AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 10 AUGUST 2022



Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 10 August 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 27 JULY 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 27 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	**DA2022/0588 - 143 WYNDORA AVENUE FRESHWATER - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL, HOME OFFICE AND ASSOCIATED LANDSCAPE WORKS**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/464683**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations**

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to **DA2022/0588** for Demolition works and construction of a dwelling house including a swimming pool, home office and associated landscape works on land at Lot 58, DP 8389, 143 Wyndora Avenue, FRESHWATER, subject to the conditions set out in the Assessment Report.

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DEVELOPMEMT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0588

Responsible officer:	Geoff Goodyer, planning consultant, Symons Goodyer Pty Ltd
Land to be developed (address):	Lot 58, DP 8389, 143 Wyndora Avenue, FRESHWATER NSW 2096
Proposed development:	Demolition works and construction of a dwelling house including a swimming pool, home office and associated landscape works
Zoning:	Warringah LEP 2011 – Land zoned R2 Low Density Residential
Development permissible:	Yes – dwelling house
Existing use rights:	No
Consent authority:	Northern Beaches Council
Delegation level:	Development Determination Panel (DDP)
Land and Environment Court action:	No
Owner:	Aimee Maree King and David James King
Applicant:	Annabelle Chapman

Application lodged:	21 April 2022
Integrated development:	No
Designated development:	No
State reporting category:	Residential – Single new detached dwelling
Notified:	3/5/2022 to 17/5/2022
Advertised:	Not advertised
Submissions received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated cost of works:	$2,501,062



EXECUTIVE SUMMARY

This application seeks consent for the demolition of an existing dwelling house and construction of a dwelling house including an inground swimming pool, garage with home office and associated landscape works. The proposed development complies with the 8.5 metre building height limit in Clause 4.3 of WLEP 2011 and is generally compliant with the relevant built form controls stipulated within the Warringah Development Control Plan (WDCP) 2011.

This application has been externally assessed and referred to Council's Development Determination Panel (DDP) because an objection has been received from a relative of an employee of Council.

The application was notified in accordance with Council's Community Participation Plan and two (2) submissions were received in response. The issues raised in those submissions have been taken into consideration in the assessment of this proposal.

Notwithstanding the minor numerical non-compliances to the WDCP, the proposed development is commensurate with other dwelling houses within the locality, will not result in any unreasonable amenity impacts to surrounding properties and is therefore recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to carry out carry out demolition works and construct a dwelling house including an inground swimming pool, garage with home office and landscape works.

The following works are proposed:

- Demolition of all existing structures
- Dwelling house

  Ground floor (RL31.30 / RL32.00)

  - Living / kitchen / dining room
  - Sitting room
  - Study
  - Laundry
  - w.c.
  - Rear terrace

  Upper floor (RL35.05)

  - Four bedrooms, one with robe and ensuite
  - Bathroom

- Garage

  Ground floor (RL 31.25)

  - Parking for two cars

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Upper floor (RL 33.97)

- Home office
- Bathroom

- Site works

  - Swimming pool (5m x 4m)
  - Spa
  - Landscape 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 (ie: 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 in accordance with the Act, Regulations and Community Participation Plan;
- A review and consideration of all submissions made by the public in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011
Warringah Development Control Plan 2011 – B7 Front boundary setbacks
Warringah Development Control Plan 2011 – D8 Privacy

SITE DESCRIPTION

Property description:	Lot 58 DP 8389, 143 Wyndora Avenue FRESHWATER NSW 2096
Detailed site description:	The site is located on the northern side of Wyndora Avenue between Harbord Road and Oliver Street. The site is rectangular in shape, with a southern frontage to Wyndora Avenue of 12.19 metres, eastern and western side boundaries of 42.33 / 42.335 metres, and a northern frontage to Raffo Lane of 12.19 metres. The site area is 516m^2. The site contains a two-storey dwelling house with a detached brick garage fronting Raffo Lane.

	The surrounding area has been developed predominantly for dwelling houses in landscaped settings.

LOCALITY PLAN (not to scale)



Figure 1 – Location of Site (source: sixmaps)

SITE HISTORY

The site has been used for residential purposes for approximately 70 years prior to which it was vacant.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None - applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	See discussion on “Warringah Development Control Plan 2011” in this report.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None - applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

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Section 4.15 'Matters for Consideration'	Comments
	Clauses 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 – 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) The proposed development will not have a detrimental social impact in the locality. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed works.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is zoned for the proposed purpose and has been developed for this purpose.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” 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 3/5/2022 to 17/5/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process Council is in receipt of two (2) submissions from:

Name:	Address:
Dante Dell'Angelese	145 Wyndora Avenue, FRESHWATER NSW 2096
Mr Lindsay Warnes	74 Wyuna Avenue, FRESHWATER NSW 2096
Mr Derek Schaefer	84 Wyuna Avenue, FRESHWATER NSW 2096

The following issues were raised in the submissions:

- Privacy and overlooking
- Landscape species
- Construction access and deliveries

The above issues are addressed as follows:

- **Privacy and overlooking**

  Comment:

  Concern is raised that there will be privacy and overlooking impacts arising from first-floor bedroom and bathroom windows (WF03, WF05, WF06, WF07 and WF08). These windows are appurtenant to rooms with low levels of daytime usage (unlike living areas and balconies/terraces). The neighbouring building has a floor level that is approximately 500mm higher than the proposed dwelling house and this difference in level, together with the minimum sill height of 1400mm in the neighbour's dwelling, restrict sight lines, as shown in the follow diagram:

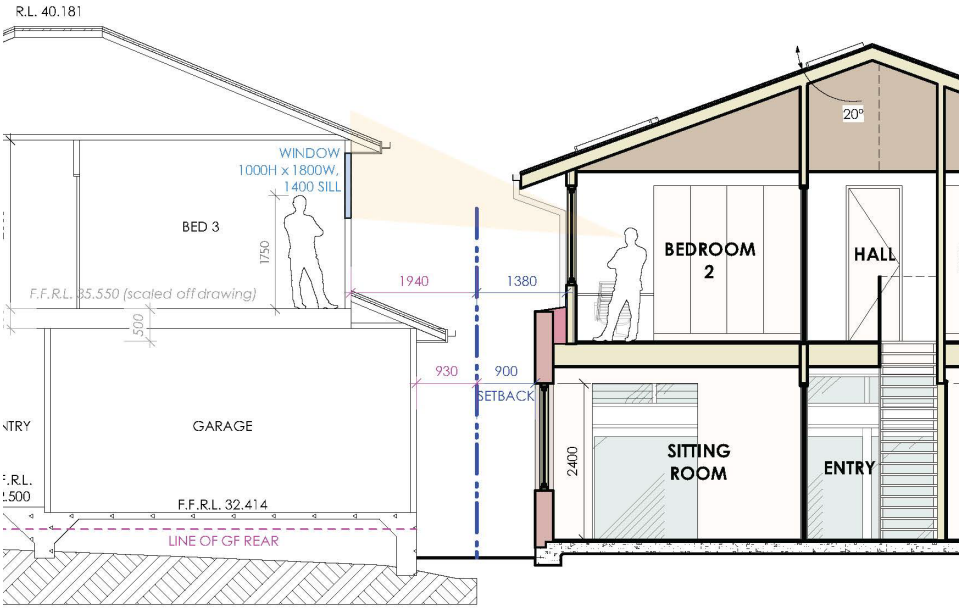


Diagram 1: Sight lines (extract from Drawing 302, Issue B)

The restricted sight lines together with the low level of daytime usage of the rooms are considered to be sufficient to mitigate potential privacy impacts from the proposed windows.

Concern is also raised regarding overlooking from the windows of the home office, located above the garage at the rear of the site. In this regard, windows WF16 and WF17 are oriented to the south, to the rear yard of the subject site, and provide only oblique views to the neighbour's rear yard. They are separated from the neighbour's living area glazing by a minimum of 12 metres. These factors mitigate potential overlooking from these windows. Window WF18 faces west, overlooking the neighbour's rear yard and swimming pool. It is proposed that the lower panes of this window be obscure glazing, which will mitigate potential overlooking from this window. A condition of consent is recommended requiring glazing in window WF18 to be fixed and obscure to a minimum height of 1600mm above the floor level.

Concern is also raised regarding overlooking from the home office of the rear yard and south-facing bedroom of the property to the north-east of the subject site on the opposite side of Raffo Lane, known as 84 Raffo Lane, shown in the following photograph:



Photograph 1: Rear of 84 Wyuna Avenue, Freshwater (source: google maps)

In this case, the separation distance between the subject site and the rear yard is 9 metres, which is considered to be sufficient to mitigate any potential privacy impacts. In this regard it is noted that Control D8 Privacy of WDCP 2011 requires a separation distance of 9 metres to prevent views between windows of adjoining dwellings. The boundary fence of 84 Wyuna Avenue, shown in Photograph 1 above, provides further screening and, together with the separation distance, ensures that reasonable levels of privacy are maintained.

- **Potential use of home office as a secondary dwelling**

  Comment:

  Concern is raised that the home office may be used as a secondary dwelling, resulting in amenity impacts on the neighbouring property including a loss of privacy. In this regard, the applicant originally submitted a BASIX Certificate for the home office as a "separate dwelling house – secondary dwelling", but subsequently replaced this with a BASIX Certificate identifying the space as a "separate dwelling house". This is inconsistent with the drawings, which identify the space as a "home office", and the Statement of Environmental Effects, which states:

  "The proposed home office space at the loft level above the detached garage will be used wholly in conjunction with the dwelling and will not be used for any form of separate accommodation."

  Discussions with the architect indicate that the online BASIX tool was not effective in providing a Certificate for the home office and dwelling house as a single dwelling and so a separate Certificate was obtained for the home office. To address the inconsistency in the submitted documentation, and to protect the amenity of the neighbourhood, a condition of consent is recommended requiring that the home office not be used as a separate dwelling.

- **Landscape plan**

  Comment:

  Concern is raised that the landscape plan does not specify the species that will be planted in the hedge along the western boundary and requests that an appropriate species be provided for screening. In this regard the Landscape Plan (Drawing No. 601) specifies Coastal Tea Tree (*Leptospermum laevigatum*) or similar, which is considered to be a suitable species for hedge screening. As discussed above with regards to privacy and overlooking, landscape screening is not relied upon to mitigate potential privacy impacts from windows. The proposed hedging, together with boundary fences, will mitigate privacy between the rear yards of the dwelling house and its neighbours.

- **Construction access and deliveries**

  Comment:

  Concern is raised that construction vehicles and deliveries will access the site from Raffo Lane, which it is stated can become blocked due to the number of construction sites that use the lane for access. In this regard it is considered that Raffo Lane provides a suitable point of access to the site. All construction and delivery vehicles will be required to obey local road laws, including the maintenance of access in the lane, and there are no particular circumstances that in this case would warrant restricting construction access to Wyndora Avenue only.

REFERRALS

Internal referral body	Comments
NECC (Development engineering)	Applicant seeks approval to demolish existing dwelling and construction of a new dwelling. Submitted concept stormwater management plan is acceptable. No Development Engineering objection subject to recommended conditions.
Landscape officer	The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation The Arborist's Report prepared by Margot Blues is noted. The Report indicates that five trees are to be removed to accommodate the proposed works. Two of the trees are non-exempt species 6-7m tall. The other trees to be removed are exempt species. The non-exempt trees to be removed are rated Medium-Low significance. No objections are raised to removal of the trees in this instance, subject to replanting as included in recommended conditions.

External referral body	Comments
Ausgrid	The proposal was referred to Ausgrid who raised no objection to the proposal.

ENVIRONMENTAL PLANNING INSTRUMENTS

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 those documents are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against. As such, the following assessment is provided against the controls relevant to the merit consideration of the application.

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

SEPP (Building Sustainability Index: BASIX) 2004

BASIX Certificate numbers 1260950S_04 and 1262826S_03, both dated 9 August 2022, have been submitted for the dwelling and the home office. The certificates demonstrate compliance with the state government's requirements for sustainability.

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

SEPP (Biodiversity and Conservation) 2021

Vegetation in Non-Rural Areas

Chapter 2 of SEPP (Biodiversity and Conservation) 2021 relates to the protection of vegetation in non-rural areas. The proposal involves the removal of five trees, two of which are non-exempt species. Council's Landscape Officer has reviewed the documentation submitted with the application, including the Arborist's report, and raised no objections to the proposal. The comments of Council's Landscape Officer are concurred with.

SEPP (Resilience and Hazards) 2021

Remediation of Land

Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 4.6 of SEPP (Resilience and Hazards) 2021 and the land is considered to be suitable for the residential land use.

SEPP (Transport and Infrastructure) 2021

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Clause 2.48 of the SEPP requires the Consent Authority to notify the electricity supply authority of 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.

The proposal was referred to Ausgrid who raised no objections to the proposal subject to compliance with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets. In this regard, a condition is included in the recommendation of this report.

Local Environment Plans (LEP's)

Warringah Local Environmental Plan 2011 (WLEP 2011)

Consideration of proposal against Warringah Local Environment Plan 2011:

Definition of proposed development: (ref. WLEP 2011 Dictionary)	Dwelling house
Zone:	R2 Low Density Residential
Permitted with Consent or Prohibited:	Permissible with consent

Objectives of the Zone
• To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.
The development is considered to be consistent with the relevant objectives of the zone for the following reasons: • The proposal continues to provide for the housing needs of the community. • The proposal provides a landscaped setting for the dwelling house.

Principal Development Standards:			
Standard	**Permitted**	**Proposed**	**Complies**
Height of buildings	8.5 metres	8.5 metres	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

6.4 Development on sloping land

The site is identified as being within Area A on the Landslip Risk Map so the provisions of clause 6.4 of WLEP 2011 apply to the proposal.

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

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council can be satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council can be satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council can be satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan 2011 (WDCP 2011)

Built form controls

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Built form control	Requirement	Proposed	% Variation	Complies?
B1 Wall height	7.2m	6.5m	-	Yes
B2 Number of storeys	2 storeys	2 storeys	-	Yes
B3 Side boundary envelope	4m + 45°	Within envelope	-	Yes
B5 Side boundary setbacks	900mm	900mm	-	Yes
B7 Front boundary setbacks*	6.5m (primary frontage) 3.5m (secondary frontage)	6.75m House - 21.1m Swimming pool – 9.2m Garage / home office – 0.9m	- - - 74.3%	Yes Yes Yes No
C3 Parking facilities	2 spaces	2 spaces	-	Yes
D1 Landscaped open space and bushland setting	40% (206.4m^2)	41.5% (214.0m^2)	-	Yes
D2 Private open space	60m^2	135m^2	-	Yes

* No rear boundary setback as the site has double street frontage (Wyndora Avenue and Raffo Lane).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C5 Erosion and sedimentation	Yes	Yes
C7 Excavation and landfill	Yes	Yes
C8 Demolition and construction	Yes	Yes
C9 Waste management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building bulk	Yes	Yes
D10 Building colours and materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and reflection	Yes	Yes
D14 Site facilities	Yes	Yes
D16 Swimming pools and spas	Yes	Yes
D20 Safety and security	Yes	Yes
D21 Provision and location of utility services	Yes	Yes
D22 Conservation or energy and water	Yes	Yes
E1 Preservation or trees or bushland vegetation	Yes	Yes

Detailed Assessment

B7 Front boundary setbacks (secondary frontage)

Description of non-compliance

Control B7 requires that a setback of 6.5 metres be provided to all street frontages. The site has two street frontages. The proposal complies to the front setback requirements with regards to the Wyndora Avenue frontage, but does not comply with the front setback requirement with regards to the Raffo Lane frontage. The garage / home office structure has a setback of 0.9 metres.

Control B7 provides an exception in circumstances where a property has more than one street frontage, as follows:

On corner allotments or sites with a double street frontage, where the minimum front building setback is 6.5 metres to both frontages, the front building setback may be reduced to a minimum of 3.5 metres for the secondary frontage, but secondary street variations must consider the character of the secondary street and the predominant setbacks existing to that street.

The proposed 0.9 metre setback of the garage / home office represents a variation of 2.6 metres (74.3%).

The proposal is considered to fall within the ambit of the exception because it is consistent with the character of Raffo Lane and the predominant setback of structures fronting the lane. The proposed double garage occupies an area that is currently occupied by a double garage. The locality is characterised by garages within the setback area with access from Raffo Lane, as shown in the following aerial photograph:



Diagram 2: Aerial photograph showing structures fronting Raffo Lane (source: sixmaps)

Merit consideration:

Notwithstanding the technical non-compliance with the front setback control, the proposal is considered to satisfy the objectives of the control for the following reasons:

- *To create a sense of openness.*

  Comment: Raffo Lane serves as a service area for dwelling houses on both sides of the lane and, as such, does not have the character of a street frontage. The sense of openness is maintained to Wyndora Avenue, where the streetscape has an open character. Creating a sense of openness to Raffo Lane would be inconsistent with the character of the area and the utilitarian benefits provided to properties with two street frontages, including one to Raffo Lane.

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

  Comment: The proposal maintains the visual continuity of development fronting Raffo Lane, as demonstrated by the aerial photograph above, which is dominated by garages and other secondary structures fronting the lane.

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

  Comment: The proposal maintains and enhances the visual quality in Raffo Lane. The garage / home office structure has been architecturally designed, is considered to be well proportioned, and has a suitable laneway presentation.

- *To achieve reasonable view sharing.*

  Comment: The garage / home office structure has no impact on any public or private views.

In summary, the proposal is considered to qualify for the exemption to the front boundary setback requirement in Control B7 in he WDCP 2011 and satisfies the objectives of the control such that a variation is warranted in the circumstances of the case.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022. A monetary contribution of $25,010.62 is required for the provision of new and

augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,501,062.

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 2021;
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011; and
- Codes and Policies of Council.

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

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

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

This proposal, for demolition and construction of a dwelling house including an in-ground swimming pool and associated landscaping, has been referred to the Development Determination Panel (DDP) because an objection has been received from a relative of a person employed by Council. The proposal complies with Clause 4.3 Height of Buildings of WLEP 2011.

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 DA2022/0588 for Demolition works and construction of a dwelling house including a swimming pool, garage with home office, and associated landscape works on land at Lot 58 DP 8389, 143 Wyndora Avenue, FRESHWATER, 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**
B	Undated	Annabelle Chapman Architect
101 (Revision B)	25.5.2022	Annabelle Chapman Architect
102 (Revision B)	25.5.2022	Annabelle Chapman Architect
103 (Revision B)	25.5.2022	Annabelle Chapman Architect
104 (Revision B)	25.5.2022	Annabelle Chapman Architect
201 (Revision B)	25.5.2022	Annabelle Chapman Architect
202 (Revision B)	25.5.2022	Annabelle Chapman Architect
203 (Revision B)	25.5.2022	Annabelle Chapman Architect
301 (Revision A)	25.5.2022	Annabelle Chapman Architect
302 (Revision B)	25.5.2022	Annabelle Chapman Architect

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
602 (Revision A)	25.5.2022	Annabelle Chapman Architect
603 (Revision A)	25.5.2022	Annabelle Chapman Architect
H01 (Revision B)	9.3.2022	Peninsula Consulting Engineers
H02 (Revision A)	15.3.2022	Peninsula Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment	18.3.2022	Margot Blues
BASIX Certificate 1260950S_04	9.8.2022	Annabelle Chapman
BASIX Certificate 1262862S_03	9.8.2022	Annabelle Chapman
Statement of Environmental Effects	April 2022	Vaughan Milligan Development Consulting Pty Ltd

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**
601 (Revision A)	25.5.2022	Annabelle Chapman Architect

Waste Management Plan		
Report Title	**Dated**	**Prepared By**
Waste Management Plan	17.3.2022	Annabelle Chapman Architect

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

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

2. Approved Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	16 May 2022

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

3. Home office not to be used as a separate dwelling

The proposed home office is not to be used as a separate dwelling. In this regard, kitchen facilities are not to be placed or installed within the home office.

Reason: To confirm the details of the application and to protect the amenity of the area.

4. Window WF18 privacy treatment

Window WF18 is to be provided with fixed obscure glazing to a minimum height of 1600mm above the finished floor level.

Reason: To prevent overlooking of the neighbouring private open space.

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 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 removal of materials/buildings/structures 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) 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.

(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) 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.

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

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

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

(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.

(i) 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.

(k) 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 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.

(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. Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan. The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018	

Contribution based on a total development cost of $2,501,062		
Contributions	**Levy rate**	**Payable**
Total Section 7.12 Levy	0.95%	$23,760.09
Section 7.12 Planning and Administration	0.05%	$1,250.53
Total	1%	$25,010.62

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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 Northern Beaches Council Contributions Plan 2018.

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

8. 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 Peninsula Consulting Engineers, drawing number (21-1116) H01A and H02B, dated March 2022.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

9. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

10. Compliance with Standards

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

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

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

11. 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.

12. Sydney Water "Tap In"

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

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

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

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

13. Waste Management Plan

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. Tree protection

(a) Existing trees which must be retained
  i) All trees located on the subject site
  ii) All trees located on adjoining land

(b) Tree protection
   i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
   ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
   iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
   iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
   v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

15. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council's road reserve or land under Council's care, control and management, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. Road Reserve

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

Reason: Public Safety.

17. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

18. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum, the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Tree protection.

19. Tree and Vegetation Protection

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

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

photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

20. 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.

21. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

22. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

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

23. Reinstatement of Kerb

The Applicant shall reinstate redundant laybacks and vehicular crossings in Wyndora Avenue to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

24. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

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

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

northern beaches council

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

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

25. Required Tree Planting

a) Trees shall be planted in accordance with the following:
   i) 2 trees capable of attaining a minimum height of 5m at maturity; Located within the grounds of the property; Minimum pot size 200mm

b) Native tree planting species may be selected from Council's list: www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Reason: To maintain environmental amenity.

26. 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.

27. 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.

28. 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; and
(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.

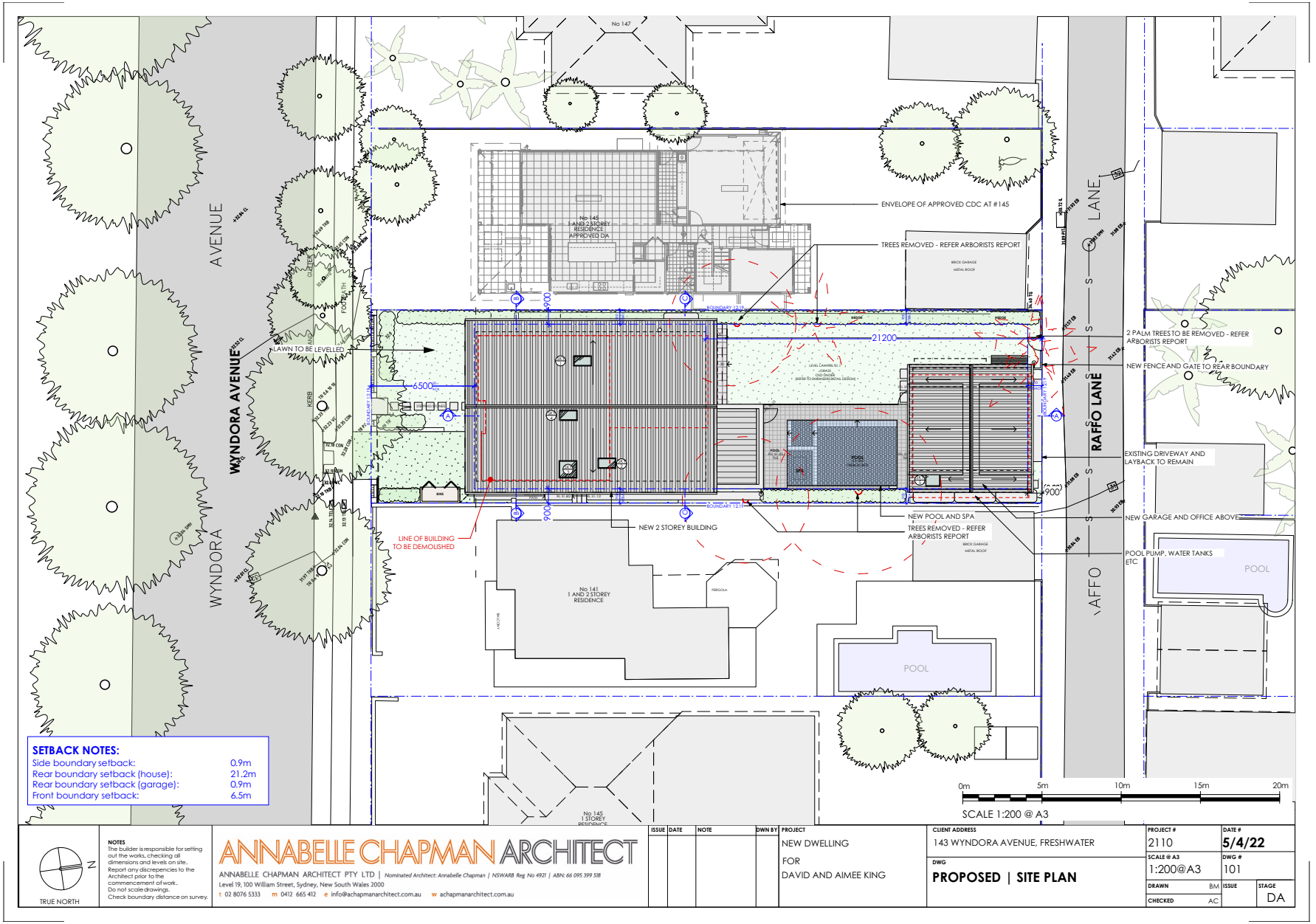
Reason: To protect human life.

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

29. Swimming Pool/Spa Motor Noise

The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

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



SETBACK NOTES:

Side boundary setback:	0.9m
Rear boundary setback (house):	21.2m
Rear boundary setback (garage):	0.9m
Front boundary setback:	6.5m

TRUE NORTH

NOTES
The builder is responsible for setting out the works, checking all dimensions and levels on site. Report any discrepencies to the Architect prior to the commencement of work. Do not scale drawings. Check boundary distance on survey.

ANNABELLE CHAPMAN ARCHITECT

ANNABELLE CHAPMAN ARCHITECT PTY LTD | Nominated Architect: Annabelle Chapman | NSWARB Reg No 4921 | ABN: 66 095 399 518
Level 19, 100 William Street, Sydney, New South Wales 2000
t 02 8076 5333 m 0412 665 412 e info@achapmanarchitect.com.au w achapmanarchitect.com.au

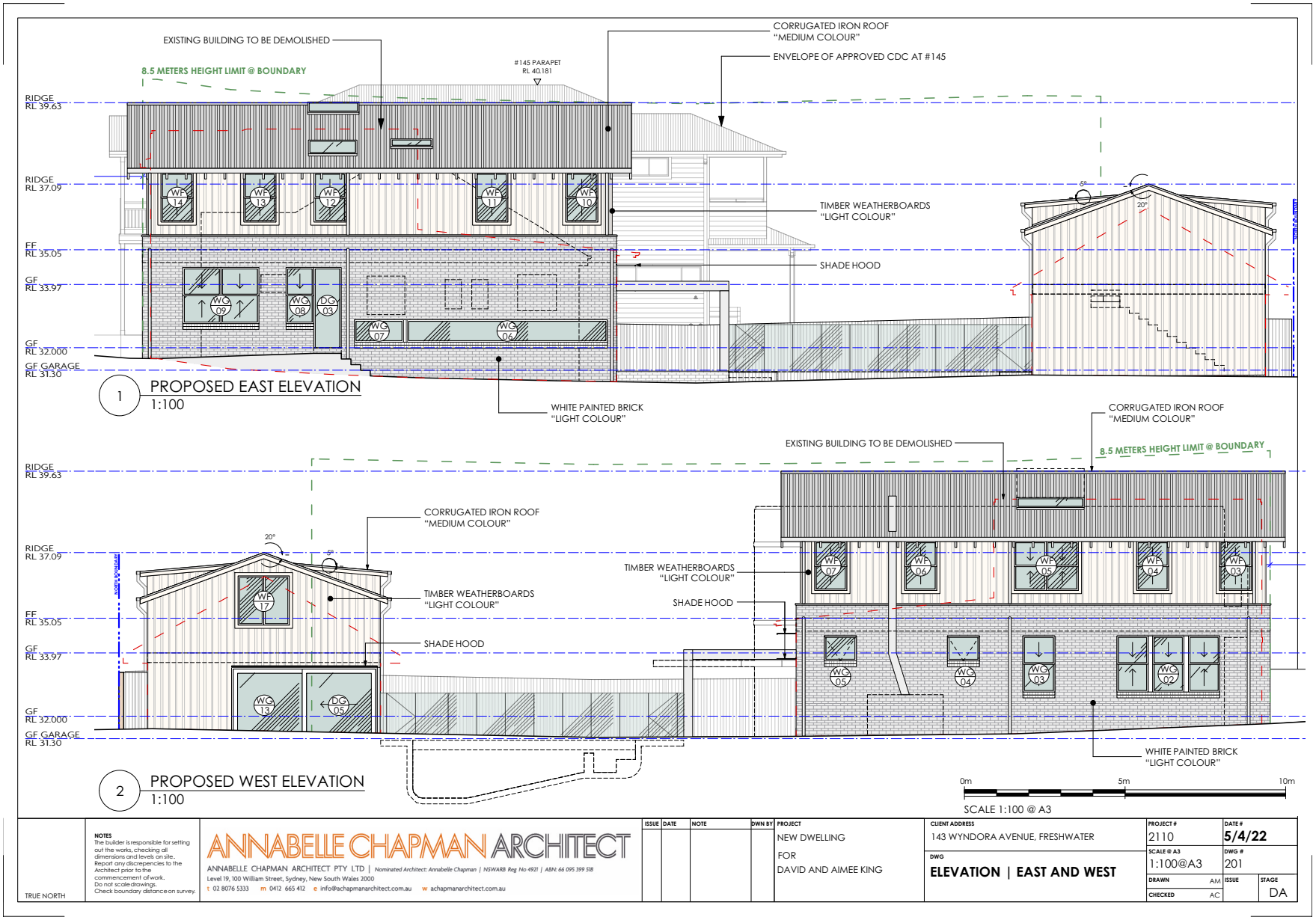
ISSUE	DATE	NOTE	DWN BY

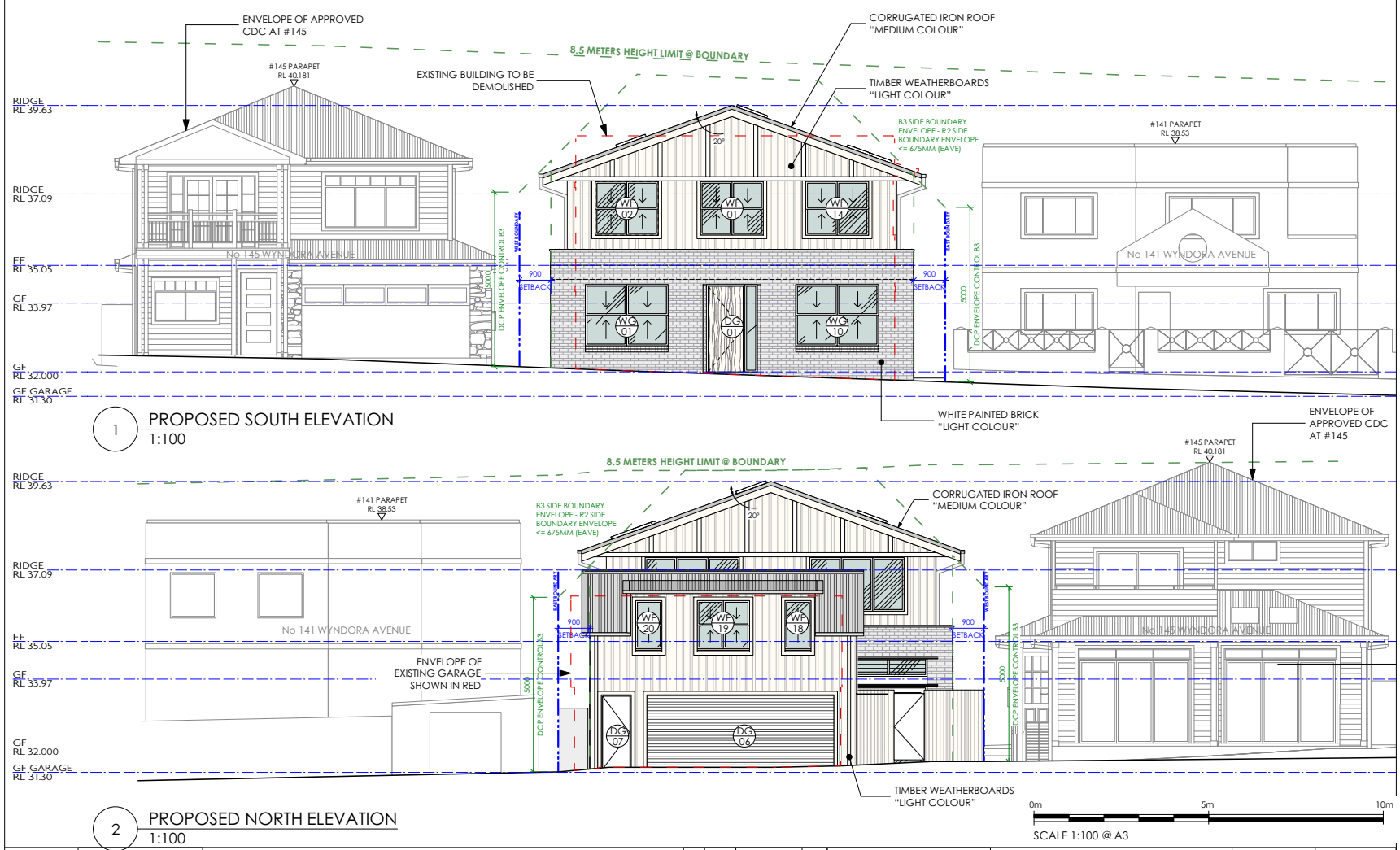
PROJECT
NEW DWELLING
FOR
DAVID AND AIMEE KING

CLIENT ADDRESS
143 WYNDORA AVENUE, FRESHWATER

DWG
PROPOSED | SITE PLAN

PROJECT #	2110
DATE #	5/4/22
SCALE @ A3	1:200@A3
DWG #	101
DRAWN	BM
CHECKED	AC
ISSUE	
STAGE	DA


EXISTING BUILDING TO BE DEMOLISHED
8.5 METERS HEIGHT LIMIT @ BOUNDARY
#145 PARAPET RL 40.181
CORRUGATED IRON ROOF "MEDIUM COLOUR"
ENVELOPE OF APPROVED CDC AT #145
RIDGE RL 39.63
RIDGE RL 37.09
FF RL 35.05
GF RL 33.97
GF RL 32.000
GF GARAGE RL 31.30
TIMBER WEATHERBOARDS "LIGHT COLOUR"
SHADE HOOD
WHITE PAINTED BRICK "LIGHT COLOUR"
1 PROPOSED EAST ELEVATION 1:100
CORRUGATED IRON ROOF "MEDIUM COLOUR"
EXISTING BUILDING TO BE DEMOLISHED
8.5 METERS HEIGHT LIMIT @ BOUNDARY
TIMBER WEATHERBOARDS "LIGHT COLOUR"
SHADE HOOD
WHITE PAINTED BRICK "LIGHT COLOUR"
2 PROPOSED WEST ELEVATION 1:100
0m 5m 10m
SCALE 1:100 @ A3
TRUE NORTH
NOTES
The builder is responsible for setting out the works, checking all dimensions and levels on site. Report any discrepencies to the Architect prior to the commencement of work. Do not scale drawings. Check boundary distance on survey.
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Level 19, 100 William Street, Sydney, New South Wales 2000
t 02 8076 5333 m 0412 665 412 e info@achapmanarchitect.com.au w achapmanarchitect.com.au
ISSUE DATE NOTE DWN BY
PROJECT
NEW DWELLING
FOR
DAVID AND AIMEE KING
CLIENT ADDRESS
143 WYNDORA AVENUE, FRESHWATER
DWG
ELEVATION | EAST AND WEST
PROJECT # 2110
DATE # 5/4/22
SCALE @ A3 1:100@A3
DWG # 201
DRAWN AM
CHECKED AC
ISSUE
STAGE DA



NOTES
The builder is responsible for setting out the works, checking all dimensions and levels on site. Report any discrepencies to the Architect prior to the commencement of work. Do not scale drawings. Check boundary distance on survey.

TRUE NORTH

ANNABELLE CHAPMAN ARCHITECT

ANNABELLE CHAPMAN ARCHITECT PTY LTD | Nominated Architect: Annabelle Chapman | NSWARB Reg No 4921 | ABN: 66 095 399 538
Level 19, 100 William Street, Sydney, New South Wales 2000
t 02 8076 5333 m 0412 665 412 e info@achapmanarchitect.com.au w achapmanarchitect.com.au

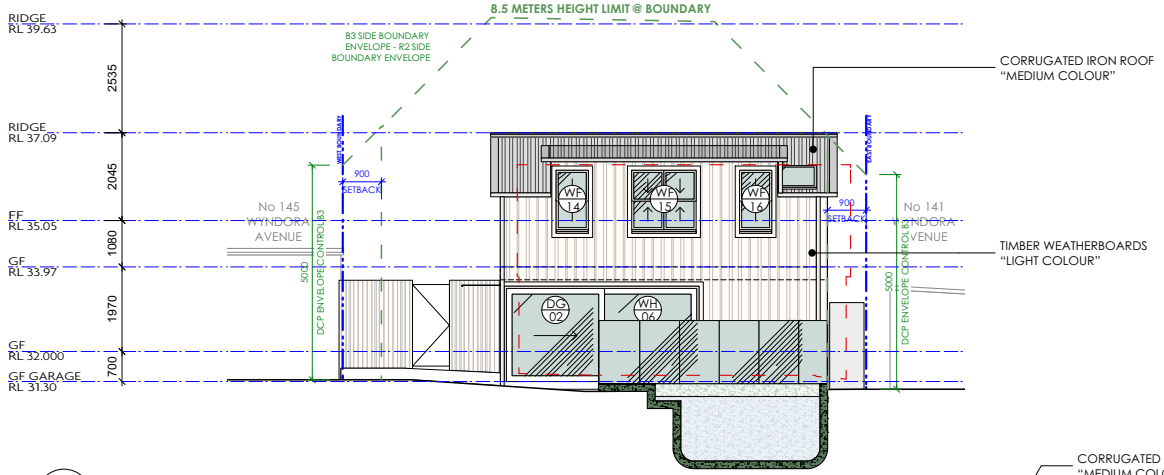
ISSUE	DATE	NOTE	DWN BY

PROJECT: NEW DWELLING FOR DAVID AND AIMEE KING

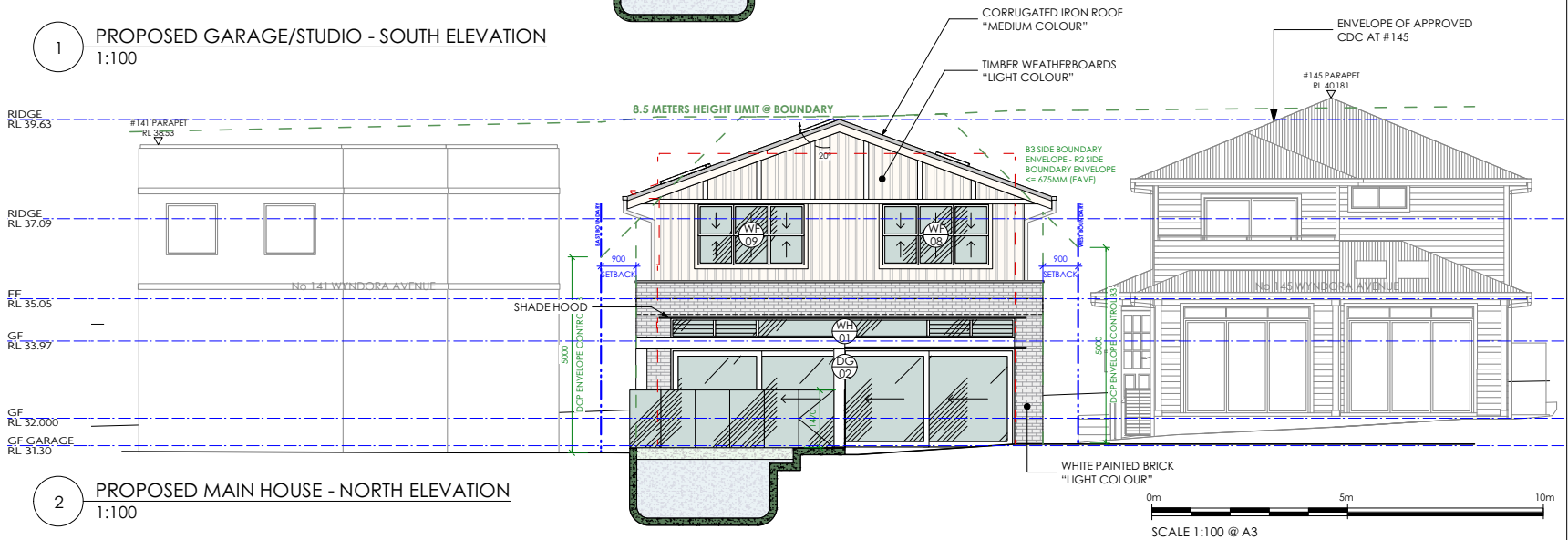
CLIENT ADDRESS: 143 WYNDORA AVENUE, FRESHWATER

DWG: **ELEVATION | NORTH & SOUTH | PROP**

PROJECT #	DATE #
2110	5/4/22
SCALE @ A3	DWG #
1:100@A3	202
DRAWN AM	ISSUE
CHECKED AC	STAGE DA



1 PROPOSED GARAGE/STUDIO - SOUTH ELEVATION
1:100



2 PROPOSED MAIN HOUSE - NORTH ELEVATION
1:100

SCALE 1:100 @ A3

TRUE NORTH

NOTES
The builder is responsible for setting out the works, checking all dimensions and levels on site. Report any discrepencies to the Architect prior to the commencement of work. Do not scale drawings. Check boundary distance on survey.

ANNABELLE CHAPMAN ARCHITECT
ANNABELLE CHAPMAN ARCHITECT PTY LTD | *Nominated Architect: Annabelle Chapman | NSWARB Reg No 4921 | ABN: 66 095 399 518*
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ISSUE	DATE	NOTE	DWN BY

PROJECT
NEW DWELLING
FOR
DAVID AND AIMEE KING

CLIENT ADDRESS
143 WYNDORA AVENUE, FRESHWATER

DWG
ELEVATION | NORTH & SOUTH | PROP

PROJECT #	DATE #
2110	**5/4/22**
SCALE @ A3	DWG #
1:100@A3	203
DRAWN AM	ISSUE
CHECKED AC	STAGE DA

ITEM 3.2	**MOD2021/0910 - 4-10 SYDNEY ROAD MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA0167/2017 GRANTED FOR CHANGE OF USE TO A CHILDCARE CENTRE INCLUDING ALTERATIONS AND ADDITIONS TO THE EXISTING BUILDING**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/469249**
ATTACHMENTS	**1 ⇩Assessment Report**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to MOD2021/0910 for modification of development consent DA0167/2017 granted for change of use to a childcare centre including alterations and additions to the existing building on land at Lot 2 SP 103324, 4 / 4 - 10 Sydney Road MANLY, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0910

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2 SP 103324, 4 / 4 - 10 Sydney Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0167/2017 granted for change of use to a childcare centre including alterations and additions to the existing building
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Thousand Miles Pty Ltd
Applicant:	Guardian Early Learning Group Pty Ltd

Application Lodged:	21/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/07/2022 to 22/07/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application originally sought to amend conditions of consent applied to Development Consent No. DA0167/2017 (as modified by Mod2019/0399), as follows:

- Alteration of the approved list of reports and documents to replace the original Acoustic Report (by Wood & Grieves Engineers) with an updated Report (by Wilkinson Murray); and
- Modification of Condition 'Noise Mitigation Measures' as follows:

Original Condition:

Noise Mitigation Measures
Prior to an Occupational Certificate being released, the noise mitigation measures recommended in

item 6.4 of the acoustic report project number 32318 prepared by Wood and Grieve Engineers are to be installed.

Reason: Comply with relevant legislation and protect residential amenity

Proposed Condition:

Noise Mitigation Measures
Prior to an Occupational Certificate being released, the noise mitigation measures recommended in item 6.4 of the acoustic report project number 32318 prepared by Wood and Grieve Engineers are to be installed, except for those matters listed in bullet point two relating to the installation of an absorptive finish required on at least 50% of each face of existing roof trusses.

Reason: As per the assessment and recommendations in the Wilkinson Murray acoustic report, this acoustic treatment is not necessary to protect residential amenity.

The intention of the condition changes is to remove the requirement to install noise attenuating baffling to the childcare centre. The proposed condition changes were reviewed by Council's Environmental Health Officer, who established that the sound attenuation measures required by the conditions of consent must remain in place, as removal would result in unreasonable acoustic impacts to nearby residential receivers. However, it was established that the required attenuation measures would reasonably allow for an increase to the hours of outdoor play for children at the childcare centre, in line with Association of Australian Acoustical Consultants (AAAC) Guidelines, subject to an amended Plan of Management.

On 10 May 2022, the Applicant provided an amended Plan of Management and Acoustic Report addendum in accordance with the increased hours of outdoor play to 2 hours in the morning and 2 hours in the afternoon. The proposed amendment warranted re-notification of the application, in accordance with the Northern Beaches Community Participation Plan, between 21 June and 5 July 2022. During this notification period, the notification sign was removed from the site by an unknown third party. The application was re-notified again from 8 July to 22 July. All issues raised in all submissions across the notification periods have been addressed in the section of this report titled Notification & Submissions Received.

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 Development Control Plan - 3.4.2 Privacy and Security

SITE DESCRIPTION

Property Description:	Lot 2 SP 103324 , 4 / 4 - 10 Sydney Road MANLY NSW 2095
Detailed Site Description:	The subject site is commonly known as 4-10 Sydney Road, Manly and legally known as Lot 1 DP 628937. The site is located on the northern side of Sydney Road. The property is irregular in shape and has a frontage of 18.9m to Sydney Road, an average depth of 36.7m and an overall site area of 695m2. The property currently contains a three-storey commercial development, including the approved childcare centre. The property is level. **Detailed Description of Adjoining/Surrounding Development** The adjacent property to the east, at 2 Sydney Road, is developed with a two-storey commercial development. The adjacent property to the west, at 12 Sydney Road, is developed with a three-storey commercial development. Development in this area consists of commercial developments, shop top housing, residential flat buildings and pubs.

Map:



SITE HISTORY

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

- DA0167/2017 for change of use to a childcare centre including alterations and additions to the existing building was approved by the former Northern Beaches Independent Assessment Panel on 8 December 2017.
- Mod2019/0399 for modification of Development Consent DA0167/2017 was approved by the Northern Beaches Local Planning Panel on 4 December 2019.
- Application DA2020/0421 for alterations and additions to a mixed use development was approved by Council on 25 June 2020.
- Application DA2020/0628 for alterations and additions to an existing commercial building and strata subdivision was approved by Council on 28 August 2020.
- SC2021/0060 for strata subdivision of the existing commercial building was registered with Council on 12 November 2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA0167/2017 (as modified by DA2019/0399), in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	**Yes** The modification, as proposed in this application, is considered to be of minimal environmental impact in that the proposed amendments are minor in nature and do not result in any unreasonable amenity impacts.
(b) it is satisfied that the development to	The development, as proposed, has been found to

Section 4.55(1A) - Other Modifications	Comments
which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0167/2017, in that it involves a change to the length of hours of outdoor play only, and no substantial change to the development itself.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 'Matters for Consideration'	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to acoustic impact and the plan of management. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and

Section 4.15 'Matters for Consideration'	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/07/2022 to 22/07/2022 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 process council is in receipt of 7 submission/s from:

Name:	Address:
Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Ray Caryl Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095
Ms Zina Dybac	509 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Gregory Ernest Brown	8 Macquarie Road PYMBLE NSW 2073
Mr Faustino Miguel Martinez De Morentin	508 / 9 - 15 Central Avenue MANLY NSW 2095
V Westacott	804 / 9 - 15 Central Avenue MANLY NSW 2095
Mrs Frances Elizabeth Glading	507 / 9 - 15 Central Avenue MANLY NSW 2095

The following issues were raised in the submissions:

- Removal of sound attenuation measures will result in unreasonable acoustic impacts to nearby residential properties. Noise is already unreasonable, despite the centre not currently operating at full capacity.
- Ventilation mechanical equipment on the roof is allegedly unauthorised and contributes to noise concerns.
- Concern about how the Plan of Management will be enforced, as the Centre currently does not operate in accordance with the Plan of Management. The centre could have children playing

10am-2pm, which is 2 hours in the morning and 2 hours in the afternoon, but does not provide sufficient break.

The above issues are addressed as follows:

Noise Impacts
Comment:
Council's Environmental Health Officer is not supportive of the proposed removal of the required sound attenuation measures. The proposal has been amended to retain those measures, but to adjust the hours of outdoor play for the children, in accordance with the Association of Australian Acoustical Consultants (AAAC) Guidelines. Council's Environmental Health Officer is supportive of the amended proposal.

Unauthorised Works
Comment:
Concern regarding unauthorised works can be reported to Council's Building Control team for investigation.

Plan of Management
Comment:
The Plan of Management is to be enforced by the childcare centre. Concern regarding compliance with the Plan of Management or noise can be reported to Council's Environmental Health team for investigation. The query with regard to 4 hours of outdoor play time from 10am to 2pm has been reviewed by Council's Environmental Health Officer, who provides comment that this is unlikely to occur due to how child care centres operate (that is, ceasing play to allow for lunchtime for the children), and if it were to occur, the middle of the day is the best time, being outside of quiet hours.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	**General Comments** Environmental Health have been requested to provide advice on the acoustics of the proposed modification. The applicant is seeking to remove the requirement to install sound absorptive infills in the existing roof trusses. As part of this assessment the new Wilkinson Murry Acoustic report and previous acoustic report by Wood and Grieve engineers have been assessed and compared to the requirements set out in the EPA Noise Policy for Industry (2017) and the AAAC guidelines for child care acoustic assessments. The development has consent to operate between 7:30am & 6:00pm Monday to Friday which sits within the day period defined in the EPA Noise Policy for Industry. The EPA Noise Policy for Industry sets out the requirements to set penalties or modifying factor corrections for noise sources. Based on our review there does not appear to be any penalties that would be applicable for the proposed development. However, the AAAC guidelines section 3.2.1 outdoor play area recommends limiting the use of outdoor play areas to 2 hour per morning and 2 hour per afternoon if background noise levels can be demonstrated to not

Internal Referral Body	Comments
	reach above 10dBA above background and if the outdoor play area is to be used more than 4 hours than a more conservative 5dBA above background shall not be exceeded. The statement of modification and the acoustic report by Wilkinson Murry appear to insinuate that a 10dBA penalty (modifying factor correction) was applied in the report by wood and grieve engineers. Our review of the report did not find any penalties applied other than page 8-9 of the report which just highlights that penalties of up to 10dBA can be applied for tonal, low frequency, impulsive, intermittent noise and for duration of single event noise during an assessment period. Environmental health requires the applicant to elaborate on where they believe a 10dBA penalty has been applied in the Wood and Grieve engineers report. Table 15 of the Wood and Grieve engineers report shows the sound pressure levels at residential receivers with the acoustic measures in place but does not elaborate and show the expected sound pressure levels without controls. Table 1 of the Wilkinson Murry reports that the residential receiver R1 & R3 will experience a the same or lower sound pressure level with no baffles installed than the Wood and Grieve modelling and noise levels will be reduced with absorptive or reflective baffles. Further detail is required on how these figures have been determined is required. The operational plan of management referenced as "Manly, NSW: 16 May 2017" refers to the Wood & Grieve Engineers report for its acoustic requirements and references a maximum capacity of 110. It is noted that the capacity of the centre was changed to 100 through Mod2019/0399. Both acoustic reports use a sound power level modelling based on 25 children in the outdoor play area. Based on this the Wood and Grieve engineers report recommends that the outdoor play area has a maximum capacity of 25 children at any one time and to limit its use to 2 hours. Environmental Health require an amended operational plan of management with this modification application to address the proposed changes to the development and to clarify the proposed hours of use for the outdoor play area as well as its maximum capacity. N.B. Any proposal with a capacity greater than 25 children for the outdoor play area will require further acoustic testing and any use greater than 2 hours in the morning and 2 hours in the afternoon will likely require the acoustic baffles to be installed. At this time Environmental Health do not have sufficient information to provide a recommendation on the proposed modification. For an assessment to be undertaken Environmental Health require; - An updated plan of management to reflect the proposed changes - Clarification from the applicant on where the alleged 10dBA penalty was applied in the Wood and Grieve engineers report. - Further detail for the applicant on their acoustic modelling and how anticipated sound pressure levels are the same or less without the originally proposed noise attenuation measures.

Internal Referral Body	Comments
	Amended comments 14/04/2022 Further details have been provide by the applicant regarding the proposed modification including additional information for the acoustic consultant, updated plan of management and a letter responding to the request for further information. This response will be broken up into two parts providing a response for both submitted attachments. The acoustic consultant from RWDI dated 22 March 2022 provides clarity on the total number of children in the centre, maximum number of children in the outdoor play area and the maximum permissible use time of the outdoor play area. The acoustic consultant recognises the AAAC guidelines for child centre acoustic assessment V3 as an applicable guideline to base assessments for the centre on. Based on the use and hours of use of the site Environmental Health is satisfied. However figures relating to the predicted noise levels without acoustic baffles at residental receiver R1 in the RWDI report seem to conveniently fit into the project specific noise levels (PSNL) defined by the wood and grieve report and seem to completely contradict the expected noise emissions in the wood and grieve report on page 19. Based on the limited provided information Environmental Health have determined that the proposed removal of acoustic baffles would be unfair and inequitable on affected residents to allow a modification to the consent that removes the previously approved acoustic baffling based purely on cost. The visual aspect of noise and barriers for noise cannot be understated for this proposal as well. By incorporating visual screening there will be less of a visual association of noise from affected residents. The updated operational plan of management provides some improvement in that it correctly references the maximum number of children (total) and maximum number of children outdoors at one time. The refence to two hours play in the morning and two in the afternoon are valid when considered against the AAAC guidelines however the plan of management loses its purpose in part 7 as a more general document when it repeatedly references LA10 noise levels and offensive noise. The purpose of an operational plan of management is to generally list out requirements under the legislation, the consent and relevant plans or reports and translate them to a more operational level understanding. Adding specific noise requirements dilutes the intent of the document. Based on the above Environmental Health recommends refusal and for the existing requirements relating to noise mitigation measures to remain as per the original consent and for acoustic baffling to be installed as was originally intended. Should the applicant wish to increase use of the outdoor play area they may provide Council with a further updated plan of management as per the recommendations above which may be considered to be included as part of the modification. Further representations regarding removal of acoustic baffles will not be considered in future assessments.

Internal Referral Body	Comments
	Amended comments 23/05/2022 Further information has been provided by the applicant including an updated plan of management, a response from the private town planner addressing the request for further information and further information from the acoustic consultant. The provided information addresses previous issues with the operation plan of management, bringing it to a more operational level of understanding and in that regard Environmental Health are satisfied that the new operation plan of management can be incorporated into the modification of the consent replacing the existing plan of management. Regarding the acoustic baffles and the amendment of the project specific noise levels (PSNL) from 55dB to 60dB based on the AAAC Guidelines for child care centre acoustic assessments. Environmental health are satisfied with an increase and clear definition to the amount of time the outdoor play area is used for based on the more recent guidelines. Environmental Health does not support an increase of 5dB to the PSNL and the proposed removal of acoustic baffles on the basis of cost and the reasoning previously listed. As advised in the previous response removal of the acoustic baffles are not supported and the condition relating to the installation of the baffles in the modification should remain unchanged. **RECOMMENDATION:** Supported in part - subject to conditions being imposed. Assessing Officer's Comment: Council's Environmental Health Officer recommended the following condition: *Noise Mitigation Measures* *Prior to an Occupational Certificate being released, the noise mitigation measures recommended in item 6.4 of the acoustic report project number 32318 prepared by Wood and Grieve Engineers are to be installed.* *Reason: Comply with relevant legislation and protect residential amenity* This condition was applied under Mod2019/0399 and is not removed by this application, so re-application of the condition is not necessary.

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 Educational Establishments and Child Care Facilities 2017

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

As previously outlined this application is for the establishment of a centre-based child-care facility.

As per the provisions of Clause 23, the provisions of the SEPP and the *Child Care Planning Guideline* are applicable.

DESIGN QUALITY PRINCIPLES

The matters covered by the design quality principles of the childcare centre were considered under the original application and the modification application Mod2019/0399. The proposed modifications under this application result in a development that is substantially the same as originally approved under DA167/2017, and as modified by Mod2019/0399.

MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
C1 ***To ensure that appropriate zone considerations are assessed when selecting a site***	For proposed developments in commercial and industrial zones, consider: • potential impacts on the health, safety and wellbeing of children, staff and visitors with regard to local environmental or amenity issues such as air or noise pollution and local traffic conditions • the potential impact of the facility on the viability of existing commercial or industrial uses.	No change.
C2 ***To ensure that the site selected for a proposed child care facility is suitable for the use***	When selecting a site, ensure that: • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards	No change.

	• there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.	
C3 ***To ensure that sites for child care facilities are appropriately located***	A child care facility should be located: • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.	No change.
C4 ***To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard***	A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from: • proximity to: - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating	No change.

	uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses	
3.2 Local character, streetscape and the public domain		
C5 ***To ensure that the child care facility is compatible with the local character and surrounding streetscape***	The proposed development should: • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas.	No change.
C6, C7, C8 ***To ensure clear delineation between the child care facility and public spaces***	Create a threshold with a clear transition between public and private realms, including: • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing.	No change.
	On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.	
	Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions: • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences.	
C9, C10 ***To ensure that***	Front fences and walls within the front	No change.

front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	
	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary	
3.3 Building orientation, envelope and design		
C11 ***To respond to the streetscape and site, while optimising solar access and opportunities for shade***	Orient a development on a site and design the building layout to: • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.	No change.
C12 ***To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised***	The following matters may be considered to minimise the impacts of the proposal on local character: • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character.	No change.

C13, C14 ***To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context***	Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use. On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.	No change.
C15 ***To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character***	The built form of the development should contribute to the character of the local area, including how it: • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place.	No change.
C16 ***To ensure that buildings are designed to create safe environments for all users***	Entry to the facility should be limited to one secure point which is: • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building.	No change.
C17 ***To ensure that child care facilities are designed to be accessible by all potential users***	Accessible design can be achieved by: • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and	No change.

	within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. ***NOTE:*** *The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.*	
3.4 Landscaping		
C18, C19 ***To provide landscape design that contributes to the streetscape and amenity***	Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by: • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping.	No change.
	Incorporate car parking into the landscape design of the site by: • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas.	
3.5 Visual and acoustic privacy		
C20, C21 ***To protect the privacy and security of children attending the facility***	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	No change.
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design.	
C22 ***To minimise***	Minimise direct overlooking of main internal	No change.

impacts on privacy of adjoining properties	living areas and private open spaces in adjoining developments through: • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening.	
C23, C24 ***To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments***	A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should: • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.	No change.
	A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met.	Acceptable, as assessed by Council's Environmental Health Officer.
3.6 Noise and air pollution		
C25, C26	Adopt design solutions to minimise the impacts of noise, such as: • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources	Acceptable, as assessed by Council's Environmental Health Officer.

	An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations: • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise.	No change.
C27, C28 ***To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development***	Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.	No change.
	A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as: • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility.	
3.7 Hours of operation		
C29, C30 ***To minimise the impact of the child care facility on the amenity of neighbouring residential developments***	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	No change.

	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	
3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 *To provide parking that satisfies the needs of users and demand generated by the centre*	Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land. Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates: Within 400 metres of a metropolitan train station: • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. In other areas: • 1 space per 4 children. A reduction in car parking rates may be considered where: • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site.	No change.
	In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.	
	A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on	

	amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that: • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network.	
C34, C35 ***To provide vehicle access from the street in a safe environment that does not disrupt traffic flows***	Alternate vehicular access should be provided where child care facilities are on sites fronting: • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. The alternate access must have regard to: • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic.	No change.
	Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	
C36, C37, C38 ***To provide a safe and connected environment for pedestrians both on and around the site***	The following design solutions may be incorporated into a development to help provide a safe pedestrian environment: • separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction.	No change.
	Mixed use developments should include: • driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by	

	trucks • drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or maneuvering areas used by vehicles accessing other parts of the site • parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.	
	Car parking design should: • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards • include wheelchair and pram accessible parking.	

APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
Regulation 107 ***Education and Care Services National Regulation*** Every child being educated and cared for within a facility must have a minimum of 3.25m^2 of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP. Unencumbered indoor space excludes any of the following: • passageway or thoroughfare (including door swings) used for	***The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.*** **Verandahs as indoor space** For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space. **Storage** Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide: • a minimum of 0.3m^3 per child of external storage space	No change.

circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set aside for the use or storage of cots • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children. When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations. Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service	• a minimum of 0.2m^3 per child of internal storage space. Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently. Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance. Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.		

be met, having regard to their ages, development stages and individual needs. Development applications should indicate how these needs will be accommodated. Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.		
4.2 Laundry and hygiene facilities		
Regulation 106 Education and Care Services National Regulation There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children. Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.	***The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.*** Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated. **On site laundry** On site laundry facilities should contain: • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children. **External laundry service** A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.	No change.

4.3 Toilet and hygiene facilities		
Regulation 109 Education and Care Services National Regulation A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.	***The proposed development includes adequate, developmentally and ageappropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.*** Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include: • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries	No change.
4.4 Ventilation and natural light		
Regulation 110 Education and Care Services National Regulation Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the *National Construction Code*. Ceiling height requirements may be affected by the capacity of the facility.	***The proposed development includes indoor spaces to be used by children that:*** ***• will be well ventilated; and*** ***• will have adequate natural light; and*** ***• can be maintained at a temperature that ensures the safety and well-being of children.*** **Ventilation** Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility. To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external	No change.

	building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room. **Natural light** Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to: • providing windows facing different orientations • using skylights as appropriate • ceiling heights. Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.	
4.5 Administrative space		
Regulation 110 Education and Care Services National Regulation A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	***The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.*** Design considerations could include closing doors for privacy and glass partitions to ensure supervision. When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.	No change.

	Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.	
4.6 Nappy change facilities		
Regulation 112 Education and Care Services National Regulations Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.	***(To be completed only if the proposed development is for a service that will care for children who wear nappies).*** ***The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.*** In circumstances where nappy change facilities must be provided, design considerations could include: • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas.	No change.
4.7 Premises designed to facilitate supervision		
Regulation 115 Education and Care Services National Regulations A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to	***The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.*** Design considerations should include: • solid walls in children's toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room	No change.

maintain their rights and dignity. Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.	activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities	
4.8 Emergency and evacuation procedures		
Regulations 97 and 168 Education and Care Services National Regulations Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including: • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service.	Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency. Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example: • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. An emergency and evaluation plan should be submitted with a DA and should consider: • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios.	No change.
4.9 Outdoor space requirements		
Regulation 108 Education and Care Services National Regulations	***The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.***	No change.

An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m^2 of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP. Unencumbered outdoor space excludes any of the following: • pathway or thoroughfare, except where used by children as part of the education and care program • car parking area • storage shed or other storage area • laundry • other space that is not suitable for children. When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations. Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a	Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play. When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered. **Verandahs as outdoor space** Where a covered space such as a verandah is to be included in outdoor space it should: • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements **Simulated outdoor environments** Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications. A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment. Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas. Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have: • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility		

centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required. A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.	• skylights to give a sense of the external climate • a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs.	
4.10 Natural Environment		
Regulation 113 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.	***The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.*** Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space. Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which: • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees,have thorns, spikes or prickly foliage or drop branches The outdoor space should be designed to: • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and	No change.

	recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction.	
4.11 Shade		
Regulation 114 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	***The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.*** Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option. **Solar access** Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should: • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area • have evenly distributed shade structures over different activity spaces. **Natural shade** Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended. Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by: • placing appropriately scaled trees near the	No change.

	eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter. **Built shade structures** Built structures providing effective shade include: • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.	
4.12 Fencing		
Regulation 104 Education and Care Services National Regulations Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the	***Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.*** Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should: • prevent children climbing over, under or though fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. Design considerations for side and rear boundary fences could include: • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres	No change.

requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code	• having no rails or elements for climbing higher than 150mm from the ground. Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.	
4.13 Soil Assessment		
Regulation 25 Education and Care Services National Regulations Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required: • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way	To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process. Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where: • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment. An assessment of soil for a children's service approval application may require three levels of investigation: • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment.	No change.

that poses an unacceptable risk to the health of children		

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

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

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

Comment:
The proposal did not require referral to Ausgrid.

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
There are no principal development standards under Part 4 of the MLEP 2013 to consider as part of this assessment.

Manly Development Control Plan

Built Form Controls
There are no built form controls under the MDCP 2013 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
4.4.6 Child Care Centres	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

As amended, the proposed modifications retain a reasonable level of acoustic privacy for nearby residential receivers, as assessed by Council's Environmental Officer, and in accordance with Association of Australian Acoustical Consultants (AAAC) Guidelines.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0910 for Modification of Development Consent DA0167/2017 granted for change of use to a childcare centre including alterations and additions to the existing building on land at Lot 2 SP 103324,4 / 4 - 10 Sydney Road, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Plan of Management Manly NSW	5 May 2022	Guardian Early Learning Group

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

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

ITEM 3.3	**DA2021/1330 - 15 BLIGH CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/470323**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan & 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 DA2021/1330 for alterations and additions to a dwelling house on land at Lot 12 & Lot 13A DP 5297, 15 Bligh Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1330

Responsible Officer:	David Auster
Land to be developed (Address):	Lot 12 DP 5297, 15 Bligh Crescent SEAFORTH NSW 2092 Lot 13A DP 5297, 15 Bligh Crescent SEAFORTH NSW 2092
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:	Tulip 7 Pty Ltd
Applicant:	Tulip 7 Pty Ltd

Application Lodged:	06/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/08/2021 to 30/08/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 54% 4.4 Floor space ratio: 162%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,074,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves significant alterations and additions to the existing dwelling, at all four existing levels.

Level 4 (top level):

- Storage room above garage extended to front
- internal alterations and rear extension to create bedroom/ensuite/WIR

Level 3:

- Internal alterations and enclosure of rear deck to create new open plan living/dining/kitchen
- New entry
- Existing split level removed and new single level across floor plan

Level 2:

- Rear extension and enclosure of side decks on both sides
- Internal alterations to provide 3 bedrooms, laundry, 2 bathrooms

Level 1 (bottom level)

- Internal alterations to provide rumpus, bathroom and bedroom.
- Covered terrace created beneath south eastern corner of dwelling

Exterior:

- Existing pergolas and roof structures removed as shown on demolition plans
- New planting provided in front courtyard area and rear
- Existing pool to be reduced in size

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 12 DP 5297 , 15 Bligh Crescent SEAFORTH NSW 2092 Lot 13A DP 5297 , 15 Bligh Crescent SEAFORTH NSW 2092
Detailed Site Description:	The site is located on the southern side of Bligh Crescent and is accessible via a shared lower road (with 17 Bligh Crescent) within the road reserve, below the elevated road carriageway in front of the site. It is a regular, generally square shaped combined site, with an irregular waterfront southern boundary at the MHWM to Middle Harbour. The northern boundary fronting the lower road carriageway has a combined length of 15.24m. The western boundary adjoining 17 Bligh Crescent has a length of 18.9m and the eastern boundary adjoining the vacant 11 Bligh Crescent has a length of 19.81m. The site has a total area of 284.5m2. The land slopes steeply down from north to south towards the waterfront with a total fall of approximately 11.5m over the length of the site. There is an existing four level (three storeys plus attic) dwelling with attached double garage on site, with a swimming pool to the rear. There are also waterside facilities including a boatshed, deck and slipway ramp and a timber jetty and a floating pontoon, though these are not located on the subject site, and are not the subject of works under this application. The adjoining property to the west at 17 Bligh Crescent is developed with a three storey brick and weatherboard clad dwelling house with a flat metal roof. It utilises the shared road in front of 15 Bligh Crescent for access to a double garage at the western end of the lower road. To the east of the site is small vacant lot of land at 11 Bligh Crescent and adjoining at 9 Bligh Crescent is a two storey painted rendered dwelling house with a metal roof. It has direct access to the main carriageway of Bligh Crescent in front, to a double garage at the front of the house that is partly within the road reserve.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow

Section 4.15 Matters for Consideration	Comments
	Council to request additional information. Additional information was requested in regard to floor to ceiling heights of the upper level, and a new section plan was provided. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/08/2021 to 30/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr John Rabbitts	17 Bligh Crescent SEAFORTH NSW 2092

The following issues were raised in the submissions:

- Height and FSR non-compliance
- Storage area
- View loss
- Solar access
- Geotechnical Report
- Construction impacts

The above issues are addressed as follows:

- **Height and FSR non-compliance**

  The submissions raised concerns with the further proposed non-compliance with the development standards, given the existing building is already non-compliant.

  Comment:
  These non-compliances have been assessed in detail under clause 4.6 of the LEP in this report. In summary, the proposed non-compliances are supported in the circumstances of the site. It is noted that the Manly DCP allows for consideration of these variations to height and FSR due to the application making alterations to an existing building, and due to the undersized nature of the lot.

- **Storage area**

  The submissions raised concerns that the 'storage' room shown on the plans above the garage, is used as a study, and that this may affect the calculation of FSR.

  Comment:

  The applicant has provided a section through the storage room, demonstrating that the ceiling

height makes the room non-habitable by BCA standards. As such, it does not count towards the calculation of FSR.

- **View loss**

  The submissions raised concerns with view loss from both number 17 Bligh Crescent, and from the public road area in front of the site.

  Comment:
  This issue has been assessed in detail under clause 3.4.3 Maintenance of Views in this report. In summary, the proposal is considered to result in negligible to minor view impacts based on the Tenacity view sharing principles, and the view impacts are not considered to be unreasonable.
- **Solar access**

  The submissions raised concerns that the proposal would impact on solar access to number 17 Bligh Crescent in the early mornings.

  Comment:
  The sites are on a north/south orientation. The DCP requires protection of solar access between 9am and 3pm. The shadow diagrams confirm that the neighbouring residence is already overshadowed at 9am. The additions will not create extra overshadowing of number 17 between 9am and 3pm.
- **Geotechnical Report**

  The submissions raised concerns that the geotechnical report referred to works which were not clear on the plans. Concern was also raised with regard to the proximity to the piers supporting the shared driveway in front of the site. A request was made that all geotechnical recommendations from the report submitted be adhered to during construction.

  Comment:
  All recommendations within the geotechnical report submitted with the application will be required to be followed if the application is approved, as per the draft conditions of consent attached to this report. These recommendations include carrying out of dilapidation reporting of neighbouring properties prior to construction. A condition is recommended to include the shared driveway in this dilapidation reporting. The works include lowering of the front courtyard, and this is shown on the plans. The plans do not indicate any new works outside the boundaries of the subject site.
- **Construction impacts**

  The submissions raised concerns with access on the shared driveway during construction, and to the site in general due to the winding nature of Bligh Crescent.

  Comment:
  Some impacts in this regard are inevitable and unavoidable if construction is approved. However, conditions are recommended to ensure access on the shared driveway is maintained at all times to 17 Bligh Crescent. Further standard conditions of consent relating to the construction site will be imposed if the application is approved, as per the draft conditions attached to this report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing dwelling house and existing swimming pool. Council's Landscape Referral section have considered the application against the zone E3 Environmental Management objectives of Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 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. The landscape outcome of the zone E3 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. The existing site does not support any trees or vegetation of significance, with the existing land occupied by building and hard pavements. Existing trees and vegetation within adjoining properties are located in proximity to development works and should the application be approved, conditions shall be imposed to ensure protection. A lawn area with palm planting and sea wall is located beyond the boundary within the Middle Harbour. The proposed alterations and additions do not provide any opportunity for substantial tree planting establishment within the site as the proposed works utilise the existing building footprint and external pavement areas. The proposed landscape areas in small garden areas are capable of supporting only palm, shrub and groundcover planting. The Landscape Plan indicates one native tree within the schedule however this is not feasible as a long term solution in the garden area as shown. Should Planning approve the development, conditions shall be imposed to alter the landscape design to provide planting in keeping with the natural foreshore environment, to assist in complying with the E3 landscape objectives.
NECC (Coast and Catchments)	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.

Internal Referral Body	Comments
	The application has also been assessed using Northern Beaches SREP assessment template. The proposed works are alterations and additions to an existing structure and include cutting back rock face as part of courtyard reconfiguration. There are no changes to existing waterside facilities (e.g. sliprail, boatshed, jetty or seawall) or access to foreshore. No works are proposed in foreshore area or below MHW. ***Coastal Management Act 2016*** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Coastal Management) 2018** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Longitude Planning Pty Ltd dated 27 July 2021, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005** **Harbour Foreshores & Waterways Area**

Internal Referral Body	Comments
	The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Longitude Planning Pty Ltd dated 27 July 2021, it is determined that the Planning Principles and Matters for Consideration of the Area have been met. The subject site is located adjacent to W8 (Scenic Waters – Passive Use) Zones. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Longitude Planning Pty Ltd dated 27 July 2021, it is determined that the objectives and assessment criteria of the zone have been met. <u>Wetland Protection Zone</u> The subject site is located within the Wetland Protection Zone. Hence, Part 6, Clauses 61, 62 and 63 of the SREP (Sydney Harbour Catchment) 2005 apply for assessment of this DA. On internal assessment, it is determined that the objectives, requirements of development consent and matters for consideration have been assessed and met. **Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005** The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal it is determined that the proposed development satisfies the requirements of the DCP.

Internal Referral Body	Comments
	Landscape character Assessment The subject site is located within the Landscape Character Type 3. On internal assessment, it is determined that the proposed development within the landscape satisfy the relevant criteria. Ecology Assessment The subject site is located within Terrestrial Ecological Community Type Urban Development (with scattered trees) and adjacent to the Aquatic Ecological Community Type Mixed Rock Intertidal & Sand and proximate (~90m) to Seagrass Beds The proposed works are alterations and additions to an existing structure. There are no changes to existing waterside facilities (e.g. sliprail, boatshed, jetty and seawall) or access to foreshore. No works are proposed in foreshore area or below MHW. On internal assessment, it is determined that the proposed development satisfy the relevant performance criteria. **Manly LEP 2013 and Manly DCP** **Foreshores Scenic Protection Area Management** The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and

Internal Referral Body	Comments
	Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. **Manly LEP 2013 and Manly DCP** **Development on Foreshore Area** The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area. The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP.

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 (Building Sustainability Index: BASIX) 2004

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps. Council's Coast and Catchments Officer has assessed the proposal against the relevant provisions (see referrals section of this report) and found the proposal to be consistent with the requirements.

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:

Council's Coast and Catchments Officer has assessed the proposal against the relevant provisions (see referrals section of this report) and found the proposal to be consistent with the requirements.

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.

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	13.06m	54%	No
Floor Space Ratio	FSR: 0.4:1 (113.8sqm)	FSR: 1.04:1 (298sqm) Existing: 284.8sqm	162%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	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

Clause	Compliance with Requirements
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings and Floor space ratio
Requirement:	Height: 8.5m FSR: 0.4:1
Proposed:	Height: 13.06m FSR: 1.04:1 (298sqm)
Percentage variation to requirement:	Height: 54% FSR: 162%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards, 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 and Clause 4.4 - Floor space ratio development standards are 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 has provided two written requests, one for Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio. The Applicant's written requests have demonstrated that the objectives of the development standards are achieved, notwithstanding the non-compliance with the development standards.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:

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

The applicants written requests argue, in part:

Clause 4.3 – Height of Buildings

- The proposal is consistent with the objectives of the zone,
- The proposal is consistent with the objectives of clause 4.3,
- The proposal relates to the improved accessibility and function and amenity of the house with minimal adjustments to the existing building envelope, and redistribution of floor area, including within the additions to the roof, thereby maintaining the existing height and bulk and scale of the building,
- Extending into the attic roof space at the front and rear on Level 4 at the same height as the existing ridge, achieves additional floor space within the roof without increasing the visible bulk and scale of the house from both the street and from Middle Harbour.
- Clause 4.1.2 Height of Buildings of the Manly DCP provides that *"Where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building"*.
- Clause 4.1.7.2 Habitable rooms in the roof structure of the Manly DCP, includes special considerations in relation to building height for habitable rooms in the roof structure as follows: *"Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However, alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard"*.
- The proposal will be consistent with the above criteria and will not detract from the character or integrity of the existing steeply pitched roof and will not adversely impact on the amenity of adjacent and nearby properties and the streetscape. The alterations and additions to the roof where the breach of the maximum height standard occurs will not increase the overall height of the building. They will be the same height as the ridge of the existing pitched roof.
- The absence or lack of environmental harm in this case is also a relevant environmental planning ground particularly having regard to the new elements of the roof where the breach of

the standard occurs, and there are no adverse physical impacts on the existing levels of privacy, solar access and views of adjoining and adjacent properties.

Comment: The above arguments are generally concurred with. It is noted that there will be some small amount of view loss (not 'no... impacts on views' as argued above). However, the view loss is considered to be negligible from both the public road, and from the adjoining neighbour at number 17 Bligh Crescent who made a submission in this regard (see assessment under clause 3.4.3 Maintenance of Views in this report). The proposal results in a building which overall will be maintain the existing ridge height, and remain very similar in bulk and scale and the overall building envelope as the dwelling which currently exists on site. The extension of the existing ridgeline to the north and south does not result in any unreasonable impacts on the surrounding area, and does not prevent the development from achieving the objectives of the zone and of clause 4.3. The applicant's written request for contravention of the Height of buildings development standard is generally supported in this regard, and it is considered that sufficient environmental planning grounds for the non-compliance have been demonstrated.

Clause 4.4 - Floor space ratio

- The proposal is consistent with the objectives of the zone,
- The proposal is consistent with the objectives of clause 4.4,
- The proposal relates to the improved accessibility and function and amenity of the house with minimal adjustments to the existing building envelope, and redistribution of floor area thereby maintaining the essence of the existing bulk and scale and height of the building.
- Enclosing of some balcony areas and opening up the south east corner of Level 1 and extending into the attic roof space on Level 4, and the subtle changes to external materials and finishes and reduction in glazing, achieves an improved outcome in terms the visible bulk and scale of the house from both the street and from Middle Harbour.
- Enclosing of some balcony areas and opening up the south east corner of Level 1 and extending into the attic roof space on Level 4, and the subtle changes to external materials and finishes and reduction in glazing, achieves an improved outcome in terms the visible bulk and scale of the house from both the street and from Middle Harbour.
- The site is located in area 'U' on the LEP Lot Size Map, which has a minimum lot size of 750m^2. The site is an existing undersized lot and in accordance with Part 4.1.3.1 Exceptions to FSR for undersized lots of the DCP and Figure 30 – Extent of variation for undersized lots, the extent of variation to be considered would be 0.4:1 of 750m2 or a maximum of 300m2 for undersized lots in area 'U' on the LEP Lot Size Map.
- The proposal has a gross floor area of 298m2 which is less than 300m2 and in considering this exception request to the FSR standard, Council can be satisfied that the relevant LEP objectives and the provisions of this DCP are satisfied.
- The absence or lack of environmental harm in this case is also a relevant environmental planning ground, with specific reference to the adjoining properties and more generally the locality, and particularly having regard to the redistribution of floor area, which is largely within the envelope of the building and there being no adverse physical impacts on the existing levels of privacy, solar access and views of adjoining and adjacent properties.
- There will be no adverse effects on the amenity of the adjoining and adjacent properties or the locality arising from the proposed alterations and additions to the existing dwelling house.

Comment: The above arguments are very similar to the comments made in relation to the height non-compliance, with the main difference being reference to clause 4.1.3.1 in the DCP with regard to justification for the variation to floor space (as opposed to the DCP clauses that allow consideration of height non-compliances). As above, the arguments are generally concurred with, and it is considered

that there are sufficient environmental planning grounds to support the variation to the floor space ratio control. The justification essentially relies on the fact that the proposal generally maintains the overall bulk and scale of the existing development on site, with the additions not significantly altering the existing size or shape of the overall building envelope. Further, this assessment generally agrees with the applicant's argument that the alterations and additions will not have any significant adverse impacts on neighbours or the surrounding area in general, as assessed throughout this report. The proposal complies with the variation permitted within DCP clause 4.1.3.1, and when judged against a site area of 750sqm as permitted by that clause, the proposal complies with the 0.4:1 FSR limit.

In this regard, the applicant's written requests have 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 requests have adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standards as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written requests have 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 and 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 4.3 – '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 proposal maintains the existing ridge height, and extends it to the north and south. Further, the existing shape of the roof form will be maintained. The proposal will remain consistent with the prevailing roof height and character of the existing building in this regard, and is consistent with this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposal generally maintains the overall building envelope that exists on site currently, with relatively minor additions. The bulk and scale of the building will not be significantly altered in this regard.

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:

View sharing has been assessed in detail under clause 3.4.3 in this report. In summary, the proposal is not considered to result in any unreasonable impact on views. The extension of the existing ridge line to the north and south will have very small impacts on the existing public views available in the area.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal does not significantly alter solar access to public and private spaces, as demonstrated by the shadow diagrams submitted. The site is on a north/south orientation, and is to the north of the water.

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:

There is no existing landscaped area on site. The proposal will improve this situation by a small amount. The additions are relatively minor, and the extension of the existing ridgeline to the north and south will not have any significant adverse impacts with regard to existing vegetation or topography, or any other aspect.

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 overall bulk and scale of the development will be generally retained, with additions being relatively minor. It will not significantly alter the existing streetscape.

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

Comment:

The proposal will not obscure any important townscape features. The proposal will impact on a small amount of water view from the public road, however, this impact is considered negligible, and not unreasonable as assessed within this report. The proposal is consistent with the variations permitted within the DCP in relation to undersized lots with regard to floor space.

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

Comment:

The proposal will generally maintain the overall shape and building envelope of the existing building on site, with relatively minor additions. The visual relationship with the surrounding area will not be significantly altered.

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

Comment:

The proposal will not have any significant adverse impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

N/A

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 existing building footprint is generally unaltered given the site is currently entirely built upon. The proposal will generally maintain the existing building envelope, with relatively minor additions. It will not have any significant adverse impacts on the surrounding area.

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

Comment:

The proposal is for alterations and additions to an existing dwelling house, which is a permissible use in 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 does not result in removal of any canopy trees, and results in a small increase in landscaped area, where none currently exists on site. The proposal does not significantly alter the existing building envelope, and will not change the existing building to an extent that it comes to dominate the natural scenic qualities of the foreshore.

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

  Comment:

  The proposal is within the existing building footprint, and will introduce a small amount of landscaping where none currently exists. The development will have no significant adverse impacts on nearby foreshores, significant geological features or 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.*

  Comment:

  The site is wholly constructed upon. The proposal will improve the existing situation slightly in this regard by including 7sqm of landscaped area. However, the proposed alterations and additions do not create any new adverse impacts in this regard.

- 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 overall height and bulk of the existing building is not significantly changed by the proposed alterations and additions. There is no existing vegetation on site, and the proposal will not make any significant changes to the topography or impact on any surrounding land uses.

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 Height of building and Floor space ratio Development Standards associated with a single dwelling house (Class 1 building).

6.10 Limited development on foreshore area

The proposal involves the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, and as such may be consented to by Council under this clause. The proposal is consistent with the matters for consideration under clause 6.10(3). There is no existing public access along the rear (foreshore) of the property, and the proposed will not compromise any public access in this regard.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 284.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	N/A	Yes
4.1.2.1 Wall Height	E: 8m (based on gradient 1:2)	11.2m	40%	No
	W: 8m (based on gradient 1:2)	9.9m	23.75%	No
4.1.2.2 Number of Storeys	2	4 (existing)	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.85m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Nil, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 3.73m (based on 11.2m wall height)	1.5m	59.8%	No
	W: 3.3m (based on 9.9m wall height)	1.4m	57.6%	No
	Windows: 3m	1.4m - 1.5m (existing)	N/A	Yes
4.1.4.4 Rear Setbacks	8m	5.9m	26.25%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	Proposed: 62.2% (177sqm) Existing: 170.5sqm	3.7%	No
	Open space above ground 25% of total open space	2.25% (4sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40%	Proposed: 3.95%	90.1%	No

	of open space	(7sqm) Existing: 0 sqm		
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m existing	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Existing pool retained and reduced in size	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	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

3.4.3 Maintenance of Views

One submission was received in relation to view loss, from number 17 Bligh Crescent, the adjacent neighbour to the west. This submission raised concerns with view loss from their home, and from the public road.

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

The views available in the area are highly valuable views of middle harbour, including water and water/land interface, and the foreshores to the south.

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:

The view from number 17 is primarily obtained from the kitchen and living area, but is available from all levels. The primary views are directly to the south, and are wide, almost 180 degree views. The view impacted is directly across the side boundary to the east.

The views from the public road are available in a wide arc, primarily in southerly and westerly directions.

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

Comment:

The additions to the rear of the existing building are very minor, and will reduce the rear setback of the building by approximately 500mm. This will have a very small impact on the wide views to the south available from number 17. Although the view from the main living area is affected, the extent of that view loss can only be assessed as negligible with regard to these principles.

From the public road, the view looking in a westerly direction from the top of the driveway will not significantly impact on the water views given existing vegetation (not on the subject site) already largely blocks the water where the additions are proposed. From more directly to the north of the subject site, standing at the road level, the additions will impact on the water views somewhat as a viewer moves up and down the road due to the extension of the upper level to the north and south, but given the extent of the wider view, the impact is considered to be negligible to minor in the context of these principles depending upon the vantage point.

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

Comment:

The proposal is non-compliant with the rear setback control, and it is compliance with this control which will contribute to the view loss given the relationship between the subject site and number 17. However, given the extent of view loss caused, and that this view loss is across a side boundary, the proposal cannot be said to no longer result in 'view sharing'. Number 17 will retain wide views of the water, and the very small additional development to the east will not have a significant impact on those views.

From the public road, the extension of the already non-compliant height of the roof to the south will be the cause of a very small amount of water view lost. The wider view will be largely retained, and the proposal will not significantly detract in this regard.

Given these considerations, the proposal is not considered to result in any unreasonable view loss, despite the non-compliances with the controls discussed in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

The proposal involves wall heights of up to 11.2m on the eastern side, and 9.9m on the western side. These wall heights generally retain the existing wall heights, with only minor changes. The most notable change is the extension of the level 4 eastern wall to the south. The wall height of the western wall is generally unchanged.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal has been found to be generally consistent with the applicable objectives. The proposal creates generally minor changes to the overall shape and environmental impacts of the existing building. The non-compliance with regard to wall heights is supported in the circumstances.

4.1.3 Floor Space Ratio (FSR)

The site falls within Area U on the Lot Size Map. This clause therefore allows consideration of the undersize nature of the lot, and calculation of Floor Space Ratio based on a lot size of up to 750sqm. Based on this, the proposal (298sqm) would comply with the maximum 0.4:1 FSR (300sqm) requirement under clause 4.4 of the Manly LEP. See discussion under clause 4.6 in this report.

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

Description of non-compliance

The proposal involves side setbacks of 1.5m to the east (3.73m requirement based on wall height), and 1.4m to the west (3.3m requirement based on wall height). The existing side setbacks are generally retained as existing. On level 4, although the side setback is retained, the eastern side wall will be extended to the south, enclosing the existing balcony area.

The rear setback is 5.9m - 6.9m (requirement of 8m). The rear setback is slightly reduced from the existing rear setback by approximately 500mm.

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 site is below the street, and separated from the street frontage by the road reserve and the shared driveway that also services number 17, the adjacent neighbour to the west. The existing nil front setback will be generally maintained, with the addition of an extended storage room above the garage. This addition will not have any unreasonable impacts on the streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Privacy will be generally maintained to the levels of the existing building on site. New windows are primarily orientated to the south towards the views. The proposed setbacks will not significantly alter or unreasonably restrict light, sunshine and air movement to neighbours. View sharing is considered to be reasonably maintained to both public and private property, as assessed under clause 3.4.3 in this report. The alterations and additions also do not significantly alter the space between buildings or the character of the streetscape, nor do they create any traffic hazards.

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

Comment:

A degree of flexibility is considered appropriate in the circumstances given the lack of any significant impacts caused by the non-compliances compared to the existing building.

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:

Although the landscaped area on site is very little, the alterations and additions represent an improvement on the existing situation, where there is currently no landscaping on site.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The proposal does not comply with the minimum landscaped open space requirements. However, the existing site contains no landscaped area, and the proposal improves the existing situation by the addition of 7sqm of landscaping, including within the front and rear setback areas. The proposal is considered acceptable in this regard as it increases compliance.

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

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 $10,740 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,074,000.

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 requests 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 have adequately addressed and demonstrated that:

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 4.4 Floor Space Ratio development standards pursuant to clause 4.6 of the MLEP 2013 as the applicant's written requests have adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1330 for Alterations and additions to a dwelling house on land at Lot 12 DP 5297, 15 Bligh Crescent, SEAFORTH, Lot 13A DP 5297, 15 Bligh Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA01 Issue A	14/7/21	Weir Phillips Architects
DA02 Issue A	14/7/21	Weir Phillips Architects
DA03 Issue A	14/7/21	Weir Phillips Architects
DA04 Issue A	14/7/21	Weir Phillips Architects
DA05 Issue A	14/7/21	Weir Phillips Architects
DA06 Issue A	14/7/21	Weir Phillips Architects
DA07 Issue A	14/7/21	Weir Phillips Architects
DA08 Issue A	14/7/21	Weir Phillips Architects
DA09 Issue A	14/7/21	Weir Phillips Architects
DA10 Issue A	14/7/21	Weir Phillips Architects
DA11 Issue A	14/7/21	Weir Phillips Architects
DA12 Issue A	14/7/21	Weir Phillips Architects
DA13 Issue A	14/7/21	Weir Phillips Architects
DA14 Issue A	14/7/21	Weir Phillips Architects
DA18 Issue A	14/7/21	Weir Phillips Architects
DA23 Issue A	21/7/22	Weir Phillips Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate A419891	30 July 2021	Damian O'Toole Town Planning
Geotechnical Investigation Ref: 34158Rrpt	7 July 2021	JK Geotechnics

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**
DA22 Issue A	14/7/21	Weir Phillips Architects

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Report	Not dated	Tulip 7

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 $10,740.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $1,074,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

7. **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.

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

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

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

9. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. 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 that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. **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:
- 17 Bligh Crescent,
- 11 Bligh Crescent
- The shared driveway which services 11, 15 and 17 Bligh Crescent

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.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation located on adjoining properties,
ii) 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.

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.

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

Any asbestos material arising from the demolition process shall be removed and disposed of in

accordance with the following requirements:

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

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

14. **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.

15. **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.

16. **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

17. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:
i) the proposed Kentia Palm shall be replaced with one (1) Cabbage Tree Palm (Livistona australis) installed at a pre-ordered 3 metre clear trunk height,
ii) the proposed Syzygium smithii within a small garden bed shall be replaced with one (1) Blueberry Ash (Elaeocarpus reticulatus) installed at a minimum 75 litre pot container size, and shall include understorey mass planting at 4 plants per metre square, with selected species to be shade tolerant,
iii) all other planting to gardens and planters shall be species tolerant of shade, wind and salt spray.

Prior to the issue of any Occupation Certificate details shall be submitted from a Landscape Architect or an accredited Landscape Designer to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with the conditions of consent.

Reason: Environmental amenity.

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

19. **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.

20. **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.

Note: The following Standards and Codes applied at the time of determination:

(a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
(b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
(c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

21. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2008;
(iv) Australian Standard AS1926 Swimming Pool Safety;
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
(b) A warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.
(c) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life. (DACPLF10)

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

22. **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.

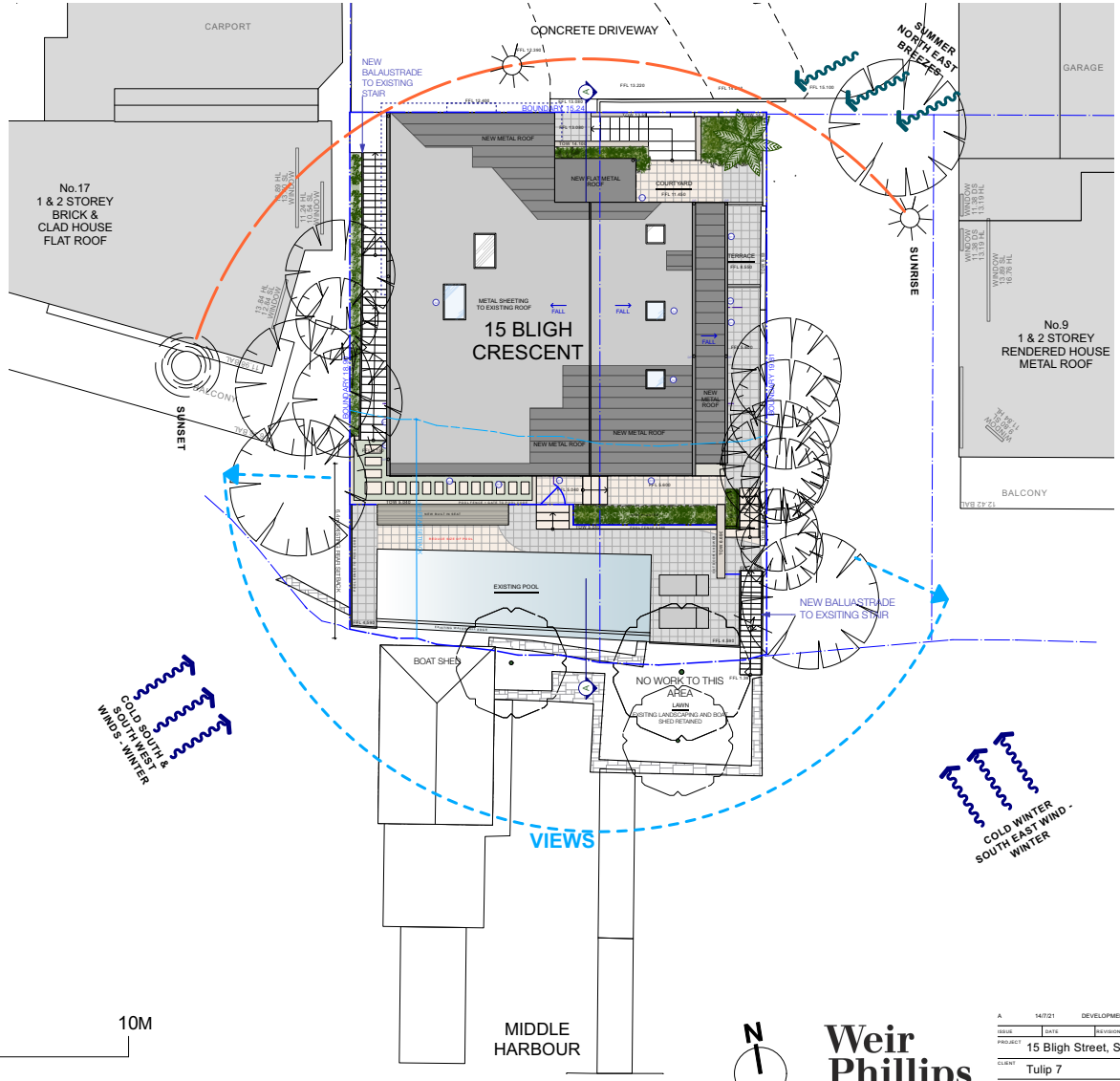
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

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

Reason: To ensure geotechnical risk is mitigated appropriately.



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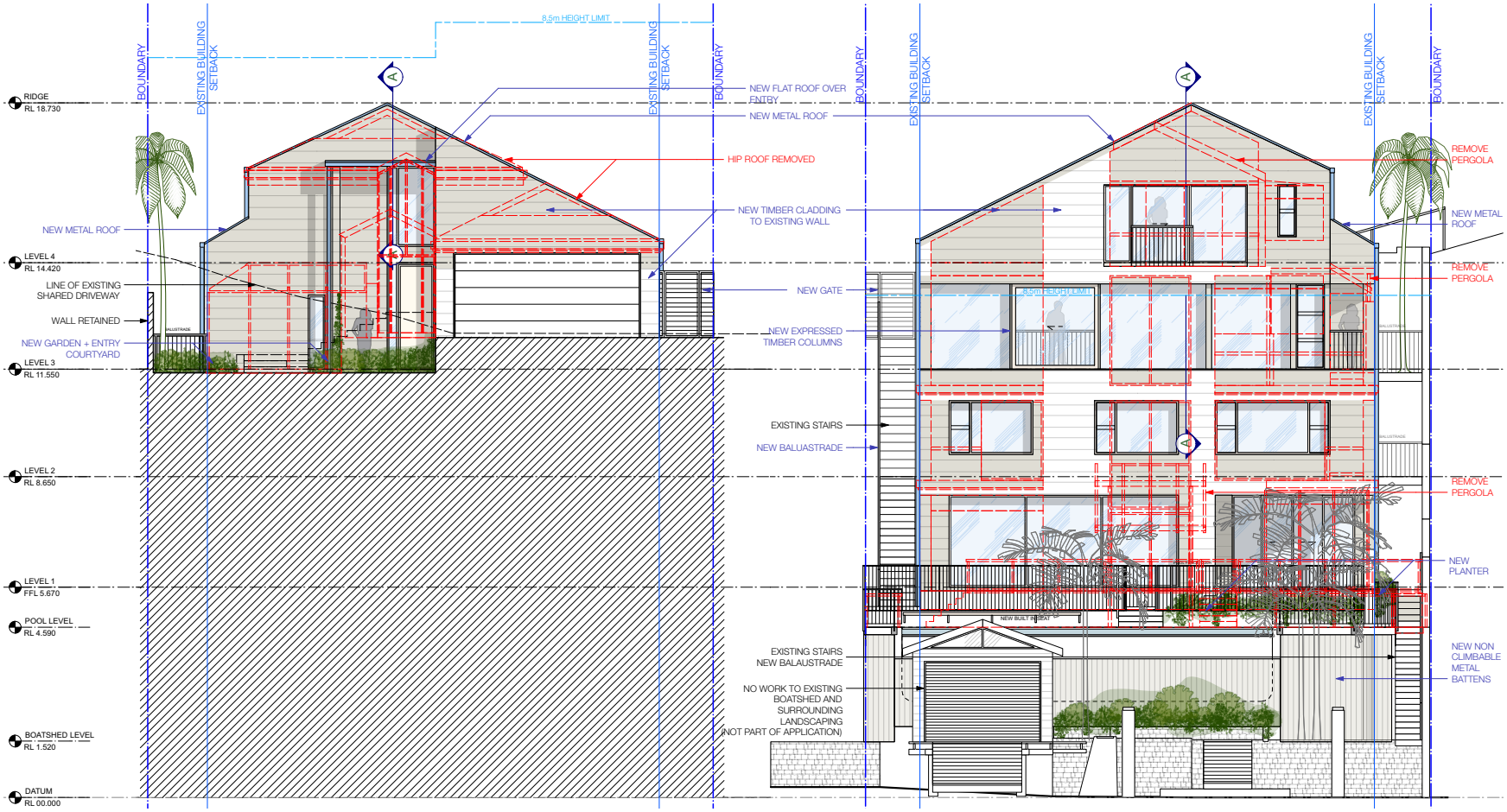
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Weir Phillips Architects
NSW Registration Number 6385 Robert Weir

ISSUE	DATE	REVISION
A	14/7/21	DEVELOPMENT APPLICATION

PROJECT	15 Bligh Street, Seaforth		PROJECT # RBS
CLIENT	Tulip 7	DATE # 14/7/21	DWG # DA01
DWG	Site Analysis/Roof Plan	SCALE 1:150	
		DRAWN RW	
		CHKD	REVISION A

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1 Proposed North Elevation
Scale 1:100 @ A3

2 Proposed South Elevation
Scale 1:100 @ A3

KEY

Existing

Proposed

Demolished

0 5 10M

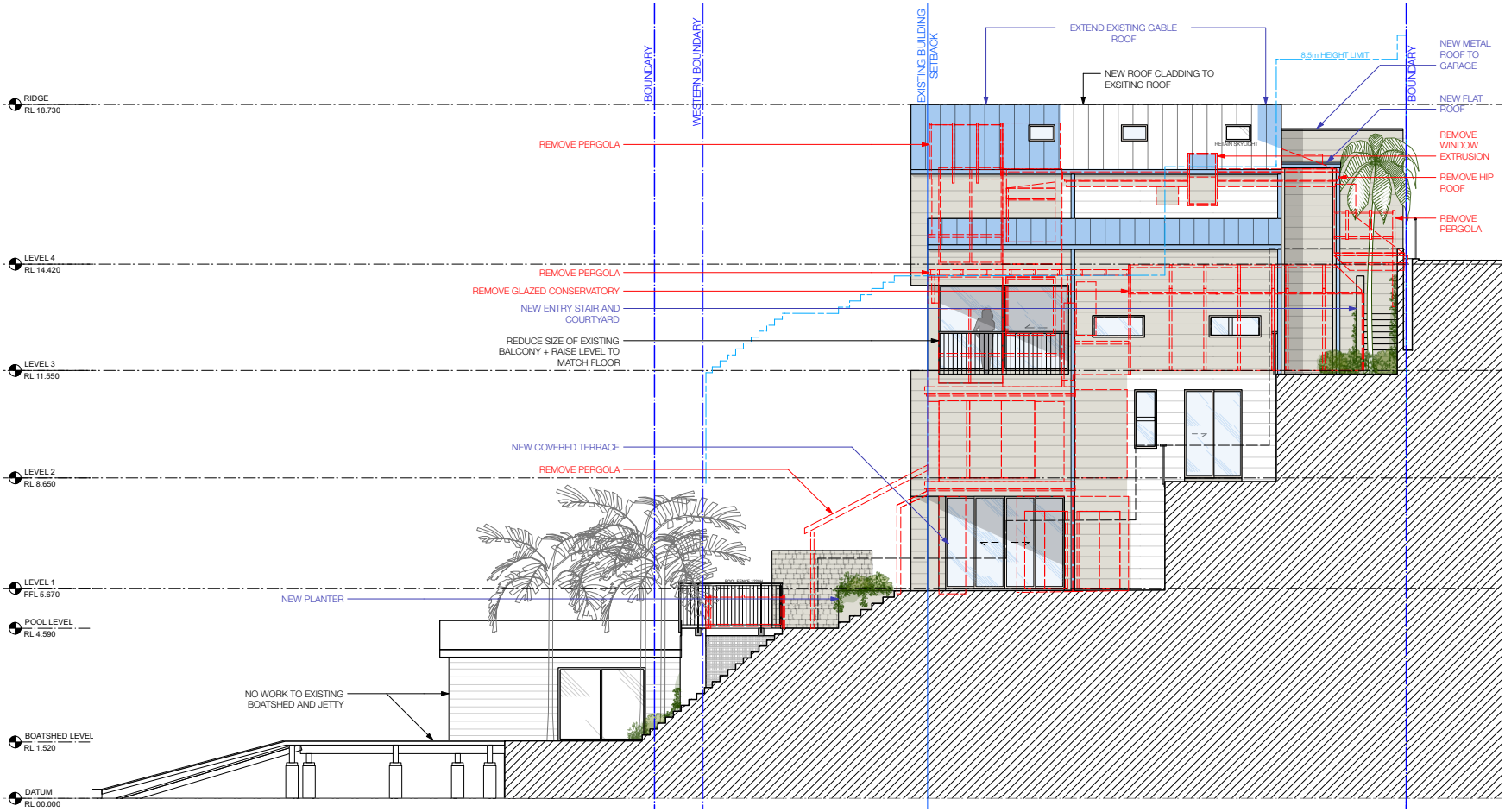
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Weir Phillips Architects
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ISSUE	DATE	REVISION
A	14/7/21	DEVELOPMENT APPLICATION

PROJECT: 15 Bligh Street, Seaforth — PROJECT # RBS
CLIENT: Tulip 7 — DATE # 14/7/21 — DWG # DA11
DWG: Proposed North & South Elevations — SCALE 1:100 — DRAWN RV — CHKD RW — REVISION A

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1 Proposed East Elevation
Scale 1:100 @ A3

KEY

- Existing
- Proposed
- Demolished

0 5 10M

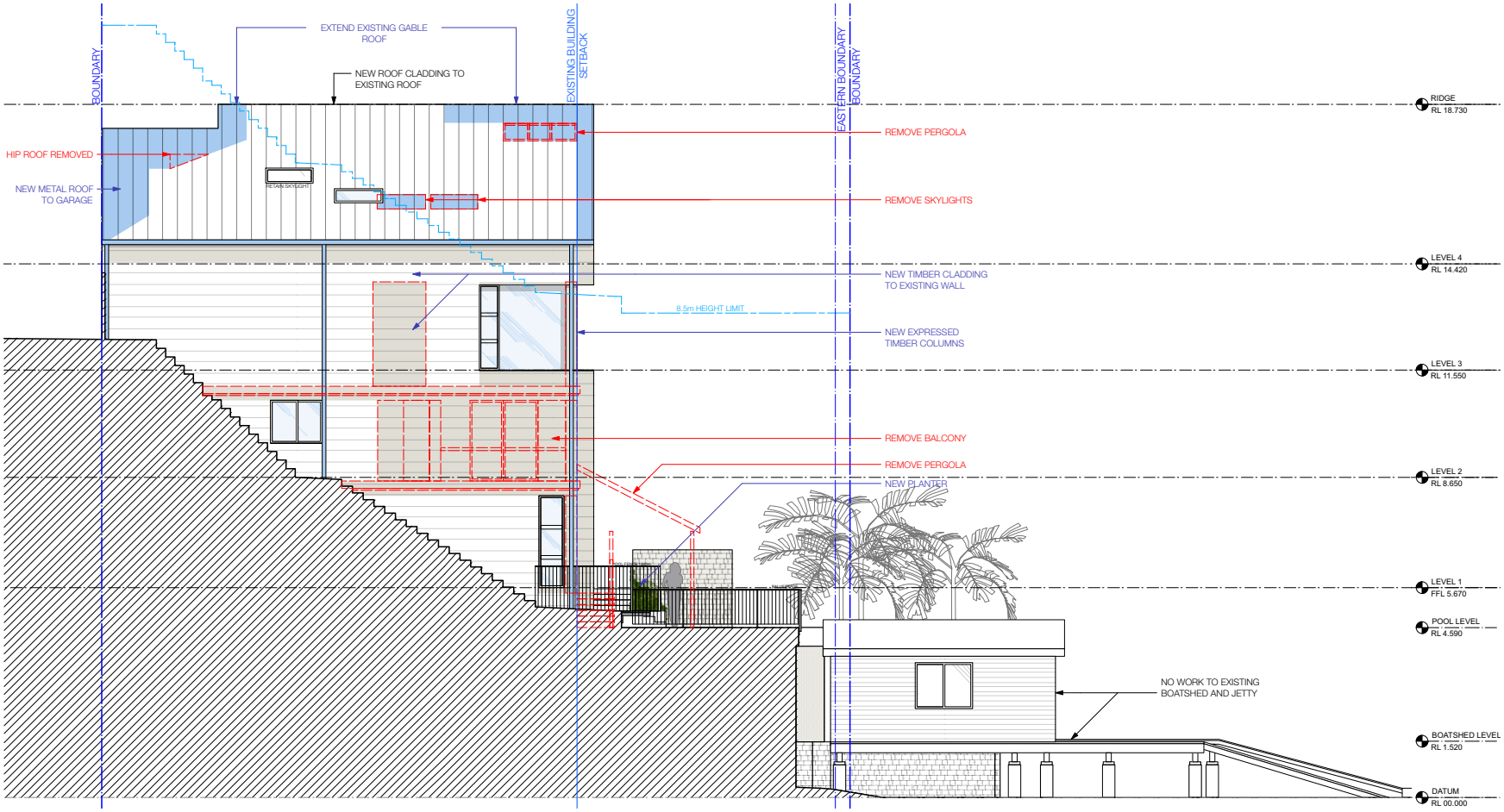
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ISSUE	DATE	REVISION
A	14/7/21	DEVELOPMENT APPLICATION

PROJECT: 15 Bligh Street, Seaforth — PROJECT #: RBS
CLIENT: Tulip 7 — DATE #: 14/7/21 — DWG #: DA12
DWG: Proposed East Elevation — SCALE: 1:100 — DRAWN: RW — CHKD: RW — REVISION: A

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1 Proposed West Elevation
Scale 1:100 @ A3

KEY

- Existing
- Proposed
- Demolished

0 5 10M

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ISSUE	DATE	REVISION
A	14/7/21	DEVELOPMENT APPLICATION

PROJECT: 15 Bligh Street, Seaforth — PROJECT #: RBS
CLIENT: Tulip 7 — DATE #: 14/7/21 — DWG #: DA13
DWG: Proposed West Elevation — SCALE: 1:100 — DRAWN: RW — CHKD: RW — REVISION: A

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longitude planning pty ltd

Clause 4.6 Exceptions to development standards.

In respect of the floor space ratio development standard of Clause 4.4(2) of the Manly LEP 2013, in relation to alterations and additions to the existing dwelling house, at 15 Bligh Crescent Seaforth.

Prepared by Warren Long MPIA Registered Planner.

27 July 2021

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Clause 4.6 – Exceptions to Development Standards in relation to Clause 4.4(2) - Floor space ratio of the Manly Local Environmental Plan 2013.

1. Introduction.

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP). A variation is sought to the floor space ratio development standard of Clause 4.4(2) of the LEP, in relation to alterations and additions to the existing dwelling house, at 15 Bligh Crescent, Seaforth.

This exception statement has also been prepared having regard to the Land and Environment Court judgments in the matters of Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe) at [42] – [48], Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and Rebel MH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112, and Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115.

Clause 4.6 Exceptions to development standards

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

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

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

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

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

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

(a) the consent authority is satisfied that—

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

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—
When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

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

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(ca) clause 6.15,
(cb) a development standard on land to which clause 6.19 applies.

Clause 4.6(1) provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH 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.

In *Initial Action* Justice Preston considered the proper interpretation of clause 4.6 and found that:

- *Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial effect relative to a compliant development (at [87]);*
- *There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and*
- *One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]. That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.*

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) provides:

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

This clause applies to clause 4.4(2) Floor space ratio development standard of the Manly LEP 2013.

2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?

Clause 4.4 of the Manly LEP sits within Part 4, which is titled 'Principal Development Standards'. Clause 4.4(2) is a development standard in relation to floor space ratio and the relevant standard is as follows:

The relevant provision as follows:

Clause 4.4 - Floor space ratio

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

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

The site is located in area 'B' on the Floor Space Ratio Map of the LEP. A maximum floor space ratio of 0.4:1 applies to the site as shown on the FSR Map.

The site has an area of 284.5m^2 and therefore a maximum of gross floor area of 113.8m^2 is permissible on the site.

The gross floor area of the existing house has been calculated to be 284.8m^2, which represents a FSR of 1:1 and therefore exceeds the FSR standard.

The proposal involves the redistribution of gross floor area and additional gross floor area of 13.2m^2, that has been calculated to be a total of 298m^2, which equates to a proposed floor space ratio of 1.04:1 and also exceeds the FSR standard.

3. Is compliance with the development standard unreasonable or unnecessary?

Clause 4.6(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.

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

As found by Justice Preston in *Initial Action*, compliance with the development standard will prima facie be unnecessary if it can be shown that there is an absence of environmental harm/adverse amenity impacts from the proposed development. The breach of the floor space ratio standard does not have adverse amenity impacts for the reasons outlined in this written request.

Furthermore, the submission and consideration of Objections under State Environmental Planning Policy No. 1 and the issue of compliance being "unreasonable or unnecessary" was summarised in the Land and Environment Court judgment *Wehbe v Pittwater Council [2007] NSWLEC 827.* While that judgment applied to SEPP 1 Objections and not Clause 4.6 variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 variation requests.

The onus lies upon the applicant to demonstrate this in a written request that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the Wehbe case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

> *i. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or*
> *ii. That the objectives of the standard are not relevant to the proposal; or*
> *iii. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or*
> *iv. The development standard in question has been "virtually abandoned" by the Council; or*
> *v. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).*

This written request does not rely on pathways ii, iii, iv and v above.

Point i. is of primary relevance in this case, that is, that the objectives of the standard are achieved, notwithstanding the non-compliance and there would be no purpose served by requiring strict compliance with the standard.

The objectives of the floor space ratio standard are as follows:

Clause 4.4 - Floor space ratio

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

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

Objectives of the standard

The proposed development will be in the public interest because it is consistent with the objectives of the floor space ratio standard for the following reasons:

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

The height and bulk and scale of the building will be relatively unchanged when viewed from the front from Bligh Crescent. It will maintain compatibility with the varied streetscape of this part of Bligh Crescent.

(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 proposed alterations and additions 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,

The proposed additions will not involve any perceptible change to the visual relationship between the existing house and the varied built form character and landscape character of the area.

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

The additions are contained largely within the envelope of the existing house and the redistribution of gross floor area will minimise adverse impact on the present amenity of adjoining and adjacent properties to an acceptable degree, particularly in relation to view sharing, visual and acoustic privacy and solar access.

(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.

This objective is not relevant to the proposal.

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

Of relevance is the judgment in the Land and Environment Court of NSW, *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009, NSWLEC 90, NSWLEC 248,* which raised the issue that the grounds should ideally relate to a site specific proposal, rather than generic reasons.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

The Clause 4.6 variation establishes sufficient environmental planning grounds to justify contravening the floor space ratio development standard.

The environmental planning grounds particular to this site and to this proposal relates to the improved accessibility and function and amenity of the house with minimal adjustments to the existing building envelope, and redistribution of floor area thereby maintaining the essence of the existing bulk and scale and height of the building.

Enclosing of some balcony areas and opening up the south east corner of Level 1 and extending into the attic roof space on Level 4, and the subtle changes to external materials and finishes and reduction in glazing, achieves an improved outcome in terms the visible bulk and scale of the house from both the street and from Middle Harbour.



Figure 1: Extract from Drawing DA21 Photomontage drawing showing the existing house on the left and proposed, to demonstrate the existing height and envelope is maintained and the improved changes to colours and finishes, including reduced areas of glazing.

The Manly DCP includes provisions relating to undersized lots and the subject site qualifies in this regard because it has an area of only 284.5m^2 in an area of Manly that has a minimum lot size of 750m^2.

The site is located in area 'U' on the LEP Lot Size Map, which has a minimum lot size of 750m^2. The site is an existing undersized lot and in accordance with Part 4.1.3.1 Exceptions to FSR for undersized lots of the DCP and Figure 30 – Extent of variation for undersized lots, the extent of variation to be considered would be 0.4:1 of 750m^2 or a maximum of 300m^2 for undersized lots in area 'U' on the LEP Lot Size Map.

The proposal has a gross floor area of 298m2 which is less than 300m2 and in considering this exception request to the FSR standard, Council can be satisfied that the relevant LEP objectives and the provisions of this DCP are satisfied.

The absence or lack of environmental harm in this case is also a relevant environmental planning ground, with specific reference to the adjoining properties and more generally the locality, and particularly having regard to the redistribution of floor area, which is largely within the envelope of the building and there being no adverse physical impacts on the existing levels of privacy, solar access and views of adjoining and adjacent properties.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in *Initial Action v Woollahra Council (2018) NSWLEC 118.*

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in *Randwick City Council v Micaul Holdings Pty Ltd at [34],* in relation to consistency of a development with

the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

Of particular relevance is objective *(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain*, of the FSR standard.

There will be no adverse effects on the amenity of the adjoining and adjacent properties or the locality arising from the proposed alterations and additions to the existing dwelling house.

For the reasons outlined, there are sufficient environmental planning grounds particular to the circumstances of the site and the design of the proposed alterations and additions to the existing dwelling house, to justify the departure from the floor space ratio standard.

In terms of the Objects of the EP&AAct, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

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

(b) the concurrence of the Director-General has been obtained.

The objectives of the standard have been previously addressed.

Objectives of the zone

The objectives of the E3 Environmental Management Zone are as follows:

• 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.*

The public interest is considered in terms of compliance and consistency with the objectives and planning controls, including State and Regional Planning Policies, applicable to a proposed development.

The following comments address the objectives of the E3 Environmental Management Zone:

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

The proposal will not affect the aesthetic values of the area and the foreshore location and ensures that those foreshore areas are not negatively impacted upon.

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

The proposal maintains an existing dwelling house on the site, which is one of a variety of permissible uses in the E3 Environmental Management zone.

> *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 affect any existing trees or tree canopy and the additions to the house will maintain the form and height and scale of the building and it will not be a dominant element of the foreshore.

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

The proposal will not affect any significant natural features, any bushland or 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.*

The proposal does not involve any changes along the foreshore in front of the site and the proposed additions do not generate any increase in hard surfaces that would impact on the existing method of stormwater disposal and run off to the harbour.

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

The height and bulk and scale of the existing building will be maintained.

Clause 4.6(4)(b) Concurrence of the Director-General

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.

In accordance with Clause 4.6(4)(b) the concurrence of the Director-General is assumed.

5. Conclusions

The bulk and scale of the proposed alterations and additions to the existing house and redistribution of floor space that is proposed is acceptable, notwithstanding the departure from the numerical floor space ratio standard.

It will not involve any adverse visual impacts in the streetscape, because the height, appearance and overall size of the building will be relatively unchanged. It will therefore will not result in an adverse impact on the present amenity of neighbouring properties particularly in relation to views, privacy and solar access. Public views either side of the existing pitched roof will also be unaffected by the proposal.

This exception request to the floor space ratio standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

This written request pursuant to Clause 4.6(3) of the Manly LEP 2013 is acceptable for the following reasons:

(a) The written request adequately addresses the matters required to be demonstrated by sub-clauses 4.6(3)(a) and
(b) The proposal will be in the public interest because it is consistent with the objectives of the floor space ratio development standard and the objectives for development within the E3 Environmental Management Zone; and
(c) The concurrence of the Director General is assumed.



Warren Long
MPIA Registered Planner
Principal of Longitude Planning Pty Limited

Dated: 27 July 2021

longitude planning pty ltd

Clause 4.6 Exceptions to development standards.

In respect of the height of buildings development standard of Clause 4.3(2) of the Manly LEP 2013, in relation to alterations and additions to the existing dwelling house at 15 Bligh Crescent Seaforth.

Prepared by Warren Long MPIA Registered Planner.

27 July 2021

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Clause 4.6 – Exceptions to Development Standards in relation to Clause 4.3(2) – Height of buildings of the Manly Local Environmental Plan 2013.

1. Introduction.

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP). A variation is sought to the height of buildings development standard of Clause 4.3(2) of the LEP, in relation to alterations and additions to the existing dwelling house, at 15 Bligh Crescent, Seaforth.

This exception statement has also been prepared having regard to the Land and Environment Court judgments in the matters of Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe) at [42] – [48], Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and Rebel MH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112, and Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115.

Clause 4.6 Exceptions to development standards

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

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

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

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

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

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

(a) the consent authority is satisfied that—

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

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—
When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

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

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(ca) clause 6.15,
(cb) a development standard on land to which clause 6.19 applies.

Clause 4.6(1) provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH 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.

In *Initial Action* Justice Preston considered the proper interpretation of clause 4.6 and found that:

- *Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial effect relative to a compliant development (at [87]);*
- *There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and*
- *One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]. That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.*

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) provides:

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

This clause applies to Clause 4.3(2) Height of buildings development standard of the Manly LEP 2013.

2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?

Clause 4.3 of the Manly LEP sits within Part 4, which is titled 'Principal Development Standards'. Clause 4.3(2) is a development standard in relation to height of buildings and the relevant standard is as follows:

The relevant provision as follows:

Clause 4.3 Height of buildings

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

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

(b) to control the bulk and scale of buildings,

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

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

The site is located in area 'I' on the Height of Buildings Map of the LEP. In accordance with the height of buildings map a maximum building height of 8.5m applies to the site.

The highest part of the building is the existing ridge of the steeply pitched roof running on a north to south axis. At RL18.73, it will be 13.06m in height above the existing ground level (Level 1) under the house at RL5.67 at the rear. It will be slightly lower in relative height and will be 10.08m in height above the existing ground level of (Level 2) at RL8.65 at the front, and therefore exceeds the 8.5m height of buildings standard in both locations.

The additions to the roof at the front and the rear will not alter the overall height of the building and the roof, which will be the same height at the front and the rear as the existing roof, relative to the floor levels, ground levels of the existing levels below.

The following extract from the east elevation drawing shows the extended roof sections in blue.

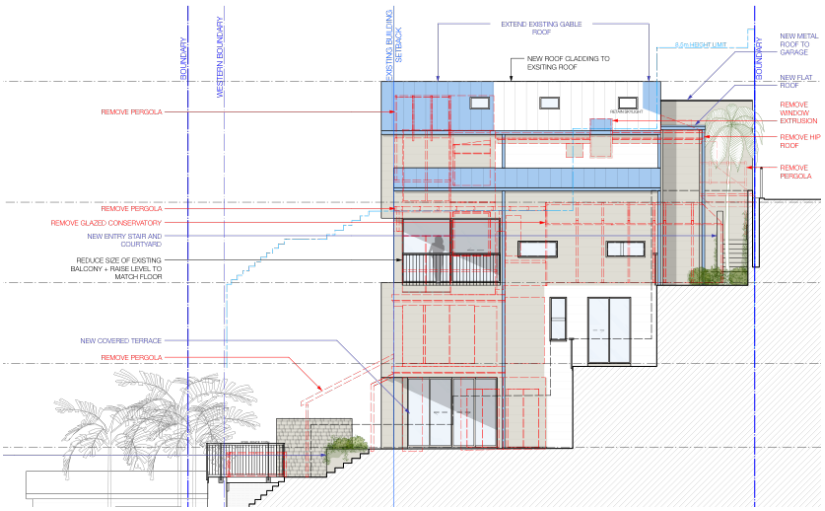


Figure 1: Extract from Drawing DA12 - Proposed East Elevation showing the new sections of the roof coloured blue, where the breach of the height standard occurs.

3. Is compliance with the development standard unreasonable or unnecessary?

Clause 4.6(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.*

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

As found by Justice Preston in *Initial Action*, compliance with the development standard will prima facie be unnecessary if it can be shown that there is an absence of environmental harm/adverse amenity impacts from the proposed development. The breach of the height of buildings standard does not have adverse amenity impacts for the reasons outlined in this written request.

Furthermore, the submission and consideration of Objections under State Environmental Planning Policy No. 1 and the issue of compliance being "unreasonable or unnecessary" was summarised in the Land and Environment Court judgment *Wehbe v Pittwater Council [2007] NSWLEC 827.* While that judgment applied to SEPP 1 Objections and not Clause 4.6 variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 variation requests.

The onus lies upon the applicant to demonstrate this in a written request that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the Wehbe case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

> *i. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or*
> *ii. That the objectives of the standard are not relevant to the proposal; or*
> *iii. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or*
> *iv. The development standard in question has been "virtually abandoned" by the Council; or*
> *v. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).*

This written request does not rely on pathways ii, iii, iv and v above.

Point i. is of primary relevance in this case, that is, that the objectives of the standard are achieved, notwithstanding the non-compliance and there would be no purpose served by requiring strict compliance with the standard.

The objectives of the height of buildings standard are as follows:

> *(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
>
> *(b) to control the bulk and scale of buildings,*

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The proposed development will be in the public interest because it is consistent with the objectives of the height of buildings standard for the following reasons:

(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 height and bulk and scale of the building will be relatively unchanged when viewed from the front from Bligh Crescent. It will maintain compatibility with the varied building height and roof forms in the streetscape of this part of Bligh Crescent

(b) to control the bulk and scale of buildings,

The bulk and scale of the building is controlled by maintaining the existing steeply pitched roof and carrying out additions to the front and rear of the roof for part of the new alterations and additions.

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

The proposed alterations and additions to the roof, where the breach of the height of buildings standard occurs will not affect views to and from the harbour or public views from Bligh Crescent from in front.



Figure 2: Photograph from the main road carriageway of Bligh Crescent, shows the existing views to be retained either side of the steeply pitched roof.

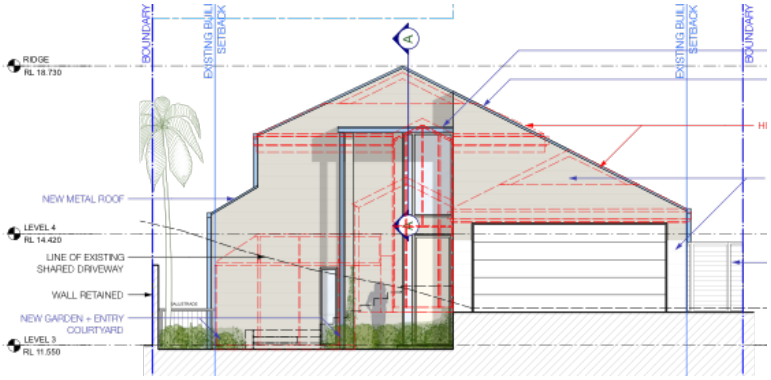


Figure 3: Extract from Drawing DA11 - Proposed North and South Elevations showing the height and shape of the roof will be unchanged on the sides, therefore maintaining view corridors.

(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,

The site has a north to south orientation similar to the adjoining and adjacent properties in this part of Bligh Crescent. The shadows cast by the existing house therefore fall to the south towards the foreshore. Shadow diagrams were prepared for 9am, 12noon and 3pm, on 21 June and submitted with the development application. The analysis confirms that the proposal will not involve an increase in overshadowing of the adjoining and adjacent dwelling houses or any public spaces.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The site is not located in a recreation zone or environmental protection zone.

There would be no purpose served by requiring strict compliance with the standard because the height of the new elements of the building that breach the height of buildings

standard are the same height as the existing steeply pitched roof that is to be retained. There are no new elements of the building and the roof that would contribute to the house being excessive in height and bulk and scale when viewed from adjoining properties, from the street and from the harbour. There will also be no adverse impact on the amenity of the adjoining and adjacent properties and the environmental quality and scenic amenity of the locality.

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

Of relevance is the judgment in the Land and Environment Court of NSW, *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009, NSWLEC 90, NSWLEC 248,* which raised the issue that the grounds should ideally relate to a site specific proposal, rather than generic reasons.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

The Clause 4.6 variation establishes sufficient environmental planning grounds to justify contravening the height of buildings development standard.

The environmental planning grounds particular to this site and to this proposal relates to the improved accessibility and function and amenity of the house with minimal adjustments to the existing building envelope, and redistribution of floor area, including within the additions to the roof, thereby maintaining the existing height and bulk and scale of the building.

Extending into the attic roof space at the front and rear on Level 4 at the same height as the existing ridge, achieves additional floor space within the roof without increasing the visible bulk and scale of the house from both the street and from Middle Harbour.

Part 4.1.2 Height of buildings of the Manly DCP states in part as follows:

> *b) Where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building.*

Also of relevance is Part 4.1.7.2 –*Habitable rooms in the roof structure* of the Manly DCP, which includes special considerations in relation to building height for habitable rooms in the roof structure as follows:

> *Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However, alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard.*

The proposal will be consistent with the above criteria and will not detract from the character or integrity of the existing steeply pitched roof and will not adversely impact on the amenity of adjacent and nearby properties and the streetscape. The alterations

and additions to the roof where the breach of the maximum height standard occurs will not increase the overall height of the building. They will be the same height as the ridge of the existing pitched roof.

The absence or lack of environmental harm in this case is also a relevant environmental planning ground particularly having regard to the new elements of the roof where the breach of the standard occurs, and there are no adverse physical impacts on the existing levels of privacy, solar access and views of adjoining and adjacent properties.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in *Initial Action v Woollahra Council (2018) NSWLEC 118.*

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in *Randwick City Council v Micaul Holdings Pty Ltd at [34],* in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

Of particular relevance is objective c) and objective d) of the height of buildings standard.

There will be no adverse effects on the amenity on the adjoining and adjacent properties or the locality.

For the reasons outlined, there are sufficient environmental planning grounds particular to the circumstances of the site and the design of the proposed alterations and additions to the existing dwelling house, to justify the departure from the height of buildings standard.

In terms of the Objects of the EP&AAct, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the

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

(b) the concurrence of the Director-General has been obtained.

The objectives of the standard have been previously addressed.

Objectives of the zone

The objectives of the E3 Environmental Management Zone are as follows:

• 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.

The public interest is considered in terms of compliance and consistency with the objectives and planning controls, including State and Regional Planning Policies, applicable to a proposed development.

The following comments address the objectives of the E3 Environmental Management Zone:

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

The proposal will not affect the aesthetic values of the area and the foreshore location and ensures that those foreshore areas are not negatively impacted upon.

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

The proposal maintains an existing dwelling house on the site, which is one of a variety of permissible uses in the E3 Environmental Management zone.

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 affect any existing trees or tree canopy and the additions to the house will maintain the form and height of the building and it will not be a dominant element of the foreshore.

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

The proposal will not affect any significant natural features, any bushland or 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.

The proposal does not involve any changes along the foreshore in front of the site and the proposed additions do not generate any increase in hard surfaces that would impact on the existing method of stormwater disposal and run off to the harbour.

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

The height and bulk and scale of the existing building will be maintained.

Clause 4.6(4)(b) Concurrence of the Director-General

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.

In accordance with Clause 4.6(4)(b) the concurrence of the Director-General is assumed.

5. Conclusions

The height and bulk and scale of the proposed alterations and additions in particular the additions at the front and rear of the existing pitched roof are acceptable, notwithstanding the departure from the numerical height of buildings floor space ratio standard.

The proposal will not involve any adverse visual impacts in the streetscape, because the height, appearance and overall size of the building will be unchanged. The additions to the roof will be the same height as the north to south ridge of the steeply pitched roof. It will therefore will not result in an adverse impact on the present amenity of neighbouring properties particularly in relation to views, privacy and solar access.

This exception request to the height of buildings standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

This written request pursuant to Clause 4.6(3) of the Manly LEP 2013 is acceptable for the following reasons:

(a) The written request adequately addresses the matters required to be demonstrated by sub-clauses 4.6(3)(a) and
(b) The proposal will be in the public interest because it is consistent with the objectives of the height of buildings development standard and the objectives for development within the E3 Environmental Management Zone; and
(c) The concurrence of the Director General is assumed.

Warren Long
MPIA Registered Planner
Principal of Longitude Planning Pty Limited

Dated: 27 July 2021

ITEM 3.4	**DA2022/0538 - 229 PITTWATER ROAD MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/468819**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0538 for alterations and additions to a dwelling house on land at Lot 1 DP 957654, 229 Pittwater Road MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0538

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 957654, 229 Pittwater Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Justin Mark Bromley
Applicant:	Novam Design Studio Eyal Snehor

Application Lodged:	10/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/05/2022 to 01/06/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 13.06%
Recommendation:	Approval

Estimated Cost of Works:	$ 575,363.75

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation to Clause 4.4 Floor space ratio (FSR) under Manly Local Environmental Plan 2013. The proposal seeks a variation of 13.06% (19.64m^2).

The proposed development was notified in accordance with Northern Beaches Community Participation Plan and two (2) submissions were received. The submissions received raised concerns surrounding sunlight access and overshadowing, and privacy.

Critical assessment issues included floor space ratio, streetscape (residential areas), sunlight access and overshadowing, privacy and security, wall height, window setback, side setbacks, rear setbacks,

and total open space variations. Notwithstanding, the variations to the controls have been assessed against the objectives of the controls and are supportable in this circumstance.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works

Ground Floor

- Demolish the rear pergola and paving, kitchen/dining rooms, laundry, internal walls of bedrooms 2 & 3, the rear chimney and storage sheds;
- Remove 3 palm trees;
- Demolish the existing rendered brick front fence and construct a new masonry and timber fence;
- Retain the existing porch, bedroom 1, entry, hallway, bathroom and living room;
- Convert bedroom 3 to a staircase and storage room;
- A new internal wall and built-in robe in bedroom 2;
- A new laundry and open plan kitchen and dining room to the rear, with a metal roof;
- A tiled courtyard opening form dining area to western boundary;
- A new timber deck with privacy screens to the rear;

New First floor

- Master bedroom with built in robe;
- Bedroom 3 with built in robe;
- Bathroom;
- WC;
- Study;
- Staircase to access the ground floor; and
- A new metal roof with 3 x skylights.

ASSESSMENT INTRODUCTION

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 957654 , 229 Pittwater Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Pittwater Road. The site is regular in shape with a frontage of 6.235m along Pittwater Road and a depth of 40.41m. The site has a surveyed area of 250.6m². The site is located within the R1 General Residential zone from MLEP 2013 and accommodates a single storey dwelling house, metal shed, and rear awning currently on the site. The site is generally flat with no significant changes in levels. The site contains grass areas, and trees. There are no details of any threatened species on the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by detached dwelling houses, attached dwelling houses, dual occupancies, residential flat buildings, and is in proximity to commercial/retail premises.

Map:



SITE HISTORY

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

PLM2021/0342
Pre-Lodgement Meeting for Alterations and additions to a dwelling house.
Meeting held on 3 February 2022.
The meeting notes concluded with the following: *The proposal is not supported in its current form, but may be supported subject to the design amendments outlined within these notes.*

Application History
Following the preliminary assessment of the application, Council requested that the applicant submit further information in relation to to Clause 3.4.1 Sunlight Access and Overshadowing under Manly Development Control Plan 2013, Clause 3.4.2 Privacy and Security under Manly Development Control Plan 2013, and Council's Heritage Officer raised concerns surrounding the proposal. Subsequently, the applicant provided amended Master Plans including hourly shadow diagrams, an amended BASIX Certificate, and an amended Heritage Report.

Furthermore, upon review of the Clause 4.6 report, whilst the Floor Space Ratio area variation was correct at 19.64m^2, the percentage variation was miscalculated at 12.26% instead of 13.06%. Therefore, Council requested an amended Clause 4.6 and amended Statement of Environmental Effects to correct the miscalculation.

Council requested further information in relation to hourly elevational shadow diagrams. Subsequently, the applicant provided additional hourly elevational shadow diagrams.

The amended plans constituted a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP). Notwithstanding the provisions of the CPP, Council's Assessment Planner informed the objecting properties of the amended plans via written email correspondence.

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 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 3.4.1 Sunlight Access and Overshadowing under Manly Development Control Plan 2013, Clause 3.4.2 Privacy and Security under Manly Development Control Plan 2013, and Council's Heritage Officer raised concerns surrounding the proposal. Subsequently, the applicant provided amended Master Plans, amended BASIX Certificate, and an amended Heritage Report. Furthermore, Council requested the percentage variation of the Floor Space Ratio to be clarified, as such an amended Statement of Environmental Effects and amended Clause 4.6 was provided to Council. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/05/2022 to 01/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Sofia Katarina Bjelkov Rossel	227 Pittwater Road MANLY NSW 2095
Mr Steven Doyle	231 Pittwater Road MANLY NSW 2095

The following issues were raised in the submissions:

- **Sunlight Access and Overshadowing**
- **Privacy**

The above issues are addressed as follows:

- **Sunlight Access and Overshadowing**

  The submissions raised concerns that the proposal will result in overshadowing to the site to the east at No.227 Pittwater Road.

  Comment:
  A detailed assessment has been conducted under Clause 3.4.1 of Manly Development Control Plan 2013 contained within this report. In summary, the proposal provides a compliant sunlight access to the private open space of adjoining residents and the subject site. Whilst the proposal provides increased shadows to the windows along the western facade of No.227 Pittwater Road from 1pm-2pm, the shadows to the windows remain unchanged from 9am-12pm, and 2pm-3pm. Notwithstanding, the windows to the north of No.227 Pittwater Road remain unaffected by the proposal and no changes to the sunlight access to the northern living room will occur as a result of the proposal. Therefore, whilst there is a minor non-compliance with the sunlight access to windows control, the shadows to the windows remain largely unchanged. Furthermore, the objector has stated that they are planning to change the internal layout of No.227 Pittwater Road, however as there is no approval for any changes, the proposal has been assessed as per the existing layout. The proposal has adequately demonstrated compliance with the objectives of the control, and as such the proposal is supportable in this instance.

- **Privacy**

  The submissions raised concerns surrounding privacy particularly in relation to the ground floor deck, and courtyard and first floor windows and balcony.

  Comment:
  A detailed assessment has been conducted under Clause 3.4.2 of Manly Development Control Plan 2013 contained within this report. In summary, conditions have been recommended for the first floor windows (07, 08, 11, 12, 13) are to be either fixed obscure glazing to a minimum height of 1.5 metres (when measured from the first floor finished level), or the window sill is to be increased to a minimum height of 1.5 metres (when measured from from the first floor finished level). The privacy concerns surrounding the ground floor deck and courtyard are considered to be addressed by a proposed privacy screen and green wall proposed opposite the courtyard. Furthermore, the first floor balcony proposes four (4) privacy screens that will mitigate any unacceptable privacy concerns. In summary, the proposal as amended via condition will ensure the objectives of the control have been satisfied and privacy concerns have been addressed accordingly.

Concluding Comment
In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed application.

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	**General Comments** The applicant advises : The site is mapped with class 4 acid sulfate soils. The proposed works are minor and do not involve work more than 2 metres below the natural ground surface. The works are not likely to lower the water table 2 metres below the natural ground surface. Accordingly Environmental Health supports the application subject to conditions.
Landscape Officer	The application seeks consent for alterations and additions to a dwelling house. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable The site is noted to be within a Heritage Conservation Area. Three palm trees are indicated for removal as part of the proposed works. Whilst the palm trees would ordinarily be exempt species under MDCP, the exemption does not apply to Heritage Conservation Areas. Assessment of the plans indicates that the trees do not appear to be of an age commensurate with the dwelling. The palms are not considered to be of heritage significance, however the resultant canopy and greening provided contributes to the character of the area. Under MDCP, a minimum of one tree is required to be provided on the site. It is considered that removal of the palms could be compensated for via the planting of a tree in the rear yard to provide for replacement canopy in the long term. In consideration of the above, no objections are raised to the removal of the palm trees subject to replanting as conditioned.
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10 & 2.12); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant environmental planning instruments and policies. The application is supported without conditions.

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>
HERITAGE COMMENTS
Discussion of reason for referral
This application has been referred as it is located within the Pittwater Road Conservation Area, listed in Schedule 5 of Manly LEP 2013. The house is not heritage listed but has been identified in recent heritage survey work as a potential contributory item to the Heritage Conservation Area within which it is located.

Details of heritage items affected
Details of this heritage conservation area, as contained within the Heritage Inventory, are:
<u>Statement of Significance</u>
This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.

Other relevant heritage listings
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td>Comment if applicable</td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
</table>
Consideration of Application
NOTE: See Revised Comments at end of this consideration section

While the proposal will affect its neighbours and the HCA in terms of heritage values, it is not considered to pose impact for heritage items in the locality.
In the PLM advice it was noted that:
“The alteration of dwellings within a Heritage Conservation Area should have regard to the controls and guidelines maintained by the respective responsible Council – and above all the significance of the Area and how an individual cottage might contribute to that Area. The individual character of a building should also be carefully considered and how the changes that may be desired by an owner will affect the individual building and what it brings to its setting and context.”
</td></tr>
</table>

Internal Referral Body	Comments
	Proposals for development within a HCA should be accompanied by a competently prepared Heritage Impact Statement which assesses the impact that a proposed development might have in heritage terms, and may recommended mitigative actions. The subject application is accompanied by a HIS, but the author and their competence to prepare such a Statement are not identified. The format of the Statement has been informed by the guidelines available from NSW Heritage but omits key elements – particularly the obvious issue that the proposal will have an impact, and how that is to be mitigated. The scale, bulk, form and materials of the proposal, together with its design relationship with the existing cottage, are all issues which together generate impact. Previous advice observed: *"Proposals for two level extensions of single storey houses in HCAs are not uncommon in current day Sydney, and in different suburbs and HCAs, and on different properties, subtly different approaches can be used to mitigate the adverse effects that the scale, bulk and often, the proposed character of such extensions will have on the house and the HCA around it."* With partial second storey additions, one of the simplest strategies that can be developed to avoid impositions upon the streetscape within a HCA and upon an individual building is to minimise the height, bulk and scale of the proposed second storey. By setting it visibly back from and behind the main roof form of a dwelling, by avoiding height and bulk, and avoiding features which are visually noticeable, the presence of the upper level can be played down. In the current scheme, the upper level extends onto the rear of the main roof, and its gabled roof makes the height of the ridge apparent and visible at each end of the new roof form. Using hipped ends would reduce the apparent wall height at the ends, and shorten the ridge length and apparent bulk of the new roof form. The application relies upon a Clause 4.6 objection to the FSR limitation upon the site, seeking an approximately 20% exceedance of the permissible area for the site. When the scale and bulk of the addition is problematic in heritage terms, and can be reduced by appropriate, responsive design decisions, an application for relief is not reasonable. By adjusted, tighter planning, omission of the proposed vestigial side balcony and of the tight study space, the upper level could be moved off the rear main roof plane, and set further back from the street. In the PLM advice it was also suggested: *"The height of the new rear wing extension should and can be reduced by lowering the overall height. This can be achieved by using a 2.1m springing height for the gabled roof, and using the roof volume to achieve habitability and spatial generosity in the upper floor within a lower overall shape. Internally spaces can be ceiled on the rake or up to a collar tie giving pleasant internal volumes within*

Internal Referral Body	Comments
	a lower building. It will still be apparent that there is a modern building element behind and larger than the cottage, but combined with the measures below, the dominance of the new work should be reduced to acceptable levels. It should be possible to achieve a lowering of at least 300mm." Some of this advice has been adopted, but the roof pitching point could still be lowered to assist overall height. Continuing, the fenestration has been revised to a dominant vertical proportion and pattern (although window 04 remains inconsistent). Again, it must be observed that louvre windows are not appropriate in a house like this. While traditionally profiled corrugated steel roofing on the new extension roof is proposed and would be acceptable, it is still shown in the image-based depiction of materials and colours as an inappropriate dark roof, and the upper level external cladding is shown as vertical and very dark grey if not black in colour. A comprehensive schedule of materials and finishes should be provided and is not difficult to prepare. While the proposal has taken some of the advice offered by Council it remains excessive in scale, height and bulk and these can be addressed to achieve an appropriate heritage outcome. By reducing height, length and bulk of the upper level, and through changes to the upper level by using hipped roof ends, a tighter plan and adoption of a setback off the main roof, a better outcome can be achieved. Changes required to make it acceptable on heritage grounds would be: • The addition form should not extend upon the main roof, but sit behind it; • The roof should use hipped ends not gables, to bring down height in the ends, the length of the ridge and overall scale and bulk; • Large glazed gable ends are not appropriate in the context of this building or the HCA; • The roof pitching point should be brought down to 2100mm, to lower the upper floor; • The louvre windows should be omitted and replaced by casement or double hung sash windows; • A revised schedule of materials and finishes nominating the actual finishes and colours should be provided. The roof must not be "metal decking" but Custom Orb profile corrugated galvanised steel or the same product pre-finished (eg., Colorbond). Dark roof and wall cladding colours such as "Monument" or dark grey are not consistent with the objectives or controls within a HCA, and revised colours compatible with the building and the HCA should be substituted. Therefore, the current proposal cannot be supported on heritage grounds. It is considered that the issues of scale, height and bulk

Internal Referral Body	Comments
	can be resolved with design changes and Heritage are willing to have discussions with the architects prior to the submission of revised plans. **Revised Comments - Amended plans (dated 27/06/2022)** To address the heritage issues previously identified, amended plans (dated 27/06/2022) were submitted. The amended plans have now addressed most of the issues canvassed in a manner which is conducive to a better heritage outcome. The scale, bulk and visibility of the proposed upper floor have been greatly reduced. However, the nominated colour scheme is not acceptable and should be replaced by a more traditional colour and finishes suite appropriate for the building's period, style, character and location within a HCA. A condition should be imposed to require submission of alternative external colours for approval by Council's Heritage Advisor prior to the issue of a construction certificate. For example, the Colourbond roof would be more appropriate in "Jasper" or "Wallaby" and it should be in Custom Orb profile. In addition, it is suggested that the owners consider using Scyon Linea traditional FC boards or boards with an equivalent profile, laid horizontally. **Therefore, the amended proposal is now acceptable on heritage grounds, subject to imposition of a condition requiring submission of a revised external colour scheme.** <u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes Further Comments COMPLETED BY: Robert Moore, External Heritage Advisor DATE: 7 June 2022 AMENDED COMMENTS: 19 July 2022

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

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.A450355_02 dated 28 June 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment:
The subject site is located within a "coastal environment area". The proposed development is not likely to cause an adverse impact to items listed under Clause 2.10(1)(a-g) inclusve.

2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
   a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
   b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
   c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
The proposal is designed, sited and will be managed appropriately to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

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 proposal is unlikely to cause an increased risk of coastal hazards on the land or other land, as the subject site is significantly distanced from the coast.

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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.7m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (150.36m^2)	FSR: 0.68:1 (170m^2)	13.06% (19.64m^2)	**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
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (150.36m^2)
Proposed:	0.68:1 (170m^2)
Percentage variation to requirement:	13.06% (19.64m^2)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

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

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters

required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"Strict numerical compliance with the 0.6:1 FSR development standard would hinder the development for the purpose of promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

The proposed development to reconfigure the ground floor plan and add a first-floor addition on land zoned R1 – General Residential is appropriate and reasonable for the following reasons:

- *There is recent precedent for similar variations to Cl 4.4 FSR of the Manly LEP 2013 being accepted by Council,*
- *The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.*
- *The works proposed will allow the housing needs of the residents to be met, including an opportunity to work from home, in their current community,*
- *The objectives of the R1 zone can be met despite the numerical variation.*

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval."

It is agreed that strict compliance with the FSR development standard would be unreasonable and unnecessary in this instance. The increase of gross floor area and subsequent FSR variation is considered to be a minor variation of 13.06% (19.64m^2) and therefore in terms of its strict compliance with this development standard it would not result in a net benefit to the desired future character of the locality. The proposal is considered to be an appropriate design to preserve the neighbourhood amenity whilst providing the housing needs for the residents.

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

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

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

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

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

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

Comment:
In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:
The proposed development is for the alterations and additions of the existing dwelling including a new first floor. The proposal complies with the height of building development standard and includes articulation to mitigate any unreasonable bulk and scale. Overall, the proposed development is consistent with existing and desired streetscape character.

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

Comment:
The proposal presents a compliant maximum building height and will not provide any unreasonable view impacts to 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 proposal maintains 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,

Comment:
The proposed development will not unreasonably impact the use or enjoyment of adjoining land or the public domain.

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

Comment:

This objective is not applicable as the site is not located within a business zone.

Zone objectives

The underlying objectives of the R1 General Residential zone:

- ***To provide for the housing needs of the community.***

  Comment:
  The proposal provides for the housing needs of the community and provides an additional gross floor area to accommodate the current and future housing needs of the residents.

  It is considered that the development satisfies this objective.

- ***To provide for a variety of housing types and densities.***

  Comment:
  The proposal will retain the existing dwelling house form and include additional gross floor area to provide amenity for the residents.

  It is considered that the development satisfies this objective.
- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

  Comment:
  This objective is not relevant as the land use is not proposed to be changed.

  It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 250.6m^2	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.5m (based on no gradient)	6.6m	1.54% (0.1m)	**No**
	W: 6.5m (based on no gradient)	6.6m	1.54% (0.1m)	**No**
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.7m	-	Yes
	Pitch: maximum 35 degrees	12 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Ground Floor: unaltered First Floor: 9.6m	- -	N/A Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.2m (based on 1/3 wall height)	Ground Floor: 0.0m First Floor: 0.25m to 0.33m	100% (2.2m) 85% to 88.63% (1.87m to 1.95m)	**No** **No**
	W: 2.2m (based on 1/3 wall height)	Ground Floor: 1.0m to 2.0m First Floor: 1.4m to 2.4m	9.09% to 54.55% (0.2m to 1.2m) 36.36% (0.8m)	**No** **No**
	Windows: 3m	1.0m	66.67% (2.0m)	**No**
4.1.4.4 Rear Setbacks	8m	Ground Floor Deck: 6.1m Ground Floor: 9.8m First Floor: 15.5m	23.75% (1.9m) - -	**No** Yes Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (137.83m^2)	33.35% (83.6m^2)	39.35% (54.23m^2)	**No**
	Open space above ground 25% of total open space (20.9m^2)	0%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (29.26m^2)	61.24% (51.2m^2)	-	Yes
	1 native trees	0 trees	100% (1 native tree)	**No***
4.1.5.3 Private Open Space	18m^2	>18m^2	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces (unaltered)	-	N/A

***Conditioned via Council's Landscape Officer for the planting of one (1) native tree. please see Condition for Required Tree Planting.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

Under Clause 3.1.1.1 Complementary Design and Visual Improvement of Manly Development Control Plan 2013, the following applies:
a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:
i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;
ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;
iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;
iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;
v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;
vi) visually improve existing streetscapes through innovative design solutions; and
vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

Under Clause 3.1.1.2 Front Fences and Gates of Manly Development Control Plan 2013 (MDCP 2013), the following applies:
a) Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.
b) Boundary fences or walls must not be erected where they would conflict with the local character.
c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.
d) Gates must not encroach on public land when opening or closing.

Furthermore, under Clause 4.1.10 Fencing of MDCP 2013, freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.

The proposed front fence is approximately 1.4m to 1.9m, presenting a variation to the control. It is noted that the proposed fencing as detailed on the Front Fence Study (A13.1) shows the fencing to encroach outside the subject site boundaries. A condition has been recommended to ensure the proposed front fence is located entirely within the subject site lot boundaries.

In this instance, the objectives of the control have been met as outlined below and the proposed fencing and pedestrian gate is supportable, subject to conditions.

Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. The control relies upon the objectives specified within Clause 3.1 of the MDCP 2013.

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:
The proposed front fence will result in an improved front fence that will positively contribute to the street frontage. The articulation of the front fence is considered appropriate and will soften the visual appearance of the fence.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:
The front fence and pedestrian gate as viewed from the streetscape is complementary to the identified streetscape. Surrounding front fences are of similar height and appearance and therefore the proposed front fence will be consistent with existing fencing along Pittwater Road.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment
The proposal includes retention of existing landscaping in the front setback area. The soft landscaping located behind the front fence will further soften the appearance as viewed from the streetscape.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

A submission from No.227 Pittwater Road (site to the east) raised concerns surrounding overshadowing. As such, as detailed assessment has been undertaken to assess the proposal against the controls.

Under Clause 3.4.1.1 Overshadowing Adjoining Open Space of Manly Development Control Plan 2013 (MDCP 2013), in relation to sunlight to private open space of adjacent properties:
a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

Under Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties of MDCP 2013, in relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:
b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);
c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

In this instance, the proposal has demonstrated compliance with the controls, as outlined under the objectives below. Therefore, the proposal is supportable in this circumstance as adequate solar access to private open spaces and sunlight to windows to living rooms of adjacent properties has been provided.

Merit consideration:

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

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

Comment:
The proposal includes hourly shadow diagrams and hourly elevation shadow diagrams that demonstrate the access to light and sunshine is providing to the subject site and adjoining properties. As the lots are north-south orientated, the subject site and adjoining sites are susceptible to overshadowing, particularly based on the narrow site allotments. Therefore, it is acknowledge that it is challenging to provide access to light and sunshine for these particular sites.

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:
The accompanied shadow diagrams have demonstrated that private open spaces within the development site will obtain adequate sunlight. The private open spaces of adjoining properties at No.227 Pittwater Road and No.231 Pittwater Road have been assessed and it is noted by the provided hourly shadow diagrams that the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) have not eliminated more than one third of existing sunlight access. The calculations of the private open space for No.277 Pittwater Road indicate that 64.87% of existing sunlight to the private open space will be retained and for No.231 Pittwater Road a total of 78.8% of existing sunlight to private open space will be retained.

In regards to the windows to the living spaces/habitable rooms the applicant has provided hourly shadow diagrams to demonstrate the existing and proposed sunlight access. It is understood that No.227 has a primary living area located at the front of the subject site that contains north facing windows. Furthermore, it is understood that No.227 only has windows located on the western facade of the dwelling. Notwithstanding, the windows have been assessed and it is noted that from 9am-12pm the windows located along the western facade of No.277 Pittwater Road are shadowed as per the existing dwelling and provided existing shadow diagrams. From 1pm-2pm it is noted that the existing windows are largely shadowed, however as a result of the proposed development these windows will be entirely shadowed. At 3pm, the windows as per the existing situation will be shadowed as a result of the proposed development. Whilst, the proposal results in increased shadows from 1pm-2pm, it is noted that the living area located at the north of No.277 will not result in any changes to sunlight as a result of the proposed development.

It is noted that No.231 Pittwater Road is currently under construction, and will result in a two storey semi-detached dwelling. As the adjoining site at No.231 Pittwater Road will result in a first floor addition, it is considered that the adjoining site will receive greater solar access as a result of the first floor addition than the previous dwelling.

Therefore, it is considered that the proposal provides adequate sunlight to the adjoining dwelling houses to the living spaces, noting that the existing shadows are largely retained in this instance.

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 amended plans provided a reduced roof form, reduced building height, and reduced roof length over the timber deck to facilitate sunlight penetration into the development site and adjacent properties. Furthermore, the proposal presents a more than compliant rear setback to the ground floor dwelling and first floor dwelling to encourage solar penetration into properties to the south.

3.4.2 Privacy and Security

Description of non-compliance

A submission has raised concerns surrounding privacy impacts to the property to the west at No.231 Pittwater Road. Specifically concern is raised in relation to the green wall and rear deck privacy screen screen on the ground floor level. On the first floor level, concern is raised in in regards to windows (7,8,11 & 12) along the western facade and the first floor balcony.

Under Clause 3.4.2.1 Window Design and Orientation of Manly Development Control Plan 2013 (MDCP 2013), the following applies:
a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.
b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

Under Clause 3.4.2.2 Balconies and Terraces of MDCP 2013, the following applies:
a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

A detailed assessment against the objectives of the controls has been undertaken. In this circumstance, the proposal meets the objectives of the control, subject to recommended conditions.

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 proposed ground floor has incorporated privacy measures including a privacy screen along a portion of the rear deck, and a 2.4m high green wall opposite the courtyard area. It is important to note that there is an existing side boundary fence separating the subject site and No.231 Pittwater Road. Therefore, the privacy measures that have been included along the ground floor are suitable in this instance and will ensure privacy impacts are mitigated.

As detailed on the amended plans, the proposed first floor include four (4) privacy screens along the length of the balcony, therefore, it is considered that the privacy screens will provide suitable privacy for the residents and adjoining neighbours. Furthermore, the use of the balcony is considered to be infrequent, due to its location next to the bathroom, wc, and study. Therefore, it is considered that the balcony would not give rise to unreasonable acoustic impacts as the width of the balcony is 0.9m that would not allow for large groups.

To ensure there are no unreasonable privacy impacts from the western facade windows on the first floor (07,08,11,12,13) a condition has been recommended for windows (07, 08, 11, 12, 13) are to be either fixed obscure glazing to a minimum height of 1.5 metres (when measured from the first floor finished level), or the window sill is to be increased to a minimum height of 1.5 metres (when measured from from the first floor finished level). Therefore, as amended via recommended condition, the proposal will provide suitable privacy for the residents and adjoining residents.

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 amended via recommended condition, the proposal will provide appropriate privacy measures without compromising access to light and air. The proposal will balance outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:
The proposed development will allow for the casual surveillance of the street.

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

Description of non-compliance

The required wall height is 6.5m based on no gradient.

The western facade and eastern facade propose maximum wall heights of 6.6m, presenting a variation of 1.54% (0.1m) (see Figure 1 and Figure 2).

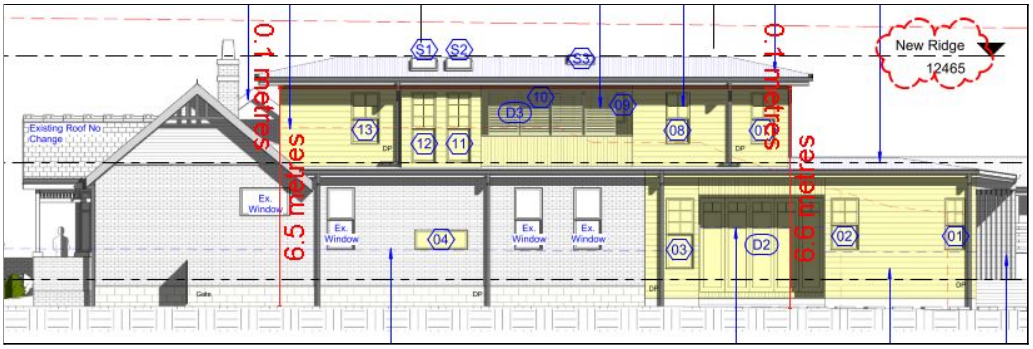


Figure 1. West Elevation (Wall Height numerical non-compliance highlighted in red)

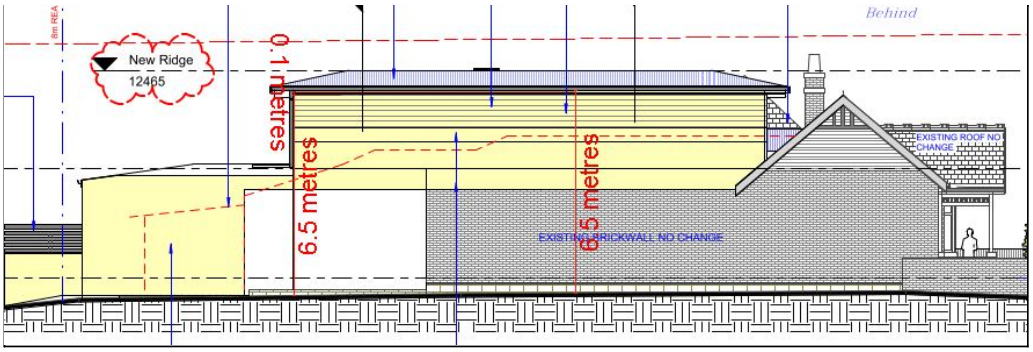


Figure 2. East Elevation (Wall Height numerical non-compliance highlighted in red)

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:
The proposal provides a compliant maximum height of building under Manly Local Environmental Plan 2013. Furthermore, the proposal includes a low pitch roof to minimise unreasonable building height. The proposal ensure consistency with the future streetscape character in the Manly Locality.

(b) to control the bulk and scale of buildings,

Comment:
The proposal has mitigated bulk and scale of the building by providing a compliant maximum height of buildings. The proposal includes articulation along the western facade to mitigate perceived bulk and scale. Furthermore, the use of windows, and various cololurs and materials will ensure appropriate visual relief that reduces any unreasonable bulk and scale.

(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:
The proposed development will not result in any unreasonable view impacts for nearby residential developments to and from public spaces.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:
As outlined under Clause 3.4.1 under Manly Development Control Plan 2013 contained within this report, the proposal is compliant with the solar access requirements for private pen spaces and habitable rooms of adjacent dwellings.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:
The proposal is not located within a recreation or environmental protection zone and therefore this objective is not relevant in this instance.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly Local Environmental Plan 2013. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary.

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

Description of non-compliance

Under Clause 4.1.4.2 of Manly Development Control Plan 2013, the requirements for setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The wall height of the eastern facade and western facade is 6.6m, requiring a side setback of 2.2m. The proposed side setback for the eastern facade is a continuation of a nil setback for the ground floor and 0.25m to 0.33m to the first floor. The proposed side setback for the western facade is 1.0m to 2.0m for the ground floor, and 1.4m to 2.4m for the first floor.

Under Clause 4.1.4.2 of MDCP 2013, the requirements for all new windows that face the side boundary are to be setback at least 3m from side boundaries. The proposal presents new windows that are setback 1.0m from the western facade ground floor and 1.4m to the western facade first floor. There are no windows proposed or existing windows along the eastern side facade.

Under Clause 4.1.4.4 of MDCP 2013, the distance between any part of a building and the rear boundary must not be less than 8m. The ground floor deck is located 6.1m from the rear boundary line, presenting a 23.75% (1.9m) to the 8m requirement. The proposed ground floor and first floor demonstrate compliance with a setback of 9.8m and 15.5m respectively.

An assessment against the objectives of the control has been undertaken and in this instance the proposal meets the objectives and is supportable.

Merit consideration:

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

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

Comment:
The proposal maintains the existing ground floor frontage and the proposed first floor addition is located 9.6m from the front boundary line. Therefore the proposal maintains and enhances the existing

streetscape. The side setback variations, window setback variations, and rear setback variation will not unduly detract from the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:
The proposal will ensure privacy to the adjoining properties, noting that the eastern facade does not contain any windows. The windows along the western facade particularly (07, 08, 11, 12, 13) are to be either fixed obscure glazing to a minimum height of 1.5 metres (when measured from the first floor finished level), or the window sill is to be increased to a minimum height of 1.5 metres (when measured from from the first floor finished level). The rear deck includes a privacy screen for a portion of the western edge to provide privacy to adjoining neighbours. Further detail has been undertaken under Clause 3.4.2 of Manly Development Control Plan 2013. Therefore, as amended via condition, the proposal will ensure privacy to adjoining residents. The proposal provides equitable access to light, sunshine and air movement as outlined under Clause 3.4.1 of Manly Development Control Plan 2013. The proposal will not result in any adverse view sharing or view impacts to and from public and private spaces. The proposal provides sufficient space between buildings to create a rhythm and pattern of spaces that is apparent in the Manly Locality. Lastly, there are no changes to traffic conditions as a result of the proposal.

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

Comment:
Flexibility is afforded in this circumstance as the side setback, window setback, and rear setback variations will not result in unreasonable amenity impacts to adjoining sites. The subject site is narrow in nature, and the retention of the existing side setback variation along the eastern facade is acceptable in this instance. The side setback to the western facade is appropriate in this instance, noting the compliance with the control is not achievable in this circumstance.

Objective 4) To enhance and maintain natural features by:

- ***accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;***
- ***ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and***
- ***ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfie****d.*

Comment:
The proposed development results in a more than compliant landscaped area that includes plantings, deep soil zones, and vegetation. The subject site does not detract from the context of the site and the

site does not adjoin open space lands, national parks, or urban bushland.

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

Comment:
The subject site is not located in bush fire prone land and therefore this objective is not relevant.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area 3. As such, at least 55% (137.83m^2) of the site is to be open space and at least 35% (29.26m^2) of the open space to be landscaped area. The proposed development results in a numerically non-compliant total open space of 33.35% (83.6m^2), presenting a variation to this control by 39.35% (54.23m^2).

The proposal achieves compliance with the landscaped area with a total of 61.24% (51.2m^2) provided.

The site requires 1 native tree that has been conditioned by Council's Landscape Officer accordingly.

In this instance, the variation to the total open space is considered to be supportable as the objectives of the control have been met as outlined below.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:
The proposal does not result the removal of any important landscape features, or vegetation including any native flora and fauna.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:
The proposal maximises soft landscaped areas providing a more than compliant area of soft landscaped areas. Council's Landscape Officer has included a condition for the planting of one (1) native tree that will encourage in tree planting. The proposal retains existing landscaping in the front yard and rear yard areas.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:
The proposal does not result in any unreasonable impacts to amenity including sunlight, privacy, and views. Access to sunlight and privacy have been addressed in detailed within this report under Clause 3.4.1 and Clause 3.4.2 of Manly Development Control Plan 2013. The proposal is consistent with the surrounding area and streetscape character.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:
The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:
The proposed development is not likely to lead to the significant spread of weeds, or degradation of private open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:
The proposed development is not likely to affect any existing wildlife habitat and potential for wildlife corridors.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The subject site does not currently provide any parking spaces and no new parking spaces are proposed. The proposal does not amend the frontage of the ground floor and the existing front setback does not allow for the required dimensions for a car space on the subject site. Therefore, whilst the proposal is numerically inconsistent with Schedule 3 of MDCP 2013 that requires 2 parking spaces, the provision of car parking within the subject site is not achievable within the existing site context.

4.1.10 Fencing

This clause relies upon the objectives of Clause 3.1 under Manly Development Control Plan 2013. An assessment of the proposal against the objectives under Clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of Clause 3.1.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $5,754 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $575,364.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

This proposal, for Alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to Clause 4.4 Floor space ratio development standard under Manly Local Environmental Plan 2013.

The development application was notified in accordance with Northern Beaches Community Participation Plan and two (2) submissions were received.

The critical assessment issues surrounding the variation request for the floor space ratio development standard under Manly Local Environmental Plan 2013 has been assessed. The Clause 4.6 variation request has demonstrated compliance with the standards are unreasonable and unnecessary and sufficient planning grounds have justified the contravention.

The variation to the streetscape (residential areas), sunlight access and overshadowing, privacy and security, wall height, window setback, side setbacks, rear setbacks, and total open space variations under Manly Development Control Plan 2013 have been assessed against the objectives of the controls. In this regard, the objectives of the controls have been satisfactorily met and the variations are supportable, subject to recommended conditions.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0538 for Alterations and additions to a dwelling house on land at Lot 1 DP 957654, 229 Pittwater Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

   a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Site Plan - A02	27 June 2022	Novam Design Studio
Existing Ground Floor - A03	27 June 2022	Novam Design Studio
Existing Roof Plan - A04	27 June 2022	Novam Design Studio
Existing North & South Elevations - A05	27 June 2022	Novam Design Studio
Existing East & West Elevations - A06	27 June 2022	Novam Design Studio
Existing Section A & Section B - A07	27 June 2022	Novam Design Studio
Existing Section C - A08	27 June 2022	Novam Design Studio
Proposed Ground Floor - A10	27 June 2022	Novam Design Studio
Proposed Level 1 - A11	27 June 2022	Novam Design Studio
Proposed Roof Plan - A12	27 June 2022	Novam Design Studio
Proposed North Elevation - A13	27 June 2022	Novam Design Studio
Front Fence Study - A13.1	27 June 2022	Novam Design Studio

Proposed South Elevation - A14	27 June 2022	Novam Design Studio
Proposed East Elevation - A15	27 June 2022	Novam Design Studio
Proposed West Elevation - A16	27 June 2022	Novam Design Studio
Proposed Section A - A17	27 June 2022	Novam Design Studio
Proposed Section B & Section C - A18	27 June 2022	Novam Design Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (No.A450355_02)	28 June 2022	Novam Design Studio
Geotechnical Report	19 April 2022	White Geotechnical Group
Heritage Report - Amended	2 June 2022	Watermark Planning

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	n.d.	Novam Design Studio

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	17 June 2022

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

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

3. **Prescribed Conditions**
(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

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

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

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

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is

dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $5,753.64 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 $575,363.75.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

- The front fence is to be located entirely within the site boundary lines.
- Windows (07, 08, 11, 12, 13) are to be either fixed obscure glazing to a minimum height of 1.5 metres (when measured from the first floor finished level), or the window sill is to be increased to a minimum height of 1.5 metres (when measured from from the first floor finished level).

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

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

9. **External colour scheme**
The proposal should adopt a more traditional colour scheme, more appropriate to the architectural character of the house and the Heritage Conservation Area. Revised details are to be submitted to Council's Heritage Advisor for approval prior to the issue of a Construction Certificate.

Reason: To ensure the addition is compatible with the architectural style of the house and the Heritage Conservation Area.

10. **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.

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

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

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

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

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

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

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

13. **Encroachment of Works**
All works to be completed under this consent are to occur within the property boundaries and are not to encroach into the neighbouring allotments.

Reason: To ensure that all works are located within the property boundaries.

14. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Protection of Existing Street Trees**
a) All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

b) As a minimum, the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

c) All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Tree protection.

16. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not indicated for removal on the approved plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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

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

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

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

18. **Demolition Works - Asbestos**

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

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

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

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

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

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. **Acid Soil Management**
Any new information revealed during 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 work being carried out.
Reason: Protection of the Environment.

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

21. **Required Tree Planting**
a) Trees shall be planted in accordance with the following:
i) 1 tree capable of attaining a minimum height of 6m at maturity; located within the rear yard; minimum pot size 25 litres.

b) Native tree planting species shall be selected from Council's list:
www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Reason: To maintain environmental amenity.

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

If any on site stormwater detention system is installed the Applicant shall lodge the Legal

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

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

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

Reason: To ensure satisfactory management of stormwater.

23. **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.

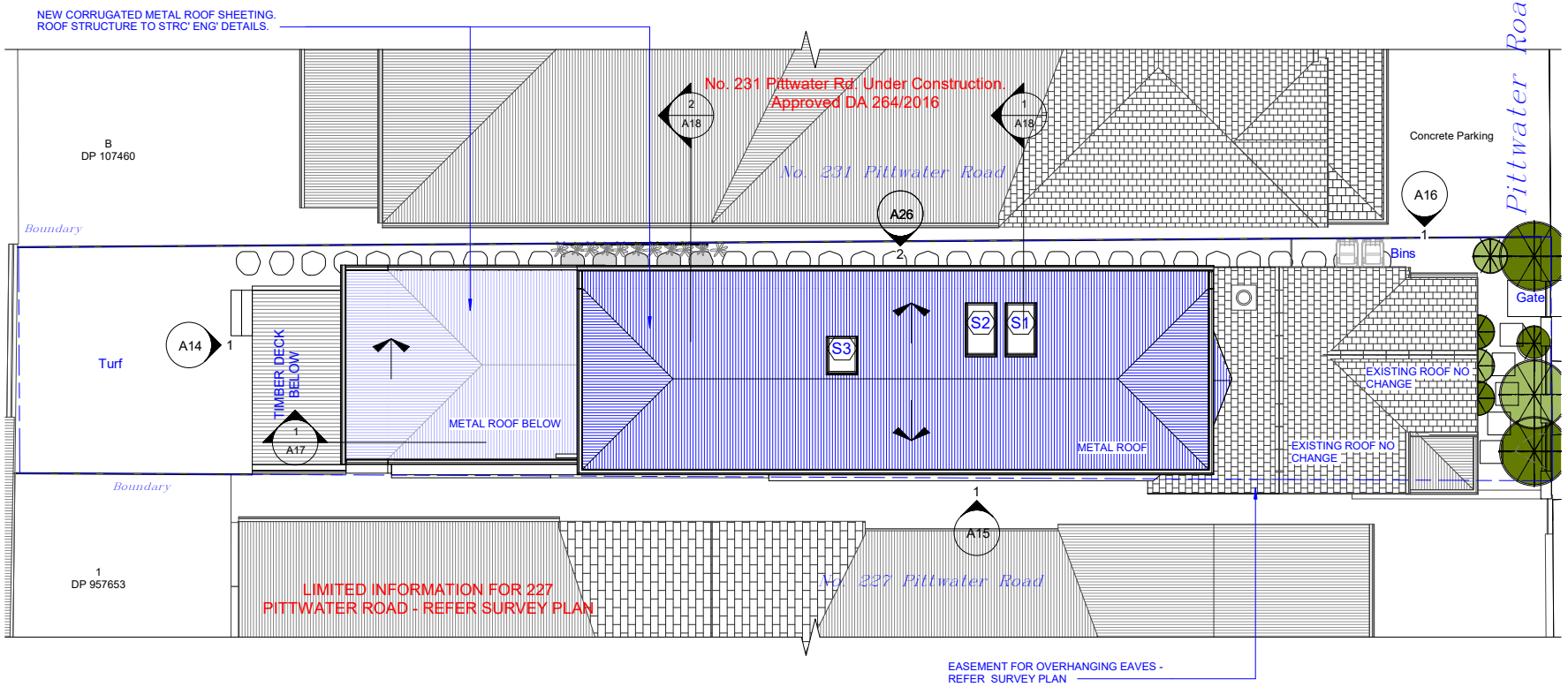
Reason: Proper identification of buildings.

24. **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.

NOT FOR CONSTRUCTION

General Notes:
- All construction to be carried out in accordance with the Building Code of Australia & all relevant Australian Standard.
- Contractor to confirm all required setbacks prior to construction
- Contractor to confirm all dimensions & levels on site prior to commencement of any work including boundary line & pegs.
- Contractor to confirm presence of any existing services before commencing works.
- Dimensions take preference over scale. Do not scale off drawing.
- Work place health and safety matters and condition of the site are in the first instance the responsibility of the principal contractor.
- The builder shall be responsible for maintaining stability of the structure until completion of construction and shall ensure that no part of the structure is over stressed by construction loading.



Wall Legend
- Denote Existing Wall
- Denote Demolition Work
- Denote New Wall
- Denote New Works

1 Site Plan
1 : 100

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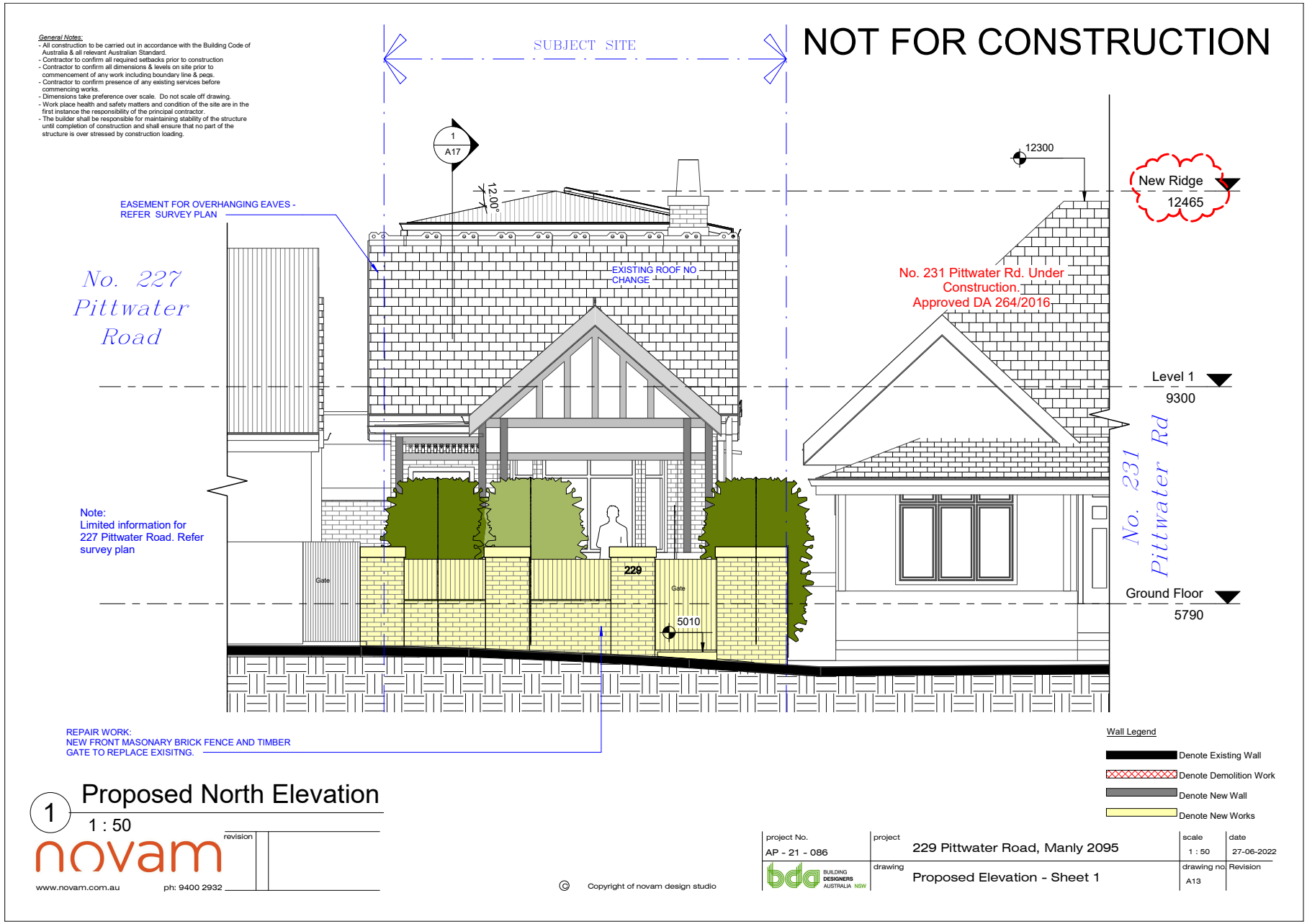
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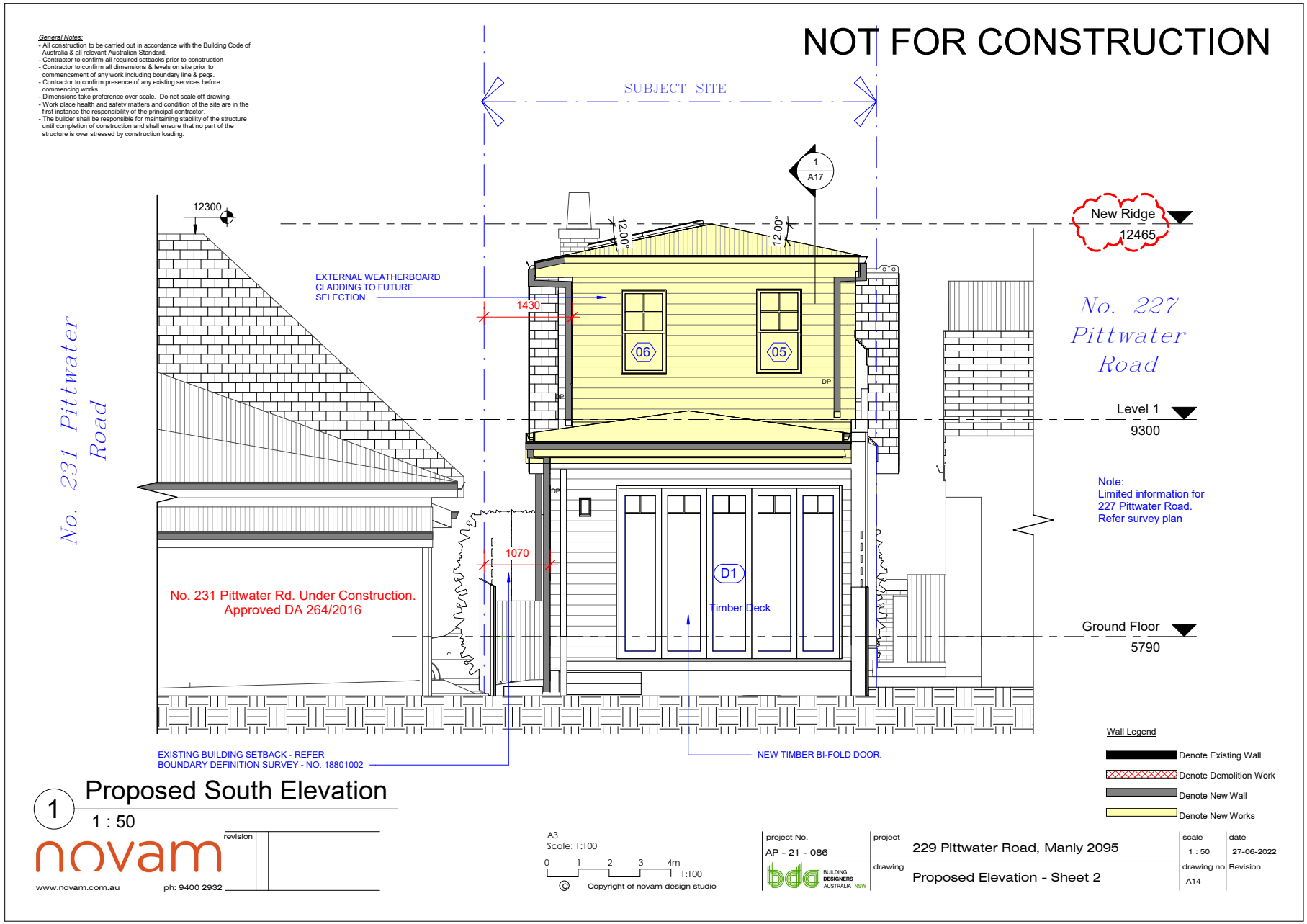
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project No.	project	scale	date
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	drawing: Site Plan	drawing no: A02	Revision

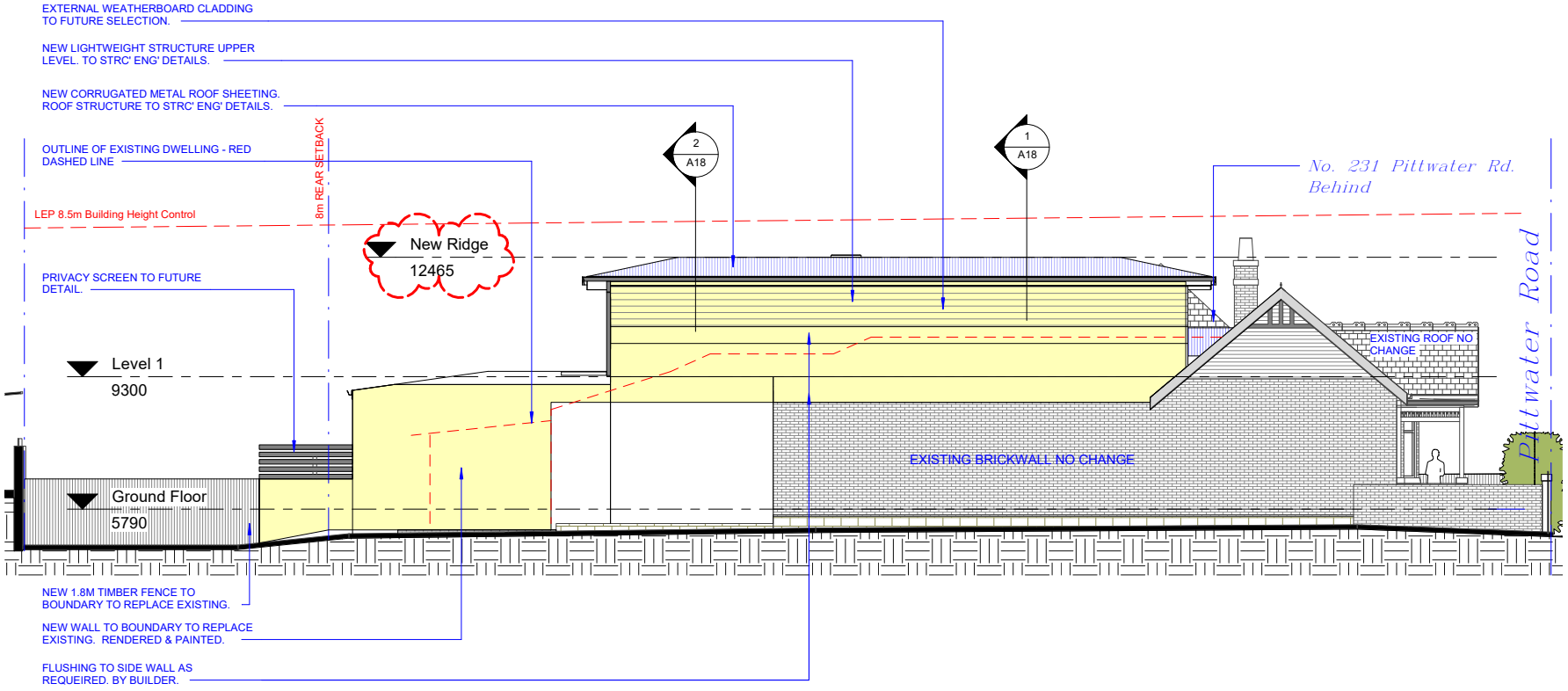
bda BUILDING DESIGNERS AUSTRALIA NSW


NOT FOR CONSTRUCTION
SUBJECT SITE
General Notes:
- All construction to be carried out in accordance with the Building Code of Australia & all relevant Australian Standard.
- Contractor to confirm all required setbacks prior to construction
- Contractor to confirm all dimensions & levels on site prior to commencement of any work including boundary line & pegs.
- Contractor to confirm presence of any existing services before commencing works.
- Dimensions take preference over scale. Do not scale off drawing.
- Work place health and safety matters and condition of the site are in the first instance the responsibility of the principal contractor.
- The builder shall be responsible for maintaining stability of the structure until completion of construction and shall ensure that no part of the structure is over stressed by construction loading.
1
A17
12.00°
12300
New Ridge
12465
EASEMENT FOR OVERHANGING EAVES - REFER SURVEY PLAN
EXISTING ROOF NO CHANGE
No. 227 Pittwater Road
No. 231 Pittwater Rd. Under Construction. Approved DA 264/2016
Level 1
9300
No. 231 Pittwater Rd
Ground Floor
5790
Note:
Limited information for 227 Pittwater Road. Refer survey plan
Gate
229
Gate
5010
REPAIR WORK:
NEW FRONT MASONARY BRICK FENCE AND TIMBER GATE TO REPLACE EXISITNG.
Wall Legend
Denote Existing Wall
Denote Demolition Work
Denote New Wall
Denote New Works
1
Proposed North Elevation
1 : 50
novam
www.novam.com.au
ph: 9400 2932
revision
© Copyright of novam design studio
project No.
AP - 21 - 086
project
229 Pittwater Road, Manly 2095
drawing
Proposed Elevation - Sheet 1
scale
1 : 50
date
27-06-2022
drawing no
A13
Revision


NOT FOR CONSTRUCTION
General Notes:
- All construction to be carried out in accordance with the Building Code of Australia & all relevant Australian Standard.
- Contractor to confirm all required setbacks prior to construction
- Contractor to confirm all dimensions & levels on site prior to commencement of any work including boundary line & pegs.
- Contractor to confirm presence of any existing services before commencing works.
- Dimensions take preference over scale. Do not scale off drawing.
- Work place health and safety matters and condition of the site are in the first instance the responsibility of the principal contractor.
- The builder shall be responsible for maintaining stability of the structure until completion of construction and shall ensure that no part of the structure is over stressed by construction loading.
SUBJECT SITE
1
A17
12300
12.00°
12.00°
New Ridge
12465
EXTERNAL WEATHERBOARD CLADDING TO FUTURE SELECTION.
1430
06
05
DP
DP
DP
No. 231 Pittwater Road
No. 227 Pittwater Road
Level 1
9300
Note:
Limited information for 227 Pittwater Road.
Refer survey plan
1070
D1
Timber Deck
No. 231 Pittwater Rd. Under Construction.
Approved DA 264/2016
Ground Floor
5790
EXISTING BUILDING SETBACK - REFER BOUNDARY DEFINITION SURVEY - NO. 18801002
NEW TIMBER BI-FOLD DOOR.
Wall Legend
Denote Existing Wall
Denote Demolition Work
Denote New Wall
Denote New Works
1 Proposed South Elevation
1 : 50
novam
www.novam.com.au
ph: 9400 2932
revision
A3
Scale: 1:100
0 1 2 3 4m
1:100
© Copyright of novam design studio
project No.
AP - 21 - 086
project
229 Pittwater Road, Manly 2095
scale
1 : 50
date
27-06-2022
drawing
Proposed Elevation - Sheet 2
drawing no
A14
Revision

NOT FOR CONSTRUCTION

General Notes:
- All construction to be carried out in accordance with the Building Code of Australia & all relevant Australian Standard.
- Contractor to confirm all required setbacks prior to construction
- Contractor to confirm all dimensions & levels on site prior to commencement of any work including boundary line & pegs.
- Contractor to confirm presence of any existing services before commencing works.
- Dimensions take preference over scale. Do not scale off drawing.
- Work place health and safety matters and condition of the site are in the first instance the responsibility of the principal contractor.
- The builder shall be responsible for maintaining stability of the structure until completion of construction and shall ensure that no part of the structure is over stressed by construction loading.



Wall Legend
- Denote Existing Wall
- Denote Demolition Work
- Denote New Wall
- Denote New Works

1 Proposed East Elevation
1 : 100

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revision

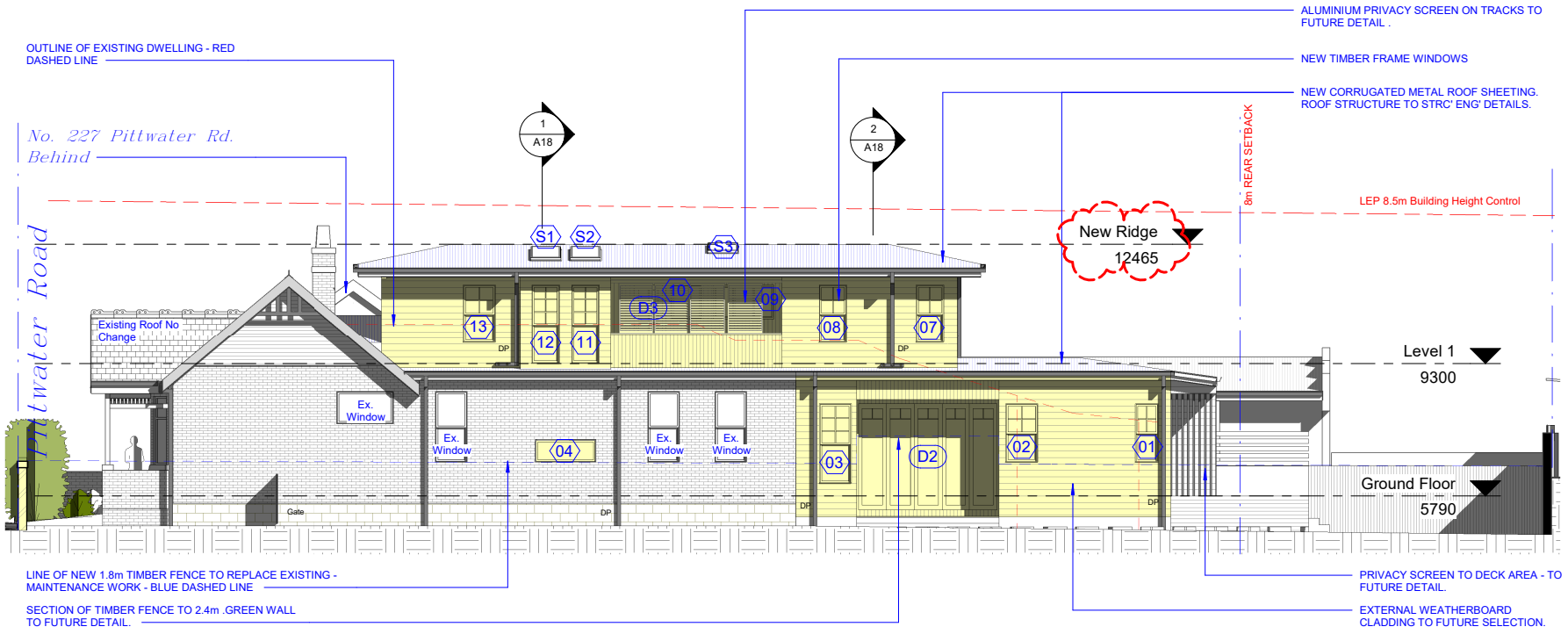
A3
Scale: 1:100
0 1 2 3 4m
1:100
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project No.	project	scale	date
AP - 21 - 086	229 Pittwater Road, Manly 2095	1 : 100	27-06-2022
	drawing: Proposed Elevation - Sheet 3	drawing no: A15	Revision

BUILDING DESIGNERS AUSTRALIA NSW

NOT FOR CONSTRUCTION

General Notes:
- All construction to be carried out in accordance with the Building Code of Australia & all relevant Australian Standard.
- Contractor to confirm all required setbacks prior to construction
- Contractor to confirm all dimensions & levels on site prior to commencement of any work including boundary line & pegs.
- Contractor to confirm presence of any existing services before commencing works.
- Dimensions take preference over scale. Do not scale off drawing.
- Work place health and safety matters and condition of the site are in the first instance the responsibility of the principal contractor.
- The builder shall be responsible for maintaining stability of the structure until completion of construction and shall ensure that no part of the structure is over stressed by construction loading.



Wall Legend
- Denote Existing Wall
- Denote Demolition Work
- Denote New Wall
- Denote New Works

1 Proposed West Elevation
1 : 100

novam
www.novam.com.au ph: 9400 2932

revision

A3
Scale: 1:100
0 1 2 3 4m
1:100

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project No.	project	scale	date
AP - 21 - 086	229 Pittwater Road, Manly 2095	1 : 100	27-06-2022
	drawing: Proposed Elevation - Sheet 4	drawing no: A16	Revision

BUILDING DESIGNERS AUSTRALIA NSW

Appendix One - Clause 4.6 *Exceptions to Development Standards – Floor Space Ratio*

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

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

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

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

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

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R1 – General Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

1.4 What is the development standard being varied?

Cl 4.4 – Floor Space Ratio

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.6:1, this equates to a maximum floor area of 150.36m^2 for the site area of 250.6m^2.

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 170m^2 or FSR of 0.678:1.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 13.06% or 19.64m^2.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).*

*5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone

objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

Comment

The proposed development is for alterations and additions to the existing dwelling including ground floor alterations and additions and a new first floor, to create a four bedroom home on the site. The dwelling easily complies with the building height for the site and the bulk and scale is consistent with surrounding properties.

The proposed variation is 13.06% or 19.64m^2 and is considered minor and reasonable. It is considered this objective is met, despite the numerical variation.

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

Comment

The proposed built form and massing will be of a consistent scale to surrounding properties. The development proposes a compliant maximum building height and will not obscure any important landscape or townscape features and will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The proposed development is visually appropriate for the locality. The ground floor dwelling frontage will be retained, preserving the streetscape contribution of the dwelling to the Pittwater Road Conservation area. The new first floor is not easily visible, being well set back from the front of the site, which retains the traditional and lesser scale streetscape appearance than other properties in the locality.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

Not relevant as the subject site is no located in a business zone.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

4. ***The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

5. ***The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 1 and 2 storey detached residential dwellings, solid front fences and garages, with a number of commercial landuses further afield.

- The dwelling proposes a compliant building height and has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.

- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:

    - 2021/0932 – 1 Bower Lane Manly, FSR Variation of 7.5%
    - 2021/1222 – 12 Bareena Drive Balgowlah Heights, FSR Variation of 12%
    - 2021/1558 – 70 Bower Street Manly, FSR Variation of 8%
    - 2020/1477 – 43 Castle Circuit Seaforth, FSR variation of 20%
    - 2020/1487 – 89 Cutler Road Clontarf, FSR Variation of 48.8%
    - 2020/1748 – 10 Kangaroo Street Manly, FSR Variation of 9.1%
    - 2021/0617 – 37 Radio Avenue Balgowlah Heights, FSR Variation of 11.4%

- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for the provision of a modern floor plan, with open plan living areas and additional bedrooms on the first floor,
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality and considerate of the heritage conservation area,
- Given the site context, the proposed variation is minor at reasonable at 13.06% or 19.64m^2 and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any native trees,
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.

- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in a dedicated study. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A).

An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

- *To provide for the housing needs of the community.*

Consistent. The proposed works will allow the current and future housing needs of the residents to be met in their current local community.

- *To provide for a variety of housing types and densities.*

Consistent. The proposal will retain the existing detached dwelling house.

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

Not relevant. No change of use is proposed.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

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

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

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

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

Strict numerical compliance with the 0.6:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development to reconfigure the ground floor plan and add a first-floor addition on land zoned R1 – General Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to Cl 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The works proposed will allow the housing needs of the residents to be met, including an opportunity to work from home, in their current community,
- The objectives of the R1 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.5	**DA2022/0457 - 15 MONASH CRESCENT CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND A SEAWALL**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2022/465164**
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 grant a **Deferred Commencement** Development Consent to DA2022/0457 for alterations and additions to a dwelling house and a seawall on land at Lot 54 DP 9745, 15 Monash Crescent CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0457

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 54 DP 9745, 15 Monash Crescent CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house and a seawall
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:	Milenka Kolenda
Applicant:	Milenka Kolenda

Application Lodged:	01/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/04/2022 to 25/04/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 63.22%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	$ 330,000.00

EXECUTIVE SUMMARY

This application is reported to the Northern Beaches Development Determination Panel (DDP) as Development Application DA2022/0457 seeks consent for alterations and additions to a dwelling house and a seawall. The alterations to the dwelling relate to modifications to the existing garage and entryway, including minor changes to the rear terrace area.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (237.72m^2 of gross floor area). The extent of proposed works provides for a FSR of 0.652:1 (388m^2), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Despite the significant variation, the proposed development only provides an additional 6m^2 of gross floor area on the site when it is added to what was approved under Development Consent No. 2020/187181 (LEC consent), which is a valid consent. The existing garage, which was retained under this LEC consent, has a storage area at the rear with a gross floor area of approximately 6m^2. It is noted that a Construction Certificate has been issued for this LEC consent but a Notice of Commencement has not been submitted to Council and the works have not physically commenced. The proposed modifications to the existing garage increase the size of this storage area by approximately 6m^2.

The applicant has demonstrated through a written Clause 4.6 variation request that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 of Manly LEP 2013. The additional gross floor area proposed does not result in any unreasonable building bulk or adverse amenity impacts, specifically in regards to visual outlook, view loss, solar access and privacy.

The application was notified for 14 days and a total of four (4) submissions were received in response. The submissions collectively raised concerns which relates to the bulk and scale of the garage, the width of the vehicle crossing, the lack of landscaping quantum on the site and view loss impacts. The issues have been considered and do not warrant refusal of the application.

The application was amended to reduce the height of the modified garage to ensure the top of the roof parapet does not exceed the ridge line of the gable roof over the existing garage. The amendments to the application have resulted in reasonable view sharing and reduced the height and bulk of the proposed garage.

The modifications to the garage represent a modernised built form and the appearance and height of the seawall is compatible with other seawalls within the visual catchment of the site.

As the proposed FSR stipulated within the applicant's Clause 4.6 request is predicated on the works approved under Development Consent No. 2020/187181 being physically commenced, the Clause 4.6 request would be invalid if such works did not commence as the quantum of gross floor area would be incorrect. To ensure the validity of the applicant's Clause 4.6 request, a deferred commencement condition is recommended with this consent to prevent the consent from operating until the Council is provided with detailed written and photographic evidence that the works pursuant to Development Consent No. 2020/187181 have been physically commenced as prescribed by Clause 96 of the Environmental Planning and Assessment Regulation 2021.

Accordingly, it is recommended that the application be approved with a deferred commencement condition by the DDP, subject to the recommended conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and addition to an existing dwelling house to provide for an integrated double garage with storage. In addition, the application seeks to demolish an existing seawall and construct a new seawall. New beach access stairs and landscaping within the rear yard is also proposed.

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 - 5.21 Flood planning
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
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 - 6.10 Limited development on foreshore area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 54 DP 9745 , 15 Monash Crescent CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the south-western side of Monash Crescent, Clontarf. The site is irregular in shape with a frontage of 11.74 metres and respective depths of 40.015 metres and 39.39 metres along the north-western and south-eastern side boundaries. The site has a surveyed area of 594.3m^2. The site is located within the C3 Environmental Management zone pursuant to Manly LEP 2013 and accommodates a two storey dwelling house with a rooftop

	terrace, including a detached garage adjacent to the front boundary. The site is generally flat and adjoins a reserve at Middle Harbour to the rear and a public pathway (RE1 zone) to the south-west. The site is devoid of any significant vegetation and is flood prone. **Description of Surrounding Development** The surrounding built environment along the foreshore area is characterised by detached low density residential development (i.e. dwelling houses), typically two 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 the following relevant history:

- **Development Application No. 4/98** for a shade structure over an existing roof deck refused by Council on 3 March 1998.

- **Development Application DA2019/1265** for alterations and additions to a dwelling house and garage refused by the Northern Beaches Local Planning Panel on 1 April 2020. This refusal was the subject of a Class 1 appeal within the NSW Land and Environment Court (refer to *Kolenda v Northern Beaches Council [2021] NSWLEC 1052*). During the conciliation phase of the appeal, the applicant submitted amended plans to resolve the contentions and an agreement was made pursuant to Section 34 of the L&EC Act 1979. It is noted that a Construction Certificate has been issued for this consent.

APPLICATION HISTORY

A site inspection was carried out at the subject site on 27 April 2022. In addition, two view impact assessments were carried out at 20 and 22 Monash Crescent (properties located on the north-eastern side of the street) on 6 June 2022 in response to the submissions made.

Following the preliminary assessment of the application, which included the aforementioned site inspections, Council wrote to the applicant raising concern with the height of the proposed garage, noting that the top of the parapet was 0.45 metres higher than the ridge line of the existing garage. The increased height would impact upon existing views corridors towards the Sydney Harbour Catchment from 20 and 22 Monash Crescent and the impact was not considered to be reasonable.

The applicant subsequently submitted amended plans to decrease the height of the proposed garage to ensure that the top of the parapet corresponds with the ridge line of the existing garage, which is sited at RL6.41 AHD. This has resolved the view sharing issue and reduced the bulk and scale of the garage to an acceptable level.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans to reduce the height of the garage. This information was subsequently received and assessed accordingly. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

COASTAL MANAGEMENT ACT 2016

Section 27 of the Coastal Management Act 2016 states:

27 Granting of development consent relating to coastal protection works

(1) Development consent must not be granted under the Environmental Planning and Assessment Act 1979 to development for the purpose of coastal protection works, unless the consent authority is satisfied that—

(a) the works will not, over the life of the works—

(i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or

(ii) pose or be likely to pose a threat to public safety, and

(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works—

(i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,

(ii) the maintenance of the works.

(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following—

(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following—

(i) the owner or owners from time to time of the land protected by the works,

(ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,

Note—

Section 80A (6) of the Environmental Planning and Assessment Act 1979 provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the Local Government Act 1993).

(3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.

Comment:

Council's Coast and Catchments Officer has reviewed the application and provided the following comments:

"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.

Further, the applicant has proposed replacement of the existing seawall with a new seawall at the same location. Hence the proposed development has been assessed also against the requirements of the Section 27 of the Coastal Management Act 2016. As required, the impact & risk associated with the construction of the seawall has been assessed in an Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022. Based on the impact and risk identified, Council endorses mitigation works applies maintenance condition as per Section 27(b)(ii) in approving this DA".

Overall, it is considered that the recommended conditions are sufficient to satisfy Section 27 of the Coastal Management Act 2016 and can be viewed in full at the end of this report.

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 11/04/2022 to 25/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mrs Josi Carroll	17 Monash Crescent CLONTARF NSW 2093
Mr Anthony Paul Brooks	13 Monash Crescent CLONTARF NSW 2093
Mr Daniel Edward Brooks	11 A Monash Crescent CLONTARF NSW 2093
Mr Mark Edward Dowling Ms Susan Georgina Dowling	22 Monash Crescent CLONTARF NSW 2093

A total of four (4) submissions were received following the public exhibition period. All 4 submissions object to the proposed development. The following issues were raised in the submissions:

- **View Loss**

  The submissions raised concerns that the proposed development will result in unreasonable view loss from nearby private properties.

  Comment:

  This matter is discussed in detail further in the section of this report relating to Clause 3.4.3 of the Manly DCP 2013. In summary, amended plans were submitted to reduce the height of the garage parapet to ensure the development does not exceed the height of the existing garage roofline. 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*.

- **FSR non-compliance**

  The submissions raised concerns that the proposed FSR is non-compliant with Clause 4.4 of Manly LEP 2013.

  Comment:

  It is acknowledged that the proposed FSR is 0.652:1 (388m^2), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013. It is noted that the proposal only generates an additional 6m^2 of gross floor area on the site when compared to the existing on site conditions.

The additional gross floor area is located within the storage at the rear of the garage. The applicant has submitted a written request pursuant to Clause 4.6 of Manly LEP 2013 to justify the variation. The applicant's request is considered to be well-founded and has adequately demonstrated that compliance with Clause 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 variation. A detailed assessment on this matter has been provided later within this report.

- **Width of Vehicle Crossing**

The submissions raised concerns that the width of the vehicle crossing is excessive.

Comment:

The width of the vehicle crossing is generally consistent with the existing vehicle crossing and Council's Development Engineers do not object to the width of the proposed vehicle crossing.

- **Width of Garage and Entryway**

The submissions raised concerns that the width of the modified garage is excessive.

Comment:

The proposed development retains the side walls of the existing garage and the width of the existing garage is unchanged. The proposed alterations and additions to the garage introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk. It is noted that the top of the parapet correlates with the ridge line of the existing garage roofline. In this regard, the modifications to the garage is considered to be acceptable.

- **Landscaped Area non-compliance**

The submissions raised concerns that the proposed development does not comply with the Manly DCP 2013 landscaped area requirement.

Comment:

It is noted that the proposal does not comply with the landscaped area provision. However, the development increases the existing landscaped area from $95m^2$ to $97m^2$. Therefore, the proposal results in an improved landscaping outcome.

- **Overshadowing**

The submissions raised concerns that the proposed garage will result in overshadowing of adjoining land.

Comment:

The shading created by the modified garage will be confined to the subject site and adjacent public reserve access way. Neighbouring properties will retain the existing levels of solar access.

- **Building Height non-compliance**

The submissions raised concerns that the proposed development does not comply with the 8.5 metre building height development standard.

Comment:

The maximum building height of the proposed development is 4.01 metres, which complies with Clause 4.3 of Manly LEP 2013.

- **Encroachment into Road Reserve**

The submissions raised concerns that the proposed development encroaches into the road reserve.

Comment:

The proposed garage is located wholly within the property boundaries and does not encroach into the road reserve.

Conclusion

The concerns raised within the submissions have been addressed above. It is considered that the concerns do not warrant refusal of the application or further amendments to the proposal.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	***Supported - no conditions recommended*** Grout injection will be used to construct (subsurface) piles. We expect that any excavations (via drill auger during grout injection process) will uncover only minor amounts sand and silty sand, no acid sulfate soils and not lower the watertable. The construction of a seawall in this way is therefore low risk and does not require an Acid Sulfate Soils Management Plan in accordance with the *Acid Sulfate Soils Manual 1998* recommendations for Class 5 soils.
NECC (Bushland and Biodiversity)	***Supported - conditions recommended*** The proposed development has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). As the proposal will not result in impact to native vegetation or wildlife or their habitats, the Biodiversity referrals section raises no objections.
NECC (Coast and Catchments)	***Supported - conditions recommended*** The application has been assessed in consideration of the *Coastal Management Act 2016*, 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.

Internal Referral Body	Comments
	Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* Further, the applicant has proposed replacement of the existing seawall with a new seawall at the same location. Hence the proposed development has been assessed also against the requirements of the Section 27 of the *Coastal Management Act 2016*. As required, the impact & risk associated with the construction of the seawall has been assessed in an Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022. Based on the impact and risk identified, Council endorses mitigation works applies maintenance condition as per Section 27(b)(ii) in approving this DA ***State Environmental Planning Policy (Resilience and Hazards) 2021*** 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. Clauses 2.11 (coastal environment area) and 2.12 (coastal use area) do not apply as the site is also located within the Foreshores and Waterways area. Hence, only Clause 2.12 of the SEPP applies for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022, the DA satisfies requirements under Clause 2.12 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience and Hazards) 2021. ***State Environmental Planning Policy (Biodiversity and Conservation) 2021*** **Harbour Foreshores & Waterways Area**

Internal Referral Body	Comments
	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. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022 , it is determined that the Planning Principles and Matters for Consideration of the Area have been met. **Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005** The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022, it is determined that the proposed development satisfies the requirements of the DCP. ***Manly LEP 2013 and Manly DCP*** **Foreshores Scenic Protection Area Management** The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 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

Internal Referral Body	Comments
	Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly LEP 2013 and the Manly DCP 2013. **Development on Foreshore Area** The subject site is also shown to be as "Manly Foreshores Area" on Council's Area "within the foreshore building line Map" in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area. The DA proposes works replacement of an existing seawall with a new seawall. The proposed sea retaining wall is consistent with Clause 6.10(2). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Millgan Development Consulting Pty. Ltd. dated January 2022 and also in the submitted Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022, the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.
NECC (Development Engineering)	***Supported - conditions recommended*** Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	***Supported - conditions recommended*** The flood impact report indicated the site is not affected by flooding in the 1% AEP. The 1% AEP extends up to the site's front boundary. However, the site is affected by the PMF flood. The development proposed a minor extension to the rear of the garage to house a store with proposed finished floor level above the 1% AEP. The remaining garage work is mainly cosmetic modification to existing garage roof and door. At the rear, the existing sea wall is proposed to be relocated to the rear boundary. This work is not in the 1% AEP nor the PMF flood extent. In view of the above, the proposed works does not result in negative impact to the existing flood conditions and in emergency event

Internal Referral Body	Comments
	evacuation is available to first floor which is located above the PMF. The proposal is therefore considered satisfactory and in accordance with B3.11, subject to the following conditions.
NECC (Water Management)	***Supported - no conditions recommended*** NECC Water Management has no objection to the application.
Parks, reserves, beaches, foreshore	***Supported - conditions recommended*** The development application is for alterations and additions to an existing garage and a new sea wall replacing the existing sea wall. The development site adjoins the Clontarf Middle Harbour foreshore that is located downslope of the property. The property adjoins along the side boundary with an unidentified Public Reserve or Road Reserve, which is noted as occupied by landscape hedges and other vegetation, and Council reserves the future right to seek removal of any encroachment for public safety or for any other public capital works within the reserves. No additional physical encroachments over the site boundaries are permitted under the development application, and the final surface finish of new structures and built elements such as the new sea wall is not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve and Foreshore, and conditions shall be imposed to satisfy this requirement. It is noted that the retaining walling is proposed to be located forward of the existing alignment and is proposed along the site boundary. Visually the existing retaining walling is comprised on sandstone and brick walling with a glass balustrade on top and this presents to the public foreshore. The proposal does not significantly alter the visual appearance with the exception of the removal of the brick component that is replaced by sandstone. Public access is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve and Foreshore, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.
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 within proximity to a heritage item, listed in Schedule 5 of Manly LEP 2013:

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
Item I1 Harbour Foreshores - Manly municipal area boundary adjacent to the Harbour

Details of heritage items affected
Details of the item as contained within the Manly inventory is as follows:

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

Other relevant heritage listings
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>N/A</td><td></td></tr>
</table>
Consideration of Application
The proposal seeks consent for alterations and additions to the existing garage, including the replacement of the existing sea wall at the beach reserve boundary and the reconstruction of the existing beach access stairs and landscaping within the immediate yard areas facing the beach. It is stated in the Coastal Engineering Risk Management Report that the existing seawall will generally be retained, and a new seawall will be constructed slightly further seaward of this existing seawall and new beach access stairs will be located to further north of the existing stairs. The proposed seawall is to be vertical and on the boundary, so with a similar base level to the existing wall, but with a crest level about 0.8m seaward of the existing seawall. The material is proposed to be reinforced concrete blocks with a sandstone cladding with a 1m high glass balustrade above the seawall.

Given the separation between the proposed works and the heritage item, afforded by the existing building and the beach reserve, the proposal is considered to not impact upon the heritage item or its significance.
</td></tr>
</table>

Internal Referral Body	Comments
	Therefore Heritage raises no objections on heritage grounds and requires no conditions. Consider against the provisions of CL5.10 of Manly LEP2013. 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

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 (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 (Biodiversity and Conservation) 2021

Chapter 6 - Bushland in Urban Areas

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

a)	*the need to retain any bushland on the land,*
b)	*the effect of the proposed development on bushland zoned or reserved for public open space p soils, the siltation of streams and waterways and the spread of weeds and exotic plants within th*
c)	*any other matters which, in the opinion of the approving or consent authority, are relevant to the zoned or reserved for public open space purposes.*

Comment:

The site adjoins land zoned RE1 Public Recreation to the south-east and south-west. Hence, the provisions of this chapter apply for this assessment.

The proposed development does not result in the removal of vegetation on the RE1 zoned land. Furthermore, suitable conditions have been included with this consent to alleviate impacts upon the adjacent reserve.

Therefore, the proposal is considered to demonstrate consistency with Chapter 6 of this SEPP.

Chapter 10 - Sydney Harbour Catchment

The subject property is located within the Foreshores and Waterways Area and 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 proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Therefore, the proposal is considered to demonstrate consistency with Chapter 10 of this SEPP.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Environment and Coastal Use Areas pursuant to this SEPP. Therefore, the proposal is considered against Clauses 2.10, 2.11 and 2.12 of the SEPP as follows.

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

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

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

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

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 and therefore, this clause is not applicable.

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.

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 and therefore, this clause is not applicable.

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:

Council's Coast and Catchments Officer has reviewed the proposal and is satisfied that the development will not cause increased risk of coastal hazards within the locality, subject to conditions.

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.

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	4.01 metres	-	Yes
Floor Space Ratio	0.4:1 (237.72m2)	0.652:1 (388m2 GFA)	63.22%	**No**

Notes:

1. The maximum building height has been taken from the top of the garage parapet at RL6.41 AHD.
2. GFA refers to gross floor area.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	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
6.9 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:	0.4:1 (237.72m^2)
Proposed:	0.652:1 (388m^2)
Percentage variation to requirement:	63.22%

The proposed floor space ratio (FSR) of the development equates to 0.652:1 (388m^2), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013.

It is important to note that the proposed development only provides an additional 6m^2 of gross floor area on the site when it is added to what was approved under Development Consent No. 2020/187181 (LEC consent), which is a valid consent. The existing garage, which was retained under this LEC

consent, has a storage area at the rear with a gross floor area of approximately 6m^2. The modifications to the existing garage increase the size of this storage area by approximately 6m^2.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request argues, in part:

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

The requirements of clause 4.4.2 of Manly DCP 2013 "promote the retention and adaptation of existing buildings rather than their demolition and replacement with new structures".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 development facilitates Council's ecologically sustainable development objectives outlined in Manly DCP 2013 Clause 4.4.2 through the retention and adaptation of the existing garage building, rather than its demolition and replacement with a new structure. The proposed alterations to the garage will retain its essential function as off street car parking together with additional storage space for household goods which be well screen from public view, is in the public interest and maintains the development is positive contribution to the streetscape. The retention and reuse of the existing garage is considered to be ecologically sustainable development (cl1.3(b).*

- *The proposed alterations and additions to the garage 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 and economic use of the land (cl 1.3(c)).*

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 minimising the calculable gross floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain.

The proposed works will see a minor increase in storage area at the rear the garage which is a private benefit the owners and public benefit in the storage of household goods and equipment is well screen from any public view on the site retains a positive contribution to the local streetscape.

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".

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, it is agreed that the additional gross floor area provided is located at the rear of the garage and is not visually prominent within the streetscape. It is also accepted that the proposed alterations and additions to the garage introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk. It is considered that the retention of the existing garage side walls and re-use of the structure promotes ecologically sustainable development.

However, the FSR proposed under this application would only be accurate in the instance that the works approved under the LEC Development Consent No. 2020/187181 have been physically commenced, as it results in a $6m^2$ increase in gross floor area to what is currently approved on the site. The applicant's Clause 4.6 request for the subject application would not be valid if the applicant did not commence the alterations to the dwelling house approved under LEC Development Consent No. 2020/187181 as the quantum of gross floor area proposed would not be accurate. It is noted that a Construction Certificate has been issued for this LEC Consent but a Notice of Commencement has not been provided to Council and the works have not physically commenced.

To ensure the validity of the applicant's Clause 4.6 request, a deferred commencement condition is recommended with this consent to prevent the consent from operating until the Council is provided with detailed written and photographic evidence that the works pursuant to Development Consent No. 2020/187181 have been physically commenced as prescribed by Clause 96 of the Environmental Planning and Assessment Regulation 2021.

Subject to compliance with this recommended deferred commencement condition, 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 flat roof profile and the bulk and scale of the modified garage and storage area is generally consistent with the double garage on the north-western adjacent site (17 Monash Crescent). Furthermore, the modulation of the front façade, coupled with the retention of the existing side setbacks and recessive external finishes, will ensure the development has an acceptable visual impact when observed from the public domain and surrounding private properties. 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 additional gross floor area proposed on the site is situated within the rear storage area of the garage and will not be discernible from the street frontage or the wider locale. It is noted that the envelope of the recently approved dwelling is unaltered. Furthermore, the proposal does not result in a reduction in significant vegetation on the site and results in a minor increase of deep soil landscaping on the site. The proposal achieves this objective.

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

Comment:

On the basis that the existing landscaped area is improved, 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,

Comment:

For the purpose of this assessment, views, solar access, visual amenity and privacy have been adopted as environmental factors that contribute to the use and enjoyment of adjoining public and private land.

Views

The proposed development has been amended to ensure that the parapet of the garage does not exceed the current ridge level of the existing garage. This will allow for the retention of an existing view corridor along the south-eastern side of the site. The proposal achieves reasonable view sharing in accordance with the planning principles established within the NSW Land and Environment Court Case of *Tenacity Consulting v Warringah [2004] NSWLEC 140*. The proposal also does not adversely impact upon existing views from the public domain.

Solar Access

Given the modest scale of the garage and the fact that the adjoining property to the south-west is a public reserve, the additional shadowing created from the modified garage will be confined to the subject site and public land. Existing levels of solar access will be maintained to surrounding private property.

Visual Amenity

The modulation of the front façade, coupled with the retention of the existing side setbacks and recessive external finishes, will ensure the development has an acceptable visual impact when observed from the public domain and surrounding private properties.

Privacy

The additional gross floor area pertains to storage areas within a garage and does not give rise to unreasonable visual and acoustical privacy impacts.

Overall, it is considered that the FSR breach will not preclude the use or enjoyment of surrounding private and public land.

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

Comment:

The site is not located within a business zone or local centre.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposal will not require the removal of any significant vegetation and will see an increase in deep soil landscaping on the site. Furthermore, the bulk and scale of the garage is generally consistent with the neighbouring garage at 17 Monash Crescent, whilst the seawall structure corresponds with other seawalls within the visual catchment of the site. Overall, the proposal will not have an adverse impact upon ecological, scientific, cultural or aesthetic values of the area.

- *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

- *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 does not necessitate the removal of any foreshore vegetation or tree canopy cover.

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

Comment:

The proposal will not result in the loss of any native vegetation. The general form of the existing development remains unchanged, and will not result in adverse effects for the foreshore.

- *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 ensure that stormwater is appropriately managed.

- *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 bulk and scale of the garage is generally consistent with nearby structures, whilst the seawall is also consistent with nearby seawall structures.
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 Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

5.21 Flood planning

The site is flood prone and therefore, the provisions of this clause apply to the development. Council's Floodplain Officers have reviewed the application and are satisfied that the proposal will achieve Council's flood risk management requirements, subject to conditions. Hence, the proposal is considered to meet the requirements of Clause 5.21 of Manly LEP 2013.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 3 and 5, as indicated on Council's Acid Sulfate Soils Planning Map. It is noted that the land in which the seawall is located is class 5 land, whilst the land in which the garage is located is class 3 land.

Council's Environmental Health Officers have reviewed the application with respect to acid sulfate soils and provided the following response:

"Grout injection will be used to construct (subsurface) piles. We expect that any excavations (via drill auger during grout injection process) will uncover only minor amounts sand and silty sand, no acid sulfate soils and not lower the watertable. The construction of a seawall in this way is therefore low risk and does not require an Acid Sulfate Soils Management Plan in accordance with the Acid Sulfate Soils Manual 1998 recommendations for Class 5 soils".

Based on the above assessment, it is considered that the proposal satisfies the requirements of Clause 6.1 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 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:

Conditions have been recommended to ensure that if any relics are found, that relevant authorities be contacted and works cease.

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

Comment:

Council's Bushland/Biodiversity and Coast/Catchment Officers have reviewed the application and are satisfied that the proposed development will not have an adverse impact upon the natural environment,

subject to recommended conditions.

(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 proposal satisfies the relevant requirements within Clause 6.2 of Manly LEP 2013.

6.4 Stormwater management

Council's Development Engineers have reviewed the application with respect to stormwater management and are satisfied that stormwater will be adequately managed and disposed of, subject to recommended conditions. Therefore, the proposal is considered to satisfy Clause 6.4 of Manly LEP 2013.

6.5 Terrestrial biodiversity

The site is located on the Manly LEP 2013 Biodiversity Map. Therefore, this clause is applicable to this assessment.

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 fact that no prescribed vegetation is being removed and Council's Biodiversity Officers are satisfied that the proposal will not have an adverse impact upon local biodiversity, it is concluded that the development is adequately sited, designed and will be managed to avoid an adverse environmental impact.

Conclusion

As demonstrated above, the proposal satisfies the relevant considerations under Clause 6.5 of Manly LEP 2013.

6.9 Foreshore scenic protection area

The site is located on the Manly LEP 2013 Foreshore Scenic Protection Area. Therefore, the provisions of this clause are applicable to this assessment.

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:

As discussed earlier within this report, the proposal does not result in unreasonable view loss towards the foreshore. The proposed seawall is approximately 2.2m in height above the beach level and will not result in significant overshadowing of the foreshore area. The height and external finishes of the seawall are also consistent with nearby seawalls along the foreshore area and hence, the development will not detract from the visual amenity of Middle Harbour. The alterations to the garage will also not have a detrimental impact upon the visual amenity of the area.

(b) measures to protect and improve scenic qualities of the coastline,

Comment:

As outlined above, 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

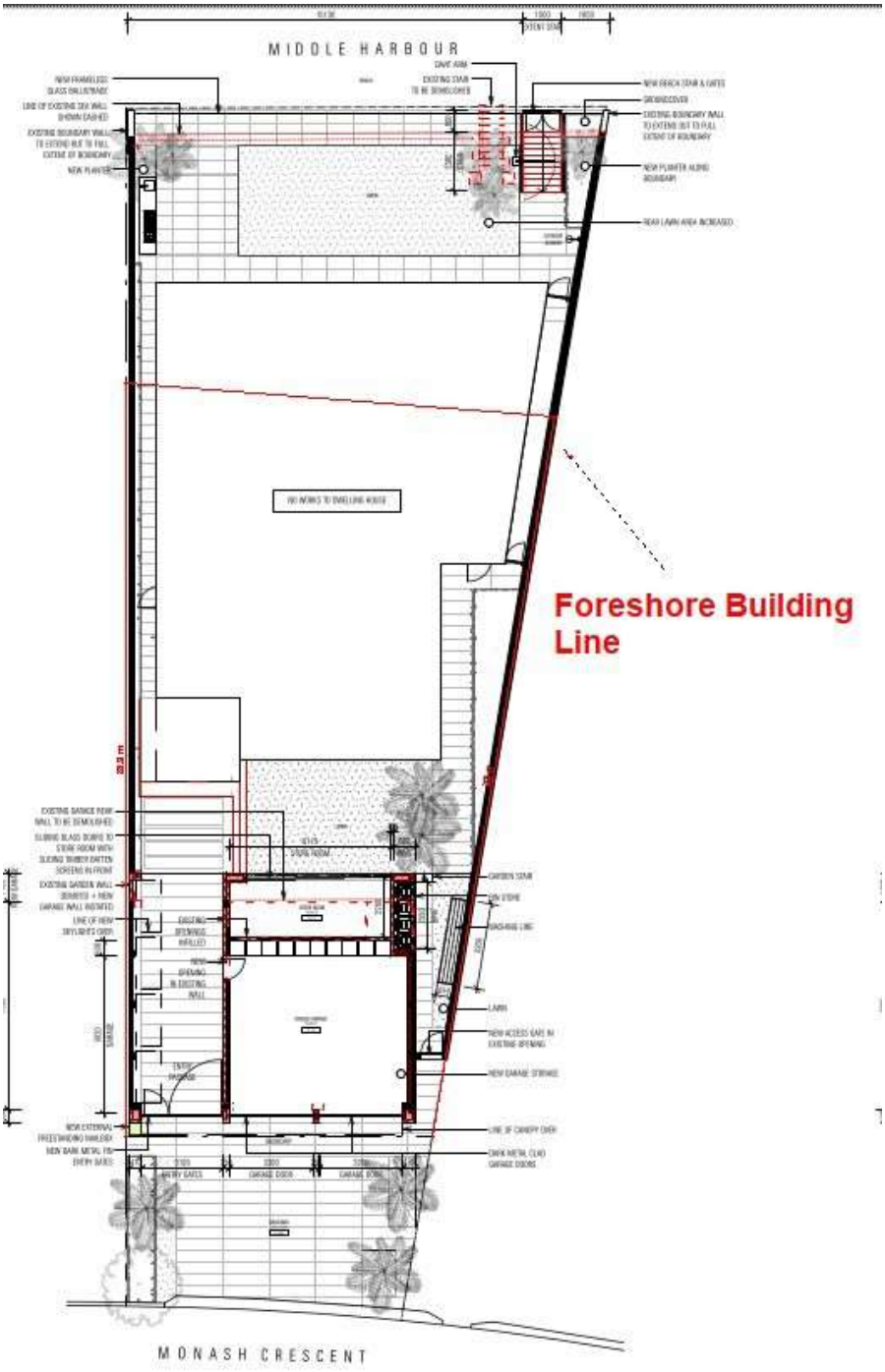
Conclusion

As demonstrated above, the proposal satisfies the requirements of Clause 6.9 of Manly LEP 2013.

6.10 Limited development on foreshore area

The Foreshore Building Line (FBL) encroaches through the rear of the property. The FBL is setback 28.9 metres from the front boundary on the south-eastern side boundary and 28 metres from front boundary on the north-western side boundary. Figure 1 below depicts the FBL on the site plan.

Figure 1: *FBL on subject site*



Clause 6.10 of Manly LEP 2013 stipulates as follows:

(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes—

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,

(b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,

(c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

The new works within the foreshore area pertain to waterway access stairs and sea retaining walls, which are permitted within the foreshore area. The proposed works to the existing garage are not located within the foreshore area.

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

(c) the development will not cause environmental harm such as—

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or

(iii) an adverse effect on drainage patterns, and

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

(h) sea level rise or change of flooding patterns as a result of climate change has been considered.

Comment:

The proposal satisfies these relevant considerations for the following reasons:

- The proposal achieves the objectives of the C3 Environmental Management zone.
- The appearance of the seawall is compatible with surrounding seawalls within the visual catchment of the site.

- Council's Natural Environment Officers are satisfied that the proposal will not cause environmental harm with respect to siltation of the harbour, impacts upon marine flora and fauna, and adverse impacts on drainage patterns.
- The seawall and foreshore access stairs will not cause congestion or generate conflict between people using open space areas or the waterway.
- The proposed development does not preclude continuous access to or along the foreshore area.
- The development does not adversely impact upon historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land.
- The proposal does not alter the existing elements of the dwelling that are located within the foreshore area.
- The seawall will assist in alleviating the impacts of sea level rise on the existing dwelling house.

(4) In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following—

(a) continuous public access to and along the foreshore through or adjacent to the proposed development,

(b) public access to link with existing or proposed open space,

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,

(d) public access to be located above mean high water mark,

(e) reinforcing the foreshore character and respect for existing environmental conditions.

Comment:

The proposal satisfies these relevant considerations for the following reasons:

- The proposed development does not preclude continuous access to or along the foreshore area.
- The development does not encroach into the existing access reserve that adjoins the site to the south-east.
- Existing public access to the foreshore area has not been compromised by the proposed development.
- The appearance and height of the proposed seawall is compatible with surrounding seawalls within the visual catchment of the site.

Conclusion

As demonstrated above, the proposed development satisfies the relevant considerations under Clause 6.10 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: 594.3sqm	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	NW: 6.5m (based on flat site)	4.01m	-	Yes
	SE: 6.5m (based on flat site)	4.01m	-	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	1.06m	76.67%	**No**
	Pitch: maximum 35 degrees	< 35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	prevailing building line (nil setback for garages)	0.54m - consistent with prevailing building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW: 1.34m (1/3 of wall height)	0.79m - as per existing	41.04%	**No**
	SE: N/A - 4.1.4.6 applies below	N/A	N/A	N/A
4.1.4.4 Rear Setbacks	Foreshore Building Line applies	N/A	N/A	N/A
4.1.4.5 Foreshore Building Lines and Foreshore Area	Refer to Clause 6.10 of Manly LEP 2013	sea wall permitted inside foreshore area	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	SE (adjoins RE1 zone): 6m	0.14m - as per existing	97.67%	**No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (356.58m2) of site area	63% (374.4m2)	-	Yes
	Open space above ground 25% (93.6m2) of total open space	40.95% (153.3m2) - no change from previous consent	63.78%	**No**
4.1.5.2 Landscaped Area	Landscaped area 40% (149.76m2) of open space	25.91% (97m2) - increase to existing	35.23%	**No**
	3 native trees	no native trees (as existing)	100%	**No**
4.1.5.3 Private Open Space	18sqm per dwelling	> 18m2	-	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7.36m	18.71%	**No**
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Site inspections were carried out at the following properties to consider the development's impact upon

existing views towards Middle Harbour:

- 20 Monash Crescent.
- 22 Monash Crescent.

These properties are located on the north-eastern side of Monash Crescent directly opposite the subject site.

Merit consideration:

The development is considered against the objectives of the control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

20 Monash Crescent

The views obtained from 20 Monash Crescent consist of obstructed views towards the south-west that encapsulate Middle Harbour and the land-water interface between Middle Harbour Yacht Club and Chinamans Beach. It is important to note that the view does not encapsulate Middle Harbour Yacht Club or Chinamans Beach, but rather the coastline between these two points. The existing obstructions to this view is existing development on the south-eastern side of Monash Crescent (including the existing dwelling on the subject site). Whilst the views are heavily obstructed, there is an unobstructed corridor through the public reserve access way that adjoins 15 Monash Crescent (subject site) to the south-east. The view is considered to be highly valued as it includes water and land-water interface.

22 Monash Crescent

The views obtained from 20 Monash Crescent consist of obstructed views towards the south-west that encapsulate Middle Harbour and the land-water interface between Middle Harbour Yacht Club and Chinamans Beach. It is important to note that the view does not encapsulate Middle Harbour Yacht Club or Chinamans Beach, but rather the coastline between these two points. The existing obstructions to this view includes existing development on the south-eastern side of Monash Crescent (including the existing dwelling on the subject site) and existing vegetation. Whilst the views are heavily obstructed,

there are unobstructed corridors located to the north-west and south-east of the existing dwelling, including over the top of the existing garage roofline. The view is considered to be highly valued as it includes water and land-water interface.

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:

20 Monash Crescent

The existing views are obtained from two south-west facing elevated balconies on the first floor that adjoin bedrooms. The views can be enjoyed from standing and sitting positions, although greater portions of water are obtained when standing. The views can also be obtained from the adjoining bedroom windows when observed from standing positions. The views are obtained over the front boundary. Figure 2 below depicts the views in question.

Figure 2: *view from first floor front deck - standing position*



22 Monash Crescent

The existing views are obtained from a large south-west (i.e. front) facing elevated deck that adjoins bedrooms on the first floor of the dwelling house. The views can be enjoyed from both standing and sitting positions, although greater portions of water are obtained when standing. The views are obtained

over the front boundary. Figure 3 below depicts the views in question.

Figure 3: *view from first floor front deck - 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 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

20 Monash Crescent

The proposal has been amended to ensure that the top of the garage parapet matches the ridge line of the existing gable roofline. In turn, the existing water views from 20 Monash Crescent will remain unaffected. In this regard, the qualitative extent of the view impact is negligible.

22 Monash Crescent

The proposal has been amended to ensure that the top of the garage parapet matches the ridge line of the existing gable roofline. In turn, the existing water views from 20 Monash Crescent will remain unaffected. The only affected view will be of the dwelling house that is currently under construction at 13 Monash Crescent. In this regard, the qualitative extent of the view impact is negligible.

4. Reasonableness of impact
The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more

planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

As the view impacts from the adjacent properties is of a negligible scale, with all water views and land-water interface remaining unaffected, it is considered that reasonable view sharing is achieved. A more skilful design is not warranted in this case.

Conclusion

The proposed development demonstrates consistency with the objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

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

Description of non-compliance

The control limits the height of parapet roof features to 0.6 metres. The proposed garage has a parapet with a height of 1.06 metres, which exceeds the numeric requirement.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The height and roof form of the garage is generally consistent with the existing double garage located on the north-western adjacent site (17 Monash Crescent). Moreover, the top of the garage parapet does not exceed the ridge level of the existing gable roof over the garage. In this regard, it is considered that the height and roof form of the garage is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

(b) to control the bulk and scale of buildings,

Comment:

The flat roof profile and the bulk and scale of the modified garage and storage area is generally consistent with the double garage on the north-western adjacent site (17 Monash Crescent). Furthermore, the modulation of the front façade, coupled with the retention of the existing side setbacks and recessive external finishes, will ensure the development has an acceptable visual impact when observed from the public domain and surrounding private properties.

(c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:

As the top of the parapet does not exceed the ridge line of the existing gable roofline above the garage, the development will not compromise views towards Middle Harbour from surrounding public and private land.

(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:

Given the modest scale of the garage and the fact that the adjoining property to the south-west is a public reserve, the additional shadowing created from the modified garage will be confined to the subject site and public land. Existing levels of solar access will be maintained to surrounding private property. The overshadowing of the adjacent public reserve access way is not excessive and will not have an adverse impact on the public amenity.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The garage does not necessitate the removal of significant vegetation.

Conclusion

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

4.1.3 Floor Space Ratio (FSR)

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

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

Description of non-compliance

The control requires development to be setback at least 1/3 of the adjacent maximum wall height from side boundaries (excluding boundaries that adjoin zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation). In applying this principle a minimum side setback of 1.34 metres is required from the north-western side boundary for the garage. The garage is setback 0.79 metres from the north-western side boundary, which does not satisfy the numeric requirement. It is important to note that the existing side setback is unchanged as the modified garage retains the side walls of the existing structure.

Furthermore, the control prescribes a minimum 6 metre setback from side boundaries that adjoin zones RE1 Public Recreation, RE2 Private Recreation, E1 National Parks and E2 Environmental Conservation. It is noted that the south-eastern side boundary adjoins an RE1 Public Recreation zone and therefore, this control applies. The garage is setback 0.14 metres from the south-eastern side boundary, which does not satisfy the numeric requirement. It is important to note that the existing side setback is unchanged as the modified garage retains the side walls of the existing structure.

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 alterations and additions to the garage introduce modulation and architectural relief to the building's facade, without seeing any substantial increase to the building's bulk. The bulk and scale of the garage is also generally consistent with the double garage on the north-western adjacent site (17 Monash Crescent). Furthermore, the proposal results in a minor increase in soft landscaping on the site. Overall, the proposal achieves 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:

As discussed within the section of this report relating to Clause 4.6 of Manly LEP 2013, the proposed development does not result in unacceptable amenity impacts, specifically in regards to visual bulk, privacy, solar access and view sharing. The garage does not alter the existing front and side setbacks and will not preclude safe traffic conditions.

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

Comment:

Flexibility is afforded with regards to the maintenance of the existing side setbacks as the non-compliance does not create adverse amenity or streetscape impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native*

vegetation and native trees;
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal does not necessitate the removal of significant vegetation and will see a minor increase in soft landscaping on the site.

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

Comment:

The site is not bushfire prone.

Conclusion

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

4.1.5 Open Space and Landscaping

The control requires at least 40% of the proposed total open space to be landscaped. In applying this principle, the proposal should provide 149.76m^2 of landscaping on the site. The application only provides 97m^2 of landscaping, which is 25.91% of the proposed total open space. It is important to note that the existing landscaping is 95m^2 and that the proposal provides for a minor increase in landscaped area on the site.

The control stipulates that only 25% (93.6m^2) of the proposed total open space should be located more than 1 metres above natural ground level. The existing approved above ground total open space is 40.95% (153.2m^2) of the total open space, which exceeds the numeric requirement. The proposal does not alter the existing approved situation.

Furthermore, the control requires at least 3 native trees to be planted on the site. There are currently no native trees on the site and the application does not propose additional native planting. It is noted that there is limited area on the site to provide native planting.

Despite these existing non-compliances, the proposal is considered to achieve the objectives of the control for the following reasons:

- The proposed development does not result in the removal of important landscape features;
- The proposal increases the quantum of deep soil landscaping on the site;
- The development does not result in adverse amenity impacts (i.e. overshadowing, view loss or privacy impacts);
- The increase in soft landscaping will assist in water infiltration;
- The works will not lead to the significant spread of weeds; and
- The works will not impact upon wildlife habitat.

Under this circumstance, the proposal is supported on merit in this regard.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The width of the garage is 7.37 metres overall, which exceeds the numeric requirement of 6.2 metres. However, the openings of the garage is 6.4 metres to facilitate access inti the car spaces beween the peirs. This is acceptable given the limited manouvering area provided in the driveway and that the existing side walls are retained and the modified garage does not increase the width of the structure.

Therefore, no further consideration of this control is required for the purpose of the assessment.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal includes excavation within 0.9 metres of the rear boundary to accommodate the seawall, which conflicts with the prescribed requirement under this control.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The earthworks are not considered to be excessive and are necessary to accommodate for the proposed seawall. Earthworks of a similar nature have been provided on adjacent sites to allow for seawall structures. The height and external finishes of the proposed seawall are also consistent with nearby seawalls within the visual catchment of the site and therefore, the proposal will not be out of keeping with the coastal setting. Suitable conditions are recommended to alleviate sedimentation of the waterway.

The application has also been accompanied by a Coastal Engineering Risk Management Report and Geotechnical Report, which concludes that the proposal will achieve an acceptable level of risk. Conditions have been recommended to ensure compliance with the recommendations within these reports.

Conclusion

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $3,300 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $330,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

The proposed development involves alterations and additions to an existing dwelling house including a swimming pool.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (237.72m2 of gross floor area). The proposed FSR equates to 0.652:1 (388m2), which represents a 63.22% variation to Clause 4.4 of Manly LEP 2013.

Despite the significant variation, the proposed development only provides an additional 6m2 of gross floor area on the site when compared to the existing approved scenario. The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 of Manly LEP 2013. The additional gross floor area proposed does not result in any unreasonable building bulk or adverse amenity impacts, specifically in regards to visual outlook, view loss, solar access and privacy.

A total of 4 individual submissions were submitted in response to this application. The submissions have been addressed and do not warrant refusal of the application.

When considered on its merits, the proposed development is found to be acceptable and worthy of support.

A deferred commencement condition is recommended with this consent requiring the works approved under LEC Development Consent No. 2020/187181 to be physically commenced, which will ensure the validity of the applicant's Clause 4.6 request for the proposed FSR breach under this application as the Clause 4.6 request stipulates a total FSR on the site that is inclusive of the works approved under the aforementioned consent.

Accordingly, it is recommended that the application be approved with a deferred commencement condition by the DDP, subject to the recommended conditions attached to this report.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

1) The Applicant’s written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within the EP&A Regulation 2021 to DA2022/0457 for Alterations and additions to a dwelling house and a seawall on land at Lot 54 DP 9745,15 Monash Crescent, CLONTARF, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. **Deferred Commencement**

This consent shall not operate until the Council is provided with detailed written and photographic evidence that the works pursuant to Development Consent No. 2020/187181 have been physically commenced as prescribed by Clause 96 of the Environmental Planning and Assessment Regulation 2021.

Reason: To ensure the orderly development of land.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **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)	20 June 2022	Mathieson Architects
DA.02 (Revision B)	20 June 2022	Mathieson Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Investigation and Stability Assessment Ref. 32694YJrpt2	11 March 2022	JK Geotechnics
Flood Risk Management Report	14 March 2022	Pittwater Data Services Pty Ltd
Coastal Engineering Risk Management Report	19 January 2022	Horton Coastal Engineering Pty. Ltd.

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	1 February 2022	Vaughan Milligan Development Consulting Pty Ltd

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.

3. **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.

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.

6. **Seawall not to encroach over Property Boundaries**
The approved seawall must be located wholly within the property boundaries and is not permitted to encroach onto adjoining land.

Reason: To prevent the development from encroaching onto adjoining land.

7. **Boundary Walls not to encroach over Property Boundaries**
The extension to the existing side boundary walls are not permitted to encroach onto adjoining land and must be located wholly within the property boundaries.

Reason: Owners consent has not been provided from the adjoining land owners for any encroachments.

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $3,300.00 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 $330,000.00.

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.

9. **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

10. **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.

11. **Flooding**
In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2
There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 2.41m AHD.

Building Components and Structural Soundness – B1
All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2
All new development must be designed to ensure structural integrity up to the Flood Planning Level (2.91 m 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 (2.91 m 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.

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.

12. **Vehicle Crossings Application**
The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

13. **Compliance with Coastal Risk Management Report**
The development is to comply with all recommendations of the approved Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022 , and these recommendations are to be incorporated into construction plans and maintained over the life of the development.

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

Reason: To ensure estuarine process risks are addressed appropriately.

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

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

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

15. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **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.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **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.

19. **No Access Through Land Owned or Managed by Council**
Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

20. **Storage of Materials on Land Owned or Managed by Council Prohibited**
The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

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

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

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on

Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

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

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

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

23. **Geotechnical Requirements**
All recommendations identified in the Geotechnical Report referenced in Condition 2 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

25. **Property Boundary Levels**
The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve and council reserve.

26. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 6 metres wide at kerb and 8 m wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

27. **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.

28. **Coastal Erosion**
This property is on land located in an area where there is likely to be a risk of coastal erosion and wave impact during severe storms. The risk to the property may increase with time due to long-term beach recession caused by greenhouse induced sea level rise or natural coastal processes. To reduce the potential impact to your property, the Council strongly recommends that effective precautions be taken to ensure adequate volumes of sand are maintained within the eastern (seaward) boundary of your property. The Council requires that only free-draining, clean, yellow sand be used to fill allotments.

Reason: Protection of coastal environment.

29. **Low Level Coastal Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

Reason: To ensure estuarine process risks are addressed appropriately.

30. **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.

31. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

32. **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.

33. **Certification of Services (B3)**
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 and any existing electrical devices, wiring and the like located below the FPL are protected from water egress 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.

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

34. **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.

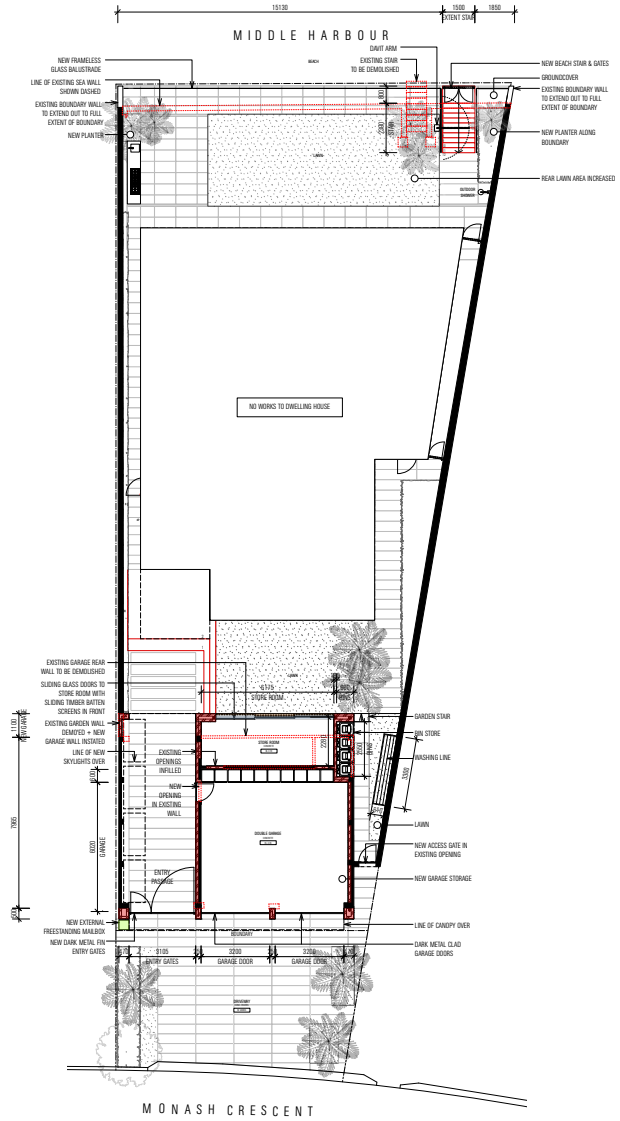
Reason: To protect wildlife habitat.

35. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 2 of this consent are to me maintained and adhered to for the life of the development.

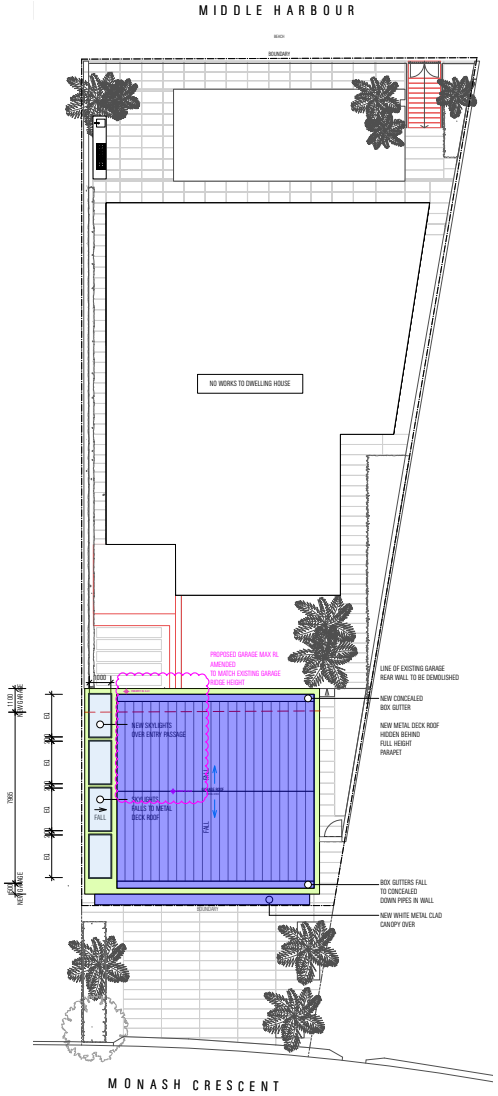
Reason: To ensure geotechnical risk is mitigated appropriately.

36. **Compliance with Coastal Engineering Risk Management Report**
The development is to comply with all recommendations of the approved Coastal Engineering Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 19 January 2022 and these recommendations are to be maintained over the life (considered 60 years design life) of the development.

Reason: To ensure preservation of the development and the estuarine environment and to comply with the section 27 of the Coastal Management Act.



01 PLAN
Ground Floor
Scale 1:100



03 PLAN
Roof terrace
Scale 1:100

MATHIESON ARCHITECTS

LEGEND
- PROPOSED DEMOLITION
- EXISTING SETBACKS TO BE MAINTAINED
- EXISTING STRUCTURE TO BE RETAINED
- PROPOSED NEW MASONRY BRICK WALL
- PROPOSED NEW BLOCKWORK/ CONCRETE
- PROPOSED NEW TIMBER ELEMENT
- PROPOSED NEW LIGHTWEIGHT INTERNAL WALL
- PROPOSED NEW GLAZING/ GLASS BALUSTRADE
- PROPOSED NEW METAL/ METAL CLADDING
- PROPOSED NEW RENDER + PAINT FINISH
- AMENDMENTS TO GARAGE/ SEA WALL DA SUBMISSION

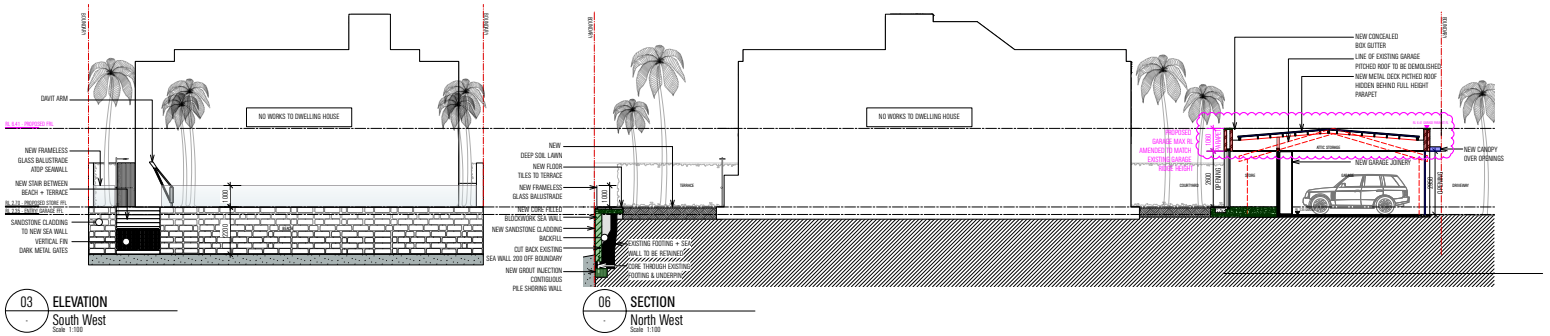
NOTES

REV NO.	DATE	REVISIONS	BY	CHK
A	06.10.21	DA ISSUE	MS	CS
B	20.06.22	AMENDMENTS TO GARAGE MAX RL	MS	CS

PROJECT: KOLENDA RESIDENCE
ADDRESS: 15 MONASH CRESCENT, CLONTARF
DOCUMENT: GARAGE/ SEA WALL DEVELOPMENT
APPLICATION
DRAWING: PLANS
GROUND, LEVEL 1 + ROOF TERRACE
DATE: 14.04.21 SCALE: 1:100 @ A1
DRAWN: MS PROJECT NO: 18007
DRAWING NO: DA.01 REV NO: B

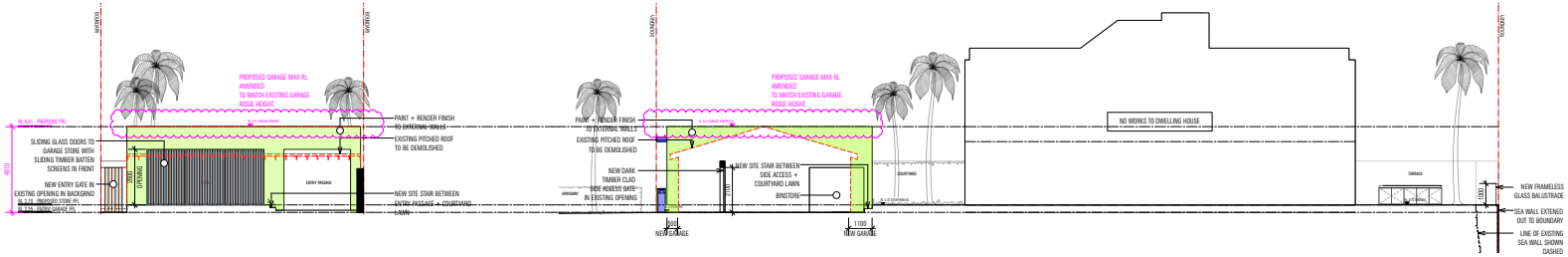
DISCLAIMER

MATHIESON



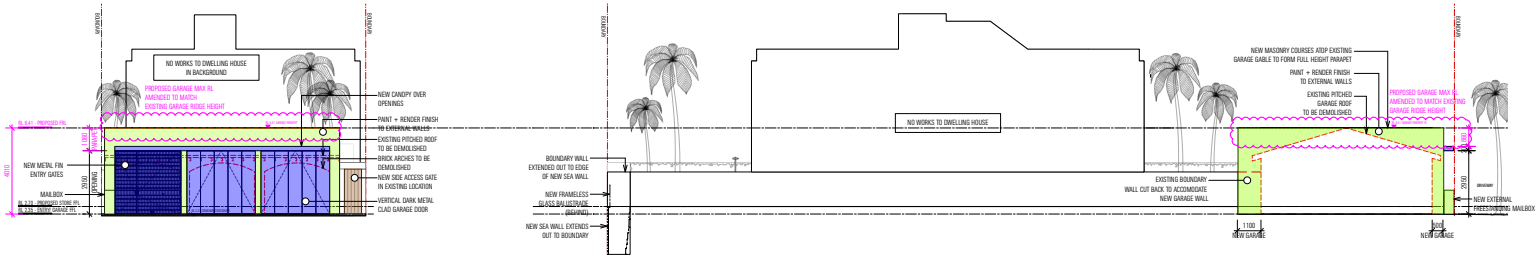
03 ELEVATION
South West
Scale 1:100

06 SECTION
North West
Scale 1:100



02 ELEVATION
South West (Garage)
Scale 1:100

05 ELEVATION
North West
Scale 1:100



01 ELEVATION
Street
Scale 1:100

04 ELEVATION
South East
Scale 1:100

MATHIESON ARCHITECTS
10/19-29 FOSTER ST SURRY HILLS NSW 2010 AUSTRALIA
T: +61 2 9280 4100 INFO@MATHIESONARCHITECTS.COM

LEGEND
- PROPOSED DEMOLITION
- EXISTING SETBACKS TO BE MAINTAINED
- EXISTING STRUCTURE TO BE RETAINED
- PROPOSED NEW MASONRY BRICK WALL
- PROPOSED NEW BLOCKWORK/ CONCRETE
- PROPOSED NEW TIMBER ELEMENT
- PROPOSED NEW LIGHTWEIGHT INTERNAL WALL
- PROPOSED NEW GLAZING/ GLASS BALUSTRADE
- PROPOSED NEW METAL/ METAL CLADDING
- PROPOSED NEW RENDER + PAINT FINISH
- AMENDMENTS TO GARAGE/ SEA WALL DA SUBMISSION

NOTES

REV NO.	DATE	REVISIONS	BY	CHK
A	25.10.21	DA ISSUE	MS	CS
B	20.06.22	AMENDMENTS TO GARAGE MAX RL	MS	CS

PROJECT: KOLENDA RESIDENCE
ADDRESS: 15 MONASH CRESCENT, CLONTARF
DOCUMENT: GARAGE/ SEA WALL DEVELOPMENT
APPLICATION
DRAWING: PLANS
N.E, S.W, S.E, N.W + SECTION
DATE: 14.04.21 SCALE: 1:100 @ A1
DRAWN: MS PROJECT NO: 18007
DRAWING NO: DA.02 REV NO: B

DISCLAIMER

MATHIESON

APPENDIX 2
CLAUSE 4.6 – MAXIMUM FLOOR SPACE RATIO

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

15 MONASH CRESCENT, CLONTARF

PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING

VARIATION OF A DEVELOPMENT STANDARD REGARDING COUNCIL'S MAXIMUM FLOOR SPACE CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For:	Proposed construction of alterations and additions to an existing garage and replacement of a sea wall
At:	15 Monash Crescent, Clontarf
Owner:	John & Milenka Kolenda
Applicant:	John & Milenka Kolenda C/- Vaughan Milligan Development Consulting

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 594.3m^2, the maximum gross floor area is 237.72m^2 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The approved development considered under DA 2019/1265 provided for a gross floor area, exclusive of the storage space within the garage of 370m^2.

The proposal to alter the form of the existing garage and provide for additional storage area at the rear of the garage will increase the total gross floor area to 388m^2 or a FSR of 0.652:1. This presents a variation of 150.28m^2 or 63.2% to the control.

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 satisfies the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 750m^2 and when calculated against this required lot size, the permissible floor area is 300m^2. The proposed development will present a total floor area of 388m^2 or a FSR of 0.517:1 which when assessed against the Lot Size control of 750m^2, results in as a reduced extent of the non-compliance with the control.

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 standards fixed in respect of any aspect of the development and includes:

"(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.

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:*
>
> *(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 of 6m^2 beyond the built form previously considered under DA2019/1265, 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 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 and the Court on appeal 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.

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 237.72m^2.

5.3 The subject site has an area of 594.3m^2.

5.4 The approved development considered under DA2019/1265 presented a gross floor area, exclusive of the storage area within the garage of 370m² the proposed additions two increase the storage space behind the garage will add an additional 6 m² of gross floor area with a total GFA of 388m^2 or 0.652:1.

5.4 The total non-compliance with the FSR control is 150.28m^2 or 63.2%.

6.0 Relevant Caselaw the

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 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 (formally E3) 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 ways 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 proposal provides for alterations and additions to an existing garage which largely maintain the character and general built form of the existing development on site.

The contemporary building form with a flat roof and matching external finishes are considered to suitably mitigate any sense of visual bulk from the garage.

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 form of the existing dwelling remains unchanged, with the alterations the garage and new sea wall not considered to result in any adverse effects on the scenic qualities of the foreshore 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,

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

As the proposal will see a minor increase the available soft landscaping through the removal of redundant paved areas, from 95m² to 97m2, the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the existing landscaped area is improved, 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 garage and the replacement of the existing sea wall is not contrary to the viability of any local business activity.

Despite the exceedance of the floor space ratio control, I am of the view that the proposal is consistent with the objectives of the development standard.

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 requirements of clause 4.4.2 of Manly DCP 2013 "*promote the retention and adaptation of existing buildings rather than their demolition and replacement with new structures".*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 development facilitates Council's ecologically sustainable development objectives outlined in Manly DCP 2013 Clause 4.4.2 through the retention and adaptation of the existing garage building, rather than its demolition and replacement with a new structure. The proposed alterations to the garage will retain its essential function as off street car parking together with additional storage space for household goods which be well screen from public view, is in

the public interest and maintains the development is positive contribution to the streetscape. The retention and reuse of the existing garage is considered to be ecologically sustainable development (cl1.3(b).

- The proposed alterations and additions to the garage 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 and economic use of the land (cl 1.3(c)).

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 minimising the calculable gross floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain.

The proposed works will see a minor increase in storage area at the rear the garage which is a private benefit the owners and public benefit in the storage of household goods and equipment is well screen from any public view on the site retains a positive contribution to the local streetscape.

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 (formerly E3) 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 extent of the non-compliance with the maximum floor space ratio control, the proposed new works will be consistent with the individual Objectives of the E3 Environmental Management zone for the following reasons:

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

  The works will respect the height, scale and form of the surrounding residential development and the existing development on the site.

  The proposal will not require the removal of any significant vegetation, and will see a substantial improvement in the existing area of soft landscaping. The aesthetic values of the area will be protected

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

The proposal provides for the construction of alterations and additions to an Existing garage, which maintains the general scale and form of the existing development on the site.

- ***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 see the loss of any significant vegetation. The built form of the approved works to the existing dwelling remains unchanged, and is therefore not considered to result in any adverse effects on the 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.***

  The proposal will not result in the loss of any native vegetation. The general form of the existing development remains unchanged, and will not result in adverse effects for the foreshore.

- ***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.***

  The proposal increases the available area of soft landscaping, and stormwater from the site will be suitably managed to minimise potential runoff impacts within the locality.

- ***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 provides for alterations and additions to an existing garage and the replacement of an existing sea wall within the site which other than a minor increase in the height of the garage largely retain the general form and scale of built form of the existing development on site.

  The contemporary building form the garage alterations with a parapet style flat roof and matching external finishes are considered to suitably reduce the visual bulk of the structures/

  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.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum floor area control, whilst maintaining consistency with the zone objectives.

7.4 Has the 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 alterations and additions to the garage and the replacement of the sea wall 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.

8.0 Conclusion

Council's Manly MLEP 2013 control within Clause 4.4 stipulates a requires a maximum floor space of 0.4:1 for development in this area of Clontarf.

The proposal to alter the form of the existing garage and provide for additional storage area at the rear of the garage will increase the total gross floor area to 388m² or a FSR of 0.652:1. This presents a variation of 150.28m^2 or 63.2% to the control.

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 750m^2 and when calculated against this required lot size, the development prescribes a FSR of 0.517:1, which presents a substantially lesser variation to the FSR control.

In my opinion, as outlined in this submission, 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 strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.6	**DA2021/2613 - 129 HEADLAND ROAD NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/469566**
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 DA2021/2613 for demolition works and construction of a dwelling house on land at Lot 107 DP 14113, 129 Headland Road NORTH CURL CURL, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2613

Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 107 DP 14113, 129 Headland Road NORTH CURL CURL NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Eric Daniel Wolf
Applicant:	Matthew John Van Geffen

Application Lodged:	11/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	21/01/2022 to 04/02/2022
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 2,432,000.00

EXECUTIVE SUMMARY

The application involves the demolition of the existing dwelling and the construction of a new dwelling, incorporating a swimming pool.

The application is referred to the Development Determination Panel (DDP) as there are 5 submissions, each raising objection to the proposal.

The five submissions raise issues with regard to non-compliance with the planning controls, impact on character, view impacts, residential amenity impact and the visual impact of the development. These submissions are addressed in the report and do not warrant the refusal of the application.

Specifically, amended plans were submitted in response to Council's and the neighbours concerns relating to view impacts and the concerns in relation to noise impacts associated with the inclusion of a car stacker in the garage portion of the dwelling have been addressed through suitable conditions of consent.

The non-compliances with the WDCP 2011 controls have been found to maintain consistency with the overarching objectives of the relevant clauses, including that the proposal will maintain appropriate character, amenity and visual presentation.

Accordingly, the application is referred to the DDP with a recommendation for APPROVAL, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition and the construction of a new dwelling.

In detail, the application involves:

Basement

- Storage
- Car stacker

Ground Floor

- Entry
- Two bedrooms with ensuites
- Rumpus with wet bar
- Laundry
- Gym
- Terrace

First Floor

- Master bedroom with robe
- Ensuite and balcony
- Two bedrooms
- Bathroom
- Open plan kitchen/dining

External

- Ground level and first floor terrace
- Swimming Pool
- New driveway, crossover and turning area
- New front fence and gate
- Landscaping

Amended Plans

Amended plans were received on 28/06/2022. These plans did not require formal re-notification in accordance with the Northern Beaches Community Participation Plan.

The amended plans involved a re-design of the rear western potion of the proposed dwelling. This involved an increased rear setback (to comply with the DCP control), and an increased western side setback to the upper level (to be up to 2.75m).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 107 DP 14113 , 129 Headland Road NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of an allotment located on the southern side of Headland Road. The site is irregular in shape with a frontage of 22.15m along Headland Road and a depth of up to 32m. The site has a surveyed area of 625.2m². The site is located within the R2 Low Density Residential zone and accommodates dwelling on site. The site has a slope from the front of the property toward the rear.

	Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development.

Map:



SITE HISTORY

Pre-lodgement Meeting - PLM2021/0255 - Construction of a Dwelling-house and Swimming Pool

A Pre-lodgement Meeting was held to discuss a similar design concept. In the Pre-lodgement notes, the advice concluded with the following statement:

"The proposed dwelling is generally consistent with the planning controls and presents as a reasonable height, scale and design for the context of the area. The proposal is capable of being supported, subject to improved landscaping and demonstration of view sharing being achieved notwithstanding the minor numerical non-compliances."

This application has responded to the comments by providing a design which allows for a view corridor for the neighbour to the west to allow for appropriate view sharing. The proposal also provides an improved landscape outcome, including deep soil areas which surround the dwelling.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/01/2022 to 04/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Withheld	NORTH CURL CURL NSW 2099
Withheld	NORTH CURL CURL NSW 2099
Doyle Consulting Group	3A Kendall Road CASTLE COVE NSW 2069
Mrs Lana Denise Debnam	6 Parr Avenue NORTH CURL CURL NSW 2099
Mark Wilson	108 Headland Road NORTH CURL CURL NSW 2099
Mr Shaun Aaron Bissett	126 Headland Road NORTH CURL CURL NSW 2099

The above issues are addressed as follows:

- **Impact on Views**

  The submissions raised concerns with regard to impact on views, including impacts caused by a non-compliant rear setback.

  Concern is also raised with the mature height of proposed trees causing view loss and concern with the impact of trees on the adjacent driveway.

  Comment:

  Amended plans were provided and this involved a redesign to provide a compliant rear setback.

  A full assessment with regard to views is made under *"D7 Views"* of this report.

  A condition is imposed to require smaller trees (no greater than 5.0m at maturity), so that impact on views and adjacent driveway is mitigated.

- **Non compliance with numerical controls for Wall height, Front setback and Side boundary envelope; Visual impact and visual dominance**

  The submissions raised concerns that the numerical non-compliances lead to an unreasonable visual impact, including impact on private open space and impact on the streetscape.

Comment:

The proposal involves a dwelling that presents in the street with a compliant building height, stepping of the roof form with the topography and articulation of the built form. In particular, the articulation of the built form at the rear of the east elevation provides a break in the built form to provide openness. As such, the non-compliance with the controls will not result in an unreasonable visual impact. Further to this, the wall is sufficiently separated from neighbouring living spaces so that there will be no unreasonable amenity impact.

Consideration is also given to the overarching outcomes of these planning controls later in this report.

- **Vegetation and Privacy**

  A submission requests that planting to the eastern boundary is sufficient for privacy mitigation (and will not cause issues for neighbouring property). Concerns are also raised with regard to noise.

  Comment:

  As planting cannot be solely relied on for mitigation of privacy impact, a condition has been imposed to require privacy screens at the eastern elevation of each terrace. The upper level terrace is recommended to be a lesser height of 1.5m, to provide a balance between view sharing and privacy.

  Council's Landscape Officer is satisfied with the proposed planting on the site.

  A condition is also imposed to restrict noise from any pool mechanical equipment.
- **Boundary Fence**

  The submissions raised concerns that details regarding the boundary fence are unclear.

  Comment:

  A condition is imposed for the Landscape Plan to be amended to show that the side fence is to be wholly on the subject site, and is 1.8m from ground level or alternatively is subject to the requirements of the Dividing Fences Act.
- **Request is made for a Dilapidation Report**

  Comment:

  A condition is provided that requires a dilapidation report.
- **Concern regarding Asbestos**

  Comment:

  Conditions are imposed with regard to the safe handling and removal of any asbestos.
- **Request for fence during construction**

  Comment:

  A condition is imposed in this regard.

- **Impact on amenity toward the rear and inappropriate rear setback**

  Submissions raise concerns with regard to the non-compliant rear setback, the impact caused by the design at the rear, including the swimming pool, and the impact on privacy and views to the property to the rear.

  Concern is also raised with regard to the car stacker and garage with regard to noise.

  Comment:

  Amended plans have been submitted which include a rear setback that complies with the numerical control.

  The compliant rear setback to the dwelling provides a circumstance in which there is adequate physical separation between buildings to minimise amenity impact. Further, the proposal complies with the controls for solar access under the DCP.

  A condition has also been imposed to require control on the noise of pool equipment and car stacker.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported (with conditions)** The proposal seeks consent for the demolition of the existing structures and the construction of a new dwelling including basement storage, driveway access, swimming pool and associated landscaping works. Council's Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls: l D1 Landscaped Open Space and Bushland Setting l E1 Preservation of Trees or Bushland Vegetation The plans indicate that no significant landscape features are affected by the proposed works. No objections are raised to approval subject to conditions.
NECC (Development Engineering)	**Supported (with conditions)** **05/04/2022:** The proposal seeks consent for the demolition of the existing structures and the construction of a new dwelling including basement storage, driveway access, swimming pool and associated landscaping works. **Access**

Internal Referral Body	Comments
	Applicant to provide a longitudinal section of proposed driveway from the street gutter to the proposed garage. Longitudinal section to include existing levels, proposed levels and grades and to be compliant with Australian standards and Council's standard vehicle crossing profiles. **Stormwater** Stormwater Management Plan prepared by ISTRUCT Consulting Engineers, Drawing number D01, Project No 211105,Issue A and Dated 20/12/2021, is satisfactory. But before Council consider this plan applicant is advised as below: a) The Stormwater drainage for the site shall demonstrate compliance with Council's Water Management for Development Policy, particularly Stormwater Drainage from Low Level Properties Technical Specification Section 5.5. As the subject site falls to the rear, an easement to drain water is to be created in favor of the site over the downstream properties. Evidence of owners consent by the property owners (6 Parr Avenue NORTH CURL CURL) shall be submitted with the Development Application. The Application shall be supported by a long section of the inter-allotment drainage to the connection with Council's road drainage system. b) Should this method of stormwater disposal not be possible, evidence shall be submitted with the Application. For sample letter refer Appendix 2, Easement Letter of Council's Water Management for Development Policy. **For Planner:** An excavation to a maximum depth of ~4.2m is proposed to construct the basement with car stacker. Geotech report by White Geotechnical Group , Ref J3907, Dated 9th Dec 2021 is provided. Please recommend the use of geotechnical report at design and construction stages. **23/06/022:** An easement refusal letter from property owners, 6 Parr Avenue

Internal Referral Body	Comments
	NORTH CURL CURL is provided.
Road Reserve	There is no impact on existing road infrastructure assets. If the existing stairs on the public road reserve are to be reconstructed, an encroachment application is required prior to commencing any work.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1265317S).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	7.9m	9.7%	**No (see comments)**
B3 Side Boundary	East - 5.0m	Encroachment of between 1.2m	N/A	**No (see**

Envelope		and 2.3m in height for a length of 8.3m		**comments)**
	West - 5.0m	Encroachment of between 0.1m and 1.6m in height for a length of 15.0m	N/A	**No (see comments)**
B5 Side Boundary Setbacks	East - 0.9m	0.9m	N/A	Yes
	West - 0.9m	1.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	5.95m	8.4%	**No (see comments)**
B9 Rear Boundary Setbacks	6.0m	6.0m	N/A	**Yes**
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	39% (244sqm)	3.5%	**No (see comments)**

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-compliance

The proposal does not comply with the 7.2m maximum wall height control. In this regard, the wall height is up to 7.9m.

Merit Consideration:

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

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

Comment:

The dwelling presents to the street with a compliant building height. Along with sufficient landscaped area, articulation of the built form and stepping with the topography of the land, this provides a circumstance in which the visual impact of the development is adequately minimised.

To ensure development is generally beneath the existing tree canopy level

Comment:

The proposal complies with the development standard for building height and provides a roof form that is generally below existing nearby trees.

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

Comment:

The proposal complies with the requirement for building height, provides a roof design that steps down with the topography and provides appropriate corridors through the site that allow opportunity for

sharing of views. This is further discussed in the view sharing section of this report.

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

Comment:

The proposal involves compliant side setbacks, physical separation between the proposed dwelling and neighbouring living spaces, and articulation of the built form. Along with the stepping down of the built form with the topography of the land, this provides a design that adequately minimised visual impact.

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

Comment:

The proposal involves a new dwelling that steps down with the topography of the land. This includes that the the roof design slopes with the topography to provide opportunity for views to be maintained. Furthermore, the proposal does not involve any significant excavation. As such the development responds appropriately the the existing landform and topography of the site.

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

Comment:

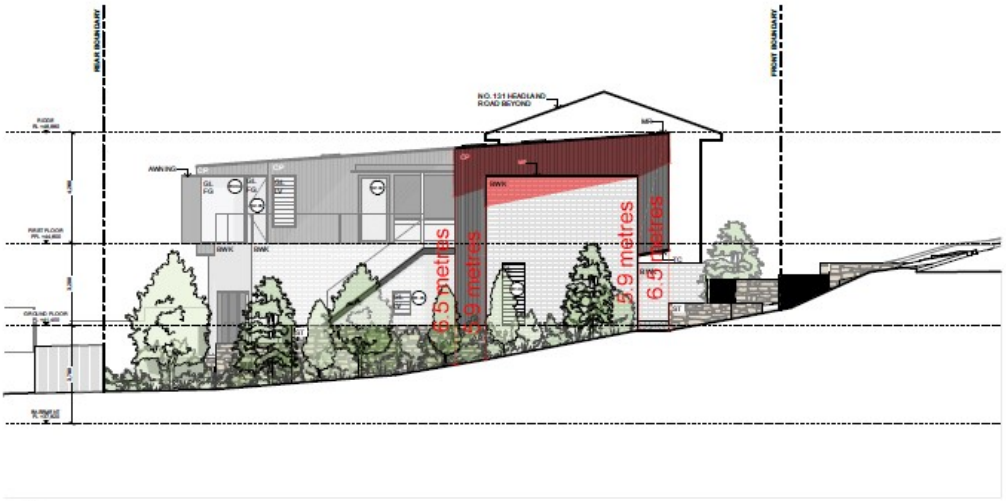
The proposal provides for a roof form which is lowered at various sections of the site, and steps with the topography of the site. As such, there sufficient scope has been provided for an acceptable roof design.

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

B3 Side Boundary Envelope

Description of Non-compliance

The proposal has a minor non-compliance with the side boundary envelope control at each side elevation as is represented in the diagrams below:



E ELEVATION EAST



W ELEVATION WEST

Merit Consideration

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

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

Comment:

Notwithstanding the envelope breach, the proposed development will not be visually dominant by virtue of its height and scale. The dwelling complies with the setback controls, provides articulation, and the built form is well separated from the street and neighbours. As such, the proposal will not become visually dominant by virtue of its height and bulk.

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

Comment:

The proposal provides a compliant setback to the southern elevation at the rear. This ensures there will be no unreasonable impact on solar access. Further to this, the proposed dwelling is well separated from neighbouring living spaces and private open space and this ensures there will be no other unreasonable amenity impact.

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

Comment:

The site is relatively flat and the proposal does not involve any significant excavation. As such, the dwelling responds appropriately to the topography of the land.

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

B7 Front Boundary Setbacks

Description of Non-compliance

The proposal does not comply with the 6.5m front boundary setback control. In this regard, the proposal involves a variable setback of 5.95m to 6.8m for the dwelling.

Merit Consideration:

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

To create a sense of openness.

Comment:

The proposal involves a varied front setback partly as a result of the irregular shape lot, being that the eastern boundary is shorter than the western boundary. Despite this variable setback, the proposal involves a landscaped area to the front of the site and a road reserve which provides separation from the street to adequately maintain a sense of openness.

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

Comment:

The proposal maintains landscaping to the front of the property and provides a building line that fits in with the varied nearby front building lines along Headland Road. Additionally, the the varied setback and articulation of the building minimises the impact of building bulk.

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

Comment:

The proposal is compliant with the development standard for building height and provides building form that is well setback from the property boundaries, to provide physical separation of the built form from neighbours. This results in a development that provides a minimisation in the presentation of building bulk and an appropriate form for the streetscape.

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

Comment:

The proposal involves landscaping to the front of the site and articulation of the built form. Along with the compliant building height and landscaping to the front of the site, this contributes to a presentation in the streetscape that will be suitable.

To achieve reasonable view sharing.

Comment:

The proposal complies with the standard for building height and would not have any unreasonable impact on views in the area. This is further discussed in the view sharing section of this report.

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

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

The proposal has a Landscaped Open Space area of 39% (244sqm). This means the development involves a minor numerical non-compliance with the 40% control.

It is also noted that there are a number of landscaped areas on the site that contribute to overall landscaped area and amenity, but are not included in calculations for the numerical control due to lack of adequate dimensions (minimum 2.0m width).

Merit Consideration

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

To enable planting to maintain and enhance the streetscape.

Comment:

The proposal maintains a landscaped frontage with the exception of the driveway access. This maintains appropriate opportunity for planting to enhance the streetscape.

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

Comment:

The proposal does not remove any substantial vegetation and does not significantly alter the topography of the land. As such, the indigenous vegetation, topographical features and habitat for wildlife is reasonably conserved.

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

Comment:

The proposal maintains areas of landscaping at the front and rear of the dwelling that are sufficient in size for the growing of vegetation that would assist in mitigating the bulk of the dwelling.

To enhance privacy between buildings.

Comment:

The proposal provides sufficient separation between the proposed dwelling and the neighbouring living spaces. The proposal also involves sufficient design of windows to minimise opportunity for overlooking. This ensures that the proposal would adequately maintain privacy between dwellings.

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

Comment:

Along with the landscaped areas to the front and rear of the site, the proposal also provides terrace areas which provide outdoor recreational opportunity. This sufficiently contributes to providing appropriate space for recreational opportunities for the occupants.

To provide space for service functions, including clothes drying.

Comment:

There is sufficient space at the rear of the property that allows an area for clothes drying.

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

Comment:

The proposal maintains landscaped area to the front and rear of the dwelling to ensure permeable area contributes to minimising impacts of stormwater.

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

D7 Views

Merit Consideration

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

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

  Comment:

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

  131 Headland Road

  1. Nature of the views affected

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

  Comment to Principle 1:

  The site has views toward the ocean beach and also toward a distant headland. Some of the view corridor is made partial by existing vegetation.



Photo 1: Taken from the lower level deck area (off the living room) to the rear of neighbouring property at 131 Headland Road

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

"*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing*

or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

Views are obtained over a side boundary from a lower level (pictured) and upper level. Each level has living areas with a deck. Views can be obtained from standing and sitting 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:

A large potion of view toward the beach, ocean and headland is maintained from the majority of the dwelling and living spaces at 131 Headland Road. As such, the overall impact is assessed as being minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal complies with the development standard for building height and the control for rear setback. This has the effect of maintaining a substantial view corridor through the rear of the subject site. As such, the minor impact is deemed to provide a reasonable view sharing outcome.

108 Headland Road

1. Nature of the views affected

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

Comment to Principle 1:

The site has a distant view over the subject site toward the ocean. The view corridor is made partial by existing vegetation and development, and is a small proportion of the overall views from the front of the property (being predominantly district views).



Photo 2: Taken from living area of neighbouring property at 131 Headland Road. Photo is taken looking across the road over the subject site.

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:

Views are obtained from a living area and bedrooms from the front of the property. Views can be obtained from standing and sitting position.

3. Extent of impact

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

Comment to Principle 3:

The ocean view affected is partial, distant and a small proportion of the overall views from the front of the site. As such, the overall impact is assessed as being minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal complies with the development standard for building height. As the view corridor is over the subject site, compliance with this control assists in showing that the minor impact provides a reasonable view sharing outcome.

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

Comment:

The proposal involves a varied setback at the western boundary with a compliant rear setback. This varied setback involves a greater side setback toward the rear of the building, This is a design solution to contribute to view sharing.

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

  Comment:

  The proposal complies with the development standard for building height and this assists in ensuring it is generally below surrounding trees.

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

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 $24,320 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,432,000.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

Conclusion

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, the relevant codes and policies of Council and the relevant provisions of the Warringah DCP 2011.

The proposal contains non-compliances with a number of planning controls, however, these variations do not give rise to any unreasonable environmental or amenity impacts. A number of special conditions have been imposed to manage or mitigate the impacts of the development.

The proposal involves a design which provides sufficient minimisation of building bulk, positively relates to the topography of the site and incorporates adequate spatial separation from the street and neighbours to minimise amenity impact.

View sharing was the main issue from a residential amenity perspective and a detailed analysis of View Sharing in accordance with the Tenacity Planning Principle was carried out, which resulted in amended plans being submitted, which effectively lessened the impacts on views.

The resultant development is a reasonable, justified and balanced approach to developing this site in line with the applicable built form controls, whilst preserving view corridors where reasonably possible.

The noise concerns of neighbours, particularly in relation to the use of car stackers have been addressed in the design and conditions of consent.

The amended design, coupled with the recommended conditions addresses the issues raised in the residents submissions and addresses the applicable planning controls.

It is recommended that the Development Determination Panel **APPROVE** the application.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2613 for Demolition works and construction of a dwelling house on land at Lot 107 DP 14113, 129 Headland Road, NORTH CURL CURL, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

   a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA04 - Site and Roof Plan - Issue C	3/6/22	Watershed Design
DA05 - Basement Plan - Issue C	3/6/22	Watershed Design
DA06 - Ground Floor - Issue C	3/6/22	Watershed Design
DA07 - First Floor- Issue C	3/6/22	Watershed Design
DA08 - Section AA - Issue C	3/6/22	Watershed Design
DA09 - Section BB - Issue C	3/6/22	Watershed Design
DA10 - Section CC - Issue C	3/6/22	Watershed Design
DA11 - Section DD- Issue C	3/6/22	Watershed Design
DA12 - Elevations- Issue C	3/6/22	Watershed Design
DA13 - Excavation & Fill Plan- Issue C	3/6/22	Watershed Design
DA16 - Driveway Crossover Plan- Issue C	3/6/22	Watershed Design

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
D01 - Stormwater Management Plan	20.12.21	Istruct Engineers
D02 - Sediment & Erosion Control Plan	20.12.21	Istruct Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment Report	12 November 2021	Blues Bros
Geotechnical Investigation	9 December 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**
1 of 2 Landscape Plan	14.12.21	Paul Scrivener
2 of 2 Planting Plan	14.12.21	Paul Scrivener

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management	6/12/21	Applicant

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

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

approved plans.

2. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

Government.

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

FEES / CHARGES / CONTRIBUTIONS

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

A monetary contribution of $24,320.00 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 $2,432,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Amendments to the approved plans**
The following amendments are to be made to the Landscape Plan:

- All vegetation species are to be amended to be an endemic species that reaches a height of no greater than 5m.
- The Landscaped Plan is to be updated to show a built form that is consistent with the approved stamped plans.
- The Landscape Plan is to show the 1.8m fence to be holly on the subject site. Alternatively, the fence is to be subject o the requirements of the Dividing Fence Act.

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

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

7. **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 ISTRUCT Consulting Engineers, Drawing number D01, Project No 211105,Issue A and Dated 20/12/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. OSD to be provided in accordance with Clause 9.0 of Council's Water Management for Development
ii. Applicant must install a rainwater tank of at least 3500l capacity (BASIX).
iii. Level spreader to be at least 3m away from any site boundary
iv. 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.

8. **Vehicle Driveway Gradients and Manoeuvring**
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.
To facilitate satisfactory and safe access to and from the proposed development the site access is restricted to 'Forward In and Forward Out' vehicle movement. All vehicle maneuvering should be within the site.

Detailed plans, including engineering certification 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 confirming the above requirements which is vehicle maneuvering within the site and safe forward in and forward out vehicle movement from the site have been satisfied and complying AS 2890, 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.

9. **Tanking of Basement Level**
The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

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

11. **Vehicle Crossings Application**
The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

12. **Site fencing**
Site fencing is to be constructed and carried out in accordance with relevant Australian Standards.

Details demonstrating compliance 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. **Privacy Screens**
A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern edge of the first floor terrace (with the exception of the entry to terrace from stairs). The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern edge of the ground floor terrace . The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

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

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

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

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

15. **Details regarding car stacker**
Details prior to Construction Certificate are to be provided from the manufacturer of the car stacker to show that noise levels of operation of the car stacker will be no greater than 5dBa when measured at the closest neighbouring habitable room.

Reason: To minimise acoustic impact on neighbours.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Property / Properties: 4 Parr Avenue and 131 Headland Road.

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

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

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

18. **Submission of Minor Encroachment Application for Works in the Public Road**

The applicant is to submit a Minor Encroachments/ Constructions With Road Reserve Application for approval (Form #4033). No work shall commence until written approval has been obtained from Council.

The applicant is to enter into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

Reason: To ensure private works within the public road reserve are constructed in accordance with relevant standards and Council's specification.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **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.

20. **Tree and Vegetation Protection**

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

i) all trees and vegetation within the site not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,

ii) all trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **Demolition Works - Asbestos**

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

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

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

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

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

25. **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.

26. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 5 metres wide with one wing on eastern side and merging with neighboring layback (131 Headland Road) on western side in accordance with Northern Beaches Council Drawing No A4-3330/ 5EL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

27. **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

28. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plans.

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

Reason: Environmental amenity.

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

30. **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),Hydraulic Engineers' certification and photographic evidence for the completed onsite 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/pdfforms/legaldocumentsa - on-site-stormwater-detention-systems/guide-submitting-ldaanov19.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/pdfforms/legaldocumentsa - on-site-stormwater-detention systems/4023 legaldocumentsauthorisationoct19.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 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 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 disposal system is maintained to an appropriate operational standard and not altered.

31. **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.

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*.

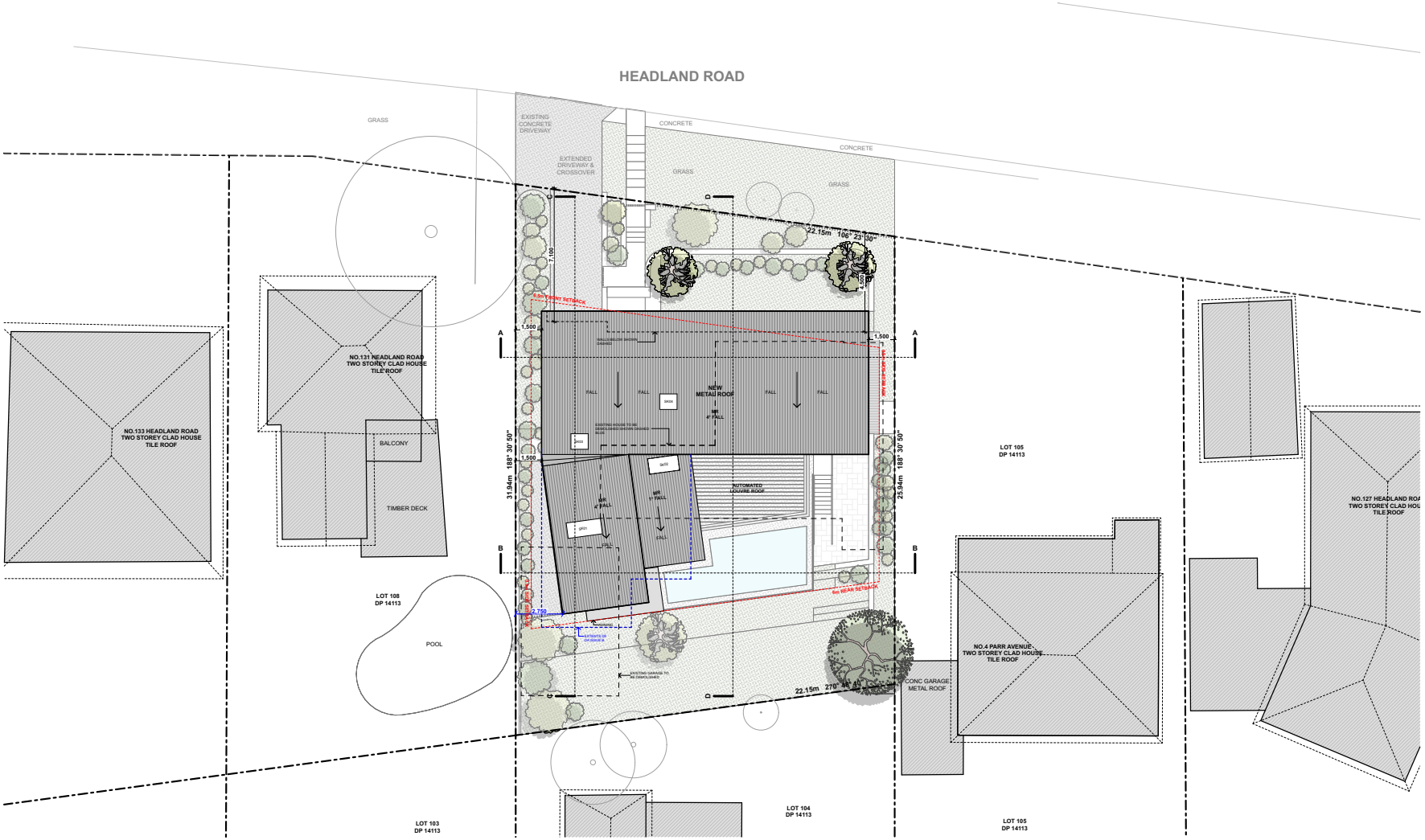
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life.

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

33. **Swimming Pool/Spa Motor/ Car Stacker Noise**
The swimming pool / spa motor and car stacker shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest habitable room.

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



NOTES:

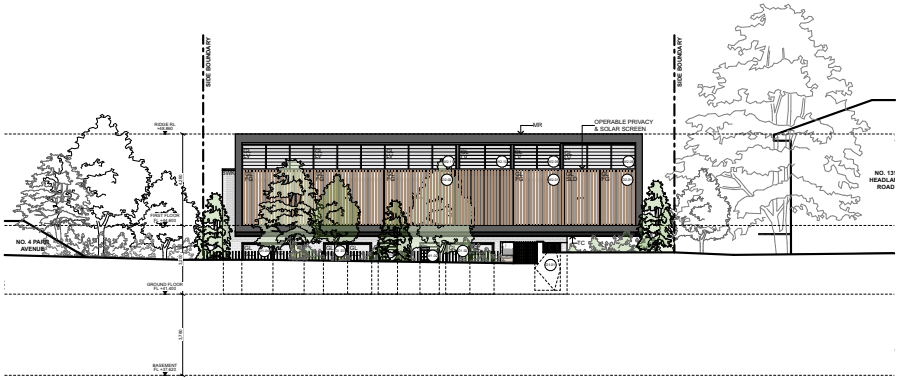
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Transmittal Set ID	Transmittal Set Name	Transmittal Set Date
A	Issue to Consultants	26/11/21
B	DA Issue	10/12/21
C	DA Issue - Amended	3/6/22

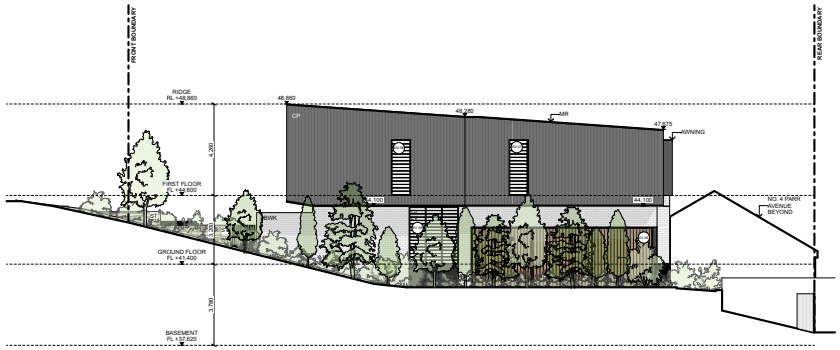
WATERSHED DESIGN architecture interiors landscapes

REGISTERED ARCHITECT: MARK KORGUL REGISTRATION NUMBER: 6221
PHONE: 9977 1076 FAX: 02 9976 0625 EMAIL: INFO@WATERSHEDDESIGN.COM.AU
ADDRESS: LEVEL 1, 167 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA

CLIENT:	ERIC WOLF	ADDRESS:	129 HEADLAND RD NORTH CURL CURL 2096	JOB NO:	21009	DRAWING NO:	DA04
PROJECT:	PROJECT NAME	DRAWING:	**SITE & ROOF PLAN**	DRAWN:	XX	ISSUE:	C
				CHECKED:	MK		
				SCALE:	1:200		



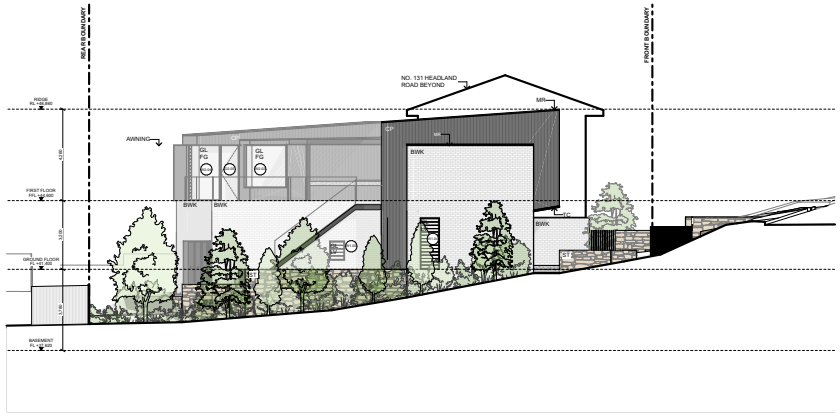
N **ELEVATION NORTH**
HEADLAND ROAD STREET VIEW



W **ELEVATION WEST**



S **ELEVATION SOUTH**



E **ELEVATION EAST**

NOTES:

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ADDRESS: LEVEL 1, 167 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA

CLIENT:	ERIC WOLF	ADDRESS:	129 HEADLAND RD NORTH CURL CURL 2096	JOB NO:	21009	DRAWING NO:	DA12
				DRAWN:	XX		
PROJECT:	PROJECT NAME	DRAWING:	**ELEVATIONS**	CHECKED:	MK	ISSUE:	C
				SCALE:	1:200		