:4 gradient or greater). The proposal includes a maximum wall height of 9.6 metres on the northern elevation. This measurement has been taken from the top of the lift shaft. It is noted that the proposal does not alter the existing wall height on the southern elevation.

Merit consideration

When considering the proposal on its merits, the control relies upon the objectives specified within Clause 4.3 of Manly LEP 2013. As discussed in detail within the section of this report relating to Clause 4.6 of Manly LEP 2013, the proposed development is found to align with the objectives of the height standard, notwithstanding the numeric non-compliances that pertain to building height and wall height.

Therefore, the proposed development is consistent with the intent of this control and supported on merit.

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 by this control. However, when utilising the undersized allotment exemption the proposed FSR equates to 0.42:1, which is still a 5% departure from the 0.4:1 FSR development standard.

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

Description of non-compliance

Side Setbacks

The control stipulates that development shall be setback at least 1/3 of the adjacent wall height from the side boundaries. In applying this principle, the following side setbacks are required:

- North: 3.2 metres.
- South: 2.91 metres.

The new additions are setback 1.1 metres and 1.07 metres respectively from the northern and southern side boundaries, which does not meet the prerequisite. Notwithstanding, these setbacks follow the side setbacks of the existing dwelling house.

Rear Setbacks

The control requires development to be setback at least 8 metres from the rear boundary. The dwelling is setback 14.85 metres from the rear boundary and meets this requirement. However, the swimming pool is setback 7.25 metres from the rear boundary, which does not meet the 8 metres requirement.

It is important to note that typically within the former Manly LGA swimming pools only need to be setback 1m from side or rear boundaries (refer to Clause 4.1.9 of Manly DCP 2013). However, as the site backs onto land zoned C2 Environmental Conservation, the 8m rear setback applies.

Windows

The control stipulates that windows must to be located within 3 metres of side boundaries. The proposal includes 8 new windows within 3 metres of the side boundaries, which does not meet this requirement.

Merit consideration:

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

Objective 1) To 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 development does not substantially alter the existing building envelope, in that the works do not extend above the ridge level of the existing dwelling house and the existing side setbacks are retained. The vast majority of the additional gross floor area is contained within the existing building footprint, whilst new articulated elements are incorporated on the front and rear facades to reduce the bulk and scale of the building. Furthermore, the new native landscape treatment within the rear yard will enhance the landscape character of the street. Overall, the proposal meets this objective.

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 new windows are appropriately located and include privacy mitigation treatments (i.e. obscure glazing) where appropriate to minimise direct overlooking into the adjacent dwelling houses to the north and south. The pool terrace also does not prompt unreasonable overlooking to the west (rear) as a consequence of the rear setback non-compliance as the land located to the rear of the site consists of dense bushland. Furthermore, the additional overshadowing created by the proposal is negligible and the development ensures adequate view sharing is maintained.

The proposal also maintains the existing character of the streetscape, noting that the side setbacks and ridge level of the existing dwelling house are maintained. In this case, adequate space between buildings is maintained. The proposal will also not preclude safe and adequate traffic conditions within the locality.

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 and rear setback non-compliance as the proposed development does not result in unacceptable streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed development complies with the Manly DCP 2013 landscaped area provision and the development incorporates additional native planting, thereby ensuring an acceptable landscaping outcome.

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

Comment:

The recommendations of the NSW RFS have been included as recommended conditions of consent.

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% (282.24m²) of the site to consist of total open space (TOS). To be included as TOS open space areas must be at least 3m x 3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway is excluded).

The application proposes only 41.52% (195.3m²) of the site area as TOS, which does not achieve the numeric requirement.

Merit consideration:

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

Objective 1) To 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 and retains the rock outcrops within the rear yard. Furthermore, native vegetation on the site will be enhanced through the provision of the additional landscaping detailed on the Landscape Plan.

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. Conditions are recommended to ensure this.

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 finished floor level of the swimming pool is located up to 2.07 metres above the existing ground level, which exceeds the numeric limit of 1 metres.

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:

As discussed earlier within this report, the issue of overlooking from the pool terrace will be alleviated through the recommended condition requiring a 1.65 metres high privacy screen to be erected along the northern elevation of the pool terrace. 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 within the rear yard.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The site is bushfire prone. The pool water could potentially be used as an emergency water resource in the event of a bushfire.

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.

4.4.5 Earthworks (Excavation and Filling)

The control limits any filling to 1 metres above the natural ground level. The Landscape Plan indicates filling within the rear yard that would exceed 1 metres. However, a condition has been recommended by Council's Landscape Officer to delete the retaining wall and associated fill within the rear yard to ensure the retention of the Sydney Red Gum tree. As such, the proposal complies with this control, subject to the recommended conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$7,660 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$766,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

The proposed development involves alterations and additions to an existing dwelling house including a swimming pool.

The proposed development involves 30.59% and 67.41% variations respectively to Clauses 4.3 and 4.4 of Manly LEP 2013. However, 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 Manly DCP 2013 has found that the proposal does not comply with a number of controls (i.e. wall height, side setback, rear setbacks and total open space). Given the constraints on the development by virtue of the steep topography and the retention of the side elevations of the dwelling house, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts upon the adjoining properties and the proposal will maintain an appropriate visual relationship with the surrounding built environment, noting that the existing building envelope generally unaltered.

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 Building and Clause 4.4 Floor Space Ratio development standards 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 DA2022/0095 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 2610, 13 Barrabooka 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
AR.DA.00 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.03 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.04 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.05 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.06 (Revision G)	August 2021	R Squared Studios Pty Ltd

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AR.DA.07 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.08 (Revision G)	August 2021	R Squared Studios Pty Ltd
AR.DA.09 (Revision G)	August 2021	R Squared Studios Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A403933_03	24 January 2022	Efficient Living Pty Ltd
Geotechnical Assessment Ref. AG 20182	26 April 2021	Ascent Geotechnical Consulting
Bushfire Risk Assessment Ref. 611-R	26 January 2022	Ronald Coffey
Tree Assessment & Management Report	May 2022	Aura Tree Services

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-01 (Revision A) - Landscape Plan	1 April 2022	The Garden Social

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	1 November 2021	Vaughan Milligan Development Consulting

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated
NSW Rural Fire Service	NSW RFS Referral Response Ref. DA20220408006927-Original-	21 April 2022

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(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 sewerage 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 \$7,660.00 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 \$766,000.00.

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

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

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

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

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

6. Security Bond

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

An inspection fee in accordance with Council adopted fees and charges (at the time of payment)

is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

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

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

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

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

7. **Stormwater Disposal**

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

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

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

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. **Water Quality Management**

A suitable flow spreader/infiltration system must be in place to capture organic matter and

coarse sediments prior to discharge of stormwater directly to the bushland. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

10. **Amendments to the approved plans**

The following amendments are to be made to the approved architectural and landscape plans:

- The retaining wall below the swimming pool and associated fill within the rear yard near tree 1 - Sydney Red Gum are not consented to and must be deleted in their entirety, and the natural ground area shall either be mass planted that continues the proposed planting theme in the rear yard, or may be grassed over existing levels.
- The entire northern elevation of the rear swimming pool terrace sited at RL46.16 AHD must be affixed with a non-transparent screen to a height of 1.65 metres above the finished floor level. The screen is to be either a solid panel or louvre style construction with maximum openings of 30 millimetres. The screen must be designed in accordance with the pool fencing safety requirements outlined within Australian Standard AS1926 Swimming Pool Safety. To avoid any confusion, the screen is to be confined only to the pool terrace and is not to be located on the northern side of the adjacent external staircase.

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 and existing bushland.

11. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA 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.

14. **Sydney Water "Tap In"**

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

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

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

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

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

15. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the Construction Certificate plans.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Construction Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

17. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,

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

b) Tree protection shall be undertaken as follows:

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

18. **Road Reserve**

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

Reason: Public safety.

19. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

20. **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) 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.

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

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

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

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

22. **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.

23. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

24. **Waste Management During Development**

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

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

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

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

25. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan, except as altered by the following conditions, and inclusive of the following conditions:

- i) the retaining wall, and associated fill within the rear yard near tree 1 - Sydney Red Gum are not consented to and must be deleted in their entirety, and the natural ground area shall either be mass planted that continues the proposed planting theme in the rear yard, or may be grassed over existing levels,
- ii) all tree planting shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying 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 at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- v) landscape works are confined to the legal lot boundaries.

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

Reason: Environmental amenity.

26. **Condition of Retained Vegetation**

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

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

Reason: Tree and vegetation protection.

27. **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.

28. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

29. **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.

30. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the as-built development.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Occupation Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

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

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

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

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

Reason: Protection of the receiving environment

32. **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

33. **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.

34. **Geotechnical Recommendations**

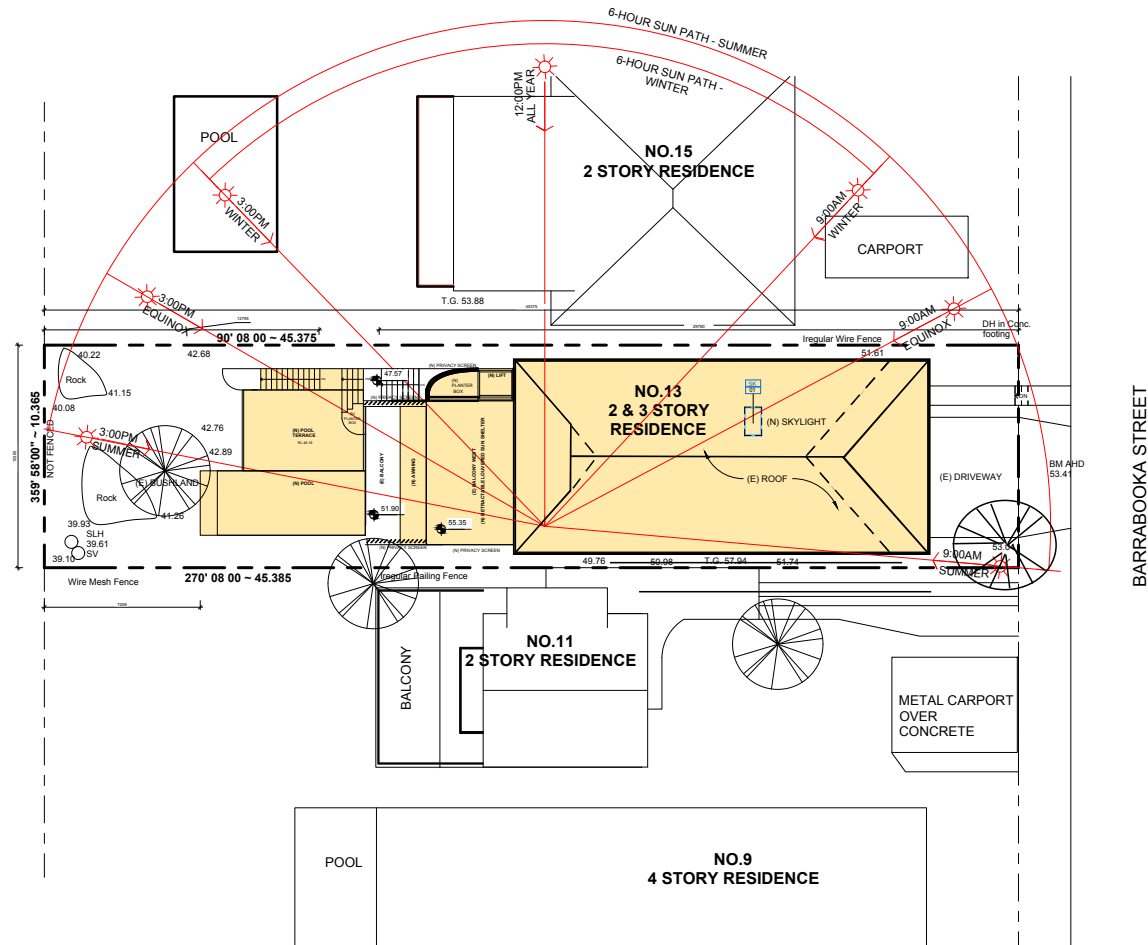
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **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 5dBA 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.



DA DRAWINGS:
AR.DA.00 - SITE & ROOF PLAN
AR.DA.01 - (E) FLOOR PLANS
AR.DA.02 - (E) EXTERIOR ELEVATIONS
AR.DA.03 - (N) FLOOR PLAN - LGF
AR.DA.04 - (N) FLOOR PLAN - GF
AR.DA.05 - (N) FLOOR PLAN - FF
AR.DA.06 - (N) EXTERIOR ELEVATIONS
AR.DA.07 - (N) SECTIONS
AR.DA.08 - (N) SECTIONS
AR.DA.09 - (N) SECTIONS
AR.DA.10 - WINDOW SCHEDULE
AR.DA.11 - DOOR SCHEDULE
AR.DA.12 - SUN SHADOW STUDIES
AR.DA.13 - OPEN SPACE CALCULATION

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Rev	Date	Description	Checked	Auth.	LEGEND

Proj. Arch
RR
Date
AUG. 2021
Do not scale drawings. Verify all dimensions on site. Notify architect of all discrepancies.

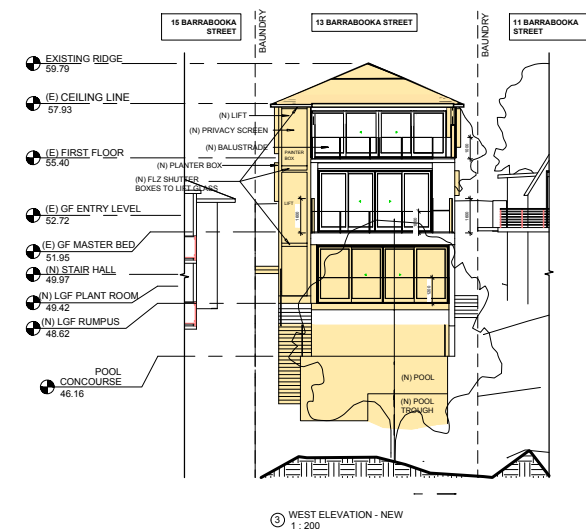
Drawn
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Scale
1 : 200

Project
ALTERATIONS & ADDITIONS
13 BARRABOOKA STREET, CLONTARF
Drawing Title
(N) SITE & ROOF PLAN

Drawing No.
AR.DA.00

Revision
G

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Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 2

CLAUSE 4.6 – FLOOR SPACE RATIO

13 Barrabooka Street, Clontarf

1

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

13 BARRABOOKA STREET, CLONTARF

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S FLOOR SPACE RATIO
CONTROL AS DETAILED IN CLAUSE 4.4 OF THE
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to an existing dwelling
At: 13 Barrabooka Street, Clontarf
Owner: Ian & Lisa Dunn
Applicant: Ian & Lisa Dunn
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Clontarf locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.4:1 or for this site with an area of 470.4m², the maximum gross floor area is 188.16m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The existing dwelling on the site presents a gross floor area of 275m² or 0.58:1.

The proposed development will see an increase in the total floor area of 40m² when compared to the existing floor area, to a maximum of floor area of 315m² or 0.669:1, and therefore presents a variation of 126.84m² or 67.1% to the control.

Notably, the extent of the new floor area (40m² of the proposed new floor area) will be within the existing lower ground floor level and excavated below the current dwelling)) with the result that

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the existing bulk and scale of the building when viewed from neighbouring properties or the surrounding public areas is largely unchanged.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 1150m², with the DCP permitting a variation to a minimum lot size of 750m² and when calculated against this required lot size, the permissible floor area is 300m². The proposed development will present a total floor area of 315m² or a FSR of 0.42:1, which is marginally in excess of the control when assessed against the minimum lot size in the locality.

Is clause 4.4 of MLEP a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

"(d) the cubic content of floor space of a building."

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

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4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.4:1 however as the proposal will only result in a minor increase in the floor area of 40m² in total with the new floor area at the lowest floor level and within the building undercroft, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence

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for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the 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.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C3 Environmental Management Zone, which are noted as:

- *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.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

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

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The proposal will not exceed the existing ridge level of the current dwelling.

Notwithstanding the non-compliance with the maximum floor space ratio, together with the fact that the development will result in only a modest total increase in the gross floor area of 39m² with only 1m² increase above the ground and first floor levels, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Barrabooka Street from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Clontarf of 0.4:1 or for this site, the allowable gross floor area is 188.16m².
- 5.3 The subject site has an area of 470.4m².
- 5.4 The existing dwelling has a gross floor area of 275m² or FSR of 0.58:1. The proposal has a calculable gross floor area of 315m² or FSR of 0.667:1. The proposal will see a minor increase in the floor area of only 40m², which is within the building undercroft and is not visible from Barrabooka Street
- 5.5 The total non-compliance with the FSR control is 126.84m² or 66.9%.
- 5.6 When assessed against a minimum lot area of 750m², the proposal presents an FSR of 0.42:1, which is a reduced extent of non-compliance with the maximum floor space ratio control.

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6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

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

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applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the C3 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

7.0. Request for Variation

7.1 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.

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The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in 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,

The proposal will not see the loss of any significant vegetation. The built footprint of the existing dwelling remains largely unchanged, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains the majority of the existing landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining 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.

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

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7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31]*

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

The low pitch roof form further introduces modulation and architectural relief to the building’s facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions introduce modulation and architectural relief to the building’s facade, without seeing any substantial increase to the building’s bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

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- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Barrabooka Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining the existing overall ridge height, with a sympathetic roof form which will reduce the impact on the views and outlook for uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

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

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

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

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7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the C3 Environmental Management zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the C3 Environmental Management zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the compatible form of the proposed additions which see a minor increase in the gross floor area of 40m², the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the C3 Environmental Management Zone for the following reasons:

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

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The C3 Environmental Management Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will see a modest increase in the total floor area of 409m², of which a significant majority (38m²) is located within the existing lower ground floor level and is provided through further excavation beneath the dwelling. The

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proposal will not exceed the existing overall ridge height of the dwelling, and will see a reduction in the general bulk and scale in comparison to the previously approved development.

The non-compliance, which results from the extent of the existing floor areas and the provision of new additional floor area to meet the requirements of the owners will improve the amenity for the buildings' owners by providing new living spaces in a form which complements the architectural style and scale of the surrounding development.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

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

The alterations and additions to the existing dwelling are modest in bulk and scale and comprise complementary colours and finishes, and will not result in any adverse impacts of the ecological values of the locality.

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

The proposal will not require the removal of any significant vegetation. The landscaped character of the site is maintained.

The proposal is not considered to detract from the scenic qualities of the nearby foreshore.

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

The subject site is well separated from the foreshore, and will not impact the existing bushland along the foreshore. The modest extent of the new works and complementary external finishes will ensure that the development is not prominently viewed within the locality.

- ***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.***

Noted. The site maintains property boundaries which are capable of accommodating future plantings.

The existing stormwater arrangements will be maintained.

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

The proposed new works will not exceed the ridge height of the existing dwelling, and maintain consistency with the two and three storey scale of existing surrounding development.

The proposed development will follow the sloping topography of the site, and will not require the removal of any significant vegetation.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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8.0 Conclusion

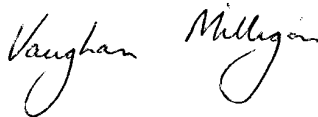
This development proposes a departure from the maximum floor space ratio control, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.669:1.

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 750m² and when calculated against this required lot size, the development prescribes a FSR of 0.42:1, which presents a substantially lesser variation to the FSR control. Compliance with this control is constrained by the extent of the existing dwelling.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 1
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

13 Barrabooka Street, Clontarf

1

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**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

13 BARRABOOKA STREET, CLONTARF

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S MAXIMUM BUILDING
HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to an existing dwelling
At: 13 Barrabooka Street, Clontarf
Owner: Ian & Lisa Dunn
Applicant: Ian & Lisa Dunn
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum height of a building as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.3 restricts the maximum height of a building within this area of the Clontarf locality and refers to the height control noted within the "*Height of Buildings Map*."

The relevant maximum height of the building in this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal will not see any change to the existing maximum height of the dwelling.

The new works are up to 11.1m in height above the existing ground level to the new pergola element over the western terrace at the first floor level and results in a non-compliance of 2.6m or 30.59% to the control, as noted in Figure 8.

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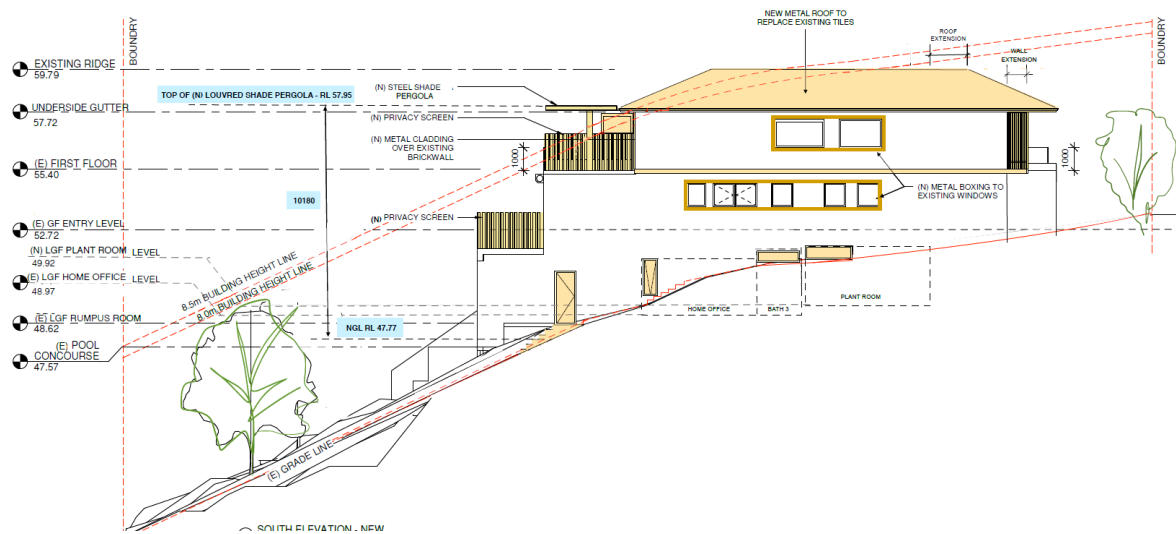


**Fig 8: Sections elevation indicating proposed roof exceeding Council's height of buildings control
(Source: R Squared Studios Pty Ltd)**

Is clause 4.3 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”

- (b) Clause 4.3 relates to the maximum height of a building. Accordingly, clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

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In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.3 (the height of a building standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

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Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the maximum height of a building development standard pursuant to clause 4.3 of MLEP which specifies a maximum building height of 8.5m. As a consequence of the site's slope and the existing built form the proposal will present a maximum height of 11.1m.

In the circumstances of this case, there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be

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carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the 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.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C3 Environmental Management Zone, which are noted as:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

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- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

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

The proposal will not exceed the existing ridge level of the current dwelling.

Notwithstanding the minor non-compliance with the maximum height of 2.6m or 30.59% in overall height, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Barrabooka Street and from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum height of a building development standard contained in clause 4.3 of MLEP.
- 5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m for development in this part of Clontarf.
- 5.3 The proposed alterations and additions to the dwelling will present a maximum height of 11.1m or a non-compliance of 2.6m or a variation to the control of 30.59%.

The proposal will not see any alteration to the existing maximum ridge level of the dwelling.

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6.0 Relevant Caselaw

6.1 In Initial Action the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

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

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may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the R2 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The surrounding area is predominantly characterised by two – three storey development.

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The proposal seeks to accommodate the additions within a contemporary building form, with the slope of the site towards the rear resulting in a portion of the pergola being up to 11.1m in height above the existing ground level.

The overall building height respects the surrounding character and the design seeks to minimise the visual impact through the retention of the existing maximum ridge height.

(b) to control the bulk and scale of buildings,

The proposed additions and alterations to the existing dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and low pitch roof form will suitably distribute the bulk of the new floor area.

(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),***

Due to the general slope of the site towards the west, the adjoining properties on the western side of Barrabooka Street enjoy views towards The Spit and Mosman.

The proposal will provide for a low profile roof form which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

(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,

As the proposal will see the construction of alterations and additions to an existing dwelling, the shadow analysis prepared by R Squared Studios Pty Ltd details the proposed shadow impacts.

The assessment confirms that the proposed alterations and additions will not result in any change to the existing solar access available to neighbouring properties.

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(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 bulk and scale of the existing dwelling is largely unchanged.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Barrabooka Street and will reflect the existing single dwelling uses in the vicinity.

The proposal will not require the removal of any significant vegetation, and maintains a suitable area of soft landscaping.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

The low pitch roof form maintains modulation and architectural relief to the building's facade, and distributes any sense of visual bulk.

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The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Barrabooka Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the maximum building height control will not exceed the ridge height of the existing dwelling and are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, by providing solar protection to the existing open terrace from the main living level which is consistent with the Objective 1.3 (g) of the EPA Act.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by largely maintaining the existing roof form which will reduce the impact on the views and outlook for the uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the maximum building height and manages the bulk and scale and maintains views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

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

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

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grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the C3 Environmental Management zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the C3 Environmental Management zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that “*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*”.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the considered form of the proposed additions which maintain the existing overall height of 11.1m, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the C3 Environmental Management zone for the following reasons:

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

The proposal provides for alterations and additions to an existing dwelling which are largely contained within the existing building footprint and will not see the removal of any significant vegetation.

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The majority of the site will be retained for soft landscaping.

The proposal will not detract from the special ecological values of the site and locality.

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

The modest alterations and additions to the existing dwelling are modest in bulk and scale and comprise complementary colours and finishes, and will not result in any adverse impacts of the ecological values of the locality.

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

The proposal will not require the removal of any significant vegetation. The landscaped character of the site is maintained.

The proposal is not considered to detract from the scenic qualities of the nearby foreshore.

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

The subject site is well separated from the foreshore, and will not impact the existing bushland along the foreshore. The modest extent of the new works and complementary external finishes will ensure that the development is not prominently viewed within the locality.

- ***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.***

Noted. The site maintains property boundaries which are capable of accommodating future plantings.

The existing stormwater arrangements will be maintained.

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

The proposed new works will not exceed the ridge height of the existing dwelling, and maintain consistency with the two and three storey scale of existing surrounding development.

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The proposed development will follow the sloping topography of the site, and will not require the removal of any significant vegetation.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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8.0 Conclusion

This development proposes a departure from the maximum height of a building control, with the proposed additions to the existing dwelling to provide for a new pergola over the existing west facing first floor terrace, which is accessible directly from the main living areas and to a height of 11.1m above existing ground level,.

The proposal will not see any change to the existing maximum ridge level of the current dwelling.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 2

CLAUSE 4.6 – FLOOR SPACE RATIO

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**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

13 BARRABOOKA STREET, CLONTARF

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S FLOOR SPACE RATIO
CONTROL AS DETAILED IN CLAUSE 4.4 OF THE
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to an existing dwelling
At: 13 Barrabooka Street, Clontarf
Owner: Ian & Lisa Dunn
Applicant: Ian & Lisa Dunn
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Clontarf locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.4:1 or for this site with an area of 470.4m², the maximum gross floor area is 188.16m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The existing dwelling on the site presents a gross floor area of 275m² or 0.58:1.

The proposed development will see an increase in the total floor area of 39m² when compared to the existing floor area, to a maximum of floor area of 315m² or 0.669:1, and therefore presents a variation of 126.84m² or 67.1% to the control.

Notably, the extent of the new floor area (40m² of the proposed new floor area) will be within the existing lower ground floor level and excavated below the current dwelling)) with the result that the existing bulk and scale of the building when viewed from neighbouring properties or the surrounding public areas is largely unchanged.

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The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 1150m², with the DCP permitting a variation to a minimum lot size of 750m² and when calculated against this required lot size, the permissible floor area is 300m². The proposed development will present a total floor area of 315m² or a FSR of 0.42:1, which is marginally in excess of the control when assessed against the minimum lot size in the locality.

Is clause 4.4 of MLEP a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

"(d) the cubic content of floor space of a building."

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.4:1 however as the proposal will only result in a

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minor increase in the floor area of 40m² in total with the new floor area at the lowest floor level and within the building undercroft, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

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- (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.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C3 Environmental Management Zone, which are noted as:

- *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.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

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

The proposal will not exceed the existing ridge level of the current dwelling.

Notwithstanding the non-compliance with the maximum floor space ratio, together with the fact that the development will result in only a modest total increase in the gross floor area of 39m² with only 1m² increase above the ground and first floor levels, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

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The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Barrabooka Street from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Clontarf of 0.4:1 or for this site, the allowable gross floor area is 188.16m².
- 5.3 The subject site has an area of 470.4m².
- 5.4 The existing dwelling has a gross floor area of 275m² or FSR of 0.58:1. The proposal has a calculable gross floor area of 315m² or FSR of 0.667:1. The proposal will see a minor increase in the floor area of only 40m², which is within the building undercroft and is not visible from Barrabooka Street
- 5.4 The total non-compliance with the FSR control is 126.84m² or 66.9%.
- 5.5 When assessed against a minimum lot area of 750m², the proposal presents an FSR of 0.42:1, which is a reduced extent of non-compliance with the maximum floor space ratio control.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

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19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.4 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

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3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the C3 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

7.0. Request for Variation

7.1 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.

The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in 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,

The proposal will not see the loss of any significant vegetation. The built footprint of the

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existing dwelling remains largely unchanged, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains the majority of the existing landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining 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.

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the*

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development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31]

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

The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Barrabooka Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining the existing overall ridge height, with a sympathetic roof form which will reduce the impact on the views and outlook for uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain.

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These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

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

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

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the C3 Environmental Management zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the C3 Environmental Management zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

In response to *Nessdee*, I have provided the following review of the zone objectives:

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It is considered that notwithstanding the compatible form of the proposed additions which see a minor increase in the gross floor area of 6m², the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the C3 Environmental Management Zone for the following reasons:

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

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The C3 Environmental Management Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will see a modest increase in the total floor area of 39m², of which are significant majority (38m²) is located within the existing lower ground floor level and is provided through further excavation beneath the dwelling. The proposal will not exceed the existing overall ridge height of the dwelling, and will see a reduction in the general bulk and scale in comparison to the previously approved development.

The non-compliance, which results from the extent of the existing floor areas and the provision of new additional floor area to meet the requirements of the owners will improve the amenity for the buildings' owners by providing new living spaces in a form which complements the architectural style and scale of the surrounding development.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

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

The subject proposal relates to a residential dwelling and this provision is therefore not relevant.

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7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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8.0 Conclusion

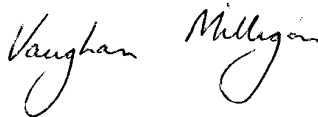
This development proposes a departure from the maximum floor space ratio control, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.669:1.

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 750m² and when calculated against this required lot size, the development prescribes a FSR of 0.42:1, which presents a substantially lesser variation to the FSR control. Compliance with this control is constrained by the extent of the existing dwelling.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.6**DA2022/0278 - 214 WHALE BEACH ROAD WHALE BEACH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL****REPORTING MANAGER****Adam Richardson****TRIM FILE REF****2022/433923****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/0278 for demolition works and construction of a dwelling house including swimming pool on land at Lot 62 DP 11067, 214 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0278
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 62 DP 11067, 214 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including 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:	Michael Gregory Ford
Applicant:	Sean Clive Gartner
Application Lodged:	08/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/03/2022 to 05/04/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 973,500.00

EXECUTIVE SUMMARY

This Development Application is referred to the Northern Beaches Council's Development Determination Panel (DDP) for the consideration of demolition works and the construction of a three storey dwelling house including a swimming pool at 214 Whale Beach Road, Whale Beach.

The application is referred to the DDP for determination at the discretion of the Executive Manager of Development Assessments due to the application aligning with the DDP previous referral criteria, which applied of the time of assessment.

The application was exhibited for 14 days and a total of 3 submissions were received. A recurrent issue in all 3 submissions relates to view loss. View impact assessments were carried out from surrounding

properties to the north and west of the subject site. Amendments to the proposal made after the preliminary assessment of the application reduced the height of the building below the maximum 8.5m building height and setback the upper floor roof line back an additional 3m to the west. These amendments 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 dwelling house involves variations to the DCP provisions that pertain to the side building envelope, southern side setback and landscaped area requirements. The partial variations to the side building envelope and southern side setback do not create unreasonable impacts to neighbouring properties in regards to view sharing, solar access and visual bulk. A condition has also been recommended to reduce the amount of hard surface on the site, thereby ensuring compliance with the DCP landscaped area provision.

The proposed development represents an acceptable 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 demolition works and construction of a three storey dwelling house including a swimming pool. Key components of the proposal are as follows:

Lower Ground Floor

- Integrated double garage with storage.
- Entryway.
- Studio with ensuite.
- Lift and internal staircase.

Ground Floor

- Open plan kitchen, living and dining area.
- Two living spaces.
- Front balcony and rear alfresco.
- Courtyard, laundry and bathroom.
- Lift and internal staircase.

First Floor

- Main bedroom with WIR and ensuite.
- Three additional bedrooms and an additional bathroom.
- Open covered balcony on southern elevation.

Ancillary Works

- New vehicle crossover.
- Earthworks.
- In-ground swimming pool and adjacent seating area.

- Landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 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 - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
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
Pittwater 21 Development Control Plan - D12.11 Fences - General

SITE DESCRIPTION

Property Description:	Lot 62 DP 11067 , 214 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one allotment located on the western side of Whale Beach Road, Whale Beach.

The site is irregular in shape with a frontage of 18.29 metres and respective depths of 45.09 metres and 41.185 metres along the northern and southern side boundaries. The site has a surveyed area of 756.6m².

The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a part 1-2 storey dwelling house including a detached garage adjacent to the front boundary.

The property contains low height planting generally within the rear of the property and scattered tall palms, and otherwise the property contains managed planting and lawns. A cabbage tree palm and small native tree are also located on the site.

The site experiences a fall of approximately 8.8 metres that slopes away from the north-western rear corner towards the south-eastern front corner.

The site is environmentally constrained with geotechnical and bushfire hazards.

Description of Surrounding Development

The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses), typically 2-3 storeys in height.

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 no recent or relevant applications on the site.

APPLICATION HISTORY

The subject site and the surrounds were inspected on 11 April 2022. To help inform the assessment of the development's impact upon views the applicant was requested to erect height poles to reflect the roofline above the main bedroom, noting that this portion of the roof was the source of the greatest degree of impact. In response height poles were erected and certified as accurate by a registered surveyor. Subsequently, view impact assessments were carried out at 216 Whale Beach Road (northern adjacent site), 27 Morella Road (rear adjacent site) and 25 Morella Road (located to the south-west of the site).

Following the preliminary assessment of the application, Council wrote to the applicant expressing concern with the following aspects of the proposal:

- **Building Height:** The maximum building height of the superseded plans measured at 9m above the existing ground level, which exceeds the statutory height limit of 8.5 metres. The application was not accompanied by a written request pursuant to Clause 4.6 of Pittwater LEP 2014 which sought to justify a breach. In the absence of a Clause 4.6 objection, Council cannot consider a variation to a principal development standard. Notwithstanding, it was noted that there would not likely be sufficient environmental planning grounds to justify a variation as a compliant height would allow for the retention of additional views.
- **View Loss:** The superseded plans would obscure views over a side boundary from an existing terrace and kitchen/living/dining area from the first floor of the northern adjacent dwelling house (216 Whale Beach Road). The view impact was not considered to be reasonable as the impact was exacerbated from a non-compliant building height.
- **Privacy:** Concern was raised with regards to overlooking from elevated terraces on the ground and first floors, noting the size of these terraces are conducive for gatherings of numerous people. The proposed planter boxes were not considered to be a viable solution to negate the overlooking.
- **Landscaped Area:** The superseded plans did not comply with the 60% landscaped area DCP requirement and it was considered that due to the size of the allotment that this could be achieved.
- **Studio – Separate Habitation:** The studio on the ground floor contains cooking facilities, which is conducive for separate habitation. It was requested that the cooking facilities be deleted.
- **Bushfire Report:** The application was not accompanied by a bushfire report. This information was required as the site is mapped as being bushfire prone.
- **Driveway Grades:** The driveway gradients did not comply with Council's standards.

The applicant subsequently submitted amended plans that included the following amendments:

- Move the entire dwelling to the west (rear) by an additional 1 metre.
- Setback the first floor front façade an additional 2 metres from the lower floors.
- Move the roofline of the dwelling back an addition 3 metres to the west.
- Increase the northern side setback of the main bedroom by 600 millimetres.
- Lower the building by 150 millimetres. This amendment, coupled with the increased setbacks, have lowered the proposed maximum building height from 9 metres to 8.45 metres, which complies with the height of buildings development standard.
- Lower the garage floor to achieve compliant driveway gradients.
- Provide a 1.65 metres high privacy screen along the southern edge of the first floor covered terrace.
- Provide additional deep soil landscaping on the site.
- Submit a Bushfire Report.
- Additional detailing on the ground floor and section plans to depict the RLs of the swimming pool.

The amended plans did not alter the BASIX commitments of the dwelling.

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	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 2021 (EP&A Regulation 2021)	<p><u>Division 8A</u> 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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans and a bushfire report. This information was subsequently submitted and assessed accordingly.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 Risk Assessment was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 19 April 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bushfire Risk Assessment have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/03/2022 to 05/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Planning Progress	Po Box 213 AVALON NSW 2107
Michael Robilliard & Associates	64 Goodhope Street PADDINGTON NSW 2021
Karen Linda Riethmuller Drew Riethmuller	25 Morella Road WHALE BEACH NSW 2107

A total of three (3) submissions were received following the public exhibition period. The submissions all objected 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 C1.3 of the Pittwater 21 DCP. In summary, amended plans were submitted which reduce the overall height of the building and setback the first floor roofline back an additional 3 metres to the west (rear). 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.

- **Inconsistent with Zone Objectives**

The submissions raised concerns that the proposal is inconsistent with the objectives of the C4 Environmental Living zone.

Comment:

This matter has been discussed in detail within the section of this report relating to the C4 Environmental Living zone. In summary, the proposal is considered to demonstrate consistency with the objectives of the C4 zone.

- **Building Height**

The submissions raised concerns that the proposed development exceeds the 8.5 metres statutory height limit.

Comment:

The amended plans that were submitted to Council have reduced the maximum building height from 9 metres to 8.45 metres, which complies with the maximum building height prescribed by Clause 4.3 of Pittwater LEP 2014.

- **Acid Sulfate Soils**

The submissions raised concerns that the proposal should be accompanied by an Acid Sulfate Soils Management Plan.

Comment:

Given the sufficient separation from nearby Class 1, 2, 3 and 4 land located on the western foreshore as well as the limited extent of excavation, it is considered that the proposal will not expose acid sulfate soils or cause environmental harm. Therefore, an Acid Sulfate Soils Management Plan is not warranted in this instance.

- **Impact of Three Storey Built Form**

The submissions raised concerns that the three storey built form will detract from the character of the area.

Comment:

The three storey built form is consistent with established development along Whale Beach Road. The proposal is not considered to be out of keeping with the existing and desired streetscape character. The proposal is also consistent with the intent of the Palm Beach Desired Future Character Statement.

- **Privacy Impacts from central courtyard, north facing windows and west facing windows**

The submissions raised concerns that the central courtyard on the ground floor will create unreasonable acoustical impacts for the neighbouring dwelling at 216 Whale Beach Road

Comment:

The acoustical privacy impacts are not considered to be unacceptable within a low density residential area. The central courtyard is also not the main private open space on the subject site and its use likely infrequent. The rear covered terrace (i.e. main private open space) is recessed into the building on the northern elevation and screened by timber battens on the southern elevation, thereby ensuring that reasonable privacy and amenity is maintained to adjacent dwellings.

The north facing windows of concern within the proposed dwelling adjoin low use rooms (i.e. bedrooms, bathroom and stairwell) and do not represent unreasonable privacy impacts.

The west facing windows and terrace on the first floor are also sufficiently separated from upslope dwellings at Morella Road to negate unreasonable overlooking impacts.

- **Side Setback of external stairs**

The submissions raised concerns of the external stairs being located within the northern side setback areas.

Comment:

It is noted that both dwellings to the north and south of the site contain external stairs within the side setback areas. The facade of the building complies with the northern side setback requirement. The external stairs within the side setback areas do not create unreasonable amenity impacts.

- **Building Envelope non-compliance**

The submissions raised concerns that the proposal does not comply with the side building envelope provision.

Comment:

This matter is discussed within the section of this report relating to Clause D12.8 of the Pittwater 21 DCP. It is noted however that the proposal does not comply with the side building envelope control for portions of the northern and southern facades of the dwelling. Despite this, the assessment against the outcome of the envelope control concluded that the proposed development achieves the outcomes, notwithstanding the numeric non-compliance. Section 4.15(3A)(b) of the Environmental Planning and Assessment Act 1979 requires Council to be flexible in applying provisions within a Development Control Plan, if it can be demonstrated that the objects of such provisions can be achieved. In this case, the outcomes of the side building envelope provision are achieved, notwithstanding the numeric non-compliance. Therefore, flexibility is afforded in this circumstance.

- **Stormwater Management**

The submissions raised concerns of how stormwater is to be managed on the site.

Comment:

Council's Development Engineers have recommended suitable conditions to ensure that stormwater is appropriately managed on the site, being captured and disposed of in accordance with Council's stormwater policy.

- **Dilapidation Reports**

The submissions requested that dilapidation reports be conditioned as part of an approval in the instance that the development is approved.

Comment:

Suitable conditions are recommended with this consent requiring dilapidation reports to be

prepared for the neighbouring dwellings to the north and south of the site. This is consistent with the recommendations of the geotechnical report submitted with this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>A fireplace to be installed in the loungeroom. This installation must be done in accordance with the applicable Australian emission and building standards. This is required by recommended Conditions.</p>
Landscape Officer	<p>The development application is for demolition of existing structures, construction of a new dwelling, swimming pool and associated external works, as described and illustrated in the reports and plans. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The 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.</p> <p>The site does not contain many native trees with the exception of a 14 metre high native Cabbage Tree Palm that is retained by the development proposal. The property contains low height planting generally within the rear of the property and scattered tall palms, and otherwise the property contains managed planting and lawns. One small 5 metre high tree with limited canopy and of low retention value is required for removal as shown on the plans and should the application be approved no design alternative is available for retention, and no concerns are raised, subject to a native tree replacement.</p> <p>No landscape works are permitted beyond the property boundaries. The footpath from the property to the kerb shall be subject to a section 138 application under the Roads Act for works within the road reserve. As this does not benefit public pedestrian access within the public road reserve, Landscape Referral do not concur with the proposal, whilst noting this however is subject to final determination with the relevant Council department assessing the section 138 application.</p> <p>Landscape Referral raise no objections to the landscape proposal contained within the property.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>Council's Biodiversity referrals team have reviewed the application for consistency against the relevant controls including;</p> <ul style="list-style-type: none"> • Pittwater LEP 2014 Part 7.6 Biodiversity Protection, • Pittwater DCP Part B4.6 Wildlife Corridors, • Northern Beaches Bush Fire Prone Land Mapping - Vegetation Buffer <p>Conditions have been applied to ensure compliance with the provisions above, including a requirement for protection and retention of the significant Cabbage Tree Palm on the northern property boundary as conditioned by the Landscape referrals team.</p>
NECC (Coast and Catchments)	<p>The DA proposes to demolish the existing dwelling and construct a new dwelling house and swimming pool at 214 Whale Beach Road, Whale Beach. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021 (RH SEPP). Hence, Divisions 4 and 5 of the RH SEPP will be relevant to the subject DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GartnerTrovato Architects Pty Ltd, dated February 2022, the DA satisfies the requirements of Divisions 4 and 5 of the RH SEPP. As such, it is considered that the application does comply with the provisions of State Environmental Planning Policy (Resilience & Hazards) 2021 subject to conditions.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP No further coastal requirements relevant to the subject development were identified.</p>
NECC (Development Engineering)	<p>The proposed driveway grade is too steep and must comply with Council's standard profile A4/3330/4 EH which is available on Council's website at the following link. https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/specification-documents/extrahighstandardvehiclecrossingprofile.pdf</p> <p>The profile must be taken from the low side of the proposed crossing. Also there appears to be a retaining wall shown on the high side of the crossing. Details of the wall must be provided including the length and height to ensure sight distance is</p>

Internal Referral Body	Comments
	<p>achieved in accordance with AS/NZS2890.1:2004. Any retaining walls must be a minimum of 1.5 metres from the back of the kerb. Battering of the nature strip to achieve the driveway levels will be considered in lieu of a retaining wall.</p> <p>The proposal includes a pedestrian access and associated retaining wall in the nature strip. Also it is unclear how the nature strip is to be reinstated for the portion of the old crossing. Comments and conditions from Council's Road Asset Team are required for these issues.</p> <p>The submitted Geotechnical report and stormwater management plans are acceptable subject to conditions.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address clause B6 of the DCP.</p> <p>Amended Plans Submitted 30/05/2022</p> <p>The revised driveway design is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed DA generally meets the flood controls in the LEP and DCP. The proposed works are outside the 1% AEP extent.
Road Reserve	There is limited impact on existing road assets and comments by Development Engineering Team area noted. There is no objection, in principle to pedestrian access from the kerb. It is recommended Development Engineering provide a condition to submit an application for civil works under the s 138 of Road Act 1993 and that application include all details of proposed works in the public road reserve including driveway, pedestrian access, retaining structures, removal and reinstatement of redundant driveway crossing and verge. Note that transverse retaining walls across the verge will not be permitted to extend to the kerb.

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. 1280344S, dated 17 February 2022).

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

Commitment	Required Target	Proposed
Water	40	46
Thermal Comfort	Pass	Pass
Energy	50	100

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 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 (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Use Area pursuant to Chapter 2 of this SEPP. Accordingly, the proposal is considered against Division 4 and 5 of this Chapter 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 site is located approximately 60 metres to the west of the foreshore building line and is physically and visually separated by existing development on the eastern side of Whale Beach Road. In this regard, it is considered that the proposal will not result in wind funnelling or overshadowing of the foreshore. The proposal also does not result in unreasonable view loss from public areas towards the foreshore area. The physical separation from the foreshore also ensures that existing public access to or along the foreshore is maintained. The physical and visual separation from the foreshore also ensure that the scenic qualities of the coastline and headlands are maintained.

The site is also not located within an area known for containing Aboriginal relics or heritage significance. Therefore, the proposal will not adversely impact upon Aboriginal cultural heritage, practices or places. Furthermore, the site does not contain a heritage item, is not located within a heritage conservation area and is not located within the direct vicinity of a heritage item. Therefore, the proposal will not adversely impact upon built and cultural environmental heritage.

The assessment has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development and concluded that the development is suitable for this coastal setting. The bulk, scale and size of the proposal is commensurate with nearby development along Whale Beach Road.

For these reasons, it is considered that the proposal is designed, sited and will be managed to avoid an adverse impact upon the coastal area.

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 designed to respond to the environmental constraints of the site, which includes geotechnical and bushfire hazards. It is considered that the development is unlikely 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.

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:	8.5 metres	8.45 metres	-	Yes

Compliance Assessment

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

Clause	Compliance with Requirements
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposal involves the construction of a new dwelling house. Dwelling houses are permissible with consent within the C4 Environmental Living zone. The proposal is also considered to achieve the objectives of the C4 zone. This is addressed below as follows:

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

Comment:

The proposal development is considered to be low-impact residential development, in that the development does not result in significant or unreasonable modifications to the site topography, does not necessitate the removal of significant vegetation, and provides a high quality landscaping scheme that will maintain the natural amenity of the area. The height, bulk and scale of the proposed dwelling house is commensurate with surrounding low density residential development on Whale Beach Road and the development will not be jarring or unsympathetic in a streetscape context. Council's Landscape and Biodiversity Officers have reviewed the application and are satisfied that the development will have an acceptable impact upon the natural environment. 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 height, bulk and scale of the proposed dwelling is compatible with surrounding development and the proposal is considered to be of a low density and scale integrated with the landform and landscape.

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

Comment:

The proposal has negligible impacts upon the foreshore vegetation along Whale Beach. The proposal will also not impact upon wildlife corridors.

Conclusion

As demonstrated above, the proposal is a permissible land use and satisfies the objectives of the C4 Environmental Living zone.

5.21 Flood planning

A small portion of the site is flood prone. Accordingly, the provisions of this clause apply to the development.

Council's Floodplain Engineers have assessed the application and are satisfied that the proposal meets Council's flooding requirements. Therefore, the proposal is considered to meet the requirements of this clause.

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.

Given the sufficient separation from nearby Class 1, 2, 3 and 4 land located on the western foreshore, it is considered that the proposal will not expose acid sulfate soils and cause environmental harm. The proposal is considered to meet the requirements of this clause.

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

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

Comment:

Council's Landscape and Biodiversity Officers have reviewed the application and are satisfied that the proposal will not have adverse impacts on waterways or environmentally sensitive lands. The site is not located in close proximity to drinking water catchments.

(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.

7.6 Biodiversity protection

The site is located on the Pittwater LEP 2014 Biodiversity Map. Therefore, the provisions of this clause apply.

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 Officer who raised no objections to approval. Therefore, it is considered 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. Furthermore, 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 Officer, 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.

Conclusion

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

7.7 Geotechnical hazards

The site is identified within the Geotechnical Hazard H1 area pursuant to Pittwater LEP 2014. Therefore, the provisions of this clause must be considered.

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

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

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to recommended 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 recommended 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.

Conclusion

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

7.10 Essential services

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

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

Comment:

The proposed development will be supported by the aforementioned essential services. Therefore, the proposal complies with 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	6.5 metres (as no de-facto building line)	7.26 metres	-	Yes
Rear building line	6.5 metres	Dwelling: 12.75 metres Pool: 4.46 metres	-	Yes - pool meets exemption provision for 1 metres side/rear setback
Side building line	1 metres (north)	1 metres - 4.6 metres	-	Yes
	2.5 metres (south)	1 metres - 9.04 metres	up to 60%	No
Building envelope	3.5 metres then projected at 45 degrees (north)	Outside Envelope	up to 31.4%	No
	3.5 metres then projected at 45 degrees (south)	Outside Envelope	up to 27.66%	No
Landscaped	60% (453.96m ²)	Proposed: 59.36%	1.07%	Yes - subject to

area		(449.1m ²)* amendments through recommended Condition: 61.31% (463.9m ²)	recommended Condition
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Note: Landscaped Area calculations include allowable variations.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
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
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	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
C1.14 Separately Accessible Structures	No	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

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:

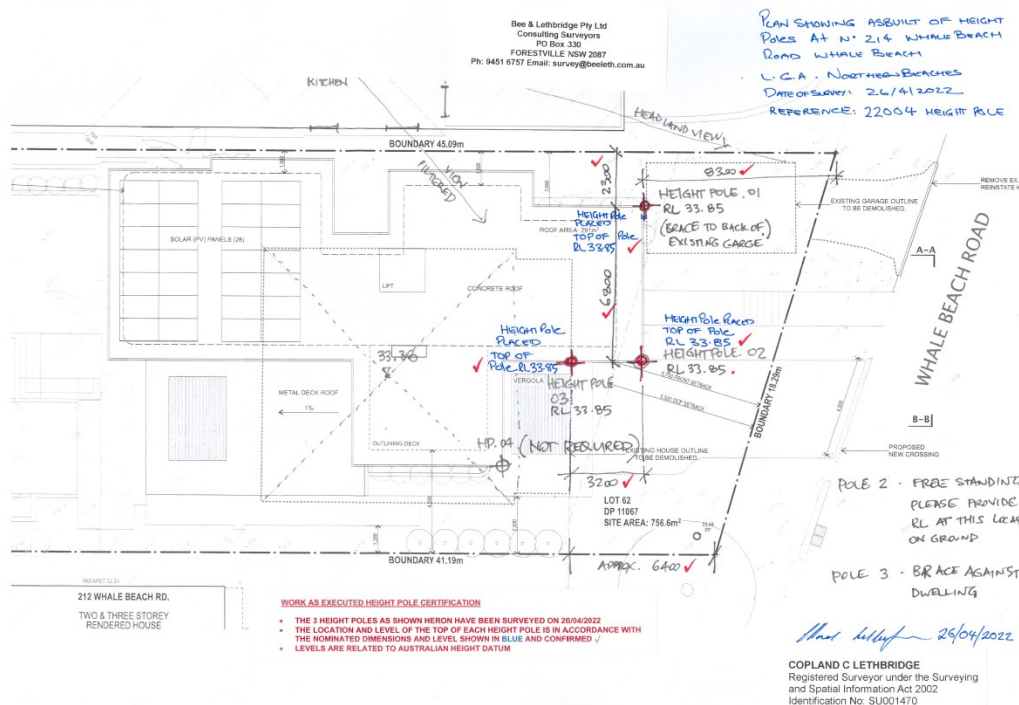
The proposed development involves the construction of a three storey dwelling house. Whilst the locality statement calls for two storey development within low density residential areas, the proposed development is considered to achieve the overall objective of the desired future character statement for the following reasons:

- The three storey built form is consistent with established development along the immediate vicinity of Whale Beach Road.
- The proposed dwelling house is under the 8.5 metres statutory building height limit and is generally below the established tree canopy within the area.
- The building is a well-articulated design and utilises contrasting external finishes and modulated wall planes, which minimises building bulk.
- The proposed development does not result in unreasonable alterations to the site topography and does not necessitate the removal of significant canopy trees.
- The upper floor façade has been recessed back from the lower floors to provide a degree of stepping with the slope.
- The proposal includes a high quality landscape scheme and the development integrates well into the landform and landscape.
- The proposal has been designed to respond to the environmental constraints of the site (i.e. bushfire and geotechnical hazards).
- The development is serviced by essential services (i.e. stormwater, vehicular access and parking etc.).
- The modern architectural scheme reflects other recently constructed dwelling houses on Whale Beach Road.
- The height, bulk, scale and intensity of the proposed dwelling house is commensurate with nearby development along Whale Beach Road.

C1.3 View Sharing

Following the public exhibition period three submissions were received raising concern of the development's impact upon views towards Whale Beach. To assist with the assessment, the applicant erected three height poles to represent a portion of the roofline above the main bedroom on the first floor, noting that this portion of the building would create the greatest view impact. The height and location of these height poles were certified by a registered surveyor. Figure 1 below depicts the location of the height poles.

Figure 1: *height poles location and certification*



Site inspections have been undertaken at the following properties to examine the extent of the view impacts:

- 216 Whale Beach Road.
- 25 Morella Road.
- 27 Morella Road.

Figure 2 below depicts the nearby properties in relation to the subject site and Whale Beach.

Figure 2: nearby properties in relation to the subject site and Whale Beach



It is important to note that during the assessment process the applicant submitted amended plans to reduce the height of the roof by 150 millimetres and shift the roofline back an additional 3 metres to the west. Hence, the height poles depicted in Figure 1 and the view impact photos below as not reflective of the current plans.

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:

216 Whale Beach Road

216 Whale Beach Road directly adjoins the subject site to the north. Due to the slope of the land that falls towards the south-east the adjacent site is elevated above the subject site to a minor degree. The views obtained from 216 Whale Beach Road consist of partially obstructed views to the east and south-east. The view encapsulates the Whale Beach southern headland and foreshore area to the south-east and the Pacific Ocean and glimpses of sand to the east. The views include areas of the land-water interface, in addition to the breaking waves along the beach. The views to the south-east include greater portions of the land-water interface. The partial obstructions to these views include the existing Norfolk Pine trees along the foreshore area and existing dwelling houses located on the eastern side of Whale Beach Road. Whilst some aspects of these views are partially obstructed, the views are considered to be highly valued in accordance with this principle.

25 Morella Road

25 Morella Road is located to the south-west (i.e. upslope to the rear) of the subject site. Due to the slope of the land that falls towards the south-east the nearby site is significantly elevated above the subject site. The views obtained from 25 Morella Road consist of 180 degree views that contains minimal obstructions. The view encapsulates the Whale Beach southern headland to the south-east and the Pacific Ocean to the north-east, including the foreshore area in between. The views include the land-water interface, in addition to the breaking waves along the beach. The partial obstructions to these views include the existing Norfolk Pine trees along the foreshore area and existing dwelling houses located to the east of 25 Morella Road. The views are considered to be highly valued in accordance with this principle.

27 Morella Road

27 Morella Road is a double block adjoining the site directly to the west (rear). Due to the slope of the land that falls towards the south-east the nearby site is significantly elevated above the subject site. The views obtained from 27 Morella Road consist of 180 degree views that contain minimal obstructions. The view encapsulates the Whale Beach southern headland to the south-east and the Pacific Ocean to the north-east, including the foreshore area in between. The views include the land-water interface, in addition to the breaking waves along the beach. The partial obstructions to these views include the existing Norfolk Pine trees along the foreshore area and existing dwelling houses located to the east of 27 Morella Road. The views are considered to be highly valued in accordance with this principle.

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 2:216 Whale Beach Road

The dwelling house at 216 Whale Beach Road contains three levels and is generally two storeys at any one point. The views are obtained from numerous areas on the middle and upper floors of the dwelling house. The middle floor contains a second living area, numerous bedrooms and a terrace on the front elevation. The views to the south-east towards the Whale Beach southern headland can be obtained from standing and sitting positions from the middle floor, primarily from the areas located closer to the front (east) of the floor plan (i.e. second living space and terrace). This corridor is located over the southern side boundary of 216 Whale Beach Road. The views to the east of the Pacific Ocean are generally confined to standing positions from the middle floor. This corridor is located over the front boundary of 216 Whale Beach Road.

The upper floor contains a large outdoor entertaining terrace on the front elevation, a kitchen/living/dining area directly adjoining the terrace and a number of bedrooms towards the rear of the floorplan. The views to the south-east towards the Whale Beach southern headland are obtained from standing and sitting positions on the upper floor, primarily from the areas located closer to the front (east) of the floor plan (i.e. outdoor terrace and kitchen/living/dining). The south-eastern view corridor is over the southern side boundary of 216 Whale Beach Road. The views towards the east of the Pacific Ocean are generally confined to standing positions within the terrace and kitchen/living/dining area on the middle floor, although small glimpses of ocean horizon can be obtained from sitting positions when looking to the east. This corridor is located over the front boundary of 216 Whale Beach Road.

The views towards the south-east contain fewer obstructions and encapsulate larger areas of the land-water interface when compared to the views towards the east.

25 Morella Road

The dwelling house at 25 Morella Road is two storeys in height. The 180 degree views are obtained from both standing and sitting positions from numerous areas on the ground and first floors of the dwelling house. The ground floor contains a large east facing terrace, a second living room and bedrooms. The first floor contains a large east facing terrace, the kitchen/living/dining areas and bedrooms. The views to the south-east (i.e. Whale Beach southern headland) are obtained over the southern side boundary, the views towards the east (i.e. Whale Beach surf zone) over the rear boundary and the views towards the north-east (i.e. Pacific Ocean) over the northern side boundary of 25 Morella Road.

27 Morella Road

The dwelling house at 27 Morella Road is two storeys in height. The ground floor contains a second living space, a bedroom and laundry with no internal access to the first floor. The first floor contains numerous bedrooms, the kitchen/living/dining area, a rumpus room and a large covered east facing verandah. The ground floor was not inspected for the purpose of this assessment. The 180 degree views can be obtained from standing and sitting positions on the first floor from the covered verandah, living areas, kitchen and a bedroom. The views to the south-east (i.e. Whale Beach southern headland and surf zone) are obtained over the southern side boundary, the views towards the east (i.e. water views and a portion of the surf zone) over the rear boundary and the views towards the north-east (i.e. Pacific Ocean) over the northern side boundary of 27 Morella 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:

216 Whale Beach Road

When observing from standing positions on the middle floor terrace, bedroom and second living space the eastern views over the front boundary will remain unaffected. Furthermore, the views towards the south-east from these areas will be partially obstructed by the proposed development. The impacted components include portions of the surf zone, headland and land-water interface. Figures 3 and 4 below depict the extent of the view impacts from the middle floor.

Figure 3: middle floor terrace looking east - standing position (no impact)



Figure 4: middle floor terrace looking south-east - standing position (amended plans have building 1 metres further west)



When observing from standing and sitting positions on the first floor terrace and kitchen/living/dining areas the eastern views over the front boundary will remain unaffected. When observing from standing and sitting positions on the first floor terrace approximately 4 metres along the terrace the south-eastern corridor over the side boundary will remain unaffected. However, when observing from standing positions within the rear half of the terrace and within the kitchen/dining area the south-eastern corridor over the side boundary towards the beach will be largely obstructed, with the remaining portions including small glimpses of the surf zone and land-water interface. It is noted that the headland will be largely retained from these areas. The views from south facing bedrooms on this level will also be complete obstructed. Figures 5, 6, 7 and 8 below depict the extent of the view impacts from the first floor.

Figure 5: first floor terrace looking south-east - standing position (amended plans have this roofline 3 metres further west)



Figure 6: first floor dining area looking south-east - standing position (amended plans have this roofline 3 metres further west)



Figure 7: first floor dining area looking south-east - standing position (amended plans have this roofline 3 metres further west)



Figure 8: first floor terrace looking east - standing position (no impact)



Noting the extent of the views lost/retained and the fact that the view loss occurs over a side boundary, with the views over the front boundary maintained, the qualitative extent of the view impact from 216 Whale Beach Road is considered to be moderate.

25 Morella Road

The 180 degree views from 25 Morella Road are largely retained in their entirety, with the exception of a small glimpse of water and sand located to the north-east of the subject site. Figures 9 and 10 below depicts the extent of the view impact.

Figure 9: first floor terrace looking south-east - standing position (no impact)



Figure 10: first floor terrace looking north-east - standing position

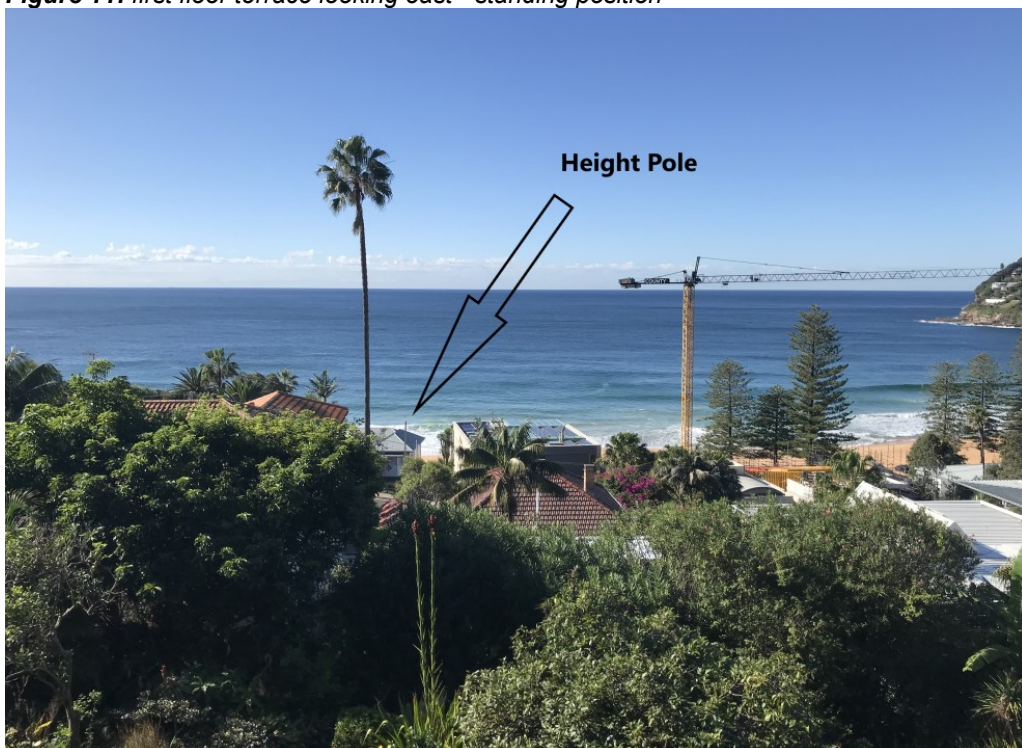


Based on the above, the qualitative extent of the view impact from 25 Morella Road is considered to be acceptable.

27 Morella Road

The 180 degree views from 25 Morella Road are largely retained in their entirety, with the exception of a small glimpse of water and sand located to the east of the subject site. Figure 11 below depicts the extent of the view impact.

Figure 11: first floor terrace looking east - standing position



Based on the above, the qualitative extent of the view impact from 27 Morella Road is considered to be acceptable.

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 non-compliance related to the view loss pertains a numeric breach to the northern side building envelope control adjacent to the ensuite on the first floor. It is noted that this offending element complies with the height of buildings development standard and northern side setback control. It is considered that full compliance with the side building envelope control would not result in a significantly improved view sharing scenario for 216 Whale Beach Road. The applicant has employed a skilful design to address the view impact through recessing the upper floor back from the lower floors to provide an unobstructed view corridor to the south-east when observing from the front half of the elevated terrace at 216 Whale Beach Road. It is noted that the views over the front boundary remain completely unaffected and that the proposal will not completely obstruct the existing views over the side boundary from the kitchen and dining areas.

Noting that a well considered, skilful design has been employed to alleviate the view impact and that the height, bulk, scale and intensity of the proposal corresponds with established development along Whale Beach Road, it is considered that a reasonable view sharing outcome has been achieved.

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

Comment:

There are no concerns that the proposal may unreasonably obstruct views from the public domain.

- *Canopy trees take priority over views.*

Comment:

The development does not seek to remove canopy trees to improve their own views.

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*.

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 east facing windows to the living areas on the southern adjoining site (212 Whale Beach Road) will not receive 3 hours of direct sunlight on June 21. However, it is noted that these windows currently do not receive the required amount of solar access as a consequence of the site's orientation and topography (i.e. its front to rear slope and east-west aspect).

However, the main private open space (i.e. front terraced area adjoining the living rooms) receives compliant solar access on June 21, in that 75.34% of the area receives direct sunlight at 9am and 61.06% receives direct sunlight at 12pm on the winter solstice.

Noting that the adjacent private open space receives compliant solar access and that the overshadowing of the adjacent living room windows is consistent with the existing scenario, the existing non-compliance is supported on merit.

C1.5 Visual Privacy

Description of non-compliance

The control stipulates that 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.

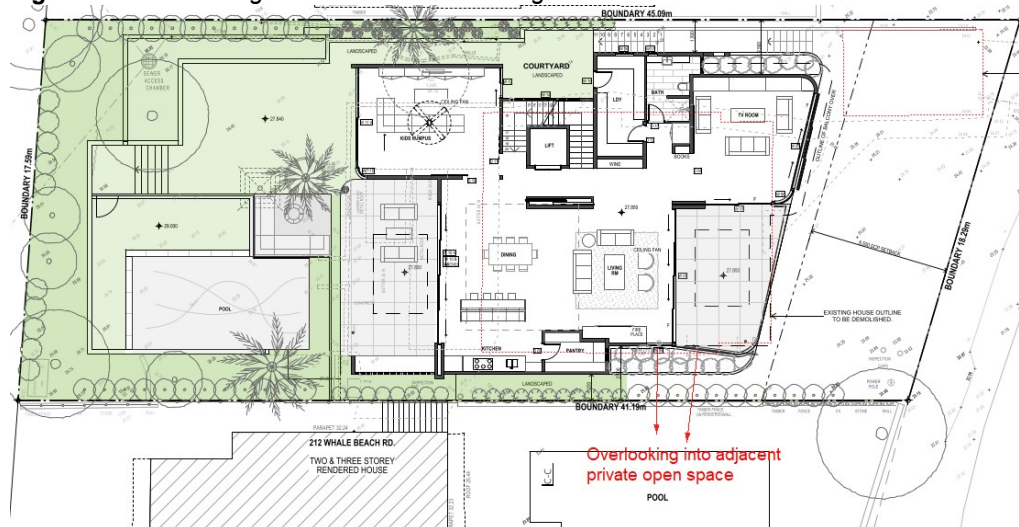
The first floor covered terrace has provided a 1.65 metres high privacy screen on the southern elevation to mitigate overlooking towards the private open space on the southern adjacent site (212 Whale Beach Road).

However, the ground floor plan includes a large covered terrace sited at RL27.85 AHD adjacent to the living room setback between 2.1 metres and 2.5 metres from the southern side boundary. There would be opportunities to overlook directly into the adjacent private open space at 212 Whale Beach Road.

Furthermore, the living room window W09 is setback 2.5 metres from the southern side boundary. The window sill height corresponds with the finished floor level of the living room and would allow for direct overlooking into the adjacent private open space.

Figure 12 below depicts the terrace and window W09 in relation to the adjoining private open space and swimming pool.

Figure 12: overlooking towards the south from ground floor covered terrace and window W09



It is important to note that the first floor small balcony off the main bedroom does not represent unreasonable privacy impacts for the northern adjoining site (216 Whale Beach Road) as it adjoins a bedroom (i.e. low use room) and is elevated approximately 2.3 metres below the adjoining terrace at

216 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:

Terrace

In considering the reasonableness of the overlooking impacts from the elevated terrace sited at RL27.85 AHD it is important to establish the location of the terrace and the frequency in which the occupants would use the area.

The terrace has a trafficable area of approximately 28.9m² and directly adjoins the open plan kitchen, living and dining areas. The terrace is also sited to enable the enjoyment of the expansive ocean views towards the east and south-east. For these reasons, the terrace is question will receive high volumes of pedestrian movement. As a result, any overlooking from this area would be unreasonable.

Whilst the terrace is noted for containing planter boxes on the southern elevation to mitigate overlooking, vegetation cannot be relied upon as the sole privacy mitigating measure. This matter is discussed within the NSW Land and Environment Court Case of *Super Studio v Waverley* [2004] NSWLEC 91, where Senior Commissioner Roseth notes as follows: "*The second principle is that where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens*".

To ensure that an acceptable level of visual privacy is maintained for 212 Whale Beach Road, a suitable condition is recommended with this consent requiring a non-transparent privacy screen to be affixed to the southernmost edge of the terrace, spanning a horizontal length of 2 metres when measured from the external wall of the dwelling towards the east. The screen is to be of a fixed panel or louvre style construction of a maximum openings of 30mm. The privacy screen must be to a height of 1.65 metres above the finished floor level. It is considered that the provision of a privacy screen for the entire southern elevation is not required in this instance.

The 2 metres screen will also not significantly compromise available views to the south-east from the terrace and living room areas.

Window W09

In considering the reasonableness of the overlooking impacts from window W09 it is important to establish the location of the window and the frequency in which the occupants would use the adjacent room.

It is noted that window W09 adjoins the living room within the proposed dwelling house. Living rooms receive higher volumes of movement when compared to bedrooms within a dwelling house. Therefore,

direct overlooking from this window is not a desirable outcome as it would occur on a frequent basis. This is outlined within the NSW Land and Environment Court Case of *Meriton v Sydney City Council* [2004] NSWLEC 313, where Senior Commissioner Roseth notes as follows: *"Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time"*.

It is noted that the finished floor level of window W09 corresponds with the finished floor level of the living room. As such, direct sight lines will be provided into the adjoining private open space at 212 Whale Beach Road.

To alleviate this issue, a condition has been recommended requiring the window sill height of this window to be increased to 1.5 metres above the finished floor level, or fixed frosted glazing to be provided to this window to a height of 1.5m above the finished floor level.

Subject to the conditions recommended above, it is considered that the proposal will mitigate visual privacy through good design, which is consistent with the intent of this outcome.

- *A sense of territory and safety is provided for residents.*

Comment:

Subject to compliance with the aforementioned recommended condition, a sense of territory and safety will be provided for the occupants of the subject site and adjacent properties.

Conclusion

Having regard to the above assessment, it is concluded that the outcomes of the control will be achieved, subject to the recommended conditions.

C1.14 Separately Accessible Structures

The proposed development includes a studio on the lower ground floor that can be accessed both from internally within the building or externally via the east facing sliding doors (W04). The studio in question contains a bathroom and cooking facilities, which lends itself to be used as a secondary dwelling.

Therefore, a suitable condition is recommended with this consent requiring the cooking facilities to be deleted from the plans. Amended plans will need to be submitted to the Certifier prior to the issue of the Construction Certificate, omitting these details.

Subject to compliance with this recommended condition, the proposal will satisfy the requirements and outcomes of this control.

D12.6 Side and rear building line

Description of non-compliance

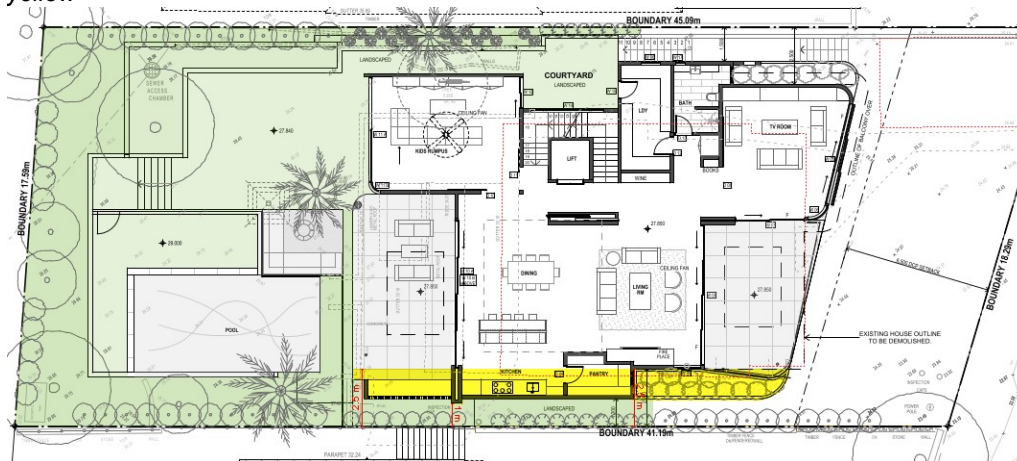
The control stipulates that development shall be setback 1m from one side boundary and 2.5 metres from the opposing side boundary. For the purpose of this assessment the 2.5 metres side building line is applied to the southern side boundary and the 1 metre side building line applied to the northern side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

The proposed dwelling house includes varied side setbacks that are as follows:

- Northern setback: between 1 metres and 4.6 metres - complies with numeric requirement of 1 metres.
- Southern setback: between 1 metres and 9.04 metres - partial non-compliance with the numeric requirement of 2.5 metres.

It is noted that the non-compliance is confined to a portion of the rear covered terrace, the kitchen, the pantry, the planter box and a small portion of the front covered terrace on the ground floor. It is noted that the lower ground floor and first floor of the dwelling comply with the 2.5 metres requirement. Figure 13 below highlights the areas of the building that do not comply with the 2.5 metres requirement.

Figure 13: areas of building that do not comply with 2.5 metres side setback requirement highlighted yellow



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:

The height, bulk and scale of the proposed development is commensurate with established low density residential development along Whale Beach Road. The bulk and scale of the dwelling has been

minimised through the employment of modulated wall plans, planter boxes, contrasting materials and the recessing of the upper floor facade. The development will not be jarring or unsympathetic to the surrounds in a streetscape context. Furthermore, the proposal implements a high quality landscaping scheme to soften the built form.

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

Comment:

As discussed in detail within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP, the proposal allows for the equitable preservation of views and vistas from nearby private and public property.

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

Comment:

A reasonable view sharing outcome has been achieved 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*.

- *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 ensure a reasonable level of privacy is maintained, subject to the recommended conditions outlined within the section of this report relating to Clause C1.5 of the Pittwater 21 DCP. Furthermore, the overshadowing of the southern adjacent east facing living room windows at 212 Whale Beach Road is consistent with the existing scenario, whilst the principal private open space at 212 Whale Beach Road will receive compliant solar access on June 21 (winter solstice). The partial side setback non-compliance on the ground floor does not contribute to unreasonable amenity impacts in terms of visual bulk. Overall, the proposal achieves this outcome.

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

Comment:

Council's Landscape Officer is satisfied that the proposal includes sufficient planting to ensure an attractive streetscape. Furthermore, a condition is recommended with this consent to reduce the width of the front paved entry steps, which will ensure compliance with the DCP 60% landscaped area requirement.

- *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:

The proposed development includes sufficient vegetation planting to soften 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

Description of non-compliance

The control requires development to remain within a prescribed envelope determined by projecting planes at 45 degrees from a height of 3.5 metres above the existing ground level along the side boundaries.

The proposed development includes partial variations to the side building envelope provision on the northern and southern side elevations. Figures 14 and 15 below depict the extent of these variations.

Figure 14: northern elevation envelope breach in red shading

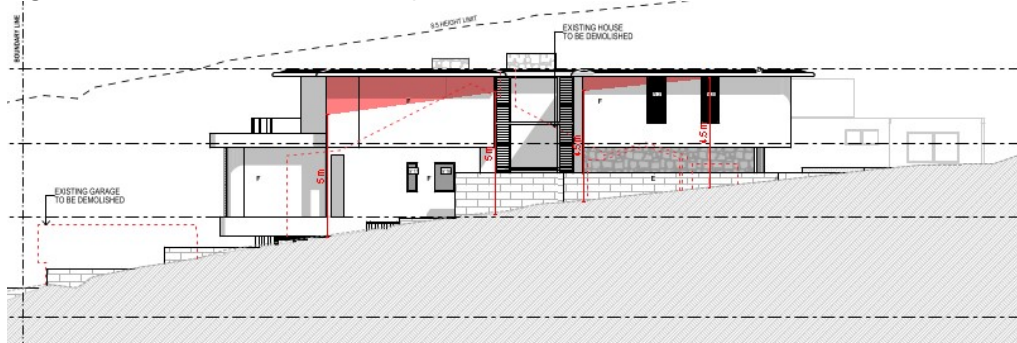


Figure 15: southern elevation envelope breach



Merit consideration

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

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

Comment:

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 scale and density of the proposed dwelling house is compatible with surrounding development and below the established tree canopy within the area.

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

Comment:

The development has responded to the characteristics of the natural environment through minimising the clearing of vegetation and providing a well-articulated design to ensure an acceptable streetscape outcome.

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

Comment:

The height, bulk and scale of the proposed development is commensurate with established low density

residential development along Whale Beach Road. The bulk and scale of the dwelling has been minimised through the employment of modulated wall plans, planter boxes, contrasting materials and the recessing of the upper floor facade. The development will not be jarring or unsympathetic to the surrounds in a streetscape context. Furthermore, the proposal implements a high quality landscaping scheme to soften the built form.

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

Comment:

As discussed earlier within this report, reasonable view sharing will be achieved.

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

Comment:

As discussed earlier within this report, reasonable solar access and privacy will be maintained to neighbouring properties.

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

Comment:

The proposal does not result in the removal of significant canopy trees. Additional native landscaping is proposed to soften the built form.

Conclusion

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

D12.10 Landscaped Area - Environmentally Sensitive Land

The control requires at least 60% of the site to be landscaped. This includes areas capable of growing grass, screen planting and trees, in addition to the following allowable variations:

- *Impervious areas less than 1 metre in width (e.g. pathways and the like); and*
- *Up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

When calculated in accordance with these requirements, 59.36% (449.1m²) of the site will be landscaped, which is a small shortfall from the 60% prerequisite.

However, the size of the site does not preclude full compliance with this control and therefore, a condition is recommended with this consent to reduce the width of the front entry steps and paved area

to 950 millimetres. In turn, this area may be included as an allowable variation into the landscaping calculations. The amended calculations will then be 61.31% (463.9m²), which complies with the 60% requirement.

The amended proposal also satisfies the outcomes of this control for the following reasons:

- The proposal achieves the intent of the Palm Beach Locality desired future character statement;
- The bulk and scale of the built form has been minimised;
- Reasonable amenity is maintained to neighbouring properties, specifically in regards to solar access, privacy, view sharing and visual bulk;
- Sufficient vegetation is retained and enhanced to visually reduce the built form;
- Sufficient landscaping is provided to assist in stormwater infiltration; and
- The character of the area is maintained.

D12.11 Fences - General

Description of non-compliance

The proposal includes a front pedestrian gate and sandstone retaining wall that is approximately 1.2 metres in height. This exceeds the numeric requirement of 1 metre.

Merit consideration

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

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

Comment:

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 ensure fences compliment and conserve the visual character of the street and neighbourhood*

Comment:

The front gate and retaining wall does not detract from the visual character of the area. The timber batten and sandstone materials will harmonise with the natural environment. Furthermore, the height of the retaining wall and timber gate is below the average height level of 1.6 metres and therefore, the structure will not be visually imposing within the streetscape.

- *To define the boundaries and edges between public and private land and between areas of different function.*

Comment:

The front gate and wall will define a boundary between public and private land.

- *To contribute positively to the public domain.*

Comment:

The front gate and sandstone retaining wall will contribute positively to the public domain.

- *An open streetscape that allows casual surveillance of the street.*

Comment:

The front gate and retaining wall is 1.2 metres in height and will not preclude casual surveillance of the street from the subject site.

- *Fences, where provided, are suitably screened from view from a public place.*

Comment:

The height of the gate and retaining wall is of a modest scale and therefore, landscaping screening is not required.

- *Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians.*

Comment:

The front pedestrian gate and retaining wall does not occupy the entirety of the front boundary and clear sight lines will be provided to the street when existing the garage in vehicles.

- *To ensure heritage significance is protected and enhanced.*

Comment:

The site does not contain a heritage item, is not located within a heritage conservation area and is not located in close proximity to a heritage item.

- *To ensure an open view to and from the waterway is maintained.*

Comment:

The front gate and retaining wall does not preclude views to Whale Beach from the subject site and adjacent properties.

- *An area of private open space is provided for properties that front the Pittwater Waterway.*

Comment:

This outcome is not applicable as the site does not front the Pittwater waterway.

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.

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 \$9,735 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$973,500.

CONCLUSION

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

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

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

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

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

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

PLANNING CONCLUSION

The proposed development involves demolition of the existing structures and the construction of a three storey dwelling house including a swimming pool.

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 3 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 Council as the consent authority grant Development Consent to DA2022/0278 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 62 DP 11067, 214 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
DA.01 (Revision B) - Site Plan	27 May 2022	Gartner Trovato Architects
DA.02 (Revision B) - Lower Floor Plan	27 May 2022	Gartner Trovato Architects
DA.03 (Revision B) - Ground Floor Plan	15 July 2022	Gartner Trovato Architects
DA.04 (Revision B) - First Floor Plan	27 May 2022	Gartner Trovato Architects
DA.05 (Revision B) - East & West Elevation	27 May 2022	Gartner Trovato Architects

DA.06 (Revision B) - North & South Elevation	27 May 2022	Gartner Trovato Architects
DA.07 (Revision C) - Sections	15 July 2022	Gartner Trovato Architects
DA.08 (Revision B) - Material Board & Section C-C	27 May 2022	Gartner Trovato Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1DA - Site Stormwater Management Plan	21 December 2021	Barrenjoey Consulting Engineers
SW2DA - Site Stormwater Management Detailing	21 December 2021	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1280344S	17 February 2022	Gartner Trovato Architects
Geotechnical Investigation Ref. 2021-271	15 February 2022	Crozier Geotechnical Consultants
Bushfire Risk Assessment	19 April 2022	Bushfire Planning Services

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L01 (Revision A) - Landscape Plan	21 February 2022	Gartner Trovato Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	31 January 2022	Gartner Trovato Architects

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

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

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

3. **Approved Land Use**

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

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

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

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

4. **Prescribed conditions (Demolition):**

- (a) 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 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
 - (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

5. **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.

6. General requirements (Demolition):

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
 - o 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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

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

7. 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.

8. **Operation of solid fuel burning heaters**

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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

FEES / CHARGES / CONTRIBUTIONS

9. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,735.00 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 \$973,500.00.

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

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

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

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

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

10. **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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 15 February 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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **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.

13. **Amendments to the approved plans**

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

- The cooking facilities within the studio on the lower ground floor are not consented to and must be deleted from the approved plans.
- The paved and pebbled pathway between the entryway and front boundary must be reduced to a maximum width of 950 millimetres.
- The southernmost edge of the covered front terrace/balcony sited at RL27.850 AHD must be affixed with a non-transparent screen that spans a horizontal length of 2.0 metres when measured from the external wall of the dwelling towards the front of the terrace. The privacy screen must be of a fixed panel or louvre style construction with maximum openings of 30 millimetres. The privacy screen must be to a height of at least 1.65 metres above the finished floor level, but no greater than 1.8 metres above the finished floor level of the terrace.
- The ground floor living room window W09 must be amended to have a window sill that is at least 1.5 metres above the finished floor level or fixed obscure glazing to a height of 1.5 metres above the finished floor level.

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

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

14. **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 Pty Ltd, drawing number 211107 SW1DA & SW2DA, dated 21/12/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. Junction pit at the front boundary connecting the outlet from the OSD tank and the driveway grated drain to the connection with the Council stormwater pit in Whale Beach Rd.
2. A catch drain or swale at the rear of the site connected to the junction pit at the front boundary for bypass flows entering the site.
3. An approval from Council for the connection of the outlet pipe to the existing Council stormwater pit in Whale Beach Road under Section 138 of the Roads Act.

Detailed drainage plans, including Engineering certification, and the Roads Act approval 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.

15. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's

roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the driveway crossing and reinstatement of the old driveway crossing which are to be generally in accordance with Council's specification for engineering works - AUS-SPEC #1 and Council's Standard Vehicle Crossing Profile. The plans shall be prepared by a qualified Civil engineer. The design must include the following information:

1. The driveway crossing is to be 4 metres wide at the kerb to 5 metres wide at the boundary.
2. The profile and design is to be in accordance with Council's Extra High Standard Vehicle Crossing Profile, Plan No. A4/3330/4 EH.
3. The layback is to be in accordance with Council's Plan No. A4/2276/B.
4. The wing of the new layback is to be a minimum of 1 metre from the edge of the lintel of the existing stormwater pit fronting the site.
5. The road reserve on either side of the crossing is to be battered and turfed. Sections through the road reserve are to be included detailing the batter slopes.
6. The levels in the road reserve on either side of the property are to be maintained.
7. The retaining walls on either side of the existing crossing are to be removed and the crossing reinstated to turf and kerb. The kerb is to be in accordance with Council Plan No. A4/2276/A, 150mm Kerb and Gutter.
8. Any existing services that need to be adjusted to suit the new crossing are to shown on the plans and concurrence from the relevant services authority provided with the application.
9. Details of the pipeline connection from the site into the existing Council stormwater pit fronting the site.

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

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

16. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

17. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage

using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

18. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact receiving waters.

19. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

20. **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.

21. **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.

22. **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

23. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below within 10 metres of the excavation perimeter, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:

- 216 Whale Beach Road, Whale Beach.
- 212 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 arising from the works.

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

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

24. **Installation and Maintenance of Sediment and Erosion Control**

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site nominated for retention on the 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) 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.

26. **Road Reserve**

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

Reason: Public safety.

27. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

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

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

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

29. **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.

30. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

31. **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.

32. **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.

33. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide at the kerb to 5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/4 EH and the Section 138 Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

34. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation not included in landscape plan and/or watercourses, are to remain undisturbed during the construction works.

All storage, stockpiling and parking of vehicles must be within the existing hard stand area or designated area outside Tree Protection Zones. Tree protection measures are to be in place should construction works impinge on canopy trees or their root plate zones.

Reason: To protect wildlife habitat.

35. **Pollution Control**

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

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

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

36. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and

inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 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,
- iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of 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.

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

38. **Post-Construction Dilapidation Report**

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

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

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

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

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

39. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and Hydraulic engineers' certification.

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

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

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

40. **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.

41. **Installation and certification of solid/fuel burning heater**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

42. **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.

43. **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

44. **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.

45. **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.

46. **Studio not to be used for Separate Occupancy**

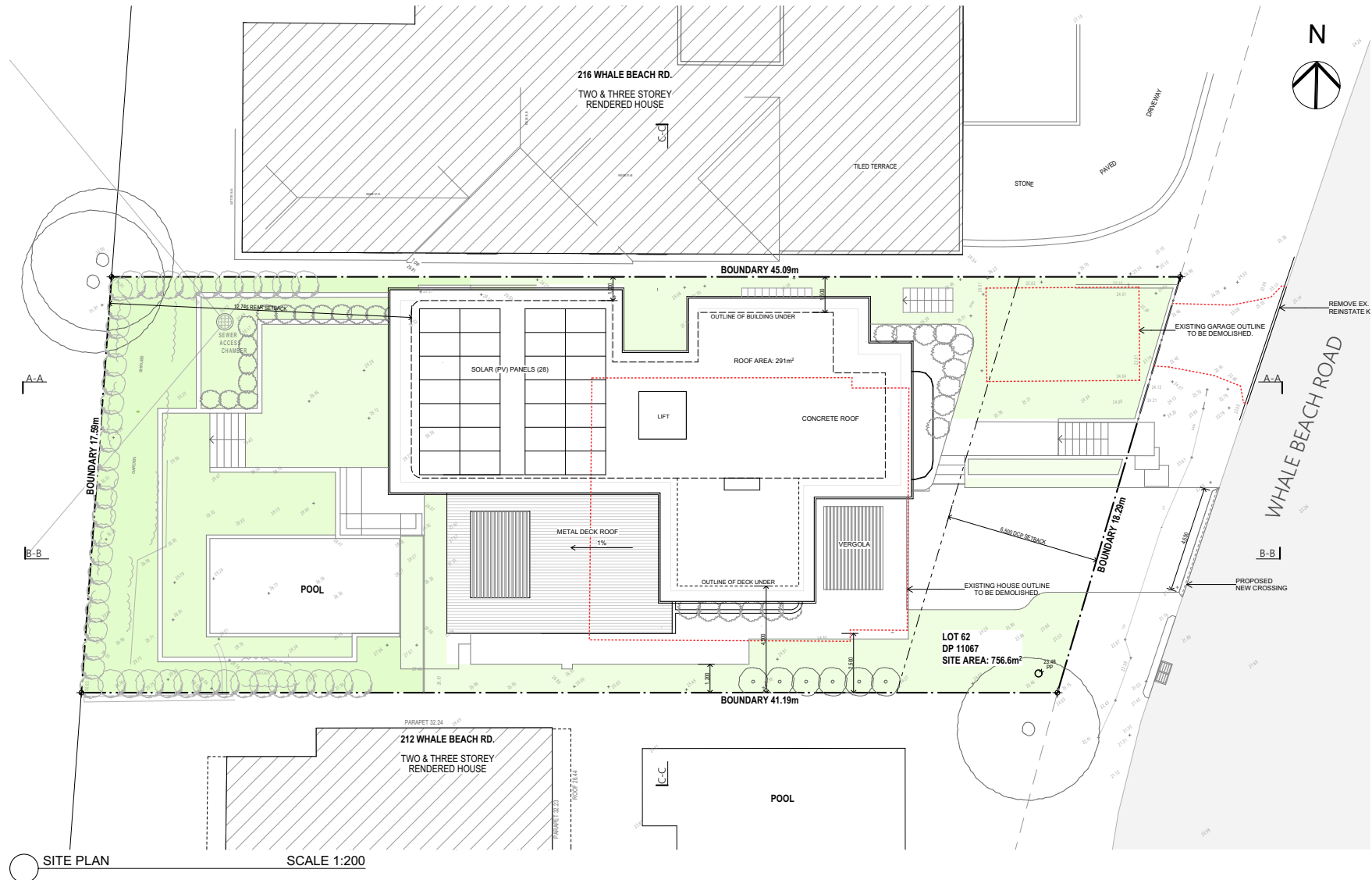
The approved studio on the lower ground floor is not permitted to be used or adapted to be used, or adapted to be used, for separate occupancy. The area must not contain cooking facilities.

Reason: Nothing in this consent authorises the studio to be used for separate habitation.

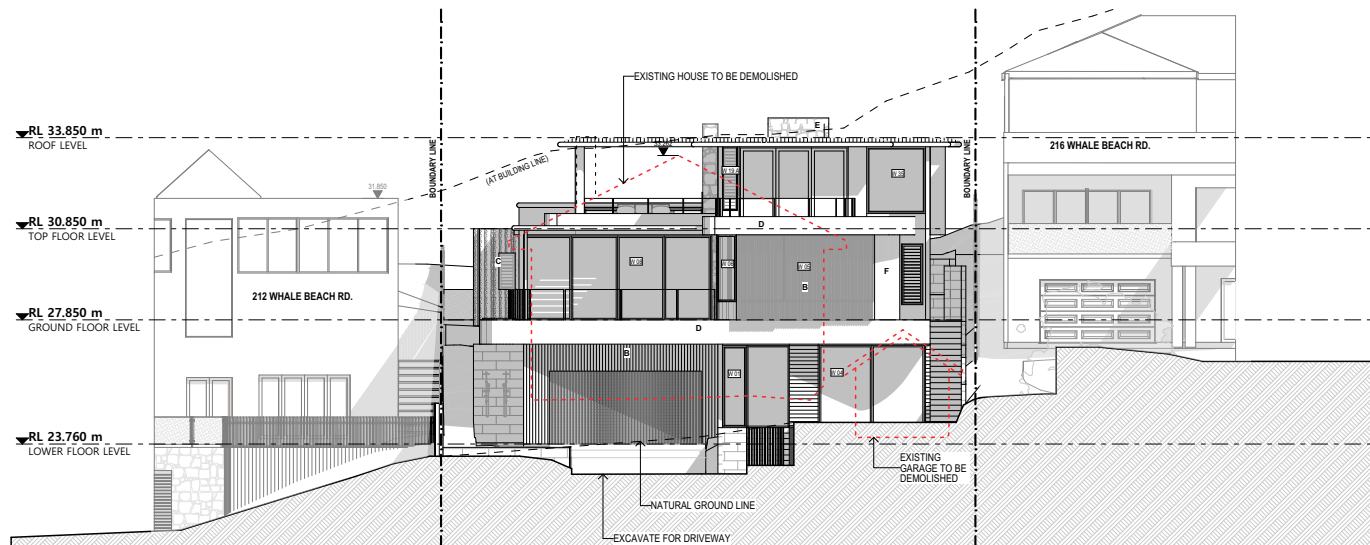
47. **Noise - Lift and Swimming Pool**

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 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

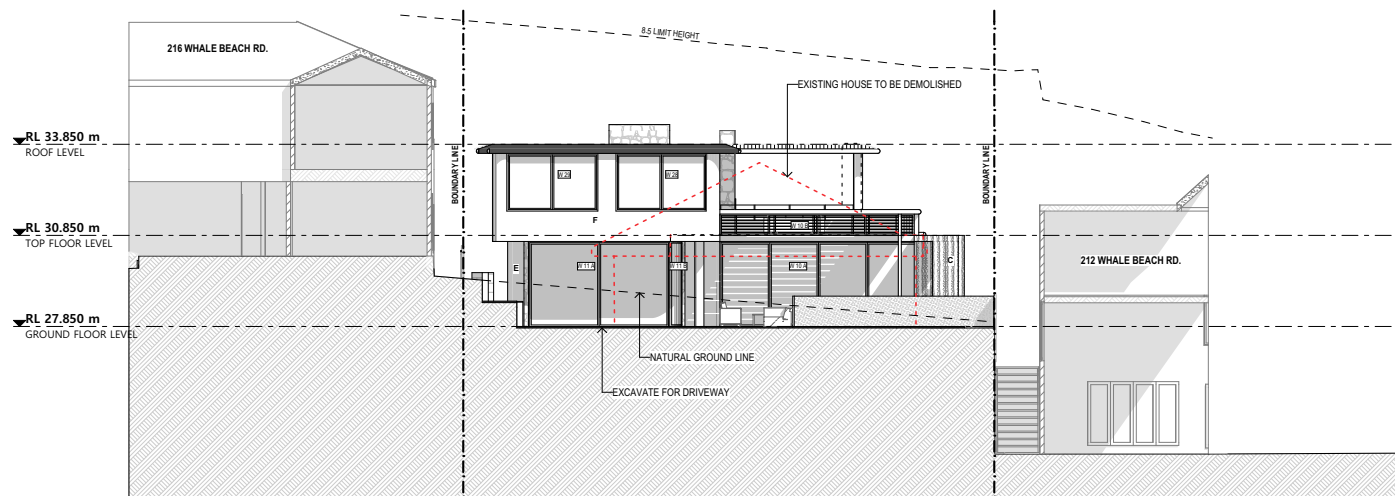
Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.



Issue Date	Rev	Description	Drawn	Checked	PROJECT	ISSUED BY	PLAT DATE
19/03/2022	A	DA			DILLAMORE Residence	Site Plan	
27/06/2022	B	REVISED DA			Development Application 214 WHALE BEACH ROAD, Sydney NSW 62 11067	SCALE 1:100 @ A2	27/06/2022
					FOR DILLAMORE FAMILY	DRAWN BY RP/SG	REVISIONS
						PROJECT NO. 2116	B
						DA.01	



EAST ELEVATION



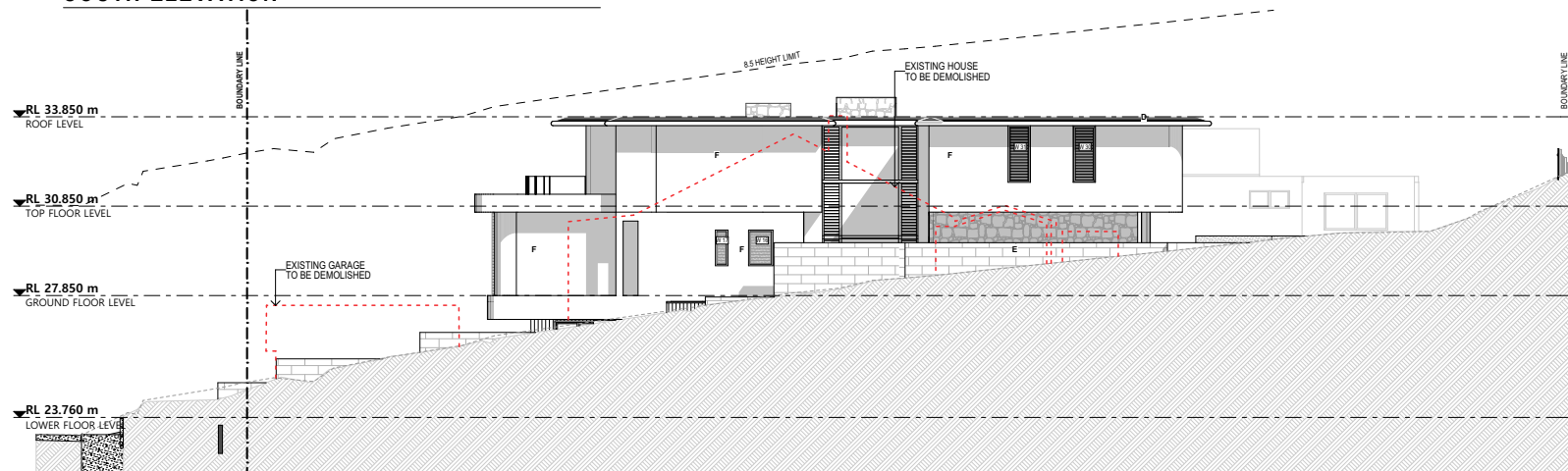
WEST ELEVATION

SCALE 1:100 (m)

<p>GARTNERTROVATO ARCHITECTS</p> <p>A 47/50 HERRICK ROAD, SYDNEY NSW 1585 P 02 9550 1100 F 02 9550 1101 E gartnertrovato@gmail.com</p>	Issue Date	Rev	Description	Drawn	Checked	PROJECT	22/2022 ELEV
	19/03/2022	A	DA			DILLAMORE Residence	East & West Elevation
	27/06/2022	B	REVISED DA			Development Application 214 WHALE BEACH ROAD, Sydney NSW 62 11067	SCALE 1:100 @ A2
						FOR DILLAMORE FAMILY	DESIGNED BY RPBG 27/06/2022 DRAWN BY DA,05 REVISION B



SOUTH ELEVATION



NORTH ELEVATION

SCALE 1:100 (m)



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Issue Date	Rev	Description	Drawn	Checked	PROJECT	PROJECT FILE
15/03/2022	A	DA			DILLAMORE Residence	North & South Elevation
27/05/2022	B	REVISED DA			Development Application 214 WHALE BEACH ROAD, Sydney NSW 62 11067	SCALE 1:100 @ A2
					FOR DILLAMORE FAMILY	DRAWN BY RP/SG
						PROJECT NO. 2116
						DATE DA.06
						REVISION B