AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 14 SEPTEMBER 2022



Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 14 September 2022 via teleconference Commencing at 10:00am

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Development Determination Panel held 24 August 2022

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS 5

3.1 DA2022/0500 - 28 Coutts Crescent COLLAROY - Alterations and additions to a dwelling house including a swimming pool.....5

3.2 DA2022/0775 - 48 Lindley Avenue NARRABEEN - Alterations and additions to a dwelling house including secondary dwelling 59

3.3 Mod2022/0292 - 16 Carrington Parade FRESHWATER - Modification of Development Consent DA2020/1090 granted for alterations and additions to a dwelling house.....116

3.4 DA2022/0727 - 12 Clarence Street BALGOWLAH - Alterations and additions to a semi-detached dwelling.....139

3.5 DA2021/1734 - 21 Headland Road NORTH CURL CURL - Demolition works and construction of a dwelling house 187

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 24 AUGUST 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 24 August 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	**DA2022/0500 - 28 COUTTS CRESCENT COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/545653**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0500 for alterations and additions to a dwelling house including a swimming pool on land at Lot 16 DP 236457, 28 Coutts Crescent COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0500

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 16 DP 236457, 28 Coutts Crescent COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lisa Jane Diaz
Applicant:	Ihgroup Pty Ltd

Application Lodged:	13/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/04/2022 to 09/05/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 11.76%
Recommendation:	Approval

Estimated Cost of Works:	$ 920,000.00

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

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. The maximum height of the proposed development has been measured at 9.5m (existing excavated garage) which represents a variation of 11.76% to the prescribed 8.5m building height limit.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. No submissions were received as a result of the public exhibition of the proposal.

Due to the slope of the site and existing excavation and the siting and form of the existing dwelling, the non-compliant elements of the proposal will not impact upon the desired character of the locality or unreasonably impact on the amenity of the adjoining properties. When assessed on its merits, it is concluded that the built form of the proposal will be commensurate with the existing dwelling on the site and the surrounding built environment and that the height breach will not result in unreasonable amenity impacts to adjoining neighbours.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to a dwelling house, including the construction of a swimming pool. The works include the following:

Basement level:

- Demolition of existing driveway access and construction of new driveway,
- Demolition of some external walls and garage door,
- Extension of garage building footprint,
- Repositioning of staircase.

Ground level:

- Demolition of some internal and external walls, doors and windows.
- Reconfiguration and extension of ground floor level to provide the following:
  - Foyer,
  - Master bedroom with ensuite and front terrace,
  - Two bedrooms,
  - Bathroom,
  - Stair access to first floor level.

First Floor Level:

- Demotion of internal walls and externals walls, doors, windows, front terrace and alfresco area.
- Reconfiguration and extension of first floor level to provide the following:
  - Open plan kitchen, living and dining area,
  - Laundry,
  - Powder room,
  - Front balcony.,
- Outdoor alfresco area,
- Swimming pool with decking,
- Landscaping.

Roof:

- New roof form.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D16 Swimming Pools and Spa Pools

SITE DESCRIPTION

Property Description:	Lot 16 DP 236457 , 28 Coutts Crescent COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Coutts Crescent. The site is regular in shape with a frontage of 17.68m along Coutts Crescent and a depth of 39.6m. The site has a surveyed area of 731.3m². The site is located within the R2 Low Density Residential zone and accommodates three storey dwelling with attached garage. The site slopes down from the rear to front boundary with a overall slope of 16 to 17 degrees. The site has lawn area at the front. At the rear of the site

	there is a mix of terraced lawn areas and exposed rock outcrops. There are no known threatened species on the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by two to three storey residential dwellings of varying architectural design. **Site Inspection** A site inspection was conducted 21 June 2022.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an incomplete Arborist Report and western elevation plan. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance 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

Section 4.15 Matters for Consideration	Comments
	justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bush Fire Planning Services, dated 02/02/2022). The report stated that the bushfire attack level of the site is BAL-19 and BAL-12.5 and the report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/04/2022 to 09/05/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Additional Information Comment 28/07/2022 Additional information providing the full Arborist's report is noted. The Report concludes that works can be undertaken as proposed with an acceptable level of impacts on two trees on the adjoining property. All other trees are to be retained. No objections are raised with regard to landscape issues subject to conditions. Original Comment The documents viewed include a portion of an Arborist's report which indicate that there is potential for impact on two trees.

Internal Referral Body	Comments
	The Report is however incomplete (Section 4 and Appendices only) and no recommendations have been provided. It is recommended that the full report be provided to enable proper assessment of the proposal. If additional information is provided, further assessment can be undertaken.
NECC (Bushland and Biodiversity)	Revised Referral The Statement of Environmental Effects states that trees will be retained and this has been confirmed in the submitted Arboricultural Impact Assessment. Therefore the proposal is considered unlikely to result in a significant impact to the environment, and is in accordance with the objectives and requirements of the relevant biodiversity planning controls. Original Referral The application seeks approval for alterations and additions to dwelling house and construction of a swimming pool. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **State Environmental Planning Policy (Coastal Management) 2018** • Clause 13 Development on land within the coastal environment area • Clause 15 Development in coastal zone generally – development not to increase risk of coastal hazards **Warringah Development Control Plan (WDCP)** • Clause E2 Prescribed Vegetation • Clause E4 Wildlife Corridors • Clause E6 Retaining unique environmental features As stated within the Landscape Referral, the submitted Arboricultural Impact Assessment is inadequate to form an opinion on the proposed development. The Statement of Environmental Effects states that trees will be retained however the measurements provided in the submitted Arboricultural Impact Assessment demonstrate that there will be an impact to the TPZ and possibly SRZ of Tree 2, with no commentary on acceptability of impacts and long-term health of the trees. Refer to

Internal Referral Body	Comments
	Landscape Referral for further detail. On receipt of the requested information, the Biodiversity Referral Team can reassess the application.
NECC (Coast and Catchments)	The application has been assessed in consideration of the *Coastal Management Act 2016,* State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011. **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 (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment, the DA satisfies requirements under clauses 2.10 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021 **Warringah LEP 2011 and Warringah DCP 2011** No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	The development site adjoins Lincoln Avenue Reserve that is located upslope of the property. Warringah DCP control E7 Development on land adjoining public open space, applies to the land. The proposed Landscape Plan submitted provides a landscape buffer of native vegetation along the rear of the property and thus the objectives of the E7 control are satisfied. No physical development works over the site boundaries are permitted under the development application, and no structures, built elements, or landscaping are not permitted beyond the site boundaries. Public access to the reserve is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

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.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The proposal was referred to NSW RFS who provided a response stating that the proposal is acceptable subject to compliance with the recommended conditions. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 19 - Bushland in Urban Areas

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

(c) the need to retain any bushland on the land,
(d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and
(e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.
Comment:
The proposal is for alterations and additions to an existing dwelling including the construction of a swimming pool and deck. The works are located within a landscaped garden and do not require the removal of native vegetation and will not encroach or disturb the adjacent public open space. Furthermore, the proposal provides a landscape buffer of native vegetation along the rear of the property and meets the objectives of the E7 control.

Based on the above, it is considered that the development would not result in consistency with the aims of the plan.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A438615_02 dated 4 April 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 proposed works are located wholly within the site and visually and physically separated from the foreshore, beach, headland or rock platform. The works are for standard residential development and will not cause an unreasonable impact on the coastal environment area and meet the requirements of this clause.

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 proposed works are located wholly within the site and visually and physically separated from the

foreshore, beach, headland or rock platform. The works are for standard residential development and will not cause an unreasonable impact on the coastal environment area.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards
Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.
Comment:
The proposed development is contained wholly within the subject site and is considered to be standard alterations and additions to an existing dwelling house. The works are not likely to cause any increased risk of coastal hazards on that land or other land.

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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	11.76%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:9.6	9.5m
Percentage variation to requirement:	11.76%

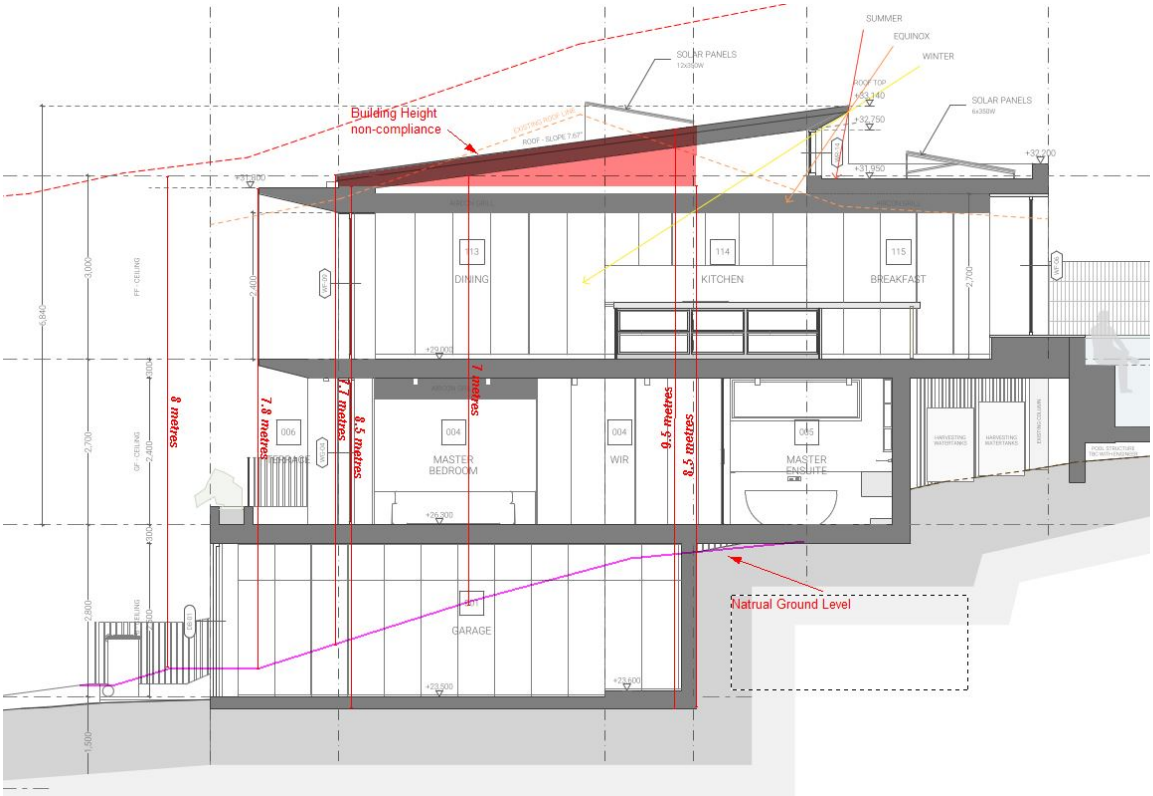


Image 1: *Section of no. 28 Coutts Crescent showing natural ground level in pink and building height non-compliance in red*

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

Clause 4.6 Exceptions to development standards:
(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular

circumstances.

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

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

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

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

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

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

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

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

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

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

- There are sufficient environmental grounds to justify the contravention. The proposed height variation does not generate any unacceptable environmental impacts in respect of overshadowing or wind and will not significantly impact on view lines and vistas from the public domain.
- There are site specific environmental grounds which justify the minor breach, due mainly to the existing site topography that slopes steeply upwards from the front of the site to the rear of the site. The height of building control of 8.5m is therefore unavoidably breached in achieving a suitable a cohesive design outcome, and the breach is exacerbated by the existing topography in the immediate area.
- The proposed development achieved compliance with the maximum building height limit under Council's previous rules which measured building height from natural ground level.
- Notwithstanding the proposed height variation, the proposed development remains consistent with the objectives of the height standard and the R2 – Low Density Residential.
- The proposed height variation will not be perceivable from the public domain and as such the proposed development will have an appropriate impact, in terms of its scale, form and massing.
- The proposed development is in the public interest as the variation to the height control will enable the orderly and efficient use of the land, in accordance with the objectives of the

Environmental Planning and Assessment Act 1979 (EP&A Act).

This assessment generally agrees with the above, that strict compliance with the building height development standard is unreasonable in the circumstances as the proposed non-compliance is a result of the existing excavated garage. The proposed works that result in the non-compliance with the building height consist of a new roof which changes the existing roof form from a gabled roof to a skillion and part flat roof. The majority of the non-compliance is below the height of the existing roof hipped roof. Council generally agrees with the applicant, that the area of non-compliant building height does not result in unreasonable amenity impact when considered against the WLEP 2011 and WDCP 2011. The area of non-compliant building height does not have a direct view impact.

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

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

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

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

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

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

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

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

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
Comment:
While the proposal includes some numerically non-compliant built form elements, the development remains sympathetic to the surrounding and nearby low-density residential development by providing a built form that is largely contained within the existing building footprint. The height non-compliance is a result of the existing excavated garage area.

The proposal maintains the existing two and three storey built form, which is consistent with the surrounding development. The height is largely a result of the existing dwelling which already

protrudes the building height plane. The height non-compliance represents a marginal increase on the existing building height to accommodate the new roof.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
Comment:
As noted above, the proposed development is largely contained within the existing footprint with only a marginal increase on the existing building height. The non-compliance is a result of existing excavated garage and the replacement of the existing roof hipped roof with replacement with a skillion roof form. The amended roof form will not disruption views, privacy or solar access with residential amenity to adjoining and nearby properties. The bulk and scale of the development, in so far as the roof is concerned remains largely unchanged.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
Comment:
The impact of the development on the scenic quality of Warringah's coastal and bush environments is minimal. The area of non-compliance is a result of the existing excavated garage. When measured from natural ground level, the proposal is below the height 8.5m requirement. The proposal is consistent with the scenic quality of Warringah's coastal and bush environment.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,
Comment:
The visual impact of development as viewed from any nearby public places, such as parks and reserves, roads and community facilities are minimised . The proposed works to the front of the dwelling remain compatible with the existing streetscape character and provides generous separation to the Coutts Crescent frontage consistent with the DCP control.

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

- *To provide for the housing needs of the community within a low density residential environment.*
  Comment:
  The proposed height variation does not contravene this objective of the zone in that the use of the land remains (for detached housing) and is provided with sufficient landscaping concentrated at the front and rear that is compatible with the scale, density and pattern of surrounding development.

  It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  Comment:
  This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

  It is considered that the development satisfies this objective.
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
  Comment:
  The height variation does not impact the landscape setting of the site and the

surrounding setting over the long term once landscaping is re-established for the garden areas. The proposed alterations and additions incorporate suitable colours and materials consistent with the existing dwelling and surrounding development in keeping with the scenic quality when viewed from Coutts Crescent and improved landscaped areas to the rear of the site.

It is considered that the development satisfies this objective.

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

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

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

6.4 Development on sloping land

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

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

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

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

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

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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from

a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.9m	9.7%	Yes - existing
B3 Side Boundary Envelope	E - 4m	Within Envelope	N/A	Yes
	W - 4m	Outside Envelope	N/A	Yes - existing
B5 Side Boundary Setbacks	E - 0.9m	1.5m	N/A	Yes
	W - 0.9m	1.1m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	7.6m	N/A	Yes
B9 Rear Boundary Setbacks	6m	Swimming pool deck - 5m Dwelling - 16.3m	16.6% N/A	Yes - with variation Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	49.7% (364.1m^2)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Under Clause B1 of WDCP 2011, requires walls to not exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed changes to the front balconies and change to materials on the western and southern elevation breach the prescribed wall height control. However, this is a direct result of the existing built form and will not result in an increase in the existing wall height non-compliance. The proposal retains the form of the existing dwelling along the western and southern boundary and the wall height non-compliance will not result in additional amenity impacts to adjoining neighbours or result in the development becoming visually dominant when viewed from the street and surrounding properties.

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

B3 Side Boundary Envelope

Under Clause B3 of Warringah Development Control Plan 2011, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 4 metres above ground level (existing) at the side boundaries.

The proposed new roof form and change to materials on the western elevation would breach the prescribed building envelope. However, this is a direct result of the existing built form and will not result in an increase in the existing envelope non-compliance. The proposal retains the form of the existing dwelling along the western boundary and the envelope non-compliance will not result in additional amenity impacts to adjoining neighbours or result in the development becoming visually dominant when viewed from the street and surrounding properties.

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

B9 Rear Boundary Setbacks

The proposed swimming pool occupies 4.9m^2 or 4.27% of the rear setback area. The WDCP allows for swimming pools and outbuildings within the rear setback that occupy not more than 50% of the rear setback area. As the proposal occupies 4.27%, the proposal may be considered for the exception and is considered satisfactory in this regard.

D8 Privacy

Clause D8 Privacy requires habitable rooms and outdoor living areas of dwellings to optimise visual privacy through an appropriate design outcome. Private open space areas and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking. The proposed swimming pool and deck are located along the western boundary shared with no. 30 Coutts Crescent and provide direct overlooking of the private open space of no. 30 Coutts Crescent.

The swimming pool fence along the western edge of the swimming pool has a height of 1.2m and the fence along the western edge of the pool deck has a height of 1.4m. The swimming pool fence is transparent and will allow for direct overlooking of the private open space of no. 30 Coutts Crescent by the swimming pool users. A condition is recommended requiring the fence along the western edge of the swimming pool to be constructed of obscure materials. The height of the fence running along the western edge is considered acceptable as the western edge of the swimming pool is non-trafficable, and when measured from the shallowest point of the swimming pool, the height to the top of the fence is 1.7m. This height along with the recommended condition for the pool fence to be constructed of obscure material will limit overlooking from the swimming pool. A condition will also be recommended increasing the height of the fence along the western edge of the swimming pool deck to 1.65m to reduce the potential to overlook the private open space of no. 30 Coutts Crescent.

The recommended conditions along with the design of the proposal will help to maintain and enhance privacy between dwellings.

D16 Swimming Pools and Spa Pools

As a result of the topography and conditions of the site, the proposed swimming pool is raised out of the ground along the western boundary with a maximum height, to the top of the swimming pool fence of 3.9 - 2.2m. The location of the swimming pool in the rear yard of the site has a cross fall and from the north-eastern corner of the swimming pool to the south-western corner of approximately 3.5m. The proposal is also raised to minimise the amount of excavation require to locate the swimming pool as the rear of the yard is scatter with large stone outcrops and lose boulders. Furthermore, the pool is located in this area to retain as much usable rear yard as possible and minimise excavation.

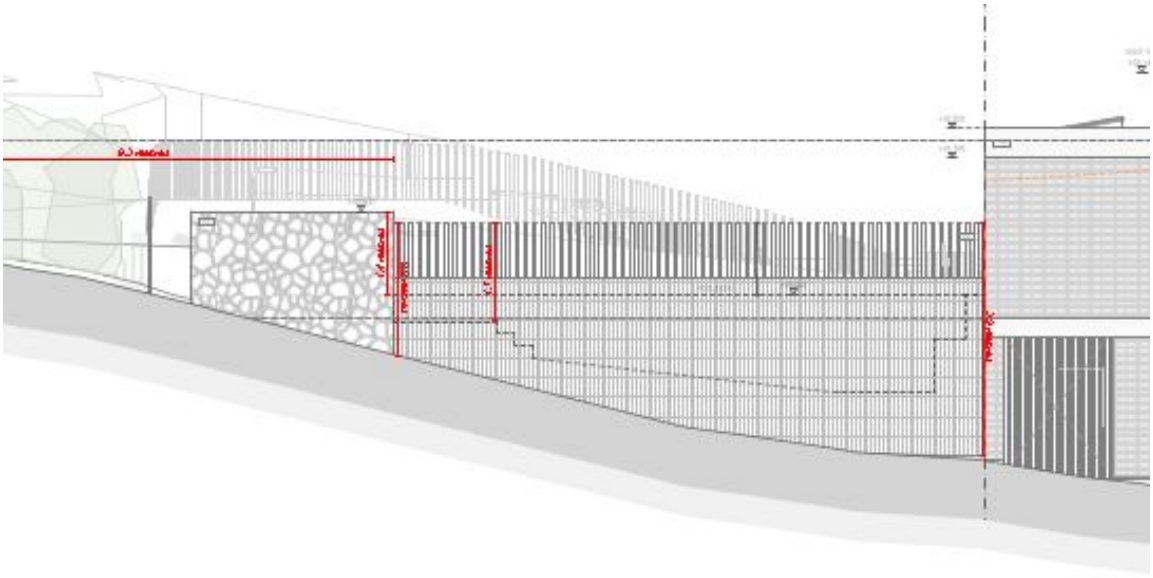


Image 1: *Western elevation of the proposed swimming pool*



Photo 1: *Location of proposed swimming pool*

The proposed location of the swimming pool will minimises the amount the amount of excavation required on the site, which will help to preserve the natural environment. The location of the swimming pool will also increase privacy between dwellings. The rear yard and private open space of no. 30 Coutts Crescent is clearly visible from the rear of the site and the swimming pool and recommended privacy conditions will screen this area from view.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $9,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $920,000.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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

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

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

Planning Conclusions

The assessment of this application has found that notwithstanding the numerical non-compliance's, the proposal overall is worthy of conditional approval.

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

The submitted clause 4.6 appropriately addresses the requirement of the clause and the non-compliance with the building height is found to be reasonable and well founded within the site constraints, historical excavation of the site and the geographical context.

On the balance of all relevant matters and after a comprehensive assessment of all materials submitted by the applicant, this report concludes that the DDP, as the consent authority, should **APPROVE** the development application, subject to the attached conditions.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/0500 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 16 DP 236457, 28 Coutts Crescent, COLLAROY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		

Drawing No.	Dated	Prepared By
Site Plan - 000.1 - RevE	18/03/2022	Pure
Demolition Basement - 100.0 - RevE	18/03/2022	Pure
New Construction Basement - 110.0 - RevE	18/03/2022	Pure
Demolition Ground Floor - 100.1 - RevE	18/03/2022	Pure
New Construction Ground Floor - 110.1 - RevE	18/03/2022	Pure
Demolition First Floor - 100.2 - RevE	18/03/2022	Pure
New Construction First Floor - 110.2 - RevE	18/03/2022	Pure
Demolition Roof Level - 100.3 - RevE	18/03/2022	Pure
New Construction Roof Level - 110.3 - RevE	18/03/2022	Pure
South Elevation - Facade - 200.1 - RevE	18/03/2022	Pure
West &North Elevations - 200.2 - RevE	18/03/2022	Pure

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Investigation Report Proposed Alterations and Additions 28 Coutts Crescent Collaroy, NSW Document Ref: CG22-0194-A Rev 0	22 February 2022	Core Geotech
BASIX Certificate Certificate number - A438615_02	4 April 2022	Chapman Environmental Services Pty Ltd
Bushfire Risk Assessment Reference number 3797	2 February 2022	Bush Fire Planning Services
Arboricultural Impact Assessment	12th July 2022	TALC

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Cover Sheet	17/03/2022	Bates Landscape
Site Plan	21/03/2022	Bates Landscape
Front Landscape Plan	21/03/2022	Bates Landscape
Rear Landscape Plan	21/03/2022	Bates Landscape
Rear Planting Plan	21/03/2022	Bates Landscape

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management/ Sediment Control Plan - 470.1 - RevE	17/21/2021	Pure

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	13/05/2022
NSW Rural Fire Service	RFS Referral Response	11 May 2022

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

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

3. **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 Section 7.12 Contributions Plan 2022

A monetary contribution of $9,200.00 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 2022. The monetary contribution is based on a development cost of $920,000.00.

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 2022 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

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

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

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

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

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

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

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

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

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

- The swimming pool fence along the western edge of the swimming pool is to be constructed of obscure materials,
- The wall along the western edge of the swimming pool deck is to have a minimum height of 1.65m when measured from the FFL of the deck.

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

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

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

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

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

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

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

13. **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.

14. **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

15. **Dead or Injured Wildlife**
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

16. **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: Nos. 26 and 30 Coutts Crescent, Collaroy.

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Protection of Landscape Features and Sites of Significance**
All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

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

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

Reason: Preservation of significant environmental features.

18. **Tree and Vegetation Protection**

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

b) Tree protection shall be undertaken as follows:
   i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 12 July 2022 prepared by TALC and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
   iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
   iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
   v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
   vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
   vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture

shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

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

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

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

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

19. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

i) a general decline in health and vigour,

ii) damaged, crushed or dying roots due to poor pruning techniques,

iii) more than 10% loss or dieback of roots, branches and foliage,

iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

v) yellowing of foliage or a thinning of the canopy untypical of its species,

vi) an increase in the amount of deadwood not associated with normal growth,

vii) an increase in kino or gum exudation,

viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,

ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

20. **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.

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

22. **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.

23. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EH 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.

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

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

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

25. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

26. **Landscape Completion**
a) Landscaping is to be implemented in accordance with the approved Landscape Plan.

b) Prior to the issue of any Occupation Certificate details 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.

27. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

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

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

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

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

Reason: To protect wildlife habitat.

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

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

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

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

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

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

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

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

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

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

Reason: To ensure bushland management. (DACPLF01)

33. **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.

34. **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

35. **Control of Domestic Dogs/Cats**
Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

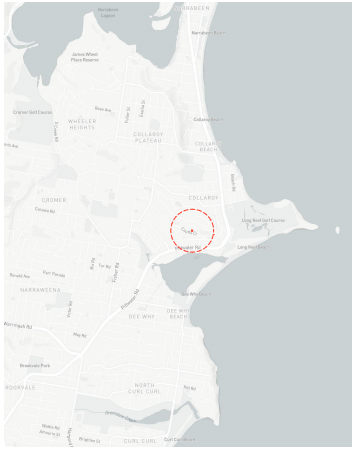
Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife in accordance.

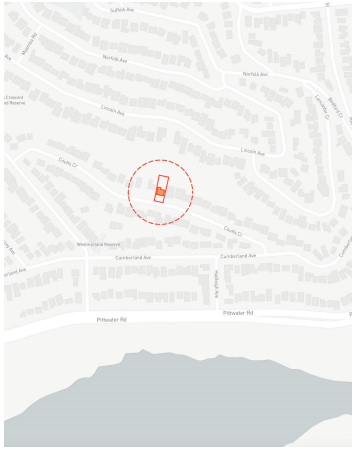
36. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

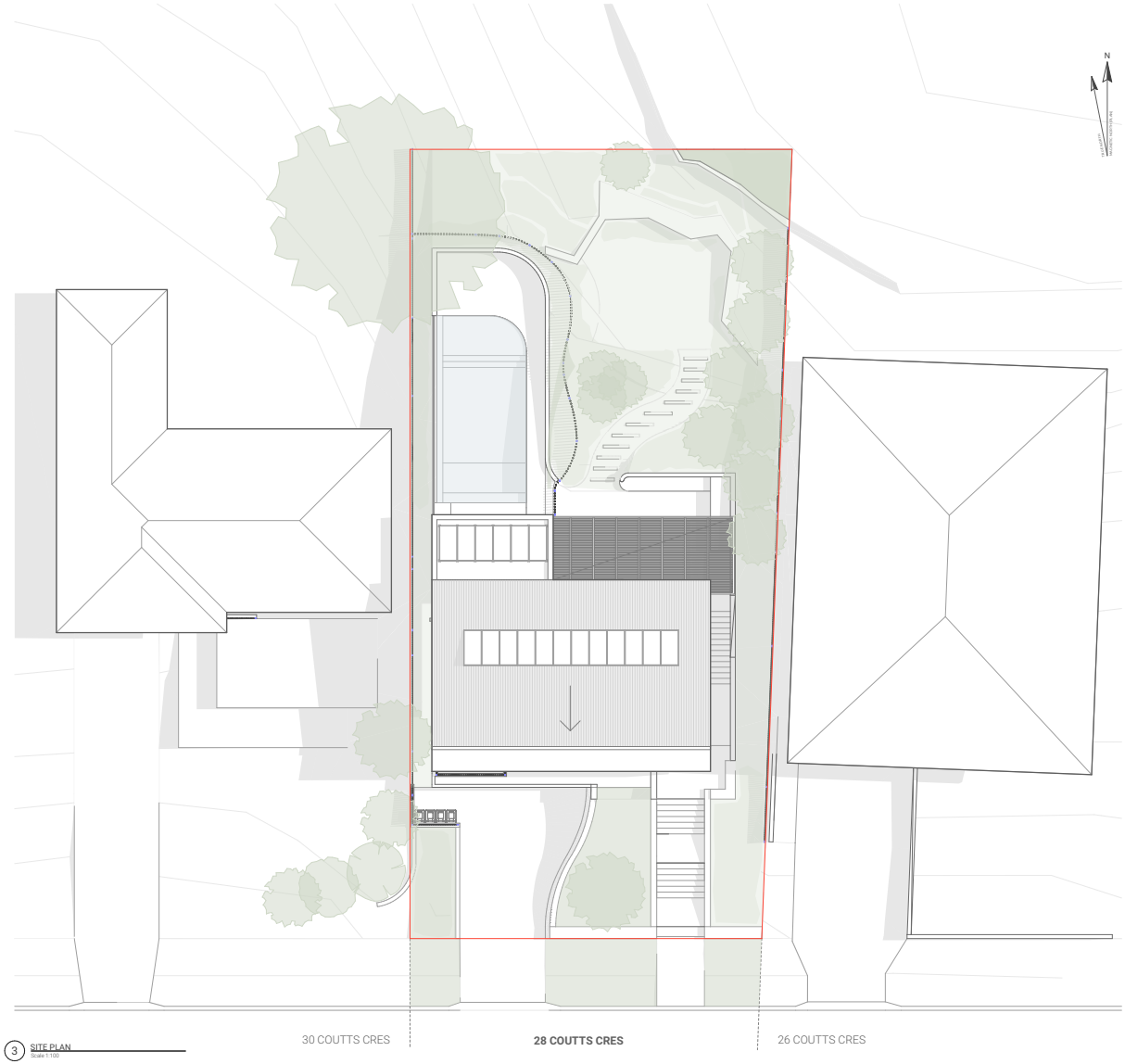
SITE LOCATION
28 Coutts Crescent
Collaroy, 2097, NSW



1 SITE LOCATION
Scale



2 SITE LOCATION
Scale 1:2000



3 SITE PLAN
Scale 1:100

NOTES

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PROJECT
Collaroy House
28 Coutts Crescent
Collaroy, NSW 2097

CLIENT
Lisa Diaz

DRAWING TITLE
Site Plan

SCALE	DATE
1:100 @A1	18/03/2022

JOB NO	DRAWING NO	REV
2107	000.1	E

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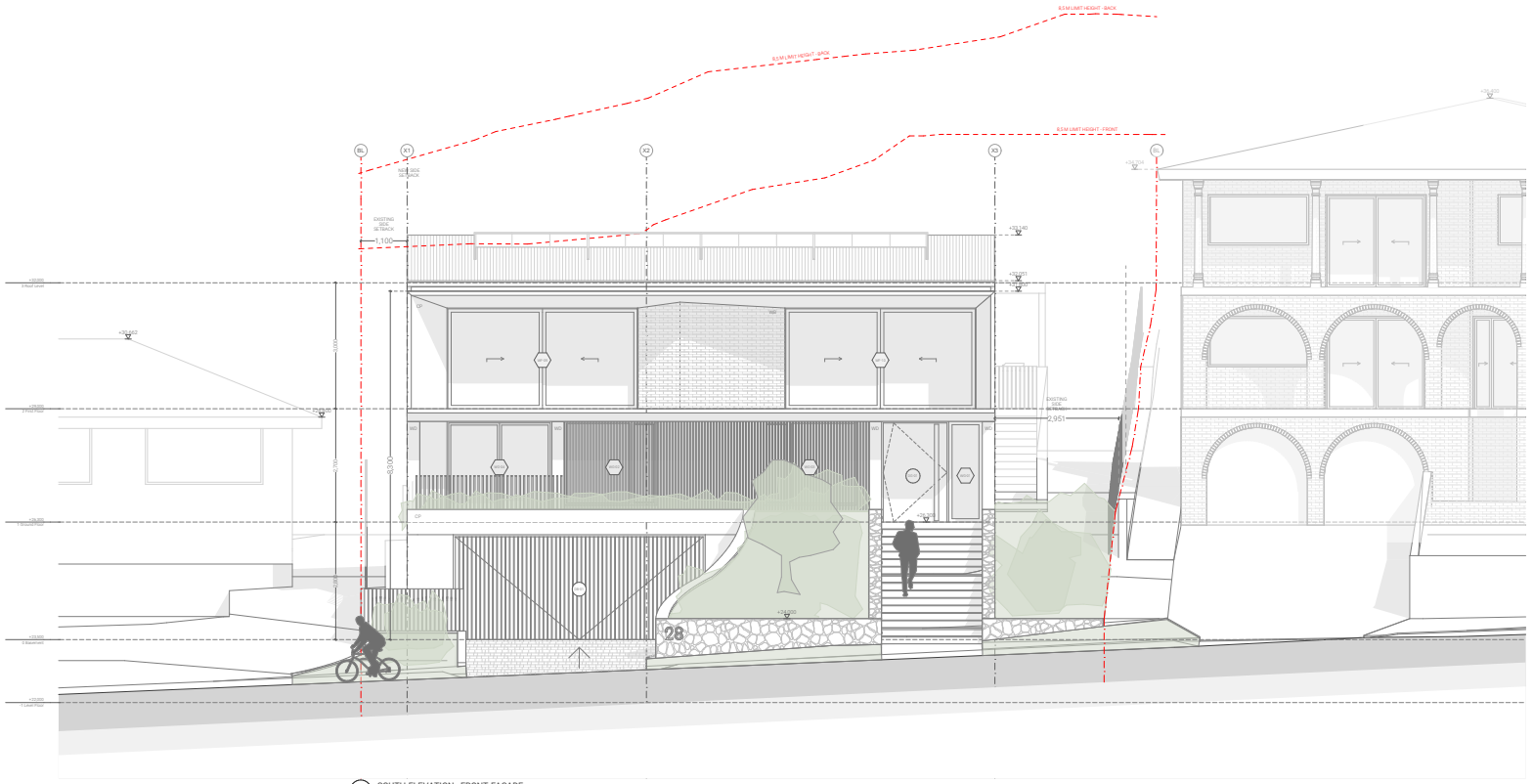
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211126_COLLAROY_DIAZ_REV-E



S SOUTH ELEVATION - FRONT FACADE
Scale 1:50

NOTES

REV	DRAWING TITLE	BY	CHK	DATE
E	211129_COLLAROY_DIAZ_REV E	AR	JC	15/03/2022
D	211129_COLLAROY_DIAZ_REV D	AR	JC	15/03/2022
C	211129_COLLAROY_DIAZ_REV C	AR	JC	15/03/2022
B	211129_COLLAROY_DIAZ_REV B	AR	JC	15/03/2022
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PROJECT
Collaroy House
28 Coutts Crescent
Collaroy, NSW 2097

CLIENT
Lisa Diaz

DRAWING TITLE
South Elevation - Facade

SCALE	DATE
1:50 @A1	18/03/2022

JOB NO	DRAWING NO	REV
2107	200.1	E

pure.

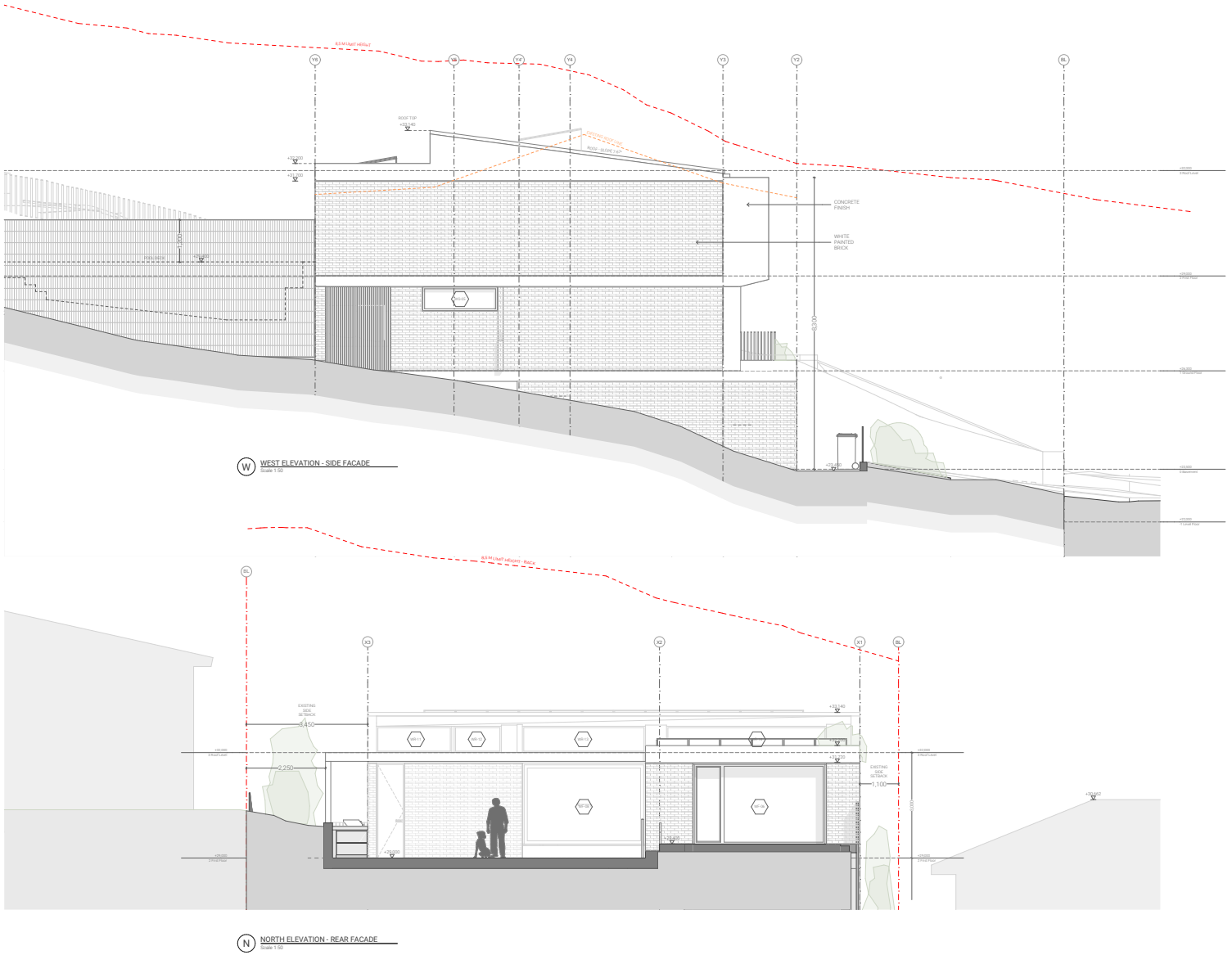
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211129_COLLAROY_DIAZ_REV E



NOTES

Collaroy House
28 Coutts Crescent
Collaroy, NSW 2097

Lisa Diaz

West & North Elevations

1:50 @A1

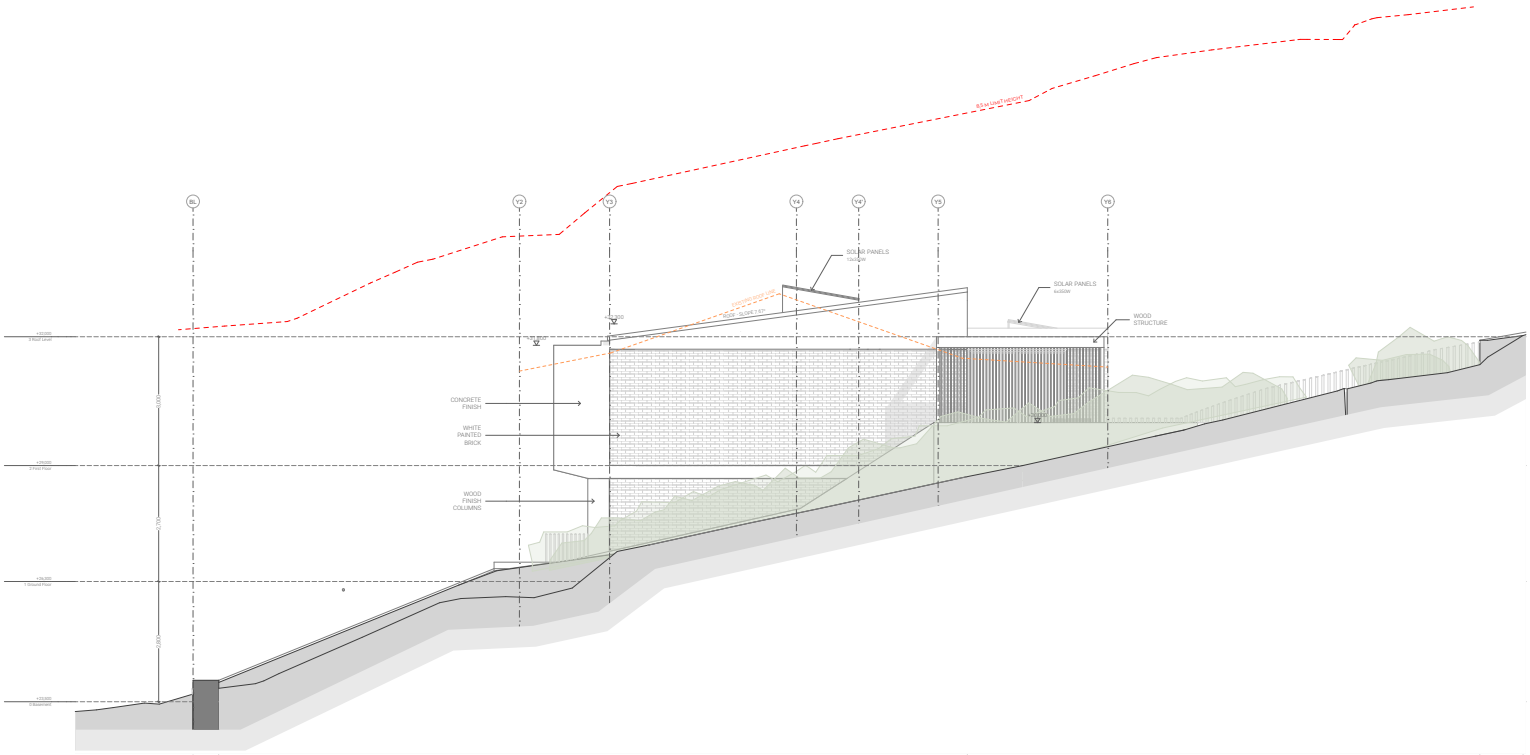
18/03/2022

2107

200.2

E

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E EAST ELEVATION - SIDE FACADE
Scale 1:50

NOTES

PROJECT
Collaroy House
28 Coutts Crescent
Collaroy, NSW 2097

CLIENT
Lisa Diaz

DRAWING TITLE
East Elevation

SCALE
1:50 @A1

DATE
18/03/2022

JOB NO
2107

DRAWING NO
200.3

REV
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IN HOUSE
DESIGN & PLANNING STUDIO

CLAUSE 4.6 VARIATION STATEMENT

ALTERATIONS AND ADDITIONS TO EXISTING DWELLING HOUSE AND NEW SWIMMING POOL

28 COUTTS CRESCENT
COLLAROY NSW 2097
LOT 16 DP 236457

1 INTRODUCTION

This Clause 4.6 Variation Statement has been prepared by In House Town Planning. It is submitted to Northern Beaches Council in support of a Development Application (DA) for alterations and additions to an existing dwelling house and a new swimming pool on the site located at 28 Coutts Crescent, Collaroy proposing a variation to the maximum building height limit.

Clauses 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) enables Northern Beaches Council to grant consent for development even though the development contravenes the height development standard. The Clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- That the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction in respect of those matters must be informed by the objectives of Clause 4.6, which are to provide an appropriate degree of flexibility in the application of the relevant controls and to achieve better outcomes for and from the development in question by allowing flexibility in particular circumstances.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a).

In accordance with the SSLEP 2015 requirements, this Clause 4.6 Variation Statement identifies the following:

- The development standard to be varied.
- The variation sought.
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- Demonstrates there are sufficient environmental planning grounds to justify the contravention.
- Demonstrates that the proposed variation is 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.
- Provides an assessment of the matters the Secretary is required to consider before providing concurrence.

This Clause 4.6 Variation Statement relates to the development standard for maximum building height under Clause 4.3 of the WLEP 2011 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by In-House Town Planning. This document demonstrates that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances due to Council's recent

implementation of the court findings in the case *"Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582"* which determined that the maximum building height should be measured from excavated ground level and not natural ground level. This document also demonstrates that there are sufficient environmental planning grounds to justify contravention of the standard.

This Clause 4.6 Variation Statement sufficiently demonstrates that:

- There are sufficient environmental grounds to justify the contravention. The proposed height variation does not generate any unacceptable environmental impacts in respect of overshadowing or wind and will not significantly impact on view lines and vistas from the public domain.
- There are site specific environmental grounds which justify the minor breach, due mainly to the existing site topography that slopes steeply upwards from the front of the site to the rear of the site. The height of building control of 8.5m is therefore unavoidably breached in achieving a suitable a cohesive design outcome, and the breach is exacerbated by the existing topography in the immediate area.
- The proposed development achieved compliance with the maximum building height limit under Council's previous rules which measured building height from natural ground level.
- Notwithstanding the proposed height variation, the proposed development remains consistent with the objectives of the height standard and the R2 – Low Density Residential.
- The proposed height variation will not be perceivable from the public domain and as such the proposed development will have an appropriate impact, in terms of its scale, form and massing.
- The proposed development is in the public interest as the variation to the height control will enable the orderly and efficient use of the land, in accordance with the objectives of the Environmental Planning and Assessment Act 1979 (EP&A Act).

2 PROPOSED VARIATION

2.1 DEVELOPMENT STANDARD TO BE VARIED

This Clause 4.6 Variation Statement seeks to justify contravention of the development standard set out in Clause 4.3 of the WLEP 2011. Clause 4.3(2) of the WLEP 2011 requires that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The site is subject to a maximum building height of 8.5m.

2.2 NATURE OF VARIATION SOUGHT

The departure from the height control is experienced on the front portion of the building where the existing topography in relation to the host structure is at its lowest point. As demonstrated by the Architectural Plans submitted with the application, the remaining areas of the proposed development are fully compliant with the prescribed maximum building height control. In this instance, the variation to the height of buildings control relies on Clause 4.6 - *Exception to Development Standards* of the WLEP 2011.

3 JUSTIFICATION FOR CONTRAVENTION OF THE STANDARD

Clause 4.6(3) of the WLEP 2011 provides that:

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.*

Further, Clause 4.6(4)(a) of the WLEP 2011 provides that:

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

Assistance in the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

- *Wehbe v Pittwater Council [2007] NSW LEC 827*; and
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*

The relevant matters contained in Clause 4.6 of the SSLEP 2015, with respect to the maximum building height development standard, are each addressed below, including with regard to these decisions.

3.1 CLAUSE 4.6(3)(a): COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE AND UNECCCESARY IN THE CIRCUMSTANCES OF THE CASE

In Wehbe, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. The five methods outlined in Wehbe include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
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.*
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.*

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, is the first method listed above. It is argued that the proposed development satisfies each of the relevant objectives of Clause 4.3(1) of WLEP 2011 as demonstrated below.

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

The proposed development has been designed in harmony with the streetscape, proposing alterations and additions to the existing dwelling house that are predominately contained to within the established building envelope on the site. The predominant built form of dwellings along the Coutts Crescent streetscape is multi level dwellings up to three storeys in height that follow the sloping gradient of the land. There are numerous examples of dwellings in the immediate vicinity of the site that have been approved for alterations and additions similar to the development proposed. The proposed development is considered to be consistent with Council's desired character of the street by significantly improving the visual appearance and architectural styling of the building and ensuring consistency with other new developments in the vicinity of the site. The overall choice of materials and colour scheme presents as cohesive and well-designed when viewed from the public domain.

The departure in the height control is the result of the steeply sloping topography of the land and when viewed from the public domain, the overall built form will not appear out of character when considering the significant bulk and scale of adjoining buildings. The final development maintains an appropriate balance between the built form, landscaped areas and private open space thereby achieving compliance with all other provisions of the WLEP 2011. Comprehensive site landscaping is proposed to the front, side and rear setbacks of the site that will contribute significantly to the natural landscape setting of the streetscape and will alleviate the perceived bulk and massing of the building when viewed from the public domain.

Whilst the height control is placed to ensure that the future character of the locality is maintained, the departure of the height control in this instance is a direct result of the inherent nature of adding to an existing dwelling on a site with extreme changes in elevation from the front property boundary to the rear. The control is therefore considered only a guide directed towards relatively level sites however applying the controls to a site with dramatic changes will inevitably create a departure from the control. While the proposed addition seeks to build higher than the numerical control, the residential surroundings will not allow extreme departures for future developments where residential dwellings will continue to dominate the streetscape.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

The proposed departure from the maximum building height control is not considered likely to result in adverse impacts to adjoining buildings, or buildings in the vicinity of the site, in terms of views, loss of privacy, overshadowing or visual intrusion. The Shadow Diagrams submitted with this application clearly demonstrate that the final development achieves the solar access requirements stipulated under the WDCP 2011 both on the site and for adjoining properties. The steeply sloping nature of the land and the location of adjoining dwellings ensures that the encroaching element of the building does not significantly overshadow the living or private open space areas of these properties or compromise their ability to attain a suitable level of solar access to the internal areas. The proposed development was designed with consideration of the value of existing views and given the locality, existing views are generally limited to neighbourhood views. Due to the orientation of adjoining buildings and the location of the subject building envelope, the proposed impacts are considered to be negligible. The proposed development is entirely reasonable as it is in keeping with the built form characteristics of the surrounding streetscape.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The proposed development retains the existing low impact residential nature of the subject site and will not impact on the visual or scenic quality of surrounding area. The proposed development will improve the visual appearance of the building when viewed from the public domain as a result of modern architectural design combined with comprehensive site landscaping. The final development reflects the character of the area and is site responsive, incorporating design elements that are sympathetic of the host structure, other dwelling houses along the

streetscape and the inherent site constraints. The final development will present to adjoining properties as a seamless dwelling house.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The subject site is not located in the immediate vicinity of any public parks or community facilities that would be impacted by the development. As mentioned throughout this report, the building is predominately located within the established building envelope of the dwelling house and will not generate significant overshadowing, privacy or amenity impacts.

3.2 CLAUSE 4.6(3)(b): ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The following site-specific environmental grounds further justify the proposed variation to the maximum height control:

- The proposed variation is minor in nature and is isolated to the front roof section of the proposed development where the existing topography in relation to the host structure is at its lowest point. As detailed on the Architectural Plans submitted with this application, the remaining areas of the built form are fully compliant with the maximum building height control.
- Prior to the implementation of Councils new method in determining maximum building height, the development achieved full compliance with the prescribed height control. This is clearly demonstrated on the Architectural Plans submitted with the application. However, due to the outcome of *"Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582"* the maximum building height is taken from the excavated ground level and as such a non-compliance is created. The development has been appropriately designed in consideration of adjoining properties and achieves a building height that is characteristic of the streetscape and will not appear out of character or set an undesirable precedence for future development.
- The proposed variation only covers a small proportion of the site and will not obstruct views from the surrounding streetscape.
- The proposed height variation will not generate any unacceptable adverse environmental impacts in respect of overshadowing or wind impacts. This is clearly demonstrated by the Shadow Diagrams submitted with this application, with the development maintaining an appropriate level of solar access to adjoining living and private open space areas through the incorporation of suitable setback distances to the side and rear property boundaries.
- Notwithstanding the proposed height variation, the final development continues to satisfy the objectives of the maximum building height control as demonstrated above.
- The complying building envelope is significantly compromised by the sloping topography of the land and Councils adoption of the new ruling. It is therefore considered necessary to contravene the maximum building height control in order to provide a functional and aesthetic building profile that reflects the existing dwelling house to ensure that the final development does not present as a piecemeal building when viewed from adjoining properties and the public domain.
- The breach of building height relates only to a small portion of the building and is not in relation to any usable or habitable floor area. Therefore, the portion of the development located above the maximum building height will not contain any windows or openings that will provide for direct view into adjoining properties or result in privacy concerns.
- The proposed variation will not result in a development that is out of character with that envisioned by Northern Beaches Council. The final development will present to the public domain as a contemporary split-level dwelling house that is sympathetic of adjoining buildings and achieves an appropriate balance between the built form, landscaped areas and private open space.

3.3 CLAUSE 4.6(3)(a)(ii): IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD

The proposed development is in the public interest as it achieves the below objectives of the R2 – Low Density Residential zone by contributing to a form of low impact residential development that is in keeping with adjoining land uses and will not adversely affect the scenic value of the surrounding area. The proposed development is predominately located within the established building envelope on the site to respect the established building line of the streetscape and retain a sufficient amount of vegetation across the site. The proposed development is appropriately stepped upped the site to limit potential impacts in terms of views to and from the public domain. The design of the development is in keeping with the established residential characteristics of the streetscape and will improve the sites presentation to the surrounding streetscape as a result of modern architectural styling combined with appropriate landscaping works.

The proposed height variation is in the overall public interest as it provides a significant improvement to the existing dwelling house, is in keeping with the predominant built form characteristics of the streetscape, improves the architectural styling of the host structure and will promote the orderly and efficient use of land in accordance with the objects of the EP&A Act.

4 OTHER MATTERS FOR CONSIDERATION

Under clause 4.6(5) of the SSLEP 2015, in deciding whether to grant concurrence, the Director-General must consider the following matters:

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.*

These matters are addressed in detail below.

4.1 CLAUSE 4.6(5)(a): WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING

The variation of the maximum height development standard does not raise any matter of significance for State or Regional planning.

4.2 CLAUSE 4.6(5)(b): THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

There is no public benefit in maintaining the development standard in terms of State and Regional planning objectives. As noted in the preceding sections, the additional height proposed generally reflects the height of development throughout the locality and the non-compliance is largely due to the sloping nature of the site. The development will not appear out of character when viewed from the public domain and does not give rise to any significant adverse environmental impacts.

4.3 CLAUSE 4.6(5)(c): ANY OTHER MATTERS REQUIRED TO BE TAKEN INTO CONSIDERATION BY THE DIRECTOR-GENERAL BEFORE GRANTING CONCURRENCE.

There are no other relevant matters requiring consideration.

6 CONCLUSION

The assessment above sufficiently demonstrates that compliance with the maximum building height development standard contained in Clause 4.3 of the WLEP 2011 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The proposed development achieved complete compliance with the maximum building height provision under Council's previous methodology of determining building height. However, subject to the implementation of the new ruling, the development cannot comply. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner. The development, including height variation, has been designed in harmony with adjoining buildings to ensure that the proposed works do not compete with the integrity of the streetscape.

This Clause 4.6 Variation Statement demonstrates that, notwithstanding the non-compliance with the maximum height development standard, the proposed height variation:

- Is consistent with the objectives of Clause 4.3 of the WLEP 2011.
- Is consistent with the guiding principles of *Tenacity Consulting v Warringah Council* in terms of view loss.
- Is minor in nature and relates only to a small portion of the building at the front of the site.
- Will enhance the streetscape in relation to scale, materials and external treatments.
- Will promote the orderly and efficient use of land, in accordance with the objectives of the Act.

It is therefore demonstrated that the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the WLEP 2011.

ITEM 3.2	**DA2022/0775 - 48 LINDLEY AVENUE NARRABEEN - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SECONDARY DWELLING**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/545896**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/0775 for alterations and additions to a dwelling house including secondary dwelling on land at Lot 2 DP 502501, 48 Lindley Avenue NARRABEEN, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0775

Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 2 DP 502501, 48 Lindley Avenue NARRABEEN NSW 2101
Proposed Development:	Alterations and additions to a dwelling house including secondary dwelling
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:	Cindy Louise Beverly Luck Nathan Luck
Applicant:	Peter Downes

Application Lodged:	26/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/06/2022 to 24/06/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 362,000.00

EXECUTIVE SUMMARY

The subject development application seeks consent for the alterations and additions to the existing dwelling house and the construction of a detached secondary dwelling. The application is referred to the Development Determination Panel (DDP) for determination as more than five (5) unresolved objections have been received.

A total of seven (7) submissions were received in response to the notification. These submissions raised numerous concerns with the proposal. The principle issues that were raised within these submissions include the impacts of the development on stormwater and natural watercourse; impacts to

wildlife and natural environment; amenity issues regarding privacy; traffic and parking; bin storage; construction management and access; bulk, scale and overdevelopment of the site; accessibility and potential landslip hazards.

Overall, the proposed development is generally compliant with WLEP and WDCP built form controls. The proposed detached secondary dwelling meets required height, floor area, envelope and setback controls and the site will comply with the minimum required landscaped area. The proposed secondary dwelling construction proposes to utilise pole construction to minimise impacts on natural watercourses and bushland. The proposal has also be designed to minimise on-site disturbance and excavation. During the assessment of this application, amended plans were received which redesigned and relocated the proposed secondary dwelling access stairs to avoid impact on an existing watercourse and rock outcrops.

The proposed dwelling additions are within the existing building footprint, within the prescribed height limit and will be a continuation of the existing built form. Despite being non-compliant with prescribed side boundary envelope requirements, the infill represents a relatively minor increase in built form and would not be discernible from the street or result in unreasonable amenity impacts to neighbouring properties.

The site is mapped as being a wildlife corridor, threatened and high conservation habitat and native vegetation areas under the Warringah Development Control Plan 2011. As such, the application is accompanied by an Aboricultural Impact Assessment and Flora and Fauna Assessment Report to address the proposed tree removal and potential impacts on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent.

Council's Development Engineer and Water Management Officer have reviewed the proposed development with regards to to the potential impact of the proposed development upon stormwater and water management. These referral bodies are satisfied that the development will adequately manage stormwater, subject recommended conditions of consent.

Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships. Conditions have been imposed requiring obscured balcony balustrading, window treatment and screen planting along the northern boundary to minimise potential privacy impacts associated with he development.

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

Accordingly, it is recommended that the application be **APPROVED** subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for the alterations and additions to the existing dwelling house and the construction of a secondary dwelling.

The proposed works include:

- Partial enclosure of the existing "ground floor" balcony to enlarge existing bedrooms
- Construction of a new single storey secondary dwelling comprising of two bedrooms; bathroom; lounge/dining room; entrance and covered balcony

- New secondary dwelling access path
- Rainwater tanks and Onsite detention storm water infrastructure
- Associated earthworks and tree removal

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation
Warringah Development Control Plan - E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat
Warringah Development Control Plan - E4 Wildlife Corridors
Warringah Development Control Plan - E5 Native Vegetation
Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 2 DP 502501 , 48 Lindley Avenue NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Lindley Avenue. The site is irregular in shape with a frontage of 17.0m along

	Lindley Avenue and a maximum depth of 46.0m. The site has a surveyed area of 665.8m². The site is located within the R2 Low Density Residential zone and accommodates a two (2) storey residential dwelling. The site has a crossfall of approximately 16.0m from the southern boundary (street frontage) to the northern boundary (rear) The site is mapped as being a wildlife corridor, threatened and high conservation habitat and native vegetation areas under the Warringah Development Control Plan. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one, two and three storey dwelling of varying architectural styles on sloping lots.

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:

- **DA2019/1161** - Development Application for alterations and additions to a residential dwelling - Approved by Councils Development Determination Panel (DDP) on 12 December 2019, subject to conditions.
- **Mod2020/0298** - Modification application of DA2019/1161 for amendments to windows; relocation of lower ground level stairs; extension of concrete

driveway and suspended carport - Approved Councils Development Determination Panel (DDP) on 09 September 2020, subject to conditions.
- **Mod2020/0645** - Modification application of DA2019/1161 for the deletion of Condition No. 34 New Vegetation planting - Approved under delegation on 22 December 2020.
- **Mod2021/0006** - Modification application of DA2019/1161 for the construction of an access path within the eastern side setback, which will be connected to the existing timber walkway and stairs; Revised location of stormwater level spreader - Approved 26 March 2021
- **OC2021/0140** - Occupation Certificate for DA2019/1161 - Issued 15/11/2021

APPLICATION HISTORY

1 August 2022
Following resident objections and Council concerns, amended plans were received which amended the design and location of the proposed secondary dwelling access stairs to avoid impact on an existing watercourse and rock outcrops.

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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic 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 10/06/2022 to 24/06/2022 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 7 submission/s from:

Name:	Address:
Mr Peter Douglas Swavley	18 The Esplanade NARRABEEN NSW 2101
Withheld	DEE WHY NSW 2099
Mrs Sylvia Gwendolyn Louise Winton Michael Francis Guymer	46 Lindley Avenue NARRABEEN NSW 2101
Dino Aiello	33 Nalya Road NARRAWEENA NSW 2099
Mrs Emma Marie Aiello	16 The Esplanade NARRABEEN NSW 2101
Mrs Nanette Margaret Adler	1024 Pittwater Road COLLAROY NSW 2097
Mrs Judith Margaret Peters	24A The Esplanade NARRABEEN NSW 2101

The following issues were raised in the submissions:

- Stormwater
- Greywater disposal
- Impact to natural watercourse
- Parking
- Privacy
- Impacts to wildlife and natural environment
- Impact of proposed fencing on watercourse and wildlife
- Bin storage
- Construction management, associated impacts and retaining access to adjoining properties
- Excavation impacts
- Landslip
- Overdevelopment
- Bulk and scale
- Loss of outlook
- Inadequate and dangerous access
- Is not for over 55 year old's

The above issues are addressed as follows:

- **Stormwater**

  Multiple submissions have been raised concerned with the impacts of the development on stormwater runoff and associated impacts to adjoining properties.

  Comment:
  Council's Development Engineer and Water Management Officer have reviewed the proposed development with regards to to the potential impact of the proposed development upon

stormwater management and are satisfied that the development will adequately manage stormwater, subject recommended conditions of consent.

The application is supported by a stormwater management plan which shows the roofed and paved areas of the proposed dwelling draining to an existing level spreader at the rear of the site and includes additional on-site detention. Council's Development Engineer has confirmed the proposal is in compliance with Council Water Management for Development Policy. If approved a condition is to be imposed ensure a restriction on the use of land and a positive covenant is created in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent.

- **Sewage and greywater disposal**

  Concern was raised with how sewage and greywater from the secondary dwelling would be disposed.

  Comment:
  The application does not propose on site greywater treatment. Sewage and Greywater is to be disposed to the Sydney Water sewer main. If approved, 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 and that the works are in compliance with Sydney Water requirements

- **Impact to natural watercourse**

  Submissions raised concerns with the impact of the development on a watercourse which traverses the site and the displacement of water.

  Comment:
  The proposal was referred to Council's Development Engineer; Coast and Catchments Officer; Riparian Lands and Creeks Officer: Flood Officer and Water Management Officer who have raised no objection to the proposed development and impacts to watercourses which traverse the site. The proposed secondary dwelling construction proposes to utilise pole construction to minimise impacts on natural watercourses and bushland. The proposal has also be designed to minimise on-site disturbance and excavation. During the assessment of this application, amended plans were received which redesigned and relocated the proposed secondary dwelling access stairs to avoid impact on an existing watercourse.

- **Parking**

  Submissions raised concerns that with impacts of the proposal on car parking

  Comment:
  This matter has been addressed within Clause *C3 Parking Facilities* of this report. Section 53 of SEPP (Housing) 2021 states that the consent authority must not refuse consent to a development for the purpose of a secondary dwelling if the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out. The proposal does not seek to change the existing onsite parking arrangement. As the provisions of the SEPP prevail over WDCP control requirements, maintenance of the existing parking arrangement is supported.

- **Privacy impacts**

Multiple submissions have raised concerns with potential privacy impacts associated with the proposed secondary dwelling

Comment:
The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section *D8 Privacy* of the WDCP. In summary, subject to recommended conditions for obscured balcony balustrading, window treatment and screen planting along the northern boundary, the proposal results in reasonable levels of privacy to adjoining properties.

- **Impacts to wildlife and natural environment**

The submissions raised concerns of the impact of the proposal on wildlife, biodiversity and natural environment.

Comment:
The application is accompanied by a Flora and Fauna Assessment Report to address potential impact on biodiversity and wildlife. This report has been assessed by Council's Biodiversity Team, who is satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to the report as required by the recommended conditions of consent.

The development proposes to utilise pole construction to minimise impacts on natural watercourses and bushland. The proposal has also be designed to minimise on-site disturbance and excavation.

- **Impact of proposed fencing on watercourse and wildlife**

The submissions raised concerns with impacts of proposed fencing on the existing watercourse and wildlife.

Comment:
No boundary fencing is proposed or approved as part of this application. This is to be conditioned within any consent.

- **Bin storage**

The submissions raised concerns that the site will not have adequate room for additional bin storage.

Comment:
Additional bin storage arrangements is not a requirement for secondary dwellings.

- **Construction management, associated impacts and retaining access to adjoining properties**

The submissions raised concerns with impacts during construction and potential impacts of construction vehicles for access to adjoining properties.

Comment:
If approved, a condition of consent is to be imposed requiring the preparation and adherence to a Construction Traffic Management Plan. This will require details for maintaining access to adjacent properties; details regarding the proposed method of access to and egress from the site for construction vehicles; Details for storage of materials; Provision of parking for workers; Traffic Control Plan for any activities involving the management of vehicle and pedestrian traffic; and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.

Additionally, following this submission, a construction methodology report was submitted to Council. This report detailed how construction onsite will be achieved using existing access arrangements. A Geotechnical amendment letter was also provided which specifies that "*the small amount of excavation required for the construction of the proposed works, and the set back from existing structures on site,and adjacent properties, will ensure no significant detrimental vibrations will be generated by the proposed works*"

- **Landslip and Excavation impacts**

  Submissions raised concerns with potential impacts of landslip and excavation

  Comment:
  The proposal is supported by a Geoechnical Report which specifies that the investigation of the subject site found no evidence of significant soil creep, tension cracks or other indicators of slope instability. The report specifies that "*The likelihood of the existing slope failing is assessed as 'UNLIKELY'; the consequences of such a failure are assessed as 'MINOR'. The risk to property is 'LOW'. The existing conditions and proposed development are considered to constitute an 'ACCEPTABLE' risk to life and a 'LOW' risk to property provided that the recommendations outlined in Table 3 in Section 3.6 below are adhered to during design and construction*." The recommendations of this report will be conditioned within any consent.

  This report has been reviewed by Council's Development Engineer who has raised no objections subject to recommended conditions.

  A Geotechnical amendment letter was also provided which specifies that "*the small amount of excavation required for the construction of the proposed works, and the set back from existing structures on site,and adjacent properties, will ensure no significant detrimental vibrations will be generated by the proposed works*"

- **Overdevelopment and out of character with area**

  Submissions have raised concerns that the proposal is an overdevlopment of the site.

  Comment:
  The proposed development would be generally compliant with WLEP and WDCP built form controls. The proposed secondary dwelling meets required height, floor area and setback controls and the site would comply with the minimum required landscaped area. The development has also been designed to minimise site disturbance enable the retention of protected trees. The proposal is therefore not considered to be an over development of the site and consistent with the character of the area.

- **Bulk and scale**

  The submissions raised concerns with the bulk and scale of secondary dwelling

  Comment:
  The proposed secondary dwelling would be single storey and generally compliant with WLEP and WDCP built form controls. The proposed secondary dwelling meets required height, floor area and setback controls and the site would comply with the minimum required landscaped area. Existing and proposed landscaping will also assist to minimise perceived bulk and scale of

the structure

The building envelope non-compliance associated with the dwelling additions has been addressed within *Clause B3 Side Boundary Envelope* of this report and is not considered to result in unreasonable bulk and scale or amenity impacts.

- **Loss of Outlook**

Concern has been raised by the adjoining neighbour to the west (No.50 Lindley Ave) that the the proposed secondary dwelling would result in a loss of outlook of trees.

Comment:
The proposed secondary dwelling is generally compliant with WLEP and WDCP built form controls. The proposed secondary dwelling meets required height, setback controls and building envelope controls and the site would comply with the minimum required landscaped area. Any loss of vegetation outlook from the neighbour to the west (No.50 Lindley Ave) will be over a side boundary and will not result from a built form non-compliance. The proposal will maintain the vast majority of trees and vegetation of site, particularly adjoining the western boundary.

Additionally, this neighbour will retain views of the lagoon and vegetation outlook over their northern (rear) boundary.

- **Inadequate and dangerous access**

The submissions raised concerns that the proposed access to the secondary dwelling is dangerous due to the steepness of the stairs and location over a watercourse.

Comment:
The application has been investigated with respects to aspects relevant to the Building Certification by Council's Building Control Team who have raised no objection subject to recommended conditions.

Conditions are to be imposed to ensure the development meets all relevant BCA and Australian construction standards. Stair access for properties on steeply sloping sites is not uncommon within the Northern Beaches.

During the assessment of this application, amended plans were received which redesigned and relocated the proposed secondary dwelling access stairs to avoid impact on an existing watercourse

- **The proposed location and design of the Secondary Dwelling does not cater for over 55 year old's**

The submissions raised concerns that the location and design of the proposed secondary dwelling would not facilitate use by over 55 year old's.

Comment:
Secondary dwellings are not classified as seniors housing and are not required to meet Seniors Housing Guidelines. The application has been investigated with respects to aspects relevant to the Building Certification by Council's Building Control Team who have raised no objection subject to recommended conditions.

- **Bushfire Hazard**

The submissions raised concerns with potential bushfire hazard of the site.

Comment:
The site is not mapped as bushfire prone land.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate
Landscape Officer	The application seeks consent for alterations and additions to a dwelling house including secondary dwelling. 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 The Arborist's Report prepared by Joanne Willis Consultant Arboriculturalist is noted. The Report indicates that one non-exempt tree species of Low landscape significance is required to be removed to construct the secondary dwelling. Other exempt trees are also to be removed. No objections are raised to removal of the non-exempt tree subject to replanting. The plans indicate that no significant landscape features are affected by the proposed works. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	The Development Application for a secondary dwelling is accompanied by a Flora and Fauna Assessment (ACS Environmental May 2022), which correctly identified the relevant Warringah DCP planning control clauses - E1 - Preservation of Trees or Bushland Vegetation, E4 - Wildlife Corridors, E6 - Retaining unique environmental features, E2 - Prescribed Vegetation, E3 - Threatened species or ecological communities listed under State or Commonwealth legislation, and E5 - Native Vegetation. The Report has also supplied evidence relating to the triggers for the NSW Biodiversity Offset Scheme threshold and the test of significance in

Internal Referral Body	Comments
	accordance with the Biodiversity Conservation Regulation 2017, and concludes that the BOS does not apply. Based on the site survey work, no native vegetation of significance will be removed, no significant hollows were detected, and the presence of High Threat Weeds is noted. No threatened flora species were recorded, and based on potential habitat loss within the small area the development significant impact to threatened fauna species with potential to occur within the locality is unlikely. The Report recommends no removal of fauna habitat features such as bush rock outcrops, organic debris, branches or logs which provide refuge for native species, removal of woody weeds from the rear section of the subject land and replacement planting with native shrubs and ground cover characteristic of the local vegetation community.
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, 2.11 & 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 subject to conditions: • Installation and maintenance of erosion and sediment controls (prior to commencement)
NECC (Development Engineering)	Applicant seeks approval for a detached secondary dwelling. The submitted stormwater management is acceptable. No Development Engineering objections subject to recommended conditions.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. As the proposed site is adjacent to Narrabeen Lagoon the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to Narrabeen Lagoon. The lagoon supports robust avian and fish communities within its waters as well as large meadows of seagrass which play and integral role in sustaining the lagoon's biodiversity. Therefore , sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. The proposal, subject to conditions, is supported as it is unlikely to have an

Internal Referral Body	Comments
	adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Lagoon and its surroundings if conditions are adhered to.
NECC (Stormwater and Floodplain Engineering – Flood risk)	This property is not tagged as flood affected. No flood related development controls.
NECC (Water Management)	Rainwater for reuse and infiltration/dispersion trench is satisfactory for the project. NECC Water Management has no objection to the proposed stormwater quality management system.

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. <u>Overhead Powerlines</u> Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding. The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, www.ausgrid.com.au It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite. "Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site." <u>Underground Cables</u> Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid’s

External Referral Body	Comments
	Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1298393S_02 dated 28 April 2022 and A456151 dated 26 April 2022).

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

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

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	**Compliance/Comment**
a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	Complies. The proposal will result in one (1) principle dwelling and one (1) secondary dwelling on the site.
b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	The site does not have a floor space ratio control. The floor area of the proposed secondary dwelling is 56.8sqm.
c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	The floor area of the proposed secondary dwelling is 56.8sqm.

Clause 53 – Non-discretionary development standards	
Standard	**Compliance/Comment**
a) For a detached secondary dwelling - a minimum site area of 450m².	665.6sqm site area, complies.
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	No change to parking proposed.

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 proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposal does not seek excessive excavation or modification to the existing landform. The proposed works will not result in the removal of any significant or protected trees. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer, Water Management Officer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

The proposed development is also unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore and beach for members of the public, including persons with a disability.

The development site has not been identified to contain any Aboriginal cultural heritage, practices or places, however, a condition has been included to ensure that if any Aboriginal engravings or relics are unearthed as part of the development, works will cease immediately and the relevant authorities will be notified. Furthermore, the proposed development is unlikely to cause an adverse impact on 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.

Comment:
As detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause 1. The proposal has been reviewed by Council's Coastal Engineer who has raised no objection the the proposal.

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

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

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

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

b) is satisfied that:

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

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

Comment:
The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunnelling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage.

It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the aforementioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

The proposal has been reviewed by Council's Coast & Catchments Officer who has raised no objection

to the works.

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:
This application is accompanied by a geotechnical report report which states the risk associated with the development is acceptable subject to recommendations. The application has been reviewed by Council's Coastal Engineer, Development Engineer and Riparian Lands Officer who are satisfied that the development is not likely to cause increased risk of coastal hazards on other land 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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.8 Conversion of fire alarms	Yes

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

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

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

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

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

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality. The proposal has been reviewed by Council's Development Engineer, Water Management Officer who have raised no objections subject to recommended conditions.

(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.

(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.

(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 proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment.

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

6.4 Development on sloping land

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

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

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

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.2m	N/A	Yes
B3 Side Boundary Envelope	4m (E)	Outside Envelope	N/A	**No**

	4m (W)	Outside Envelope	N/A	**No**
B5 Side Boundary Setbacks	0.9m (E)	1.2m	N/A	Yes
	0.9m (W)	1.0m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	10.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (266.32sqm)	41.6% (274.6sqm)	N/A	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	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	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance
Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 4m above the existing ground level, measured from the side boundaries. The proposed dwelling additions encroach into the side boundary envelope along the eastern and western elevations as depicted in figures 1 and 2 below. It should noted that the proposed secondary dwelling complies with the required side boundary envelope

The figures below show the location and extent of the non-compliance.

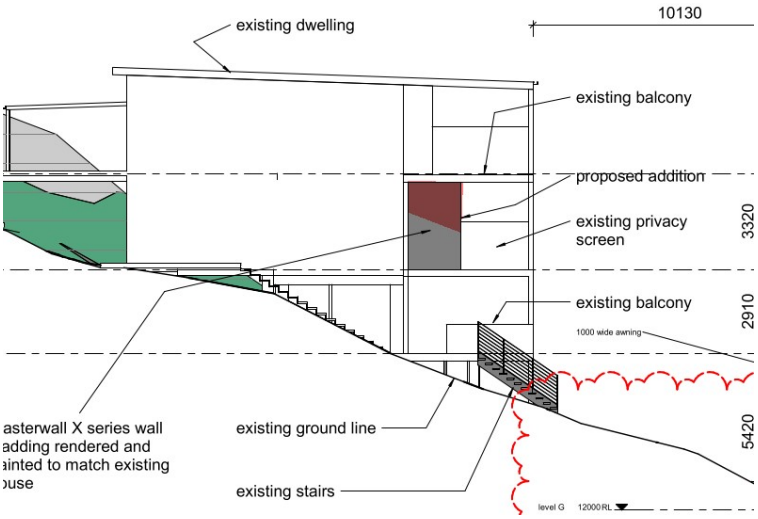


***Figure 1**: Side boundary envelope breach of proposed additions on the eastern elevation shown in red*

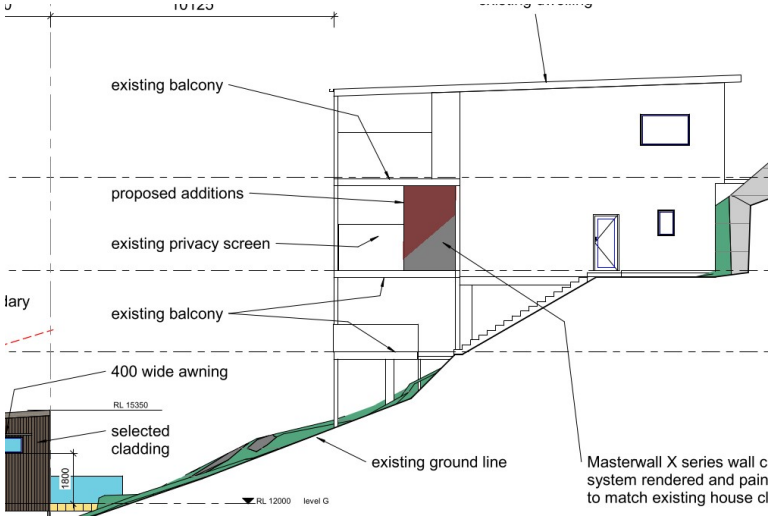


***Figure 2**: Side boundary envelope breach of proposed additions on the western elevation shown in red*

Merit consideration

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

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

Comment:

The existing building and upper floor sits outside the prescribed building envelope and the proposed development seeks to infill a portion of the existing "ground floor" deck area to enable the enlargement of existing bedrooms. The proposed additions remain within the prescribed height limit and would be a continuation of the existing built form. Notwithstanding the technical non compliance with the control, the variation is considered satisfactory as this balcony infill is within the existing building footprint and provides compliant setbacks to the front, side and rear boundaries and is consistent with existing development and more recent development throughout the immediate locality. The infill represents a relatively minor increase in built form and would not be discernible from the street. In this regard, it is considered that the proposal will not become visually dominant by virtue of its height and scale.

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The proposed additions to the dwelling will be within the existing building footprint and therefore will not result in unreasonable solar access impacts. Adjoining neighbouring private open space and windows would retain adequate sunlight by reason of their relative positioning and northerly aspect. Privacy has been addressed within Section D8 of this report. Subject to recommended conditions, it is considered no unreasonable privacy impacts would occur as a result of the development. The proposed infill dwelling additions does not contain any side facing windows and will not result in additional privacy impacts.

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

Comment:
The development is considered to generally respond to the natural topography of the site. The proposed area of non-compliance occurs within the existing building footprint and does not required significant excavation or site disturbance.

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.

C3 Parking Facilities

The control requires at least two off-street parking spaces on the site for a dwelling house. The control does not stipulate additional parking for secondary dwellings. The site only contains one off-street parking space, which is a shortfall one one space. No additional parking spaces are proposed.

Notwithstanding, Section 53 of SEPP (Housing) 2021 states that the consent authority must not refuse consent to a development for the purpose of a secondary dwelling if the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

As the provisions of the SEPP prevail over WDCP control requirements, the existing non-compliant parking arrangement is supported.

C4 Stormwater

Council's Development Engineer has reviewed the proposed development with regards to Clause C4 and the potential impact of the proposed development upon stormwater management and is satisfied that the development will adequately manage stormwater, subject recommended conditions of consent.

D7 Views

Given the orientation and elevation of surrounding properties, the proposal is not anticipated to give rise to any unreasonable view impacts. Additionally, the proposed secondary dwelling is compliant with WLEP and WDCP built form controls. Adjoining neighbours are anticipated to retain views of the lagoon and vegetation outlook over their northern (rear) boundary.

D8 Privacy

Privacy concern have been raised by four adjoining neighbours to the north (No.16 and No.18 The Esplanade); to the east (No.46 Lindley Avenue) and to the west (No.50 Lindley Avenue).

Clause D8 of the WDCP 2011 requires the building layout to be designed to optimise privacy for occupants of the development and occupants of adjoining properties. The Control stipulates that windows of a dwelling are to be located so they do not provide direct or close views (ie. from less than 9 metres away) into the windows or private open space of other dwellings.

Merit Assessment
The proposed development is considered against the underlying outcomes of the control as follows:

No.18 The Esplanade

Secondary Dwelling
Privacy concern have been raised by the adjoining neighbour to the north (No.18 The Esplanade) with regards to the new secondary dwelling and associated elevated deck area.

The proposed north (rear) facing windows (W6; W7; and W8) would within 9m of this neighbour. As such a condition of consent is recommended to ensure that these windows contain privacy screening; are obscure glazed or contain raised sil heights. This will prevent opportunities for downward overlooking into neighbouring private open space.

The proposed north (rear) facing doors of this secondary dwelling will be over 9m the private open space and windows of this neighbour in line with the requirements of this control.

The proposed north (rear) facing elevated deck of the secondary dwelling is proposed to be 6.0m from the rear boundary and rear garden of No.18 The Esplanade. While existing vegetation along the neighbouring rear boundary would assist in the mitigation of privacy between this area, Council cannot rely on vegetation of adjoining properties in this instance given the possibility of its removal in the future. In order to prevent opportunities for downward overlooking from this deck area into the rear private open space of No.18 The Esplanade, a condition is recommended for the northern elevation of the deck balustrading to be solid or obscure glazed. Conditions are also recommended for additional screen planting along the northern rear boundary capable of growing to a height of 3m to assist with privacy mitigation.

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

No.16 The Esplanade

Secondary Dwelling
Privacy concern have been raised by the adjoining neighbour to the north-east (No.16 The Esplanade) with regards to the new secondary dwelling and associated elevated deck area.

The proposed north (rear) facing elevated deck of the secondary dwelling is proposed to be within 9.0m from the rear boundary and rear garden of No.16 The Esplanade. While existing vegetation along the neighbouring rear boundary would assist in the mitigation of privacy between this area, Council cannot rely on vegetation of adjoining properties in this instance given the possibility of its removal in the future. In order to prevent opportunities for downward overlooking from this deck area into the rear private open space of No.16 The Esplanade, a condition is recommended for the northern and eastern elevation of the deck balustrading to be solid or obscure glazed. Conditions are also recommended for additional screen planting along the northern rear boundary capable of growing to a height of 3m to assist with privacy mitigation.

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

No.50 Lindley Avenue

No unreasonable privacy impacts are anticipated for the neighbour to the west (No.50 Lindley Avenue). The proposed secondary dwelling has been designed with high sil windows on the western elevation and no side windows are proposed within the dwelling addition. The proposed secondary dwelling access path will be used for momentary access and is not considered to result in unreasonable privacy impacts.

No.46 Lindley Avenue

No unreasonable privacy impacts are anticipated for the neighbour to the east (No.46 Lindley Avenue). The proposed secondary dwelling has been designed with high sil windows on the eastern elevation and the proposed deck would not adjoin this neighbours dwelling or principle area of private open space. Furthermore, this neighbour is separated from this proposed secondary dwelling by dense vegetation. Nevertheless, in order to prevent opportunities for downward overlooking from this deck area into the rear garden of this neighbour, a condition is recommended for the eastern elevation of the deck balustrading to be solid or obscure glazed.

Concern has been raised by this neighbour regarding potential existing access stairs along the eastern side boundary and its associated use for residents of the secondary dwelling. This will only be used for used for momentary access and does not facilitate long periods of gathering. Given the fact that the staircase will only be used for momentary egress and utilises an existing arrangement, it is not considered to result in unreasonable privacy impacts in this instance and no additional privacy measures are required in this instance.

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

E1 Preservation of Trees or Bushland Vegetation

The application is accompanied by an Aboricultural Impact Assessment and Flora and Fauna Assessment Report to address the proposed tree removal and potential impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat

The application is accompanied by a Flora and Fauna Assessment Report to address potential impact on biodiversity and threatened species. The report has been assessed by Council's Biodiversity Team, who is satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to the report as required by the recommended conditions of consent. Refer to Council's NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

E4 Wildlife Corridors

The application is accompanied by a Flora and Fauna Assessment Report to address potential impact on biodiversity and wildlife. The report has been assessed by Council's Biodiversity Team, who is satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to the report as required by the recommended conditions of consent. Refer to Council's NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

E5 Native Vegetation

The application is accompanied by an Aboricultural Impact Assessment and Flora and Fauna Assessment Report to address the proposed tree removal and potential impact on native vegetation. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

E6 Retaining unique environmental features

The application is accompanied by an Aboricultural Impact Assessment and Flora and Fauna Assessment Report to address the proposed tree removal and potential impact on biodiversity. The submitted Flora and Fauna Assessment Report concludes that "*the rear yard would retain much of the current environmental features at the subject land*" and "*that the extent of native vegetation at the subject land would not be significantly compromised as a result of the proposed development*".

Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent.

In line with the requirements of the control, the secondary dwelling construction proposes to utilise pole construction to minimise impacts on natural watercourses and bushland. The proposal has also be designed to minimise on-site disturbance and excavation. During the assessment of this application, amended plans were received which redesigned and relocated the proposed secondary dwelling access stairs to avoid impact on an existing watercourse and rock outcrops.

Furthermore, the secondary dwelling would be constructed of dark and earthy coloured materials to harmonise with the natural environment.

Overall, it is considered that the proposal meets the requirements and objectives of this control.

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 $3,620 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $362,000.

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 2021;
- 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

In summary, the application has been assessed with regard to the relevant Warringah LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period. The proposed development is generally compliant with WLEP and WDCP built form controls. The non-compliance with the prescribed side boundary envelopes occur within the building footprint and will not be discernible from the street or result in unreasonable amenity impacts to adjoining neighbours.

The issues raised in the public submissions are considered to be addressed by way of the amended plans and general and special conditions of consent. Concerns related to water management and the natural environment have been reviewed by relevant referral bodies who have raised no objection to the proposal, subject to imposed conditions of consent.

Conditions have been imposed to ensure that reasonable levels of privacy between properties are maintained.

Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DDP with a recommendation for **APPROVAL**.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/0775 for Alterations and additions to a dwelling house including secondary dwelling on land at Lot 2 DP 502501, 48 Lindley Avenue, NARRABEEN, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
2201-01A - Site Plan	18/07/2022	Peter Downes Designs
2201-02A - Ground Floor Plan House	18/07/2022	Peter Downes Designs
2201-03A - Secondary Dwelling Floor Plan	18/07/2022	Peter Downes Designs
2201-04A - East Elevations	18/07/2022	Peter Downes Designs
2201-05A - House North Elevation	18/07/2022	Peter Downes Designs
2201-06A - West Elevation	18/07/2022	Peter Downes Designs
2201-07A - Secondary dwelling north and south elevations	18/07/2022	Peter Downes Designs
2201-08A - Section 1	18/07/2022	Peter Downes Designs

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
2201-10A -ESCP	18/07/2022	Peter Downes Designs
STORM-1	23/03/2022	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (A456151)	26/04/2022	Lin & Associates Pty Ltd
BASIX Certificate (1298393S_02)	28/04/2022	Lin & Associates Pty Ltd
EXTERNAL FINISHES SCHEDULE	-	Peter Downes Designs
Geotechnical Assessment Report (AG 22113)	21/07/2022	AscentGeo Consulting Geotechnical Engineers
Geotechnical Amendment Letter (AG 22113B)	19/08/2022	AscentGeo Consulting Geotechnical Engineers

Flora & Fauna Assessment Report	29/07/2022	ACS Environmental P/L
Arboricultural Impact Assessment Report Rev.B	28/07/2022	Joanne Willis
Construction Methodology Report	-	Peter Downes Designs

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	05/05/2022	Peter Downes

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	29/06/2022

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

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

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

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

A secondary dwelling is defined as:
"secondary dwelling means a self-contained dwelling that—

(a) is established in conjunction with another dwelling (the principal dwelling), and

(b) is on the same lot of land as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

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

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

4. **No Approval for existing works**
This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.

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

5. **No approval for fencing**
No Approval is granted under this consent for any boundary fencing.

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

6. **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.

7. **No works on adjoining land**
No Approval is granted under this consent for any works on adjoining land or on property boundaries.

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

8. **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

9. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $3,620.00 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 2022. The monetary contribution is based on a development cost of $362,000.00.

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 2022 may be inspected at 725 Pittwater

Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

10. **Security Bond**

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

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

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

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

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

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

11. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

12. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)

- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

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

a) **Secondary dwelling balcony balustrading** - The proposed secondary dwelling north facing balcony is to incorporate solid balustrading for the entire length of the northern and eastern elevation. This balustrading is to be constructed of nontransparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.

b) **Secondary dwelling windows (W6; W7 & W8) -** Privacy screens are to be installed on the "secondary dwelling" northern windows labelled W6; W7 & W8 as shown on the approved plans. The privacy screening shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.5m above the Finished Floor Level.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **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.

16. **Laundry Facilities**

The new building that is proposed to be constructed as a secondary dwelling is required to comply with Part 3.8.3 of the Building Code of Australia –'Facilities'. A kitchen sink or washbasin must not be counted as a laundry washtub. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure adequate provision is made for building occupant health and amenity

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT for DEVELOPMENT POLICY, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm-1, dated 23 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.

18. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

19. **Compliance with Standards**

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

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

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

20. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range 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.

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

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

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

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

22. **Construction Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared prior to issue of any Construction Certificate.

The CTMP must address following:
- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- Details for loading and unloading of materials
- Details for maintaining access to adjacent properties which have access from Lindley Avenue
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior

- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Take into consideration the combined construction activities of other development in the surrounding area.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

23. **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

24. **Project Arborist**
a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the recommendation of the Arboricultural Impact Assessment dated 19 April 2022 prepared by Joanne Willis Consultant Arboriculturalist and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

b) The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

c) Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

d) All tree protection measures specified must:

i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

e) The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

Note: i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

25. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property as recommended in the the Arboricultural Impact Assessment dated 19 April 2022 prepared by Joanne Willis Consultant Arboriculturalist:
i) Tree 5 *Glochidion ferdinandi*

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

Reason: To enable authorised building works.

26. **Dead or Injured Wildlife**
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

Reason: To protect wildlife habitat.

28. **Relocation of Logs and Coarse Woody Debris**
All logs and branches are to be salvaged from trees prior to any vegetation clearing and reused as fauna habitat within areas of retained native vegetation on the site.

Reason: To protect wildlife habitat.

29. **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

30. **Protection of Landscape Features and Sites of Significance**
All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

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

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

Reason: Preservation of significant environmental features.

31. **Tree and Vegetation Protection**

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

b) Tree protection shall be undertaken as follows:
   i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 19 April 2022 prepared by Joanne Willis Consultant Arboriculturalist and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
   iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
   iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
   v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
   vi) excavation for stormwater lines and all other utility services is not permitted

within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,

vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

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

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

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

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

32. **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.

33. **Wildlife and habitat protection/replacement**
All biodiversity-related measures are to be implemented during construction in accordance with the Flora and Fauna Assessment (ACS Environmental May 2022).

Compliance with these measures is to be certified by the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

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

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

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

Reason: Protection of the receiving environment.

35. **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.

36. **Geotechnical Requirements**
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

37. **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.

38. **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.

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

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

40. **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.

41. **Stockpiling of Topsoil**
During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment

42. **Adjoining Property Access**
Construction vehicles and materials are not to impede access for surrounding the properties throughout the construction phase. The applicant must provide neighbours who use the lower western portion of Lindley Avenue with contact details of the contractor in the event that access to the Lindley Avenue is blocked.

Reason: To ensure access is available to all property owners who use the lower western portion of Lindley Avenuee during the construction phase.

43. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

44. **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

45. **Required Tree Planting**
a) Trees shall be planted in accordance with the following:
i) 2 local native trees capable of attaining a minimum height of 5m at maturity; Located within the grounds of the property; minimum pot size 200mm

b) Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views.

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

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

Reason: To maintain environmental amenity.

46. **Required Screen Planting**
Screen planting shall be planted in accordance with the following:

i) along the northern (rear) boundary for a minimum length of 10.0m from the eastern side boundary. The selected planting is to comprise of native species capable of attaining a height of 3 metres at maturity.

The selected planting is to comprise of native species suited to the mircoclimate and capable of attaining a height of (3) metres at maturity, and the following suggested species is provided as a guide only: Cheese tree (Glochidion ferdinandi) and/or blueberry ash (Elaeocarpus reticulatus)

and/or lilly pilly (Acmena smithii) and/or sandpaper fig (Ficus coronata)

Plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Reason: To maintain environmental amenity.

47. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

b) extent of damage sustained by vegetation as a result of the construction works,

c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

48. **Replacement of Canopy Trees**
At least two (2) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide. Recommended species include Glochidion ferdinandi Cheese Tree, Banksia integrilolia Coast Banksia, and Eucalyptus robusta , Swamp mahogany

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

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

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

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

50. **Priority Weed Removal and Management**
All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed. All High Threat Weeds identified within the Flora and Fauna Assessment (ACS Environmental May 2022) are to be removed and continuously controlled.

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

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

51. **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.

52. **Geotechnical Certification Prior to Occupation Certificate**
A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.
Written certification is to be provided to the Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in

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

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

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

54. **Environmental Reports Certification**
Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Geotechnical Assessment Report (AG 22113), dated 21/07/2022, prepared by AscentGeo Consulting Geotechnical Engineers.
(b) Flora & Fauna Assessment Report, dated 29/07/2022 , prepared by ACS Environmental P/L.

(c) Arboricultural Impact Assessment Report Rev.B, dated 28/07/2022, prepared by Joanne Willis.

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

Reason: To ensure compliance with standards.

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

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

Reason: To ensure bushland management. (DACPLF01)

56. **Waste Management Confirmation**
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

57. **Landscape Maintenance**

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

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

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

58. **Environmental and Priority Weed Control**
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: Preservation of environmental amenity.

59. **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.

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

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

Reason: To replace locally native trees.

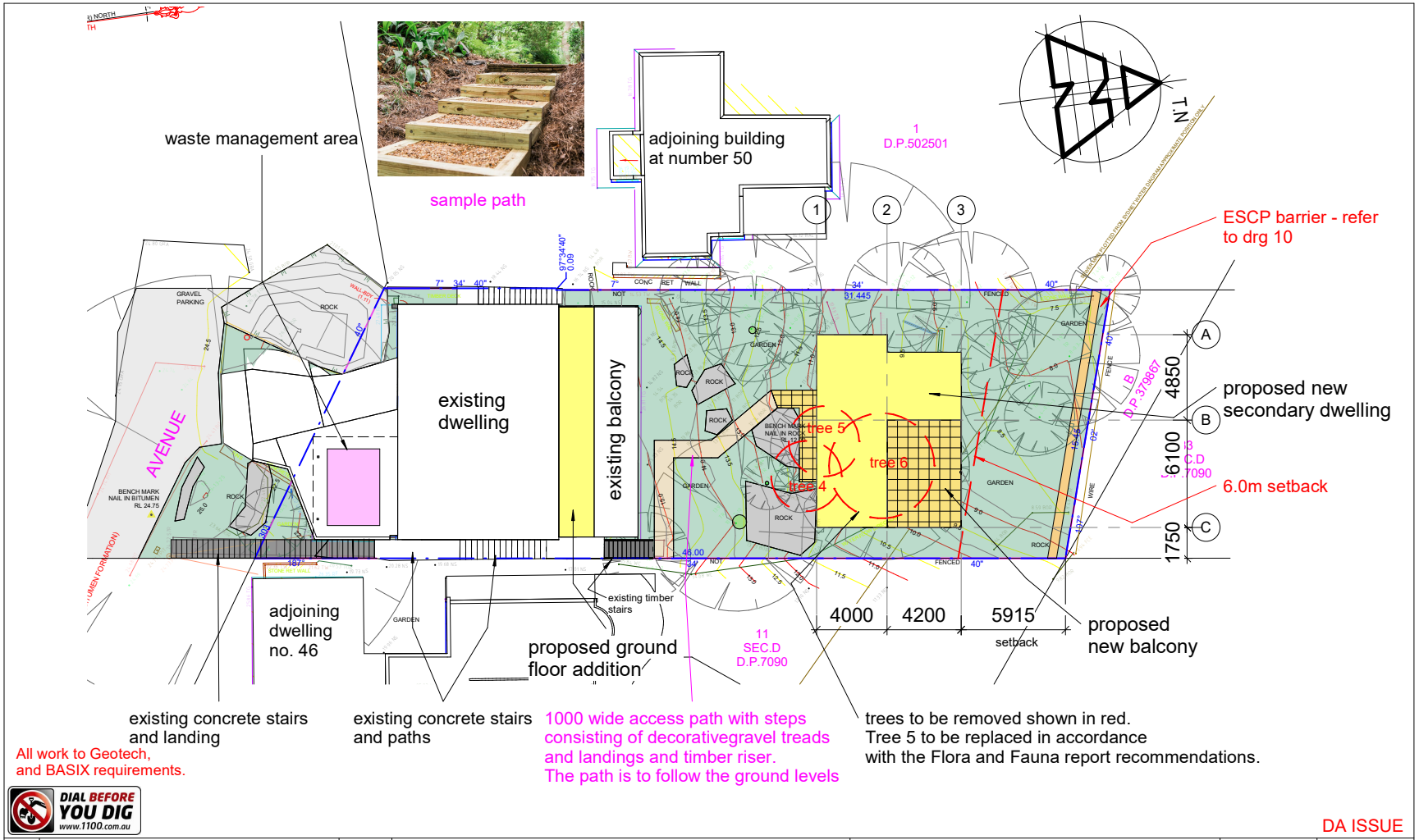
61. **Maintenance of Stormwater Treatment Measures**
Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

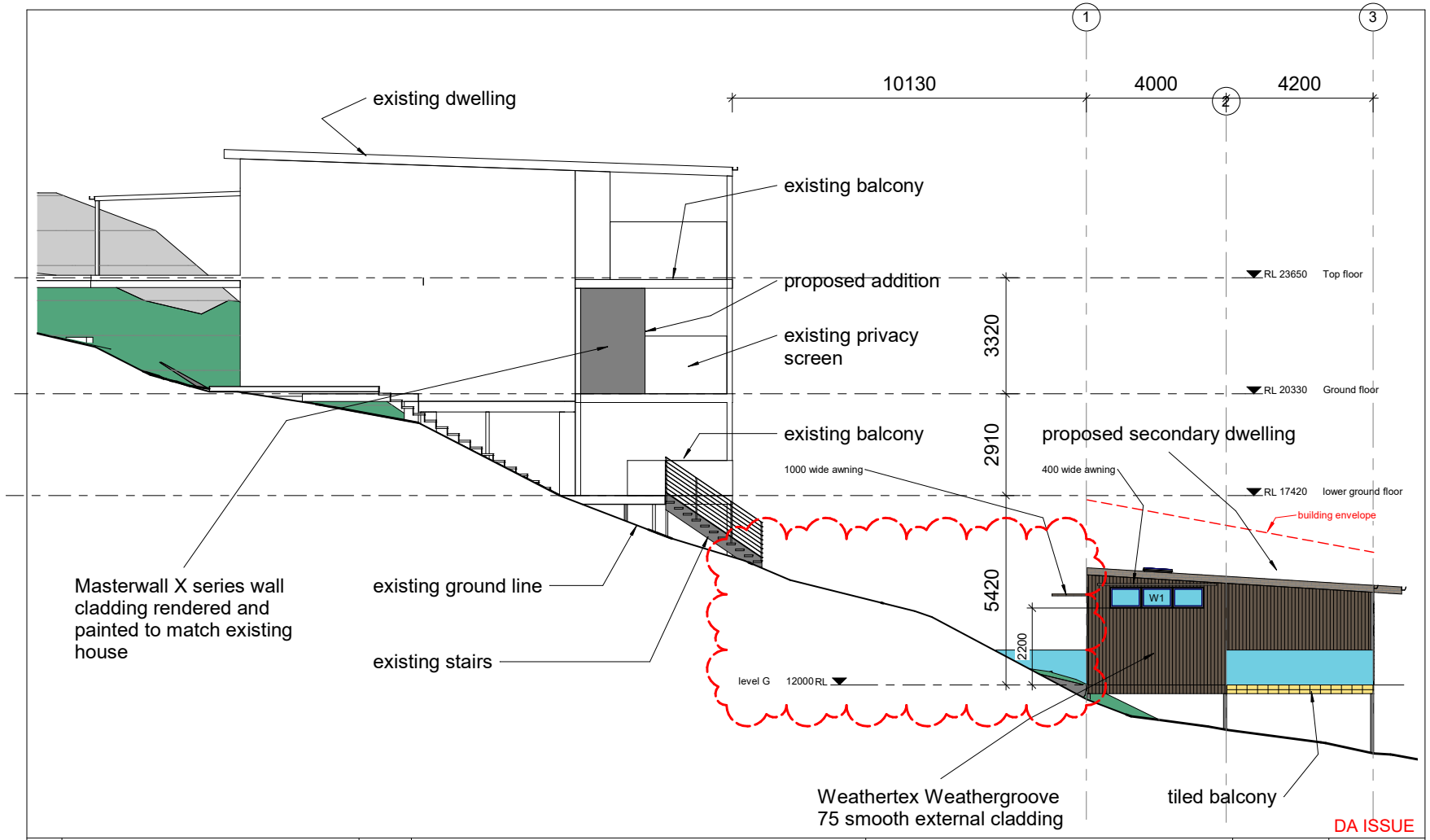
Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

62. **Retention of Natural Features**
All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To ensure the retention of natural features.


waste management area
sample path
adjoining building at number 50
1 D.P.502501
ESCP barrier - refer to drg 10
existing dwelling
existing balcony
AVENUE
GRAVEL PARKING
ROCK
GARDEN
FENCED
tree 5
tree 6
tree 4
proposed new secondary dwelling
6.0m setback
4850
6100
1750
4000
4200
5915
setback
proposed new balcony
adjoining dwelling no. 46
existing timber stairs
proposed ground floor addition
11 SEC.D D.P.7090
existing concrete stairs and landing
existing concrete stairs and paths
1000 wide access path with steps consisting of decorativegravel treads and landings and timber riser. The path is to follow the ground levels
trees to be removed shown in red. Tree 5 to be replaced in accordance with the Flora and Fauna report recommendations.
All work to Geotech, and BASIX requirements.
DIAL BEFORE YOU DIG www.1100.com.au
DA ISSUE
REVISION
REV A 18.07.22
SECONDARY DWELLING ACCESS STAIRS AND PATH ALTERED
BUILDING DESIGNERS AUSTRALIA NSW
peterdownes multi-award winner designs
address 77 Riviera rd, Avalon 2107
phone 0488 662 445 www.peterdownes.com
PROJECT
New secondary dwelling at 48 Lindley Ave, Narrabeen
DRAWING
Site Plan
DRAWN PD
CHECKED PD
SCALE 1 : 200
DATE 18.8.19
DRG. No. A3 2201-01A



REVISION

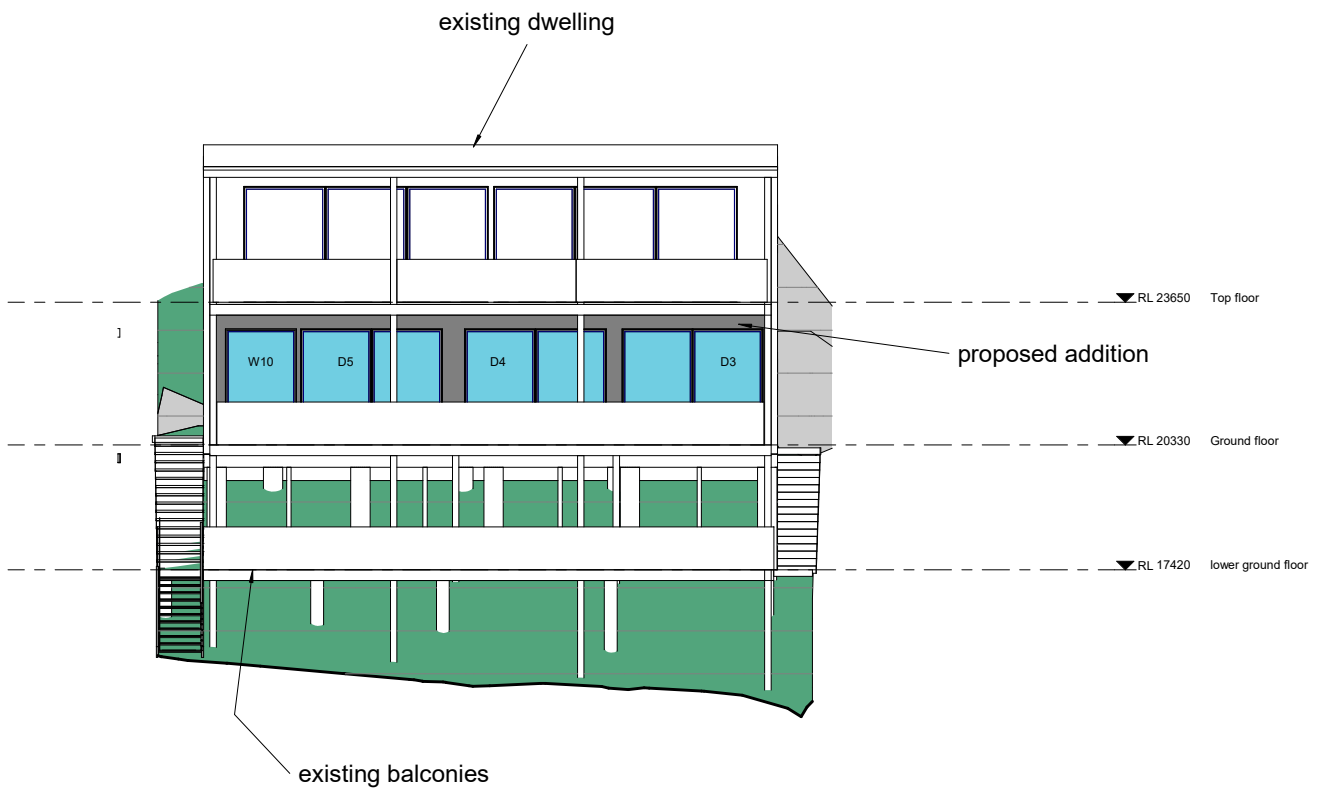
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SECONDARY DWELLING ACCESS STAIRS AND PATH ALTERED

BUILDING DESIGNERS AUSTRALIA NSW

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multi-award winner designs

address 77 Riviera rd, Avalon 2107
phone 0488 662 445 www.peterdownes.com

PROJECT New secondary dwelling at 48 Lindley Ave, Narrabeen	
DRAWING east elevations	
DRAWN PD	**CHECKED** PD
SCALE 1 : 100	**DATE** 01.04.22
DRG. No. A3	2201-04A



DA ISSUE

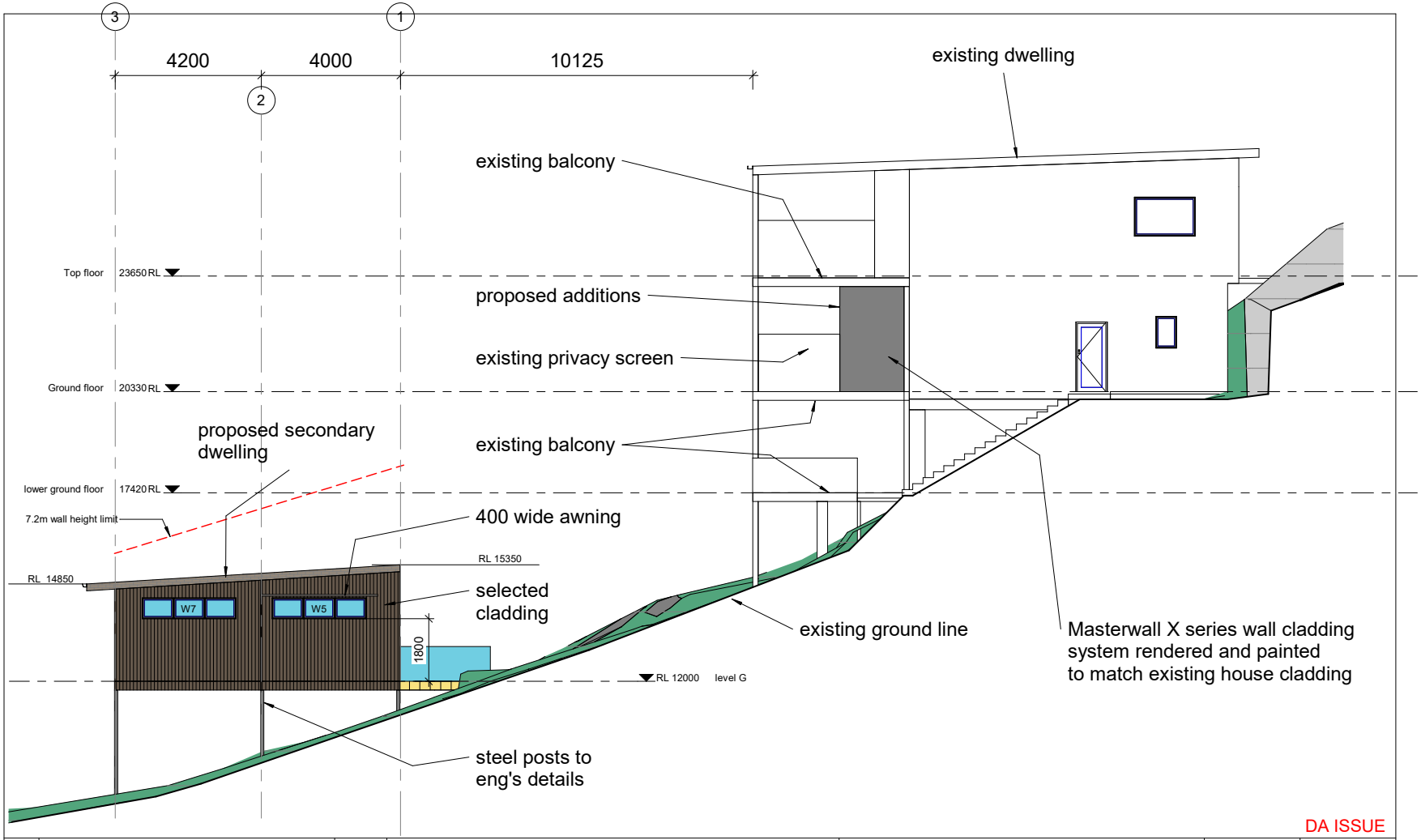
REVISION

REV A 18.07.22
SECONDARY DWELLING ACCESS STAIRS AND PATH ALTERED

BUILDING DESIGNERS AUSTRALIA NSW

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address 77 Riviera rd, Avalon 2107
phone 0488 662 445 www.peterdownes.com

PROJECT New secondary dwelling at 48 Lindley Ave, Narrabeen	**DRAWN** PD	**CHECKED** PD
	SCALE 1 : 100	**DATE** 01.04.22
DRAWING house north elevation	**DRG. No.** A3	2201-05A



DA ISSUE

REVISION

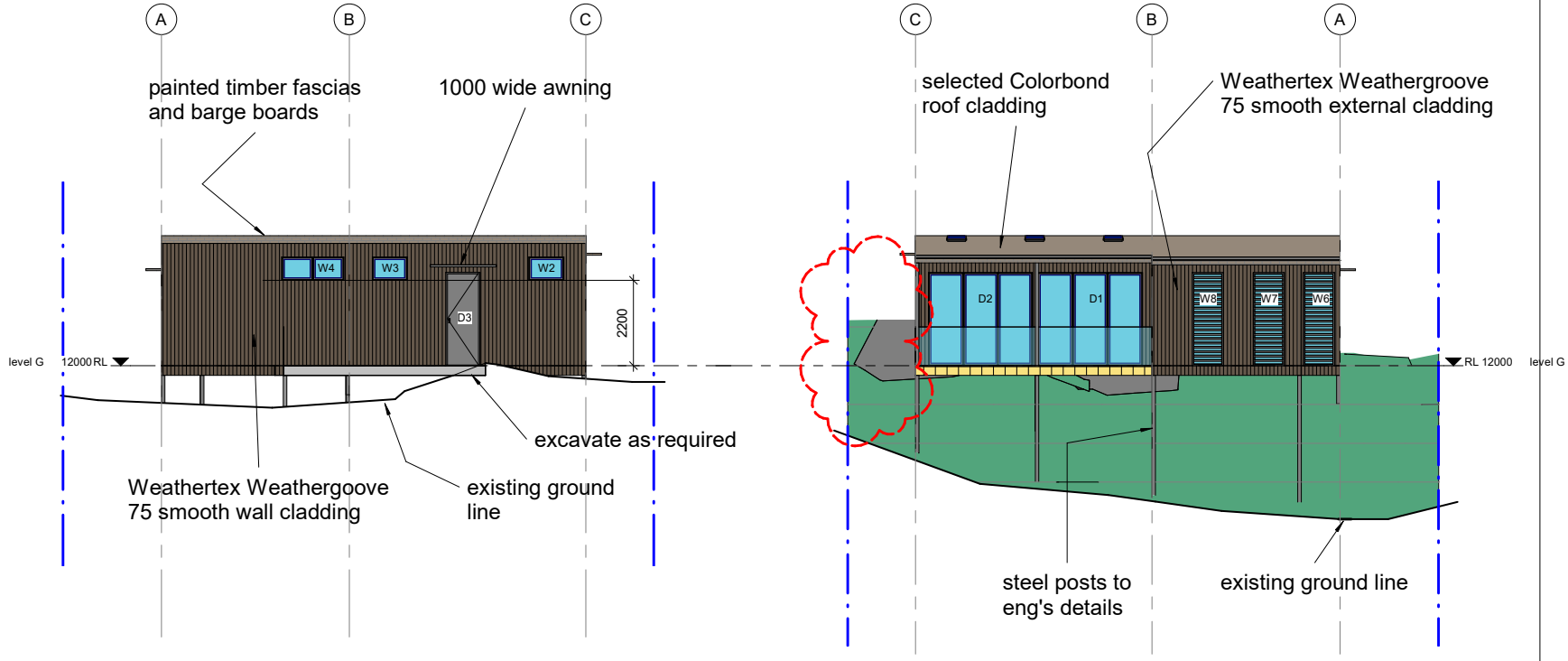
REV A 18.07.22
SECONDARY DWELLING ACCESS STAIRS AND PATH ALTERED

BUILDING DESIGNERS AUSTRALIA NSW

peterdownes
multi-award winner designs

address 77 Riviera rd, Avalon 2107
phone 0488 662 445 www.peterdownes.com

PROJECT New secondary dwelling at 48 Lindley Ave, Narrabeen	**DRAWN** PD / **CHECKED** PD
DRAWING west elevations	**SCALE** 1 : 100 / **DATE** 01.04.22
	DRG. No. A3 2201-06A



All work to Geotech, and BASIX requirements.

DIAL BEFORE YOU DIG www.1100.com.au

DA ISSUE

REVISION					
REV A 18.07.22 SECONDARY DWELLING ACCESS STAIRS AND PATH ALTERED	peterdownes multi-award winner designs address 77 Riviera rd, Avalon 2107 phone 0488 662 445 www.peterdownes.com	PROJECT: New secondary dwelling at 48 Lindley Ave, Narrabeen	DRAWN: PD	CHECKED: PD
		DRAWING: secondary dwelling north and south elevations	SCALE: 1 : 100	DATE: 18.8.19
			DRG. No. A3	2201-07A

ITEM 3.3	**MOD2022/0292 - 16 CARRINGTON PARADE FRESHWATER - MODIFICATION OF DEVELOPMENT CONSENT DA2020/1090 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2022/552573**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

B. THAT Council as the consent authority **approves** Development Consent to Mod2022/0292 for Modification of Development Consent DA2020/1090 granted for alterations and additions to a dwelling house on land at Lot 21 DP 5205, 16 Carrington Parade FRESHWATER, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0292

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 21 DP 5205, 16 Carrington Parade FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2020/1090 granted for Alterations and additions to 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:	Alexandra Harry
Applicant:	Alexandra Harry

Application Lodged:	15/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	21/06/2022 to 05/07/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This matter is referred to the Development Determination Panel (DDP) for the consideration of Modification Application No. MOD2022/0292, which seeks approval for modifications to DA2020/1090, with alterations proposed to the existing roof deck, installation of a new skylight and minor cosmetic changes.

The application is referred to the DDP as the reconstructed roof deck access results in a breach of the building height development standard by more than 10%. A 23.5% variation to the building height development standard is proposed by virtue of the introduction of an entry stair to the existing roof top terrace, which is currently access by a roof hatch.

The non-compliance with the building height arises due to excavated nature of the site. It is noted that when measuring the proposal's height using extrapolated levels taken from ground levels that surround the existing building envelope, the proposal would be deemed to be compliant, with a maximum height of 8.4 metres.

Notification of the application resulted in one objection to the proposed development. Concerns raised in the objections predominantly relate to privacy and views, which have been considered and found acceptable.

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

PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent DA2020/1090 granted for alterations and additions to a dwelling house. The works include;

- Alterations to existing roof deck access,
- Cosmetic changes to rear extension,
- Installation of a new skylight.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 21 DP 5205 , 16 Carrington Parade FRESHWATER

	NSW 2096
Detailed Site Description:	The subject site consists of one allotment located on the western side of Carrington Parade. The site is regular in shape with a frontage of 12.19 meters along Carrington Parade and a depth of 30.48 meters . The site has a surveyed area of 376.2m². The site is located within the R2 Low Density Residential zone and accommodates an existing three level dwelling house. The site does not contain any significant vegetation features. <u>Detailed Description of Adjoining/Surrounding Development</u> Adjoining and surrounding development is characterised by similar two to three storey residential dwelling houses. To the east the site overlooks the cliff edge of Curl Curl Beach.

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:

DA2012/0897
Development application for alterations and additions to a dwelling-house, including the construction of front and rear decks. This application was approved 05 October 2012.

DA2020/1090
Development application for alterations and additions to a dwelling-house, including a rear extension. This application was approved on 29 December 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1090, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/1090 for the following reasons: • The modification involves alterations to existing roof deck, installation of a new skylight and minor cosmetic changes. These modifications do not change the scope, function or scope of the approved development, rather design refinements. • Compliance with the approved built form is retained.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in	Development Application DA2020/1090 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(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 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.

Section 4.15 'Matters for Consideration'	Comments
	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 insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (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 21/06/2022 to 05/07/2022 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 1 submission/s from:

Name:	Address:
Wesley David Allen Mrs Joanne Louise Allen	1 Daisy Street DEE WHY NSW 2099

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

- **Privacy**
- **View Loss**

The matters raised within the submissions are addressed as follows:

- **Privacy**

  The submission raised concerns that the modified access to the existing roof terrace would result in unreasonable privacy impacts for No. 23 The Drive. The concerns focused on the 'formalised' access to the roof terrace would prompt additional opportunities for unreasonable overlooking into No. 23 The Drive's private open space.

  Comment:

  The proposal does not seek to enlarge or relocate the existing roof terrace. In fact, the modified access involves slightly reducing the size of the roof to 13.8m^2 (0.6m^2 decrease), such that it can only comfortably hold two or three people. The roof terrace will retain access from the second level bedrooms, which is not considered to be a highly used part of the dwelling when applying the planning principle established in *Meriton v Sydney City Council [2004] NSWLEC 313*. In addition, expansive ocean views are enjoyed from the south-east to the north east, which means individuals accessing the existing structure will primarily be facing this way (i.e. away from No. 23 The Drive). Furthermore, the existing roof terrace maintains generous building separation with a minimum rear setback of 17.0m.

  It is considered that because of the factors outlined above, including the separation between the balcony and No. 23 The Drive, the small size of the terrace, the low use room it is accessed from, and the direction of the views, the modified access will not give rise in any unreasonable privacy impacts for No. 23 The Drive. Therefore, this matter does not warrant the refusal of the application.

- **Views**

  The submission raised concerns that the proposal will result in unreasonable view loss for No. 23 The Drive.

  Comment:

  This matter has been discussed with further detail in the views section of this report. In short, it was found that the extent of view loss arising from the modified development is considered to be

minor and that the proposal is considered acceptable. Therefore, this matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. On this basis, the Biodiversity Referral has no objections to the proposed modification.
NECC (Coast and Catchments)	No further coastal comments of conditions apply.

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 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 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. A379355_02, dated 25 May 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 was carried out within the assessment of DA2020/1090.

The modified development is substantially the same development as previously approved and is considered to be of a minimal environmental impact. In this regard, no further assessment, beyond that already conducted in the report for DA2020/1090, is required

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

Development Standard	Requirement	Approved works	Proposed	% Variation	Complies
Height of Buildings:	8.5 metres	6.6 metres	10.5 metres (Roof	23.5%	Yes

			terrace door)		

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

In accordance with the Land and Environment Court caselaw of *North Sydney Council v Michael Standley & Associates Pty Ltd [1009] NSW 163 (Michael Standley & Associates)* the Court determined that Section 96 (now Section 4.55) is a "free-standing provision" meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". This means that Clause 4.6 of the WLEP 2011 does not strictly apply to the assessment of a modification application.

Notwithstanding the findings in Michael Standley & Associates, the Court later detailed in Gann v Sutherland Shire Council (2008) that consideration should still be given to the relevant standard objectives:

"*This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply.*"

Accordingly, with consideration to the above caselaw, a merit assessment of the variation sought against the approved development is undertaken below to identify the developments consistency with the zone objectives and prevailing development standard objectives.

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5 meters
Proposed:	10.5 meters (Roof terrace door)
Percentage variation to requirement:	23.5%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives

of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Objectives of development standard

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

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

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

Comment:

The proposal involves reconstructing access to the existing roof deck, which is currently accessed through a restrictive hatch. The proposed hinged door and stairway maintains generous separation from the boundaries, while including a sloped design to minimise the extent of works protruding above the existing balustrade. If measuring the proposal's height using extrapolated levels taken from ground levels that surround the existing building envelope, the proposal is less than the maximum height of the LEP of 8.5m with a height of 8.4 metres. Overall, it is considered that the structure's minimal scale will remain compatible with the established built form.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The roof deck access has been designed to limit any unreasonable view impacts from the adjoining properties to the rear. Notwithstanding, a detailed view loss assessment has been carried out under Part D7 of this report, as concern has been raised by the western neighbour. In summary, it was found that the non-compliant elements would not give rise to adverse impacts on the maintenance of private views and that the proposal as a whole was considered to achieve a reasonable sharing of views.

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

The modified access to the existing roof terrace will not result in any unreasonable privacy impacts.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The proposed works will be carried out above existing hard surfaces and will not involve the removal of any significant vegetation. Therefore, the proposed development will not detract the scenic quality of Warringah's coastal and bush environments.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The proposal has been appropriately sited and articulated to minimise the visual impact when viewed from public places.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

- *To provide for the housing needs of the community within a low density residential environment.*

  Comment:

  The development will continue to provide for the housing needs of the community within a low density residential environment.

  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 is not applicable to the proposed development.

  It is considered that the development satisfies this objective.

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

  Comment:

  The proposed development provides sufficient landscaped area within the front setback and rear setback areas to compliment the landscaped setting of the street and is consistent with the objective.

  It is considered that the development satisfies this objective.

Conclusion:

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

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(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.

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

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

Comment:
The proposed height breach will not have a substantial impact on adjoining properties in terms of amenity. The proposal will provide greater internal amenity than the existing approved development without unduly compromising the amenity of adjoining properties.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	5.0m	No change	N/A
B3 Side Boundary Envelope	5m (North)	Within envelope	No change	N/A
	5m (South)	Within envelope	No change	N/A
B5 Side Boundary Setbacks	0.9m (North)	0.9m	No change	N/A
	0.9m (South)	1.0m	No change	N/A
B7 Front Boundary Setbacks	6.5m	4.4m	No change	N/A
B9 Rear Boundary Setbacks	6m	8.2m	No change	N/A
D1 Landscaped Open Space and Bushland Setting	40%	36.8%	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D7 Views

Merit consideration

Views will be affected from No. 23 The Drive, to the west of the subject site.

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. The affected view is obtained from the first floor and living room of No. 75 Crown Road, which adjoins the subject site to the south west.

  1. Nature of the views affected

  "*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North*

Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

No. 23 The Drive:

From the ground floor - Enjoys expansive ocean views from the south-east to the north east. In addition, views of Curl Curl Beach and North Curl Curl Headland are to the north and north east, which includes an area of the land and water interface. These views are reasonably obscured by existing residential developments.

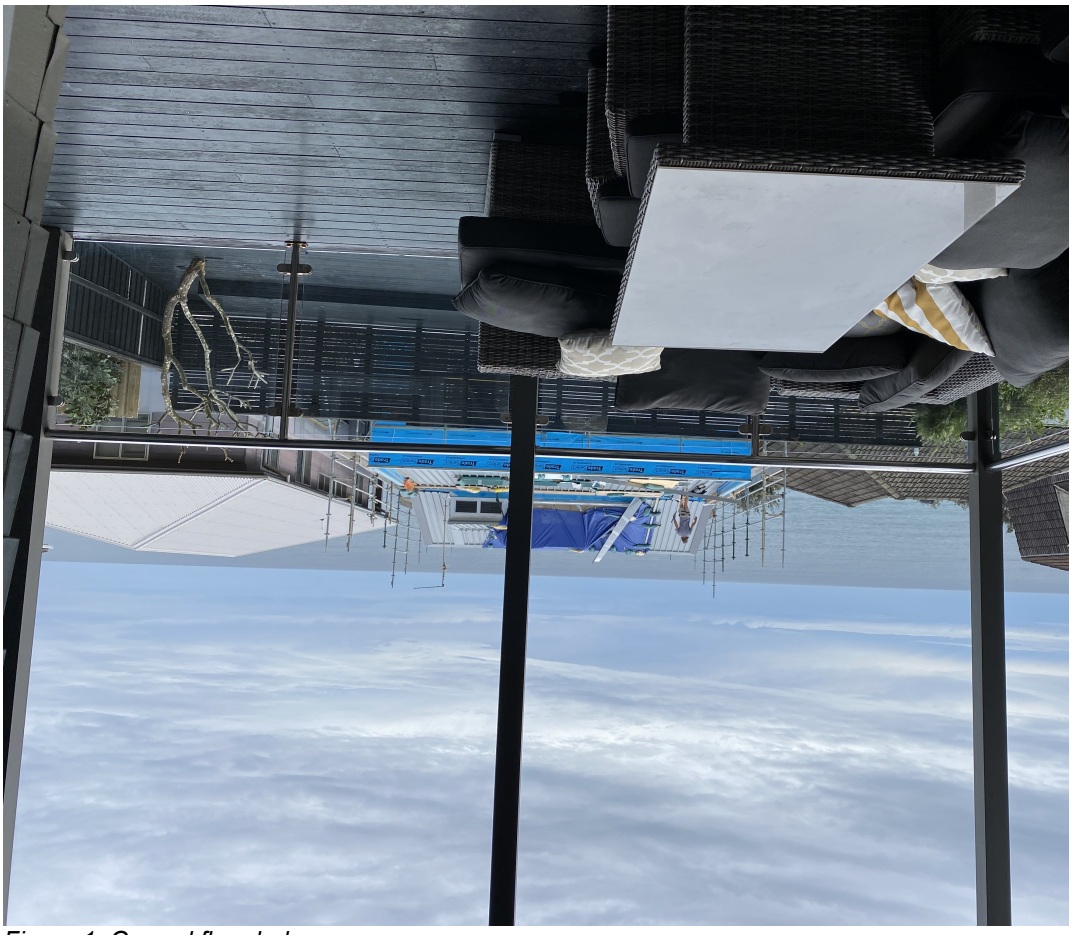


Figure 1. Ground floor balcony.

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

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

Comment to Principle 2:

No. 23 The Drive:

From the ground floor - The views are obtained from both seated and standing positions, over the subject site's rear boundary in the eastern direction.

3. Extent of impact

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

Comment to Principle 3:

No. 23 The Drive:

The view loss from this area involve a slight reduction of ocean views directly east, currently obtained over the existing roof hatch and half door. Notwithstanding, the modification will maintain acceptable view corridors to both sides of the existing roof terrace. Additionally, the views of Curl Curl Beach and North Curl Curl Headland along with those obtained from the first floor are not impacted by these works. In this regard, the view loss is considered 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:

No. 23 The Drive:
It is acknowledged that the views are highly valued by the owners of No. 23 The Drive. However, the proposed development is compliant with all development controls relevant to views, in this particular case. In this regard, the proposal's performance against the key controls relating to view loss in this particular case is acceptable.

In answering the question of 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, the proposal has maintained acceptably sized view corridors both side of the development. The loss of views are primarily a result of the previous approved works. Overall, the proposal itself is acceptable and will result in a reasonable sharing of views.

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

  Comment:

  The proposal has applied innovative design solutions to improve the urban environment.

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

  Comment:

  There are no existing canopy trees present on the site.

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

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 2021;
- 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

In summary, a detailed assessment has been required for the following specific issues:

- Variation to the building height development standard;
- Objection to the proposal due to its amenity impacts (privacy & views).

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0292 for Modification of Development Consent DA2020/1090 granted for Alterations and additions to a dwelling house on land at Lot 21 DP 5205,16 Carrington Parade, FRESHWATER, subject to the conditions printed below:

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

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

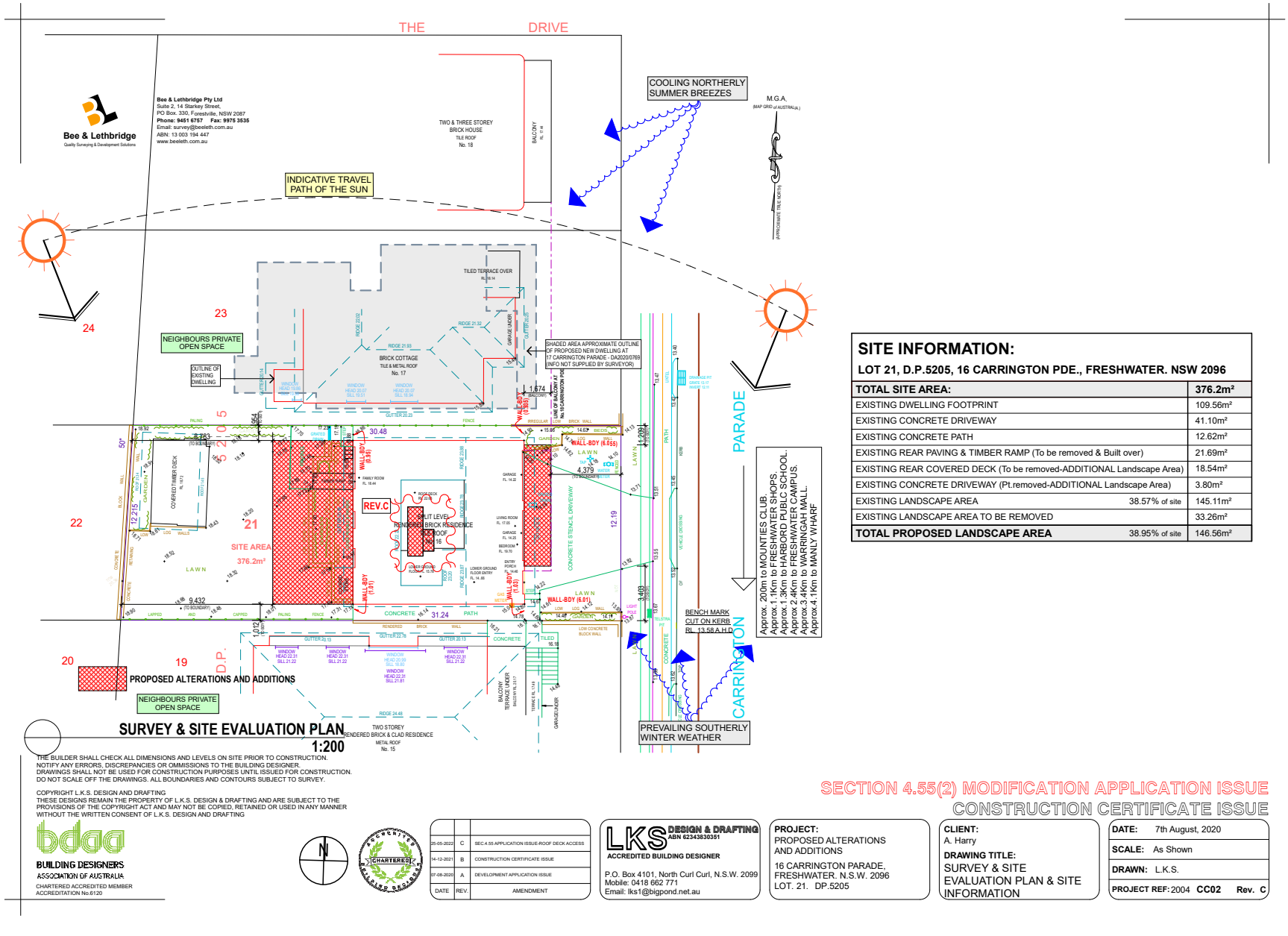
a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
CC04 - Rev C	25 May 2022	LKS Design and Drafting
CC05 - Rev C	25 May 2022	LKS Design and Drafting
CC06 - Rev C	25 May 2022	LKS Design and Drafting
CC 07 - Rev C	25 May 2022	LKS Design and Drafting
CC08 - Rev C	25 May 2022	LKS Design and Drafting
CC09 - Rev C	25 May 2022	LKS Design and Drafting
CC10 - Rev C	25 May 2022	LKS Design and Drafting
CC11 - Rev C	25 May 2022	LKS Design and Drafting
CC12 - Rev C	25 May 2022	LKS Design and Drafting
CC13 - Rev C	25 May 2022	LKS Design and Drafting
CC14 - Rev C	25 May 2022	LKS Design and Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No.A379355_02	25 May 2022	LKS Design and Drafting

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.



SURVEY & SITE EVALUATION PLAN
1:200

SITE INFORMATION: LOT 21, D.P.5205, 16 CARRINGTON PDE., FRESHWATER. NSW 2096		
TOTAL SITE AREA:		**376.2m²**
EXISTING DWELLING FOOTPRINT		109.56m²
EXISTING CONCRETE DRIVEWAY		41.10m²
EXISTING CONCRETE PATH		12.62m²
EXISTING REAR PAVING & TIMBER RAMP (To be removed & Built over)		21.69m²
EXISTING REAR COVERED DECK (To be removed-ADDITIONAL Landscape Area)		18.54m²
EXISTING CONCRETE DRIVEWAY (Pt.removed-ADDITIONAL Landscape Area)		3.80m²
EXISTING LANDSCAPE AREA	38.57% of site	145.11m²
EXISTING LANDSCAPE AREA TO BE REMOVED		33.26m²
TOTAL PROPOSED LANDSCAPE AREA	38.95% of site	146.56m²

THE BUILDER SHALL CHECK ALL DIMENSIONS AND LEVELS ON SITE PRIOR TO CONSTRUCTION. NOTIFY ANY ERRORS, DISCREPANCIES OR OMMISSIONS TO THE BUILDING DESIGNER. DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED FOR CONSTRUCTION. DO NOT SCALE OFF THE DRAWINGS. ALL BOUNDARIES AND CONTOURS SUBJECT TO SURVEY.

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bdaa BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA
CHARTERED ACCREDITED MEMBER ACCREDITATION No.6120

CHARTERED BUILDING DESIGNERS

DATE	REV.	AMENDMENT
25-05-2022	C	SEC.4.55 APPLICATION ISSUE-ROOF DECK ACCESS
14-12-2021	B	CONSTRUCTION CERTIFICATE ISSUE
07-08-2020	A	DEVELOPMENT APPLICATION ISSUE

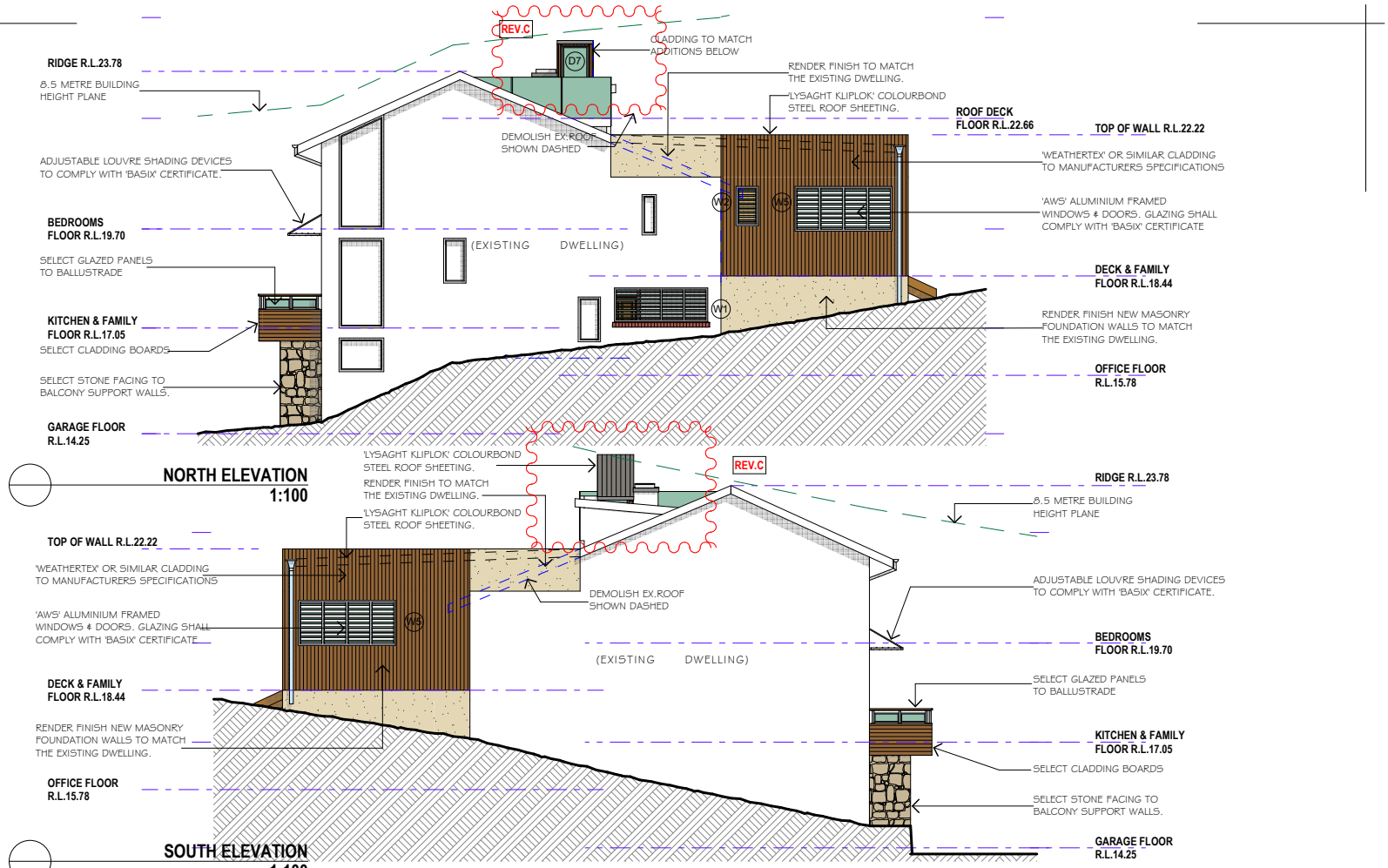
LKS DESIGN & DRAFTING
ABN 62343830351
ACCREDITED BUILDING DESIGNER
P.O. Box 4101, North Curl Curl, N.S.W. 2099
Mobile: 0418 662 771
Email: lks1@bigpond.net.au

PROJECT: PROPOSED ALTERATIONS AND ADDITIONS
16 CARRINGTON PARADE, FRESHWATER. N.S.W. 2096
LOT. 21. DP.5205

CLIENT: A. Harry
DRAWING TITLE: SURVEY & SITE EVALUATION PLAN & SITE INFORMATION

SECTION 4.55(2) MODIFICATION APPLICATION ISSUE
CONSTRUCTION CERTIFICATE ISSUE

DATE: 7th August, 2020
SCALE: As Shown
DRAWN: L.K.S.
PROJECT REF: 2004 **CC02** **Rev. C**



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CHARTERED ACCREDITED MEMBER ACCREDITATION No.6120

NOTE: THESE DRAWINGS SHALL BE READ IN CONJUNCTION WITH THE ATTACHED SPECIFICATION & TAYLOR CONSULTING CIVIL & STRUCTURAL ENGINEERS CONSTRUCTION NOTES (Cover Sheet) STORMWATER MANAGEMENT PLAN (Sheet 1), EROSION & SEDIMENT CONTROL PLAN (Sheet 2), & STRUCTURAL DETAILS (Sheet 3) Dated 3rd September, 2021.

SECTION 4.55(2) MODIFICATION APPLICATION ISSUE
CONSTRUCTION CERTIFICATE ISSUE

DATE	REV.	AMENDMENT
25-05-2022	C	SEC 4.55 APPLICATION ISSUE-ROOF DECK ACCESS
14-12-2021	B	CONSTRUCTION CERTIFICATE ISSUE
07-08-2020	A	DEVELOPMENT APPLICATION ISSUE

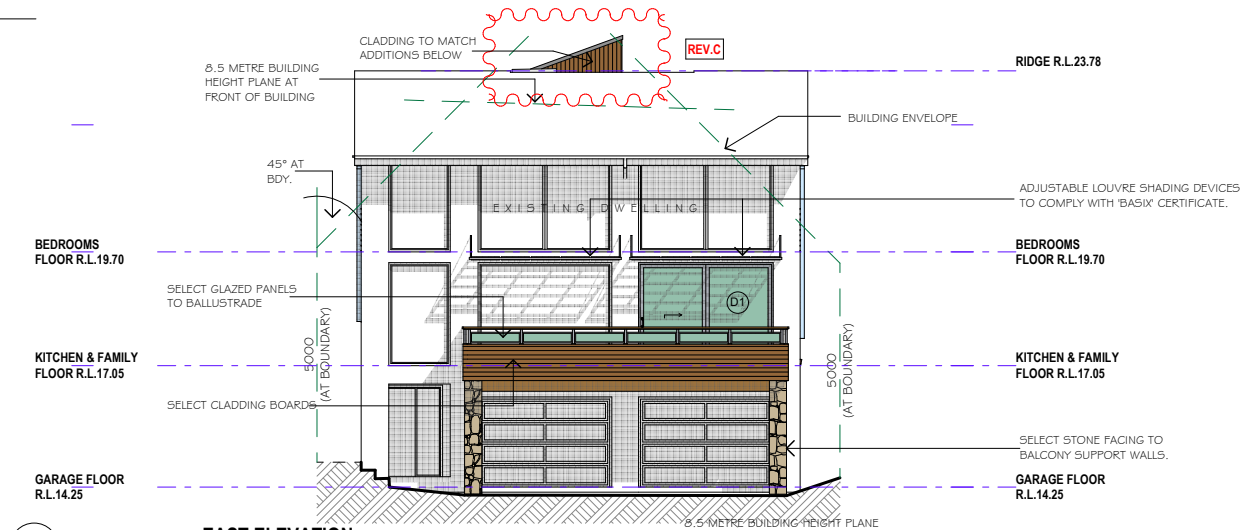
LKS DESIGN & DRAFTING ABN 62343830351
ACCREDITED BUILDING DESIGNER
P.O. Box 4101, North Curl Curl, N.S.W. 2099
Mobile: 0418 662 771
Email: lks1@bigpond.net.au

PROJECT:
PROPOSED ALTERATIONS AND ADDITIONS
16 CARRINGTON PARADE, FRESHWATER. N.S.W. 2096
LOT. 21. DP.5205

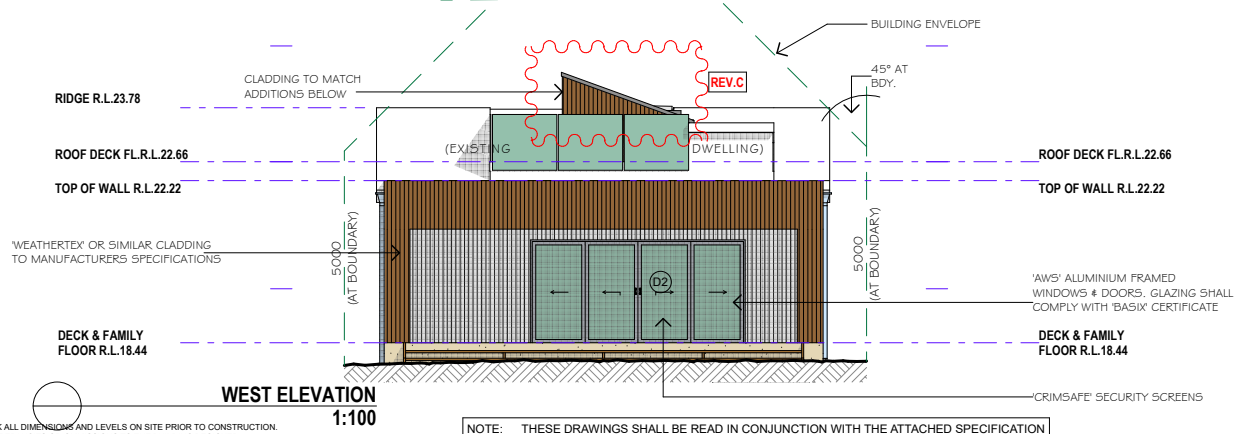
CLIENT:
A. Harry

DRAWING TITLE:
NORTH ELEVATION and SOUTH ELEVATION

DATE:	7th August, 2020
SCALE:	As Shown
DRAWN:	L.K.S.
PROJECT REF:	2004 **CC11** **Rev. C**



EAST ELEVATION
1:100



WEST ELEVATION
1:100

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SECTION 4.55(2) MODIFICATION APPLICATION ISSUE
CONSTRUCTION CERTIFICATE ISSUE

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CHARTERED ACCREDITED MEMBER ACCREDITATION No.6120

CHARTERED BUILDING DESIGNERS

DATE	REV.	AMENDMENT
25-05-2022	C	SEC 4.55 APPLICATION ISSUE-ROOF DECK ACCESS
14-12-2021	B	CONSTRUCTION CERTIFICATE ISSUE
07-08-2020	A	DEVELOPMENT APPLICATION ISSUE

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P.O. Box 4101, North Curl Curl, N.S.W. 2099
Mobile: 0418 662 771
Email: lks1@bigpond.net.au

PROJECT:
PROPOSED ALTERATIONS AND ADDITIONS
16 CARRINGTON PARADE, FRESHWATER. N.S.W. 2096
LOT. 21. DP.5205

CLIENT:
A. Harry

DRAWING TITLE:
EAST ELEVATION and WEST ELEVATION

DATE:	7th August, 2020
SCALE:	As Shown
DRAWN:	L.K.S.
PROJECT REF:	2004 **CC12** **Rev. C**

ITEM 3.4	**DA2022/0727 - 12 CLARENCE STREET BALGOWLAH - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2022/552875**
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 DA2022/0727 for alterations and additions to a semi-detached dwelling on land at Lot 1 DP 445281, 12 Clarence Street BALGOWLAH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0727

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 445281, 12 Clarence Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Matthew Dustin Adams
Applicant:	William Linehan

Application Lodged:	03/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/06/2022 to 28/06/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 13.1%
Recommendation:	Approval

Estimated Cost of Works:	$ 400,000.00

EXECUTIVE SUMMARY

This matter is referred to the Development Determination Panel (DDP) for the consideration of a Development Application, which seeks approval for alterations and additions to an existing semi-detached dwelling, including the construction of a first floor addition, at 12 Clarence Street, Balgowlah.

The application is referred to the DDP as the proposal results in a breach of the floor space ratio (FSR) development standard by more than 10%. A 13.1% variation to the FSR standard is proposed by the construction of a first floor addition and ground floor extension.

The non-compliance with the FSR standard arises due to undersized nature of the site. It is noted that proposal achieves compliance with the FSR variations permitted within Manly DCP for undersized allotments.

Notification of the application resulted in four (4) objections to the development, relating to;

- Overshadowing,
- Privacy,
- Height of boundary wall,
- Stormwater,
- Sewer,
- Setbacks,
- Floor space ratio.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the exiting built form on the site and in the wider locale. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application DA2022/727 seeks development consent for alterations and additions to an existing semi-detached dwelling. The proposal comprises;

- construction of a first floor addition, including two bedrooms, one bathroom, rumpus area and rear balcony;
- ground floor rear extension of kitchen/living areas and new outdoor patio;
- internal alterations to existing ground floor; and
- Associated landscaping works.

Amended plans dated 23 August 2023:

Following a preliminary review of the application, Council raised concern with the proposed FSR variation and the development's privacy impacts. Amended plans and a revised Clause 4.6 variation request was received on 23 August 2022. The amendments included:

- Removal of proposed car space and driveway crossover to the front of the property.
- First floor western windows amended (W6, W8, W9, W10, W11 & W12) with a 1700mm high sill.

In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain, re-notification of the application was not required. Notwithstanding, in the public interest, No. 66 Condamine Street (adjoining neighbour) was informed about the submission of the amended plans and were given the opportunity to view and provide comment on the amendments, as these were published on Council's website. The amended plans form basis of the assessment of this proposal.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 DP 445281 , 12 Clarence Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Clarence Street. The site is regular in shape with a frontage of 6.15 metres along Clarence Street and a depth of 54.7 metres. The site has a surveyed area of 334.5m². The site is located within the R2 Low Density Residential zone and accommodates a single storey semi-detached dwelling. The subject site is contained within the Foreshore Scenic Protection Area. The site relatively flat. The site does not contain any significant environmental features. **Detailed Description of Adjoining/Surrounding Development** The surrounding area includes residential terraces and other

	low density development.

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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information.

Section 4.15 Matters for Consideration	Comments
	Additional information was requested in relation to amended plans. 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 insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/06/2022 to 28/06/2022 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 4 submission/s from:

Name:	Address:
Mrs Karen Heather Ryan	6 Clarence Street BALGOWLAH NSW 2093
Mr John Malcolm Travis	8 Clarence Street BALGOWLAH NSW 2093
Mr Dominic Edward McCarthy	66 Condamine Street BALGOWLAH NSW 2093
Ms Lara McCarthy	58 Cliff Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Overshadowing,**
- **Privacy,**
- **Height of boundary wall**,
- **Stormwater**,
- **Sewer**,
- **Setbacks,**
- **Floor space ratio.**

The above issues are addressed as follows:

- **Overshadowing**

  The submissions raised concerns that the proposed addition will unreasonably overshadow adjoining properties. In addition, concern is raised that the supporting shadow diagrams do not appropriately demonstrate impacts upon the eastern neighbours.

  Comment:

  The amended shadow diagrams have been prepared in accordance with Council's lodgement requirements for development applications. An assessment of the application against Clause 3.4.2 Sunlight Access and Overshadowing of the Manly DCP finds that the application complies with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties. In addition, it is considered that the proposed development has been adequately modulated to minimise overshadowing impacts on adjoining properties. This has been achieved through the design of the addition sitting well below the maximum allowable height with a low roof pitch.

  This matter does not warrant the refusal of this application.

- **Privacy**

  The submissions raised concerns that the proposed first floor west facing windows will result in

adverse privacy impacts for the residents at No. 66 Condamine Street.

Comment:

The proposal has been assessed against the privacy provisions of MDCP (see Part 3.4.2 of this report), which stipulates that when buildings are close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy. In addition, narrow, translucent or obscured glass windows are to be used to maximise privacy where necessary. The proposed windows include high sill heights and have been positioned to maintain an acceptable level of privacy. Overall, the proposal will not result in any unreasonable privacy impacts.

This matter does not warrant the refusal of this application.

- **Height of boundary wall**

  The submissions raised concerns that the architectural plans do not provide a 'reduced level' (RL) for the top of the common boundary wall.

  Comment:

  Amended plans have been provided which include a RL for the top of the common boundary wall. Conditions have been recommended for a survey certificate to be provided during works to ensure that the proposal is constructed in accordance with the approved details, ensuring that the wall is correctly constructed.

  This matter does not warrant the refusal of this application.

- **Stormwater**

  The submissions raised concerns with the site's existing stormwater system, as to where the run-off will be directed to.

  Comment:

  Conditions relating to stormwater management have formed part of this recommendation. In summary, the stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council’s Water Management for Development Policy.

  This matter does not warrant the refusal of this application.

- **Sewer**

  The submissions raised concerns that the proposal will be constructed within proximity of the existing sewer line.

  Comment:

  Conditions have been recommended which requires the applicant to submit the approved plans, for separate approval of Sydney Water 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.

This matter does not warrant the refusal of this application.

- **Setbacks**

  The submissions raised concerns that the proposal does not comply with the prescribed side setback control, which gives rise to an adverse visual impact for adjoining properties.

  Comment:

  This matter is discussed in detail under part 4.1.4 (Setbacks (front, side and rear) and Building Separation) of this report. In summary, the proposal incorporates sufficient design solutions to minimise the non-compliance on a constrained site, and as a result the bulk and scale of the development does not give rise to any unreasonable impacts upon the adjoining properties.

  This matter does not warrant the refusal of this application.

- **Floor space ratio**

  The submissions raised concerns that the FSR variation proposed under this application is unreasonable and therefore, supported by an inadequate Clause 4.6 assessment.

  Comment:

  An assessment of the submitted clause 4.6 variation request has been undertaken within the relevant section of this report. The assessment finds the applicant's written request adequately demonstrates that it is unreasonable to apply strict compliance with the development standard and that there are sufficient environmental planning grounds to justify contravening the development standard, principally as the FSR is consistent with the requirements of the DCP for undersized allotments. It is considered that the proposal is consistent with the aims and objectives of the R2 Low Density Residential zone and the Floor space ratio development standard under Manly LEP 2013.

  This matter does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Landscape Officer	The development application is for alterations and additions to the existing dwelling including a new crossover and driveway, as described and illustrated in the Reports and Plans.

Internal Referral Body	Comments
	Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable *updated comments 29/08/2022:* Amended Plans are submitted that remove the driveway proposal from the development application. The Landscape Plan indicates the retention of the existing landscaping to the front and rear of the property, with the exception of one Frangipani at the rear that is located within the proposed footprint of the development. No concerns are raised with the removal of this tree as it is an exempt tree under height exemption. Subject to the retention of existing landscaping and the protection of existing street trees, and other trees and vegetation within adjoining properties, Landscape Referral raise no concerns. *previous comments 29/06/2022:* No Landscape Plan nor a Arboricultural Impact Assessment accompanies the application. The proposal requires the removal of a large Brushbox street tree to accommodate the crossover and driveway, as well as one other tree within the rear of the property in the vicinity of the proposed outdoor patio area. Of concern is the proposal to remove the Brushbox street tree, contrary to the requirements of control 3.3.2 Preservation of Trees or Bushland Vegetation. Clarence Street supports many street trees that provide streetscape and environmental amenity. No justification for removal is submitted and it is noted that the Brushbox appears to be in good health and with a long useful life expectancy. No arboricultural nor design investigation into alternative layouts are presented to suggest that there is no alternative approach.

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 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 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. A35344_03 dated 16 August 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5 metres	7.7 metres	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 (150.53m^2)	FSR: 0.58:1 (194.3m^2)	13.1%	**No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (150.53m^2)
Proposed:	0.58:1 (194.3m^2)
Percentage variation to requirement:	13.1%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

- *The development proposed is permissible with consent within the R2 Zone and is consistent with the relevant objectives of the zone and Clause 4.4 of the LEP.*
- *The siting, bulk, scale and massing of the proposed development is appropriate in the setting. The subject site and applicable FSR fall under the Exception to FSR for Undersized Lots as per Manly DCP Control 4.1.3.1.*
- *The proposed development would not give rise to any harmful impacts on neighbouring amenity given the high-level windows on the western elevation, proximity from the proposed development and the privacy screen to the western section of the open balcony.*

It is agreed that the proposed extension will remain compatible within the immediate locality without rise to any adverse amenity impacts, as the built form is appropriately modulated and sited, such that the proposal achieves an acceptable level of compliance with the relevant built form controls and meets the objectives of the relevant controls. Furthermore, it is acknowledged that the proposal constrained to the proportions of the host dwelling, which is located on an undersized lot as per Clause 4.1.3 of MDCP. Overall, the requested variation is reasonable in terms of its impacts and strict compliance with this development standard would not provide a net benefit to the immediate locality, as the proposal is considered an appropriate design within a low-density residential setting, which preserves an acceptable level neighbourhood amenity.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The immediate streetscape character is defined by residential terraces and other low density development, including detached dwelling houses that range between one to two storeys. In this regard, the streetscape is characterised by low-density development ranging in size, construction

and age.

The proposed first floor addition is 7.7 meters when measured from ground level (existing) to the highest point of the building. The height of buildings development standard is designed to control building height ensuring the development is consistent with that of the surrounding area. The proposed addition is 0.8 meters lesser than the maximum (8.5 meters) and is considered consistent with the height of surrounding low density development.

The proposed first floor addition is 4.9 meters wide and is reasonably constrained by the narrow lot width of 6.2 meters. Notwithstanding, the proposal is suitably articulated through gradually stepping the building down towards the rear boundary, along with fenestration and an innovative roof form. In addition, the proposed first floor provides generous building separation from the front boundary (12.4 meters). In this regard, the proposal has been appropriately designed and sited to minimise bulk and scale, thereby remaining consistent with the existing and desired streetscape character.

It is considered that the development 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:

As outlined, the proposal has been effectively modulated to minimise building bulk. Further, the amended proposal maintains the existing street tree and landscaping within the frontage. Overall, the development is not expected to cause unreasonable impacts to landscape and townscape features.

It is considered that the development satisfies this objective.

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

Comment:

The proposed first floor is adequately set back from the frontage and screened by existing vegetation. In addition, proposed development does not seek the removal of any significant vegetation. As such, the proposal will maintain an appropriate visual relationship with the existing character of the area, which contains a mix of older dwellings and more recent contemporary developments.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development has been adequately set back from adjoining boundaries within context of the site constraints, which ensures that no adverse environmental impacts (including privacy and overshadowing), will impede upon surrounding sites. These matters are discussed in further detail under 3.4.2 Privacy and Security of this report. Overall, the amenity of adjoining land and the public domain will be suitably maintained by this proposal.

It is considered that the development satisfies this objective.

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

Comment:

This objective does not apply as the site is not within a business zone.

It is considered that the development satisfies this objective.

Zone objectives

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

- *To provide for the housing needs of the community within a low density residential environment.*

  Comment:

  The proposal seeks the alterations and additions to an existing attached dwelling, which is a permissible use in this zone. The additional floor area is considered to provide for the current housing needs of the occupants of the site and is compatible with that of nearby comparable development.

  It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

  Comment:

  No change to the existing residential land use is proposed.

  It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, 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: 334.50sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5 metres (based on gradient 0)	6.5 metres	N/A	Yes
	S: 6.5 metres (based on gradient 0)	5.8 metres	N/A	Yes
	E: 6.7 metres (based on gradient 1:30)	7.0 metres	N/A	Yes
	W: 6.7 metres (based on gradient 1:30)	6.5 metres	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5 metres	0.8 metres	N/A	Yes
	Pitch: maximum 35 degrees	8 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6 metres	12.4 metres	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: Semi-detached dwelling	Nil to boundary wall	N/A	Yes
	W: 2.2 metres (based on wall height of 6.7 metres)	1.2 metres (Ground and first floor additions) Nil (rear patio)	45.5% - 100%	**No**
	Windows: 3 metres	1.2 metres	60%	**No**
4.1.4.4 Rear Setbacks	8 metres	17.3 metres	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (184m^2)	46.4% (155.3m^2)	15.6%	**No**
	Open space above ground 25% of total open space	-	-	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (54.4m^2)	57.8% (89.8m^2)	N/A	Yes
	2 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18m^2 per dwelling	>18m^2	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

Proposed windows on the western elevation do not comply with the privacy requirements of Part 3.4.2 of the DCP.

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:

Amended plans were provided to ensure that all the first floor bedroom and bathroom windows have a minimum sill height of 1.7 metres above the finished floor level (FFL), which is consistent with the requirements of this control. It is also noted that the stairwell window (W7) is a 2.2 meter high window opening with its sill height at the first-floor level. However, the window is located adjacent to the middle landing of the stairwell and as such, when applying the planning principal of *Meriton v Sydney City Council [2004] NSWLEC 313* it is considered that this space has a relatively low impact in terms of its transient usage, as individuals are not likely to spend extended periods of time observing over the western boundary from this space.

It is considered that because of the factors outlined above, including, high sill levels, and the low use rooms it is accessed from, the proposal will not result in any unreasonable privacy impacts for adjoining building at No.66 Condamine Street.

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

Comment:

The fenestration of the proposed addition allows for greater access to light and air without creating unreasonable privacy outcomes, while retaining suitable outlooks and views from the proposed rooms.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The development maintains passive surveillance and awareness of neighbourhood security.

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.

4.1.3 Floor Space Ratio (FSR)

Whilst the proposed floor area does not exceed the maximum variation to FSR for undersized lots as described under this clause, the development is technically non-compliant with the FSR requirement as prescribed under Clause 4.4 of the Manly LEP 2013. Refer to the discussion under Clause 4.6 of this report for the relevant considerations concerning the varying of this development standard.

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

Description of non-compliance

Side setback
The proposed first floor addition includes a western side setback of 1.1 metres. MDCP requires a minimum western setback of 2.2 metres (based on wall height of 6.7 metres).

Windows
The proposed western elevation includes 12 windows that are within 3.0 metres of the western

boundary.

Merit consideration:

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

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

Comment:

The proposed first floor is set back 12.4 meters from the front boundary and sits well below the prescribed height limit. The proposal has been amended to retain the existing street tree located within the road reserve and landscaping contained within the frontage, which provides adequate screening of the development. Overall, the proposal has been appropriately designed to remain consistent with the existing and desired streetscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

An assessment has been completed under Section 3.4.2 (Privacy and Security) of this report to determine the proposed first floor addition's impact on privacy for the adjoining site to the west. In summary, the proposed west facing windows will not have readily accessible views into the adjoining properties as they have been sufficiently offset from sensitive areas and include high sill levels. Notwithstanding the setback non-compliances the proposal has been designed to preserve local amenity through providing reasonable privacy between buildings.

The proposed addition will result in additional overshadowing to the western sites rear yards at 9am, however, no additional shadowing will occur to these sites from midday onwards. In summary, it is considered that the proposal maintains equitable access to sunlight between sites in accordance with Section 3.4.1 (Sunlight Access and Overshadowing) of MDCP.

The proposal will not result in the loss of views.

As mentioned elsewhere the proposal has been designed to maintain acceptable streetscape outcomes.

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

Comment:

The proposed setback breach is considered to be acceptable given the characteristics of the site and the absence of any adverse amenity impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides landscaped area which is consistent with the control for nearby dwellings and proposes vegetation to the front of the site. This provides a reasonable circumstance for natural features.

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

Comment:

Not applicable.

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

Description of non-compliance

The DCP requires that the site consist of 55% (184m^2) open space with minimum dimensions of 3 metres. The proposed development consists of 46.4% (155.3m^2) open space, which represents a 15.6% variation of the control.

Notwithstanding the numerical non-compliance with the control, the development is considered to be consistent with the desired outcomes of the control and this is discussed in detail 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 development does not result in the removal of significant canopy trees which would result in the character of the site being compromised or impact populations of 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 reasonably maximises soft landscaped areas and open space at ground level that includes appropriate tree planting and vegetation coverage within the low density residential setting. Furthermore, the proposal is considered to provide an area of private open space that is of high amenity.

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 achieves compliance with the solar access requirements under MDCP and does not impact upon views. In addition, the proposal's privacy impacts have been mitigated through a responsive window design and adequate separation from boundaries. Further, the works have been effectively designed to minimise any streetscape impacts. Overall, the proposal enhances the subject site's amenity through the provision of additional living areas and an enhanced open space provision, while not creating unreasonable amenity impacts for the surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposal will retain sufficiently sized landscape areas across the site that are capable of water infiltration, which will assist in minimising stormwater run-off.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

No major landscaping works are proposed within this application.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The development does not impact significant canopy trees which would be used for habitat.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is inconsistent 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 $4,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $400,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- 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.

In summary, the application has been assessed with regard to the relevant Manly LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

The issues raised in the submissions are considered to be addressed by way of the amended plans and conditions of consent.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DPP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.
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 DA2022/0727 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 445281, 12 Clarence Street, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Sheet 1 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 2 - DA/7	16 August 2022	Evolving Design & Drafting

Sheet 3 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 4 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 5 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 6 - DA/7	16 August 2022	Evolving Design & Drafting
External finishes schedule Job No. 117-18	Not stated	Evolving Design & Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A35344_03	16 August 2022	Evolving Design & Drafting
Geotechnical Assessment	31 March 2022	AscentGeo Consulting Geotechnical Engineers'

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	19 January 2022	Evolving Design & Drafting

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

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

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

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Response Ausgrid Referral	29 June 2022

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $4,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2022. The monetary contribution is based on a development cost of $400,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2022 may be inspected at 725 Pittwater Rd, Dee Why and at Council’s Customer Service Centres or alternatively, on Council’s website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed

with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **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.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees. Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

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

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation

with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

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

Reason: Tree and vegetation protection.

12. **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.

13. **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.

14. **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.

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

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

16. **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. **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.

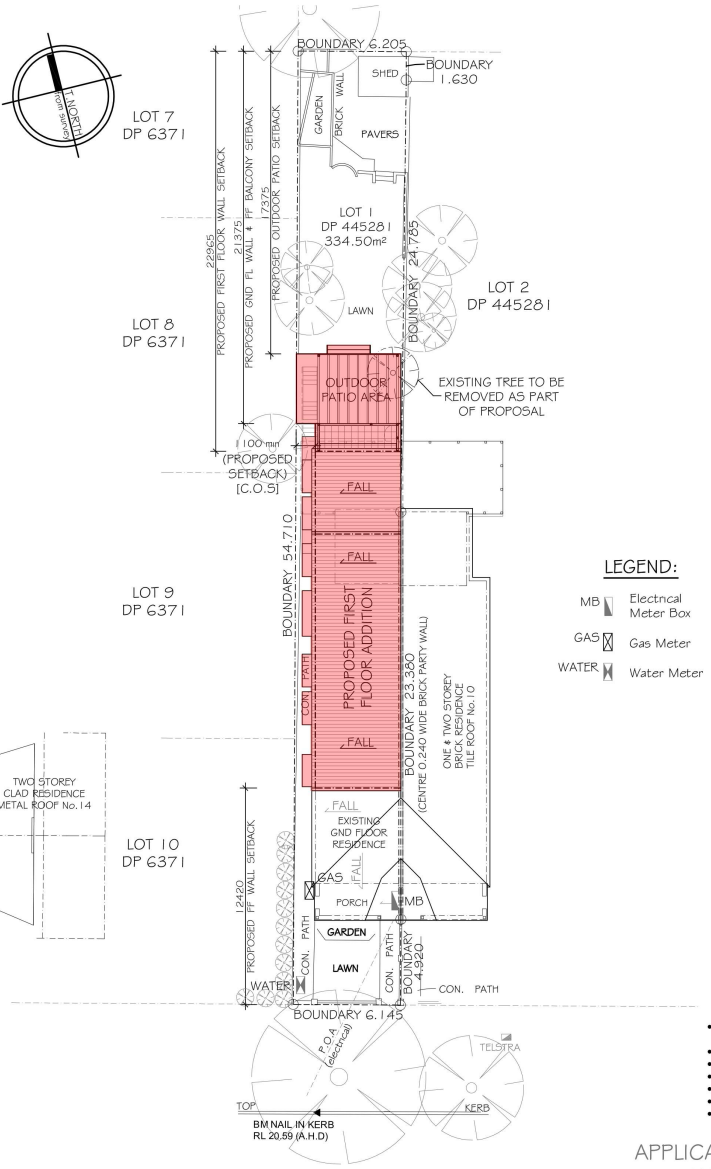
Reason: To ensure satisfactory management of stormwater.

PROPOSED ADDITIONS TO EXISTING RESIDENCE

FOR: MR. MATTHEW ADAMS

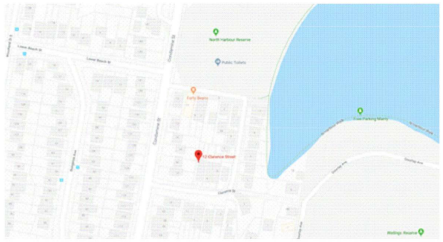
AT: 12 CLARENCE ST, BALGOWLAH, 2093

DRAWING: SITE PLAN & COVER PAGE



LEGEND:

MB	Electrical Meter Box
GAS	Gas Meter
WATER	Water Meter



BASIX REQUIREMENTS

- The applicant must ensure that a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.
- The applicant must ensure that new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.
- The applicant must ensure that new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating
- The applicant must ensure that new or altered taps have a flow rate no greater than 9 litres per minute or a minimum 3 star water rating

INSULATION REQUIREMENTS

- The new concrete slab on ground floor requires no additional insulation.
- The floor structure above existing dwelling requires no additional insulation.
- The new external walls construction to be cavity brick veneer - R1.16 (or R1.70 including construction) & framed (weatherboard, fibro, metal clad) - R1.30 (or R1.70 including construction).
- The new roof structure is to be pitched with a framed flat ceiling - ceiling: R1.45 (up), roof: foil backed blanket (55mm). Medium (solar absorptance) - 0.475 - 0.70.

WINDOW REQUIREMENTS

- See 'Window & Door Schedule' on Sheet 7.

No.	ISSUE	DRAWN	DATE
DA/1	RESPONSE TO 2nd MINUTES OF MEETING & CLIENTS REQUESTS + START DETAILING DRAWINGS	F.F.	03.02.20
DA/2	RESPONSE TO CLIENTS EMAIL & PHONE CONVERSATION WITH BILL	F.F.	06.10.21
DA/3	AMENDMENTS TO DESIGN IN RESPONSE TO CLIENTS EMAIL & PHONE CONVERSATION WITH BILL	F.F.	07.12.21
DA/4	AS PER CONVERSATION WITH CLIENTS, MODIFY FF BATHROOM TO CREATE MASTER ENSUITE.	F.F.	12.01.22
DA/5	ADDITIONAL WINDOW TO MASTER W.I.R.	F.F.	25.01.22
DA/6	UPDATE DRAWINGS & CALCs DUE TO NEW SURVEY	F.F.	27.04.22
DA/7	REQUEST FOR ADDITIONAL INFORMATION	F.F.	16.08.22

- ALL WORKS TO BE IN ACCORDANCE WITH THE NATIONAL CONSTRUCTION CODE, LOCAL COUNCIL BUILDING APPROVAL, RELEVANT GOVERNING STATUTORY AUTHORITIES & MINIMUM STANDARDS OF CONSTRUCTION.
- FIGURED DIMENSIONS IN PREFERENCE TO ANY SCALE.
- THE BUILDER IS TO BE RESPONSIBLE FOR BUILDING DETAILS, CONSTRUCTION METHODS & SET OUT.
- THE BUILDER IS TO CHECK ALL DIMENSIONS & LEVELS FOR IN ACCURACIES PRIOR TO START.
- THE BUILDER IS TO INCLUDE & ARRANGE SEPARATE ENGINEERS DETAILS &/OR INSPECTIONS AS REQUIRED.
- EXISTING FOOTINGS & STRUCTURE TO BE CERTIFIED BY ENGINEER TO WITHSTAND ADDITIONAL LOADS.
- PROPOSED ADDITION & STRUCTURE TO BE CERTIFIED BY ENGINEER.

- SITE AREA - 334.50 M2

EXISTING SITE CALCULATIONS

- EXISTING RESIDENCE - 102.99 M2
- EXISTING FRONT PORCH - 10.14 M2
- EXISTING REAR TILED AREA - 18.28 M2
- EXISTING PAVERS - 30.42 M2
- EXISTING REAR PAVERS & STEPS - 23.48 M2
- EXISTING SHED - 6.61 M2
- EXISTING ENTRY CONCRETE PATH - 5.81 M2
- EXISTING SIDE CONCRETE PATH - 31.33 M2
- TOTAL EXISTING SITE COVERAGE - 109.60 M2 / - 33%
- TOTAL EXISTING HARDSTAND - 229.06 M2 / - 69%

PROPOSED SITE CALCULATIONS

- EXISTING RESIDENCE *(to remain)* - 85.33 M2
- EXISTING FRONT PORCH - 10.14 M2
- EXISTING REAR PAVERS & STEPS - 23.48 M2
- EXISTING SHED - 6.61 M2
- EXISTING ENTRY CONCRETE PATH - 5.81 M2
- EXISTING SIDE CONCRETE PATH - 31.33 M2
- PROPOSED RESIDENCE ADDITIONAL FOOTPRINT - 44.29 M2
- PROPOSED OUTDOOR PATIO AREA & STEPS - 25.21 M2
- PROPOSED SIDE CONCRETE PATH ADDITION - 4.79 M2
- PROPOSED REAR FIRST FLOOR ENCLOSED BALCONY (no additional footprint, not included in calcs) - (7.33 M2)
- TOTAL PROPOSED SITE COVERAGE - 136.23 M2 / - 41%
- TOTAL PROPOSED HARDSTAND - 236.99 M2 / - 71%
- PROPOSED ADDITIONAL HARDSTAND - 7.93 M2

PROPOSED OPEN SPACE CALCULATIONS

TOTAL OPEN SPACE REQUIRED - AT LEAST 55% OF SITE AREA
334.50m2 x 55% = 183.98m2

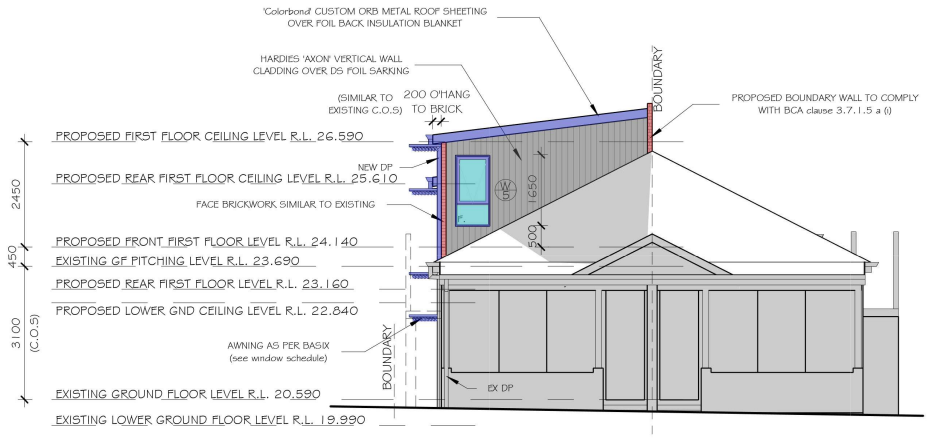
- PROPOSED OUTDOOR PATIO AREA & STEPS - 25.21 M2
- PROPORTION OF EXISTING REAR PAVED AREA *(as per definition of Open Space Dimensions)* - 17.37 M2
- PROPOSED REAR LANDSCAPED AREA *(as per definition of Open Space)* - 60.49 M2
- TOTAL PROPOSED OPEN SPACE AREAS - 103.07 M2

APPLICATION ONLY, NOT FOR CONSTRUCTION

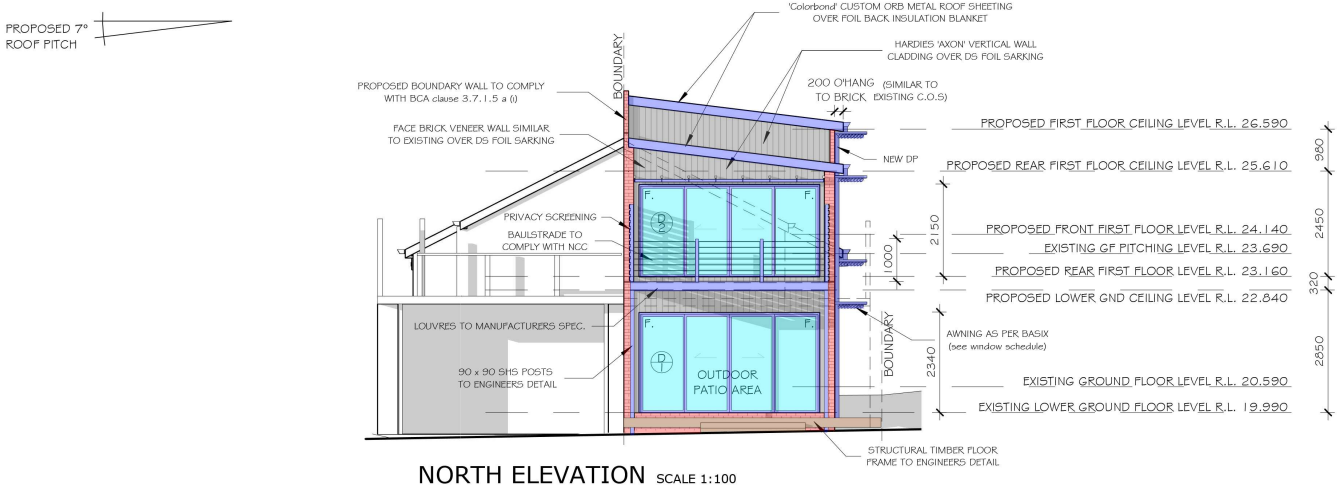
EVOLVING DESIGN & DRAFTING.
NO: SHOP 6 - 459 GREAT WESTERN HIGHWAY, FAULCONBRIDGE. NSW 2776
PH: (02) 4751 5842 INFO@EVOLVINGDESIGN.COM.AU
ABN: 67 164 531 748

SCALE 1:250 - A3
DATE: 16.08.22

JOB No. 117/18
SHEET NO 1/7
AMENDMENT DA/7



SOUTH ELEVATION SCALE 1:100



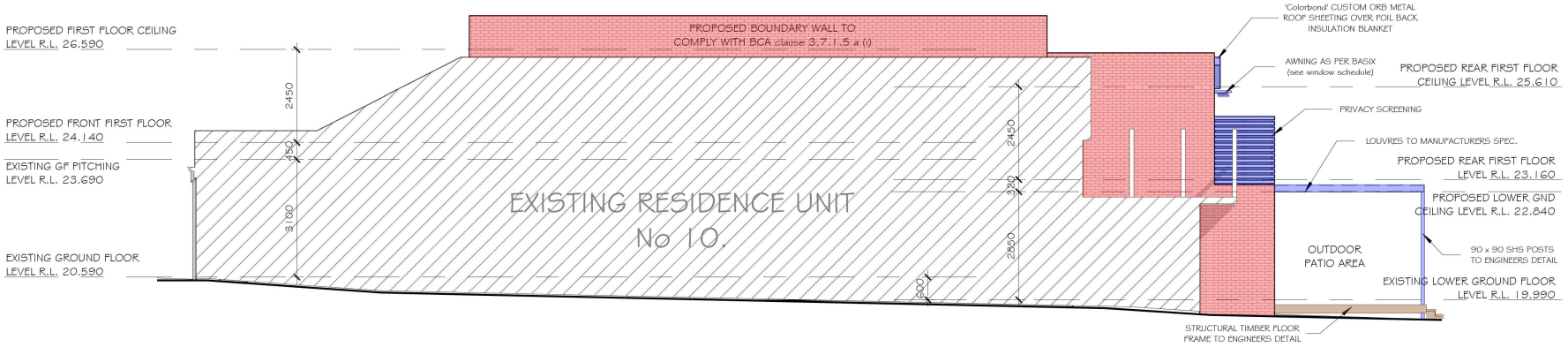
NORTH ELEVATION SCALE 1:100

APPLICATION ONLY, NOT FOR CONSTRUCTION

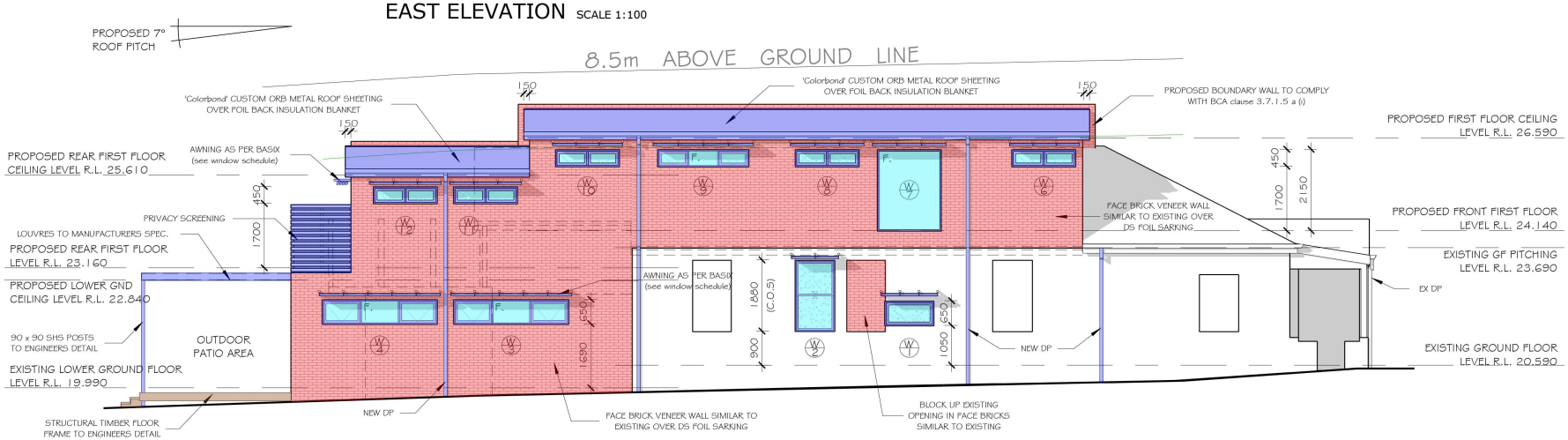
PROJECT: PROPOSED ADDITIONS TO EXISTING RESIDENCE
FOR: MR. MATTHEW ADAMS
AT: 12 CLARENCE ST, BALGOWLAH, 2093
DRAWING: NORTH & SOUTH ELEVATIONS

EVOLVING DESIGN & DRAFTING
NO: SHOP 6 - 459 GREAT WESTERN HIGHWAY, FAULCONBRIDGE. NSW 2776
PH: (02) 4751 5842 INFO@EVOLVINGDESIGN.COM.AU
ABN: 67 164 531 748

SCALE: 1 : 100/ A3
DATE: 16.08.22
JOB No. 117/18
SHEET NO. 5/7
AMENDMENT DA/7



EAST ELEVATION SCALE 1:100



WEST ELEVATION SCALE 1:100

APPLICATION ONLY, NOT FOR CONSTRUCTION

PROJECT: PROPOSED ADDITIONS TO EXISTING RESIDENCE
FOR: MR. MATTHEW ADAMS
AT: 12 CLARENCE ST, BALGOWLAH, 2093
DRAWING: EAST & WEST ELEVATIONS

EVOLVING DESIGN & DRAFTING
NO: SHOP 6 - 459 GREAT WESTERN HIGHWAY, FAULCONBRIDGE. NSW 2776
PH: (02) 4751 5842 INFO@EVOLVINGDESIGN.COM.AU
ABN: 67 164 531 748

SCALE: 1 : 100/ A3
DATE: 16.08.22
JOB No. 117/18
SHEET NO. 6/7
AMENDMENT DA/7

planning
progress

CLAUSE 4.6 VARIATION REPORT
FOR
FLOOR SPACE RATIO DEVELOPMENT STANDARD
CLAUSE 4.4 OF MANLY LEP
AT
12 CLARENCE STREET, BALGOWLAH

AUGUST 2022

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234
karen@planningprogress.com.au
www.planningprogress.com.au

INTRODUCTION

This Clause 4.6 (cl.4.6) Variation Request is prepared in support of a Development Application (DA) for alterations and additions to the existing semi-detached dwelling at 12 Clarence Street, Balgowlah and seeks to vary Clause 4.4 of the Manly Local Environmental Plan 2013 (LEP) with regard to the Floor Space Ratio Control.

This written cl. 4.6 Variation Request has been prepared in accordance with cl.4.6 – Exception to Development Standards of the LEP, and the NSW Department of Planning and Infrastructure, 'Varying development standards: A Guide', August 2011 (NSW guide to varying development standards).

DEVELOPMENT STANDARD TO BE VARIED

Clause 4.4 Floor Space Ratio

Comment: A 0.45:1 Floor Space Ratio control applies to the subject site.

PROPOSED DEVELOPMENT

The proposed development, as set out in the Statement of Environmental Effect, seeks alterations and additions to the existing semi-detached dwelling to include:

o Alterations to ground floor layout to include a bathroom and staircase to proposed first floor

o First floor addition over partial existing ground floor footprint (no additional footprint) to include two bedrooms and parent's retreat.

o Rear balcony without external walls and privacy screen to western boundary

o Storage area – accessed off bedroom at first floor level

The proposed development relating to this cl 4.6 Variation Request is limited to the technical breach of Cl.4.6 Floor Space Area control. Given the small lot size of the existing dwelling, small lot size exception applies under Manly DCP Control 4.1.3.1 and the calculation of FSR should be based on 500 sqm lots size.

CLAUSE 4.6 VARIATION REQUEST TO VARY CLAUSE 4.4 OF THE MANLY LEP – FLOOR SPACE RATIO

Clause 4.6 of the LEP provides a degree of flexibility in applying development standards to development proposed to achieve better outcomes for and from the development.

The NSW guide to varying development standards includes a template at appendix 3. This Clause 4.6 Variation Report has been prepared in accordance with this guide:

1. **What is the name of the environmental planning instrument that applies to the land?**

   Manly Local Environmental Plan 2013.

2. **What is the zoning of the land and what are the objectives of the zone?**

   Zone R2 Low Density Residential

   Objectives of 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.*

3. **Identify the Development Standard to which this Clause 4.6 Variation applies?**

The development standard sought to be varied by this cl.4.6 Variation Request is Clause 4.4 of the LEP – Floor Space Ratio.

What are the objectives of the development standard?

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.

4. What is the numeric value of the development standard in the environmental planning instrument?

The development standard is 0.45:1 FSR in accordance with Clause 4.4(2).

5. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation?

Floor Space Ratio			
Current Floor Space Ratio (FSR)	**Maximum floor space ratio under LEP**	**Proposed FSR (post amended plans) or level of non-compliance**	**Percentage Variation**
103.26 sqm	0.45:1 based on site area 334.50 sqm = 150.52 sqm 0.45:1 based on 500 sqm lot size = 225 sqm under DCP Control 4.1.3 – Exceptions to FSR for Undersized Lots	194.26 sqm 194.26sqm (can be 225 sqm as per control)	13.17% Permissible FSR (9.18% more FSR can be proposed in compliance with control)

6. Application of Clause 4.6 of the LEP

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.

Comment: This cl.4.6 Variation Request is applying on these grounds, in accordance with the following five requirements:

1. Subject to a written request from the applicant that seeks to justify the contravention of the development standard (clause 4.6(3)).

Comment: This cl.4.6 Variation Report meets the requirements for a written request.

2. That written request must seek to justify contravention of the standard by demonstrating that:

• Compliance with the development standard is unreasonable or unnecessary in particular circumstances of the case (clause 4.6(3)(a)); and
• That there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).

Comment: See Part 8 and 9 of this Report

3. The consent authority must consider the written request.

Comment: This is the responsibility of the consent authority.

4. The consent authority must be satisfied that:

• The written request has adequately addressed the matters that are required to be demonstrated, i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds (clause 4.6(4)(a)(i)).
• The development is 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 grounds (clause 4.6(4)(a)(ii).

Comment: This is the responsibility of the consent authority and is in assessing Parts 8, 9 and 10 of this Report.

5. Concurrence to the variation must have been obtained from the Director-General grounds (clause 4.6(4)(b).

Comment: The Director-General has issued a blanket concurrence to variations to development standards where the variation is made pursuant to an environmental planning instrument which contains cl.4.6 in the form contained in the standard template or in similar terms.

7. How is compliance with the development standard unreasonable or unnecessary in in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests that can be applied to establish whether compliance with the development standard is unreasonable or unnecessary.

<u>Test 1:</u> The objectives of the standard are achieved notwithstanding non-compliance with the standard.

As outlined below, the proposed development will achieve the objectives of the development standard notwithstanding the minor non-compliance with the numerical requirements.

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

Comment: The non-compliance to which this Cl.4.6 Variation Request relates, is limited to the addition of a first floor to improve the living accommodation at the site without detriment to the desired streetscape character. The proposed development meets the exception to FSR for Undersized Lots under the Manly DCP 2013 Control 4.1.3.1. As per the stated control, *the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case'...*

The subject site is 335sqm. The minimum lot size of the subject site as per the LEP Lot Size Map is 500 sqm. DCP Control 4.1.3.1 *Exceptions to FSR for Undersized Lots* requires that, *a) the extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30.* As per Figure 30, the achievable FSR for the lot size is 225 sqm. The proposed FSR is 194.26 sqm, below the achievable FSR for the lot.

Compliance with the development standard is therefore considered unreasonable and unnecessary as it meets objective (a) of Cl. 4.4 of the LEP and falls under the exception to FSR for Undersized Lots.

(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 does not obscure important landscape or townscape feature and the additional bulk is limited to a partial first floor addition over the existing ground floor footprint. The proposed development.in relation to the site area and minimum lot size, is not of a bulk and scale that would not give rise to any impact on the site, surrounding environment, or landscape/townscape features in accordance with objective (b) of Cl. 4.4 of the LEP.

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

Comment: The location of the subject site is within an existing low density residential environment. There is a mix of residential styles in the immediate vicinity, made up of semi-detached dwellings and two storey detached properties.

The variation in bulk and scale of neighbouring dwellings is apparent and forms part of the existing character of the area. A recent Development Application DA2020/0330 at 4 North Harbour Street was approved for a 70% variation in FSR as it was justified that a variation to the development standard met the objectives of the zone and the standard.

The same justification is applicable to the subject DA as detailed in this cl.4.6 variation request, although it should be acknowledged that the variation is considerably less at 22.5% and the allowance for exceptions for undersized lots under DCP Control 4.1.3.1 permits a greater FSR than proposed.

No views are affected from or to the subject site. The proposed development is a contemporary first floor addition which would complement the streetscape and improve the visual relationship between the new development and existing character of the area in accordance with objective (c) of Cl.4.4 of the LEP.

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

Comment: Amended plans incorporate high levels windows along the western elevation which protects the amenity of adjoining land users. The proposed privacy screen to the external balcony, provides additional privacy to the neighbouring occupiers to the west of the subject site. Additionally, given the improved visual impact on the streetscape, the proposed development by virtue of the privacy mitigation measures incorporated and positive impacts on the public domain meets objective (d) of Cl. 4.4 of the LEP.

(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 applicable.

Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary

Comment: The underlying purpose of the standard to is control the floor space ratio in this location to ensure that new development is appropriate in its context, bulk and scale. This test is not strictly applicable to the

proposed development as the development meets the objectives of the standard notwithstanding the non-compliance and meets the exception to FSR for Undersized Lots as per Manly DCP Control 4.1.3.1.

Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Comment: Not applicable to the proposal.

Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Comment: Not applicable to the proposal.

Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Comment: Not applicable to the proposal.

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

Comment: There are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The development proposed is permissible with consent within the R2 Zone and is consistent with the relevant objectives of the zone and Clause 4.4 of the LEP
- The siting, bulk, scale and massing of the proposed development is appropriate in the setting. The subject site and applicable FSR fall under the Exception to FSR for Undersized Lots as per Manly DCP Control 4.1.3.1.
- The proposed development would not give rise to any harmful impacts on neighbouring amenity given the high-level windows on

the western elevation, proximity from the proposed development and the privacy screen to the western section of the open balcony.

9. Is the proposed development, despite the contravention to the development standard, in the public interest?

Comment: As outlined in Parts 8 and 9 of this Report, the proposed development meets the objectives of the zone and the development standard in accordance with Cl.4.6 (4) (a) (ii). For these reasons, and the reasons set out in the Statement of Environmental Effects, the proposed development is in the public interest.

10. Is there any other relevant information to be considered in order to justify varying the development standard?

Comment: The proposed development meets all the other relevant development standards of the LEP.

CONCLUSION

It is requested that council support the proposed variation to Clause 4.4 of the Manly LEP 2013 for the reasons set out in this Cl.4.6 Variation Request.

ITEM 3.5	**DA2021/1734 - 21 HEADLAND ROAD NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2022/556521**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Attachment - Height Pole Photos** **3 ⇩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 **refuses** Development Consent to DA2021/1734 for demolition works and construction of a dwelling house on land at Lot 107 DP 6143, 21 Headland Road NORTH CURL CURL, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	2021/1734

Responsible Officer:	Natalie Richter, Independent Planning Consultant
Land to be developed (Address):	21 Headland Road, North Curl Curl (Lot 107 DP 6143)
Proposed Development:	Demolition works and construction of a dwelling house, associated landscaping and site works
Zoning:	R2 (Low Density Residential)
Development Permissible:	Yes, development for the purposes of a dwelling house is permissible with development consent in the zone
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Thomas and Carmen McGhee
Applicant:	PCL & APR Pty Ltd T/As Icon Homes

Application Lodged:	22 September 2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Local
Notified:	1) Original plans - 1 October 2021 2) Amended plans - on 23 June 2022
Advertised:	No
Submissions Received:	Yes 3 x submissions to the first notification period & 1 x objection to the second notification & 1 x submission from lawyers for the property owners in support of the proposal
Clause 4.6 Variation:	No
Recommendation:	Refusal

Estimated Cost of Works:	$723,150.00

EXECUTIVE SUMMARY

The Development Application involves the demolition of an existing dwelling and the construction of a new dwelling on the site which has an integrated garage and new replacement driveway at the front. The application involves the removal of 3 existing trees at the front of the site and the removal of the existing concrete strip driveway and crossing. Rainwater re-use tank (5500L slimline), air conditioning, stormwater work and landscaped areas are proposed.

In February 2022 the applicant advised staff that one of the property owners was an employee of Council. Consequently, the application has been referred for independent assessment.

Over 2 notification periods, the application attracted a number of submissions relating to size, scale and form, water view impacts/loss and a request to address stormwater management for the rear adjoining and topographically lower property.

A number of amendment requests have been issued since the DA lodgement (on 17 March, 3 June and 22 August). Requested items included: improved DCP control compliance (side boundary envelope, views, height), a request to erect height poles and a number of suggestions to amend the dwelling design and bulk/form to address potential view loss/sharing for the affected house directly opposite at No. 20 Headland Road.

The design of the proposed house was amended in June to largely address requests for planning control compliance. The applicant provided detail that the proposal was compliant with the height Development Standard and the majority of design planning controls, including side setbacks and wall height.

The remaining areas of non-compliance are discussed in the DCP table within this report.

When the plans were amended in June, some changes were adopted to the upper part of the roof such as a reduction in the roof pitch to 15 degrees, resulting in an overall ridge RL of 56.768 and an increased eastern setback of the first-floor plan to 1.45m.

The key remaining issue is that the 2 storey dwelling house directly opposite the site at No. 20 Headland Road, located on the higher side of the street, currently enjoys panoramic land/water views above the existing house roof profile The view is gained over the existing lower form house and its pitched roof, between the 2 larger houses on either side of the subject site.

The house at No. 20 has been architecturally designed to access and enjoy this view. The house has a large, full width deck across the front which is a key outdoor living area. This large outdoor living area is directly connected to an indoor living area as well as a large bedroom (both these rooms open to the view via extensive glazing across the street facing elevation). Central areas towards the rear of the first-floor levels can gain vista outward.

The view in question is a relatively wide, panoramic, distant land/water view which has a considerable expanse of visible water element across due the space over the roof between the 2 storey house.

The views are available from sitting and standing positions from with internal and external living areas as well as the front bedroom. The view has been assessed as adding considerable amenity and value to the house at No. 20 and is considered to be the type of view which warrants consideration and protection when considering the *Tenacity* view equity Planning Principles and in a planning merit assessment in terms of impacts, against D7 of the DCP which recognises available views in the Warringah area which covers North Curl Curl.

The submission which was prepared in support of the most recent changes does not quantity or establish the impact of the revised design or the views which would be blocked or retained. The submission relies on the ‘reasonableness’ of the proposal being connected with numeric height compliance and the building being smaller in scale than some of the existing dwellings in the area.

The report provided by Watermark Planning expresses the view that there would be a ‘minor’ loss of views from the balcony. The submission indicates that further lowering would adversely impact on the compliant development (however does not quantify what this would be). The submission has also indicated that ‘skilful design initiatives have been applied’ however does not provide detail to assess in terms of what they have been. For example, whether varied roof forms could be considered to maintain/open up a water element corridor for the neighbour.

At the site inspection in August, the height poles had been removed and the latest, June plans were assessed by considering the proposed roof profile in comparison with the existing roof and the heights of the adjoining houses. Based on the information available, the proposed roof line is likely to largely block water views and it is unclear as to whether any or what kind of corridor may be retained. As a result of this assessment, the applicant was requested to provide some view modelling at this stage to support the latest plan set and to further evaluate the view outcome.

The issue of design changes to address view impacts, in terms of the assessment and quantification of view sharing have not been addressed or resolved adequately in the current design or documents.

It is put forward that a revised roof form, with a flatter or minimised form and reduced overall built scale at the upper level is likely to have the potential to allow for the development whilst also enabling some more reasonable view sharing. A design which seeks this outcome is worthwhile investigating in accordance with the *Tenacity* view access equity assessment principles in terms of design skill/alternatives and the DCP objectives for views. This would allow the development whilst also reasonably addressing the objections and enabling some access to water views.

The objector has suggested a flat roof design. As detailed in the area photographs, flat roof designs are characteristic of this area having given the escarpment location which sees the terracing of houses down the hill. It is considered that there would be scope to sit the design lower at the rear, reduce subfloor and reduce the high internal ceiling heights which could manifest in a lower and more sensitive form.

In this regard, following the independent assessment of the plans, application, submissions and the views, a recent request letter was issued to the applicant on 22 August providing 3 options (to address Warringah DCP Clause D7 Views and view sharing Planning Principles) which included:

1. *Prepare and submit further supporting information/amendments to the assessing officer directly addressing the issues by 5 September 2022 (14 days). If the amended information is deemed acceptable and satisfactorily addresses all the issues raised, you must then upload all documentation via the NSW Planning Portal; or*
2. *Request that the current proposal proceed to determination in its current form, which may result in the refusal of the application; or*
3. *Withdraw the application from Council, which may include the refund of a proportion of the application fees.*

The applicant confirmed by email on 24 August that they wished to take option 2 which is to resolve the application in the current form. Accordingly, for the reasons discussed, and based on the information and assessment to date, this report is prepared in relation to the current design, for the consideration of the Panel and with recommendation for refusal due to unreasonable impacts.

The applicant has been requested on a number of occasions to model and assess views and present a design which might allow improved sharing under the circumstances where the issue of the potential sharing of available water views has been raised over the course of the assessment period.

The impact is not considered to be minor or reasonable and the consideration of alternative ceiling height, ridge height and roof pitch and type could be explored to improve the sharing. Therefore, the current plans are not assessed as reasonable given the potential significant and detrimental view impact.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the demolition of the existing house and structures on the site and the replacement of a dwelling house. A double garage is integrated into the front of the dwelling.

Proposed at ground floor level:

- Double enclosed garage facing the street with internal access to the house.
- Entry foyer.
- Powder room.
- Study.
- Open plan meals/family/kitchen area with a butler’s pantry.
- Airconditioning and rainwater tanks to the western side of the house.

- This level has a finished floor level RL of 48.90 and floor level at the entry of RL50.

Proposed at first floor level:

- 2 bedrooms at the front with a front, street facing balcony.
- Bedroom 2 located centrally with a main WC opposite.
- Master bedroom with en-suite and wawl-in-robe and sitting area opening out onto a 2.9m x 7.47m dimension balcony.
- The finished floor level of this upper level is not detailed on the floor plans, sections or elevations.

General site works:

- Removal of 2 trees at the front to accommodate a new driveway to the garage. Existing trees can be retained at the rear for screening.
- Provision of soft landscaped areas as detailed on the plans, to the front and rear of the house.

Proposed materials:

- The house is proposed to be constructed of rendered masonry at the lower level with Axon cladding at the upper level and a metal roof sheeting for the pitched roof.
- Stone featured detailing is proposed across the lower-level front elevation, with vertical cladding at the upper level and glazed upper floor balcony elements.
- It is also noted that both levels are proposed with high ceiling heights (2.6m ground and first floor level and up to 3.7m for the ground level stepped down area at the rear). Part of the rear (bedroom and balcony) at first floor level have higher ceiling heights.

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 number of site inspections were conducted (by Council officers and planning consultant) 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

The issue of concern is the proposed design and form in relation to view equity and sharing having regard to the objectives and assessment criteria expressed within Warringah DCP D7 – Views and the *Tenacity v Warringah* Planning Principles.

This matter is assessed in detail within this report in relation to the recommendation.

SITE DESCRIPTION

Property Description:	Lot 107 DP 614, No. 21 Headland Road, North Curl Curl
Detailed Site Description:	The subject site is located on the southern side of Headland Road. The site is rectangular in shape with a frontage of 10.06m along Headland Road and a depth of 45.265m. The site has a surveyed area of 455.3m². The site is located within the R2 zone under the Warringah LEP and accommodates a split-level dwelling house (ground floor with an under-croft area below an elevated rear deck) as the site slopes away from the street to the rear by around 2m across the depth of the site. The site contains rear and front gardens. The rear and side boundaries are landscaped. The site is not mapped as containing significant trees or natural development constraints. The site is not mapped as flood prone and is mapped as being within the Coastal Environment Area under the SEPP (Resilience and Hazards 2021 – Coastal Provisions).

Map showing the subject site and those around it:



Detailed Description of Adjoining/Surrounding Development
The site slopes from the street toward the rear and this area of North Curl Curl is on a hillside which slopes down towards Curl Curl Beach/coastline. This means that many residential properties along the subject hillside are oriented to gain a variety of distant land/water views.

The residential area is characterised by a mixture of (primarily) 2 storey dwellings adopting a mixture of architectural styles and within landscaped settings. Examples of the surrounding area character are provided in the following site and area photographs.

SITE PHOTOGRAPHS


Subject site and adjoining homes


Streetscape, east


Streetscape, west


Streetscape and housing character, subject low side- prevailing lower forms and flat roofs, stepped back from the street


Existing deck, subject site


Existing deck, looking rear - subject site

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 developed and used for residential purposes for an extended period of time.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Notification Period #1 (October 2021) – 3 Submissions

Name:	Address:
Mr Richard Colbran	12 Austin Avenue Austin Avenue North Curl Curl (raising hydraulic concern)
Mr Michael Davis	54 Kentwell Road Allambie Heights (in objection)
Milestone Planning	20 Headland Road North Curl Curl (in objection)

Notification Period #2 (June 2022 – Amended Plans) – 2 Submissions

Name:	Address:
Mr and Mrs Davis	20 Headland Road North Curl Curl (in objection)
Addisons Lawyers	21 Headland Road North Curl Curl (in support)

The following issues were raised in the submissions:

1. Request for stormwater management for the protection of the rear adjoining property.
2. Impact on water views from No. 20 Headland Road from upper living areas and the balcony. Request to lower the roof and alter the design to allow view protection/sharing.
3. Excessive size, scale and built form. Roof form does not fall with the slope of the land.

The above issues are addressed as follows:

Stormwater:

Stormwater details have been provided and the plans and details have been reviewed and supported by the Development Engineer, subject to conditions.

Rainwater re-use tanks are proposed and improved landscaped areas.

This concern has been considered and addressed. Stormwater works being consistent with controls and expectations, would likely provide an improvement to the current situation and is considered sustainable.

Impact on Views for No. 20 Headland Road

A number of objections have been raised in relation to view impact from the owner of No. 20 in relation to the original plans and the revised plans. The objector has requested a varied design with a flatter roof and lower roof profile. A detailed assessment of this matter is made in the DCP assessment under *D7 – Views*, and the *Tenacity* view sharing planning principles below.

The views enjoyed by No. 20 are relatively wide, panoramic, land water views and are valuable and available from the front areas of the house, for the width of the house. The views are available within bedroom and living areas and a large, key area of private open space which is on the first floor deck. This area gains amenity from this view.

The applicant has been requested to model the impact on the views available as the current plans do not confirm the extent of views lost and protected. There are no height poles available and a montage of the form in relation to the potential view impact has been requested and not provided.

Based on the available information, an assessment of the plans, the height, width and design of the building and the roof, indicates that most of the view would be lost.

It is considered that the design could be revisited to better protect or open up views, via a lower roof profile, lower building elements and lower ceiling height. It would be appropriate to study whether the house can be provided whilst also allowing improved view access, given the amenity currently available. This would accord with view sharing planning objectives in relation to ‘skilful’ design to allow a development whilst respecting and protecting available valuable views.

Bulk and Scale, Relationship to the Topography:

The proposed house does not comply with the building mass, stepping, view sharing or building envelope requirements as detailed in the following compliance sections.

The proposed design is elevated in parts on the site and is large in height and scale at the rear where the side drops away.

The proposal could potentially be lowered in terms of roof profile and overall scale which could then improve view access for neighbours and improve compliance with merit scale objectives.

It is considered that the current planning controls require undulation and minimisation of forms down a site. There are other area examples of lower forms in the area with flat roof forms allowing view access over. A minimised and stepped design might allow improved visual relief and view access. The proposed design is recommended for refusal having regard for view loss and scale.

REFERRALS

Internal Referral Body		Comments
Landscape		No issues, subject to the protection of retained trees and vegetation and the completion of landscape works. The proposal is therefore supported. Recommended consent conditions were included Landscape referral.
Engineer		The applicant proposes to discharge the onsite stormwater into the kerb at Headland Road. An easement refusal letter has been submitted to demonstrate that a gravity drainage line cannot be installed. As such, Development Engineering was satisfied as to the ability of the site to drain in accordance with Council requirements and raised no objection to the application subject to conditions of consent. Recommended conditions were included in the referral.
Natural Environment (Coastal)		The application was assessed as meeting the requirements of the relevant Environmental Planning Instruments and policies. The application is supported subject to conditions: • Stormwater management (prior to construction certificate) • Installation and maintenance of erosion and sediment controls (prior to commencement). Recommended consent conditions were included in the referral.
Natural Environment (Biodiversity)		As the proposal is located wholly within the existing footprint and does not require the removal of prescribed trees

Internal Referral Body		Comments
		or vegetation, nor is it likely to impact on soft open space or nearby biodiversity values, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls. The proposal is therefore supported and recommended conditions of consent were included in the referral.

External Referral Body	Comments
Ausgrid	'*Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets. Overhead Powerlines Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding. The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite. "Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."'*

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 'Matters for Consideration'	Comments
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 regulations	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this scope of low density residential application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested by letter on 17 March 2022 in relation to view sharing/amended design and compliance with the Warringah LEP and DCP (height, side boundary envelope, views, building bulk). Additional information was requested by email on 3 June by email requesting design to address view impacts. Amendments and information were again requested by letter on 22 August in relation to view impact assessment/modelling/upper-level design changes to provide view sharing. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed and could be addressed via a condition of consent if the Panel was to resolve to approve the 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 matter can be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent if the application is resolved to be supported. 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 can be addressed via standard conditions of consent if the application is to be supported.

Section 4.15 'Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will have a detrimental social impact in the locality considering the character of the proposal. This impact is connected with public interest considerations relating to view access and equity for residents and the community. The sharing of local coastal views enjoyed in this unique locality. (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, being maintained as residential.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed residential 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of Part D7 of the Warringah DCP, the general objectives of the Warringah LEP relating to outcomes of development and the public interest. As detailed, there would be a material and unreasonable impact on the currently available view access from the home and outdoor living areas of the property opposite at No. 20 Headland Road. The views in question are relatively expansive/wide, front available, land/water views, which are enjoyed from living and private areas in seating and standing positions. These have been expressed within a number of submissions as being valued and adding significant residential amenity to the neighbour. As detailed in the view assessment, the house at No. 20 Headland Road has been designed and oriented to enjoy these water views, with the rear living areas looking through. Photographs and assessment of these views are provided within the assessment for the Panel’s understanding of the views available.

Section 4.15 'Matters for Consideration'	Comments
	The original SEE and Site Analysis do not recognise the views. The development does not detail a design strategy to seek to provide for the house whilst also to recognise and maximise the sharing of these significant views. The application material minimises the importance of the view and this is not considered reasonable. It is considered reasonable to look into options to reduce the upper floor scale and consider a roof design with a lower and flatter roof profile, with an achievable lower ridge RL which may provide some improved view access over or through. Considering also that many homes in the area have utilised flat roof profiles for this objective. High ceiling heights are proposed. The house is in some parts elevated in terms of footings (referring to building sections). The public interest objectives behind the range of planning frameworks, including S4.15 of the Act and the Warringah LEP and DCP merit assessment objectives seek to achieve development which is appropriate to the area, is responsive to the context and neighbours as well as consistent with mandated form Standards and guidelines. In this case, as well as basic numeric compliance, where views exist and are a consideration, and submissions have been received, it is appropriate to consider the reasonableness of the design and form in relation to view sharing objectives in cases such as these. These are addressed in detail in the DCP and Tenacity assessment below. Whether the development proposal is consistent with the public interest is considered to require reference to planning objectives and intentions, including the impact of a proposal on surrounding properties and the area in addition to numerical planning Standards and controls which provide a reference point and an envelope to work within. In this case, it is assessed that the proposal has the potential to be approved with a revised design, which could also reasonably protect or improve view access/equity. The objector has indicated and understanding that some impact could result and has put forward what are considered to be reasonable alternatives (and are understood to have been assisted by input from their consultant planner). This includes a reduced RL and flatter roof design. Based on the above points, and with consideration of all submissions, it is considered that it would be in the public interest for the proposal to be re-visited to provide outcomes which address perspectives and interests and constitute a reasonable outcome for both landowners.

Section 4.15 'Matters for Consideration'	Comments
	The development, as currently proposed, is not considered to be in the public interest and is recommended for refusal based on this adverse impact.

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 (Resilience and Hazards 2021 – Coastal Provisions)

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 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area
1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
   a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
   b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
   c) the carrying out of any of the following:
      i) earthworks (including the depositing of material on land),
      ii) constructing a levee,
      iii) draining the land,
      iv) environmental protection works,
   d) any other development

Comment:

Drainage and earthworks have been considered and supported by a geotechnical report and stormwater plans. The proposal has been considered supportable in these respects and it is considered that the proposed development would not adversely impact on sensitive coastal areas, being located away from these zones.

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

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

Comment:

The site is not located within a proximity area.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
b) the proposed development:
   i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
   ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
   iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The subject site is not mapped as being located within a Coastal Vulnerability Area. The proposal is assessed as acceptable in relation to this clause.

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 site is mapped as being within the coastal environment area under the SEPP.
The proposal:
Has been assessed as acceptable in relation to water management and quality and coastal processes and land stability.
Involves the demolition of the existing dwelling and construction of a new dwelling in place.
Does not involve extensive vegetation removal.
Is not within a surf zone and would not impact on marine or native vegetation.
Is not considered to impact on aboriginal cultural heritage, practices and places as the site has been used and developed as residential use for some time.
Conditions could be included relating to the discovery of any relics or historical objects relating to excavation which is proposed.
Does not impact upon public open space, headlands, beach areas, rock platforms or foreshore access.

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 proposed development is considered acceptable in relation to impacts relevant to the coastal environment area within the SEPP, as addressed above.

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

Comment:

The site is not mapped as being within the coastal use area.

Division 5 General

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

Comment:

The proposed excavation has been supported by a Geotechnical Report which addresses stability and landslip aspects and the application has been assessed by Council's environmental and engineering teams as acceptable in relation to excavation and land capacity (subject to conditions).

The proposed development is not assessed as creating increased risk of coastal hazards on the subject land or adjoining land.

As such, it is considered that the application does 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.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 12081075_02, dated 15 September 2021).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	50

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 the recommendations detailed within this report under External Referral comments.

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?	No. Whilst the proposal complies with most objectives, the scale and impact is considered to fail against objective '*(d) in relation to residential development, to—* *rprotect and enhance the residential use and amenity of existing residential environments, and* *promote development that is compatible with neighbouring development in terms of bulk, scale and appearance'*
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.16m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	N/A
5.1 Flood Planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on Sloping Land	Yes

Detailed Assessment

5.1 Flood Planning
The site is not mapped as flood prone and the development is consistent with the objectives of the clause, with proposed on site water management which has been supported subject to recommended conditions.

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 not mapped as affected by Acid Sulfate Soil under the Warringah LEP 2011 Acid Sulfate Soils Map for North Curl Curl. The proposed development is not considered to be constrained. Therefore, it is concluded that the proposed development satisfies the requirements within Clause 6.1 of Warringah LEP 2011.

6.2 Earthworks

The site is mapped as affected by Area A – Slope < 5 degrees and Area B – Flanking Slopes 5-25 degrees. The objectives of Clause 6.2 - 'Earthworks' include:

(1) The objectives of this clause are as follows—
(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,
(b) to allow earthworks of a minor nature without requiring separate development consent.

(2) Development consent is required for earthworks unless—
(a) the work is exempt development under this Plan or another applicable environmental planning instrument, or
(b) the work is ancillary to other development for which development consent has been given.

(3) Before granting development consent for earthworks, the consent authority must consider the following matters—
(a) the likely disruption of, or any detrimental effect on, 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,
(c) the quality of the fill or the soil to be excavated, or both,
(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
(e) the source of any fill material and the destination of any excavated material,
(f) the likelihood of disturbing relics,
(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality and has been supported by consultant reports in relation to geotechnical aspects and drainage. These reports have been assessed in relation to Council's controls and requirements and supported by Council's engineers, subject to conditions.

6.4 Development of Sloping Land

The site is mapped as affected by Area A – Slope < 5 degrees and Area B – Flanking Slopes 5-25 degrees and Clause 6.4 applies.

(1) The objectives of this clause are as follows—
(a) to avoid significant adverse impacts on development and on properties in the vicinity of development sites resulting from landslides originating either on or near sloping land,
(b) to ensure the impacts of storm water runoff from development on or near sloping land are minimised so as to not adversely affect the stability of the subject and surrounding land,
(c) to ensure subsurface flows are not adversely affected by development so as to not impact on the stability of existing or adjoining land.
(2) This clause applies to land shown as Area A, Area B, Area C, Area D and Area E on the Landslip Risk Map.
(3) 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
(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and
(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment:

The proposed development involves excavation as detailed on the plans.

The plans have been supported by water management plans and a Geotechnical Report which has assessed the site soils and addresses the site in relation to the proposed excavation and construction work.

The Geotechnical Report made recommendations as to construction and methods and recommended additional testing. The proposal has been reviewed by internal referral staff and the excavation is supported, subject to recommended conditions.

Impacts of excavation and water management have been considered and subject to conditions, would not create adverse impacts. The proposal is considered to be consistent with Clause 4.6.

WARRINGAH DEVELOPMENT CONTROL PLAN

The proposal has been amended to comply with most development controls and considerations contained within the DCP. The following items involve variations and additional merit consideration.

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A.5 Objectives	No (details below)	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D4 Electromagnetic Radiation	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No (details below)	No
D8 Privacy	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	No (detail below)	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D18 Accessibility and Adaptability	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
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A – Objectives *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood* *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome* *To inspire design innovation for residential, commercial and industrial development* *To provide a high level of access to and within development.* *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained* *To achieve environmentally, economically and socially sustainable development for the community of Warringah*	Yes	No, the proposal is not considered to respond to the area character and neighbours in terms of views. The development reflects the prevailing residential character however there are some larger forms which exist, and which are referenced in the proposal.
B1 Wall Heights The objectives are to promote innovative roof pitch and design, promote design to promote reasonable sharing of views, minimise visual impact and keep scale below the tree canopy. *Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space.*	Yes	Design to promote the sharing of views is not considered to be maximised in line with the objective.

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Clause	Compliance with Requirements	Consistency Aims/Objectives
B1 Side Boundary Envelope *To ensure that development does 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.* *To ensure that development responds to the topography of the site.*	No. Variation requested	As detailed, the proposal is not considered to minimise bulk and scale, particularly at the rear. The assessment letter provided in March requested improved scale by stepping to the rear of the site following the topography. Stepping in of the bulk at the top level/elevation could be improved in line with the controls, providing additional spatial separation and to respond to tapering of buildings across the topography. This matter was raised as part of the March assessment letter. Some improvement was made in the current plans.
D7 Views *To allow for the reasonable sharing of views.* *To encourage innovative design solutions to improve the urban environment.* *To ensure existing canopy trees have priority over views.* *Requirements 1. Development shall provide for the reasonable sharing of views. Note Assessment of applications will refer to the Planning Principle established by the Land and Environment Court in Tenacity Consulting v Warringah Council (2004) NSWLEC 140.*	No	As detailed within this assessment. Innovative design could allow improved sharing of currently available water views for the property opposite at No. 20. It is considered that the form, roof profile/RL and overall scale and height of the proposal could be reviewed to investigate whether an improved and more reasonable outcome could be achieved for the house and open spaces opposite, to mitigate the view blockage impact. The affected neighbour has suggested RL 55.76 and a flat roof design (approximately 1m lower form). It is considered that this may be possible and could be considered, given the proposed high internal ceiling heights, floor levels and the potential to sit the development further down, as the site undulates and slopes back.



Clause	Compliance with Requirements	Consistency Aims/Objectives
		The March assessment letter stated: '*Further concern is raised with the proposed floor level heights at ground level of the new dwelling. The section provided appears to indicate significant subfloor areas beneath the raised ground floor levels, and the Statement of Environmental Effects does not provide any explanation for this design. Lowering of these heights, and floor to ceiling heights in general, may allow for a more compliant and lower building form, maintaining greater view corridors.'*
D9 Building Bulk *To encourage good design and innovative architecture to improve the urban environment.* *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. Requirements* *1. Side and rear setbacks are to be progressively increased as wall height increases.* *2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.* *3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular: The amount of fill is not to exceed one metre in depth. Fill is not to spread beyond the footprint of the building. Excavation of the landform is to be minimised.* *4. Building height and scale needs to relate to topography and site conditions.* *5. Orientate development to address the street.* *6. Use colour, materials and surface treatment to reduce building bulk.* *7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.* *8. Articulate walls to reduce building mass.*	No	The height and bulk are not minimised towards the rear of the site. Building mass could step down the slope having regard for the elevated footings. On sloping land, the DCP requires the need for cut and fill to be minimised and to promote the massing of a building down the slope. The proposed design is in part elevated above the site and therefore, is not considered to effectively step down in form. It is considered that the building bulk could be improved in terms of being minimised in relation to the topography. This would likely ameliorate some of the objections relating to the scale and the view impact. The side setbacks are not considerably increased as wall height increases.

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Assessment of Views/Comment:

In relation to the assessment Planning Principles established in *Tenacity Consulting V Warringah Council (2004) NSWLEC 140* in conjunction with Clause D7 of the DCP addressed above.

The notion of view sharing is invoked when one property gains access to a view and another property seeks to share that view by taking away some of it for their enjoyment. Taking it all away is not necessarily considered sharing and the following 4 step process is adopted in assessments to determine whether one land owner taking the view and impacting the other is 'reasonable'.

> *'25 The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.*
>
> *26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
>
> *27 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.*
>
> *28 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.*
>
> *29 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.'*

As detailed in the photographs, the view is considered a whole view (not a partial or obstructed view), available for the full width of the property, at the front of the property from living rooms and a key open space area designed to enjoy the view. Some of the interior house areas have the capacity to gain glimpses through due to the design.

The view provides an enjoyable aspect when standing on the balcony and takes in a wide section of the waterway and is framed by land elements. Refer to the view assessment photographs.

The applicant has put forward that the view is distant and moderate.

The planning consultant engaged for the objector at No. 20 in the first submission (original plans) assessed the view in the following way:



'*No. 20 Headland Road enjoys significant views to the south of toward South Curl Curl and North Curl Curl and distant views to the Freshwater Lookout and Manly Beach to the south, both of which will be adversely impacted by the proposed development.*
The views shown in Photos 2 to 4 of this submission provide significant visual amenity for the residents of No. 20 Headland Road.
As a result of the accumulation of non-compliances in accordance with Parts B1 and B3 of DCP 2011, the proposed development in its current form will restrict and disrupt these current views to a significant extent.
The view loss impacts associated with the proposed redevelopment are unreasonable and unnecessary due to the slope of the land and perceived bulk resulting from the non-compliances. Part D7 states that the natural topography may make view sharing achievable. Whilst No. 20 Headland Road is considered to enjoy a higher floor level than that of the subject site, it is not raised to an extent where the natural slope of the land will ensure the proposed development allows for reasonable view sharing'.

For this locality, the visible water view, although distant, is considered as a key and panoramic area view which adds significant enjoyment, experience and amenity to the home and its large elevated front open space area.

This view is considered to provide significant value and amenity to the property owners such that extensive or potentially full blockage would be significant in terms of residential amenity impact.

It is considered that this type of coastal land/water view is the type which is intended to be assessed and protected by the *Tenacity* sharing principles. It is the type of view which should be considered at the outset of a development proposal and assessed within application documents to look at protection via design in line with DCP objectives.

As detailed, these views are taken in from across the glazed front of the home and key outdoor enjoyment areas. The house has been designed to take in the view. The view is available in a sitting and standing position, from inside and outside living areas as well as the front bedroom. The extensive glazing across the front of No. 20 accesses the view from all vantage points within those front rooms.

The extent of the impact has not been clearly detailed or addressed in the submissions. It is recognised that the applicant has applied a pitched from which might provide a corridor.

However, the height and scale of the house, the overall scale and extent of the roof form and the height, it is likely that minimal water view is likely to be retained and consequently, this would be a significant detrimental change for the neighbour in terms of the current amenity enjoyed. The neighbours have submitted that this would be devastating and that there would be alternatives to provide an alleviated impact.

As detailed within this submission, the proposed scale has the potential to be reduced or modelled to provide some view lines. It is considered that a lower and flatter roof form, with lowered internal ceiling heights for the proposed house could reduce the scale and likely improve the view sharing outcome.

The proposed dwelling is considered to be overly high at the rear (as the ground floor rear wall is around 3.75m above floor level, then with a first floor above with a ceiling height of 2.6m and increasing at the rear). The house is partly elevated underneath where the site falls at the rear (garage and study on raised footings with subfloor areas of over 1m).

The Planning Principle (fourth step) in relation to the question of reasonableness of a proposal and an impact indicates that '*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'.* In this regard, it is not considered unreasonable to request more 'skilful' or alternative design options in this case to potentially lower the form and reduce the impact.

Reliance on other larger dwellings or mere height and DCP numeric envelope compliance are not considered to be reasonable positions or submissions in relation to the potential view impact in this case. The LEP and DCP controls provides the envelope controls to design within in a contextually responsive way and the objectives which are assessed below are also relevant in the merit assessment of this impact.

3View Photograph Examples – No. 20 Headland Road



View from front first floor terrace, No. 20 Headland Road, over the subject site/existing house



Standing, internal living area No. 20 looking out to deck and view



Sitting internal living area No. 20



Bedroom through the glass



Deck of No. 20 and area character



View from bedroom doorway, No. 20



Context view/west from No. 20

7.12 CONTRIBUTIONS

If approved, the proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of $7,232 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $723,150.

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;
- 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, in this regard the application is not considered to be acceptable for the reasons outlined within this report and is recommended for refusal.

The proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with all the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs

The proposed development involves the construction of a 2 storey dwelling house including stormwater, landscaping and minor tree removal works to accommodate a new driveway.

The assessment has concluded that the site is not suitable for development as

Following the public exhibition period, and a re-notification period of amended plans, 3 individual submissions were received in relation to the first notification period and 1 objection and 1 submission in support made on behalf of the property owners were received in relation to the second notification.

The key concerns raised within the submissions pertain to unreasonable and detrimental view impact, excessive scale in relation to the topography and inadequate design to address view sharing.

As detailed, the view impact assessment and consideration of a number of the concerns raised within the submissions have merit and warrant refusal of the application.

It is therefore recommended that the NBLPP refuse the development application for the reasons set out within the assessment report.

The proposed development does not satisfy the bulk and scale and view access controls contained within the DCP and is in conflict with general objectives of the LEP and Section 4.15 of the Act.

The proposal is considered to conflict with public interest objectives having regard for the variations to planning objectives and adverse view and area character impacts.

It is considered that all processes and assessments have been satisfactorily addressed.



RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/1734 for the Demolition works and construction of a dwelling house on land at Lot 107 DP 6143, 21 Headland Road, NORTH CURL CURL, for the reasons outlined as follows:

Reasons for Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.

   Particulars:
   The proposal does not protect and enhance the residential use and amenity of existing residential environments, or promote development that is 'compatible with neighbouring development in terms of bulk, scale and appearance.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Objectives of Part A of the Warringah DCP 2011.

   Particulars:
   The proposal does not sensitively to respond to the area character and neighbours in terms of the detrimental and significant blockage of available water views.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause B1 of Warringah DCP 2011 in relation to Side Boundary Envelope.

   Particulars:
   The design is not considered to minimise bulk and scale, particularly at the rear where the building is elevated.
   Stepping in of the bulk at the top level/elevation could be improved in line with the planning objectives and controls to provide improved spatial separation and respond to the character of existing tapering of buildings down the topography.
   Compliance with scale controls and improved separation and modulation is likely to improve view access.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah DCP 2011 Clause D7 in relation to Views;

   Particulars:
   The proposed scale and design are not considered to take into account site or area planning to protect available water views.
   The proposed height, design and roof form are not considered to promote or maximise the opportunity of achieving the 'reasonable sharing of views' and some view access to be maintained for the first floor areas of No. 20 Headland Road.
   It is considered that design options may exist, in terms of 'innovative design solutions' to improve the urban environment (including maintaining view access in the area and tapering built form with the sloping topography).
   The application does not detail whether or which 'skilful' design options have been considered in accordance with the Planning Principle established by the Land and Environment Court in

northern beaches council

Tenacity Consulting v Warringah Council (2004) NSWLEC 140. The principle seeks to achieve a development whilst allowing reasonable view access.
The available information does not provide current height poles or a view montage to clearly quantity the views blocked or protected by the current design.
At a reduced height, with a flatter roof form, the building could potentially allow some view across. It is considered reasonable to request a revised design in order to protect the public interest.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Development Control Plan 2011 Clause D9 Building Bulk.

   Particulars:
   The controls require the height and bulk to be minimised, with building mass stepped down the slope. This is not considered to be achieved having regard for the elevated footings and mass at the rear.
   On sloping land, the DCP requires the need for cut and fill to be minimised and to promote the massing of a building down the slope. The proposed design is in part elevated above the site and therefore, is not considered to effectively step down in form.
   A stepping and reduction of building bulk in relation to the topography could ameliorate objections relating to the overall scale and the view impact.
   The proposal is not considered to encourage good design and innovative architecture to improve the urban environment in relation to relative scale, design with slope and view access/equity.
   The scale, envelope and setbacks are not considered to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.
   The side setbacks are not considerably increased as the wall height increases.
   The setbacks are not considered to not relieve continuous wall planes.
   The building height and scale are not considered to relate to topography.

6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest.

   Particulars:
   The public interest objectives behind S4.15 of the Act and the Warringah LEP and DCP seek to achieve development which is appropriate to the area, is responsive to the context and neighbours as well as consistent with form development controls.
   It is appropriate to consider the reasonableness of the design and form in relation to view sharing objectives where valuable water views exist which are available from key living areas are a consideration and objections have been received relating to the substantial blockage of these views.
   Whether the development proposal is consistent with the public interest requires reference to the impact of a proposal on surrounding properties as well as code/numeric compliance.
   It is considered that the proposal has the potential to be approved with a revised design, which may better protect or improve view access/equity.
   It would be in the public interest to consider alternative designs, including whether a reduced overall roof/ridge RL and flatter roof design could be achieved, and a reduction of the internal ceiling heights and the building elevation above the topography.
   The development, as currently proposed, is not considered to be in the public interest and is recommended for refusal based on adverse view and amenity impact to the neighbours and inconsistency with the planning controls which aim to promote area view sharing.

FINAL DECLARATION

Consultant Name: Natalie Richter

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.

Attachment:
Height Pole Photographs taken (previous plans)





































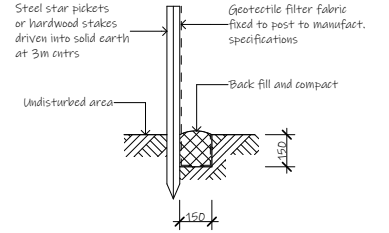






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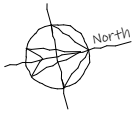
Soil Erosion and Sediment Control Fence
1. Siltation fencing is to be placed as shown on the site plan as so to prevent silt run off to any ajoining property or to the street. This measure is to be placed prior to any excavation work beggining and is to be removed only when the sites surface as been stabalized, i.e. paved, landscaped or turfed
2. 40mm crushed rock aggregate is to be placed as an access driveway to the site and must be maintained throughout the course of construction.

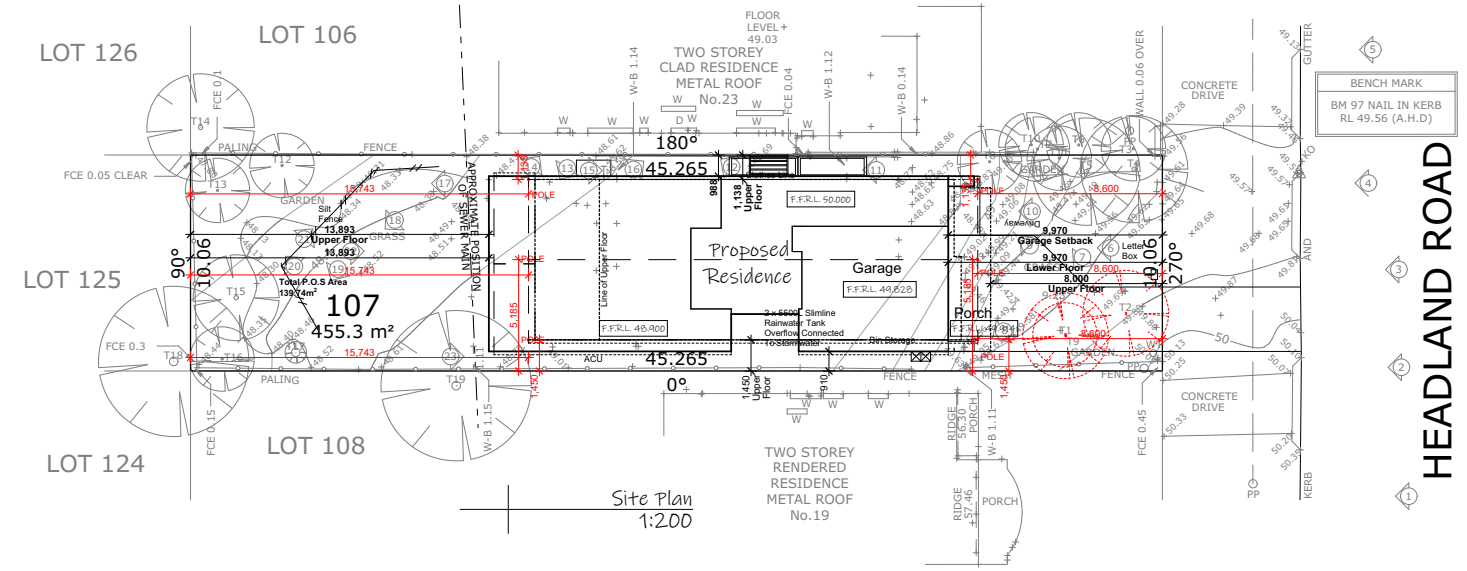
Typical Silt Fence
1:20

SCHEDULE OF TREES			
	DIAMETER	HEIGHT	TYPE
T1	0.10	3m	-
T2	0.10	3m	-
T3	0.10	4m	-
T4	0.20	7m	PALM
T5	0.20	7m	PALM
T6	0.10	3m	-
T7	0.10	3m	-
T8	0.10	3m	-
T9	0.10	3m	-
T10	0.10	3m	-
T11	0.10	3m	-
T12	0.10	3m	-
T13	0.10	3m	-
T14	0.20	5m	-
T15	0.20	4m	-
T16	0.10	3m	-
T17	0.40	7m	DEAD TREE
T18	0.40	7m	-
T19	0.40	7m	-

LANDSCAPED AREA
182.38sqm - 40.06%

Lot 107
455.30m²
DP: 6143





ISSUE:	DRAWING:	DATE:	LOT:
W	20189-22	10-06-22	107
	SHEET:	PAPER:	DP:
	8/15	A3	6143

note: all works to be carried out in conjunction with the construction notes on sheet 2

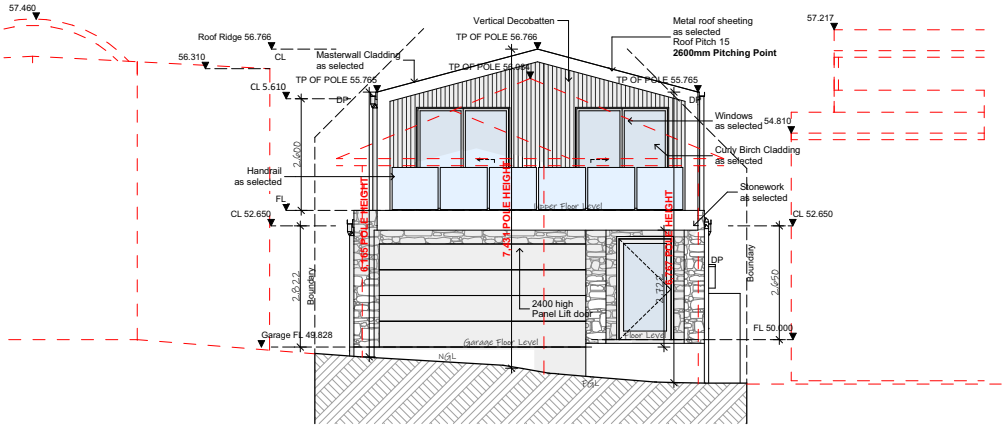
Proposed Residence
#21 Headland Road, North Curl Curl
Icon Job Number: J/0846

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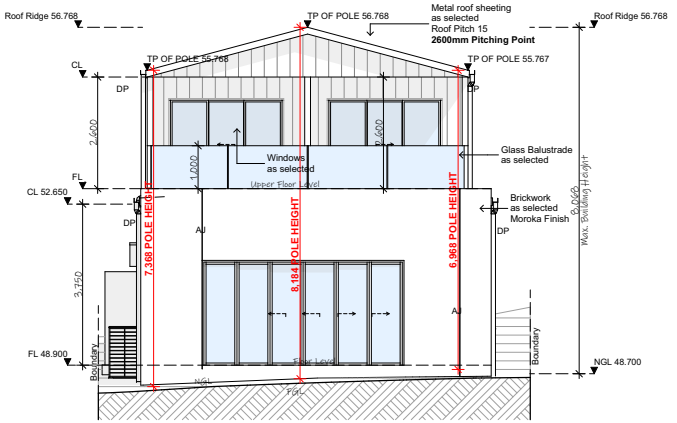
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Legend:
ACU - Air Conditioning Unit
AJ - Articulation Joint
CL - Ceiling Level
FGL - Finish Ground Line
FL - Floor Level
HWS - Hot Water System
NGL - Natural Ground Line
OBS - Obscure
DP - Downpipe
RW - Retaining Wall



Front/North Elevation
1:100



Rear/South Elevation
1:100

ISSUE:	DRAWING:	DATE:	LOT:
W	20189-22	10-06-22	107
	SHEET:	PAPER:	DP:
	5/15	A3	6143

note: all works to be carried out in conjunction with the construction notes on sheet 2

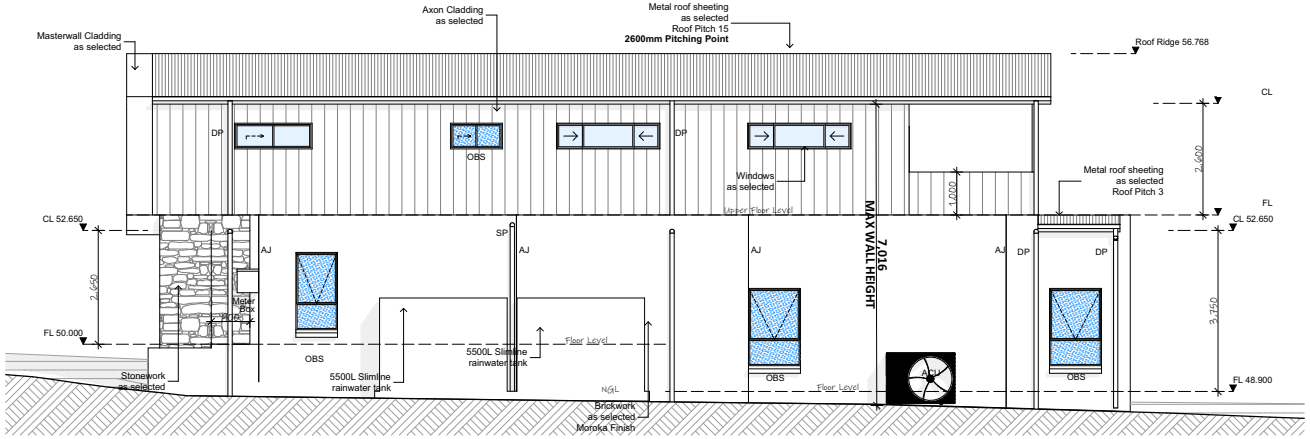
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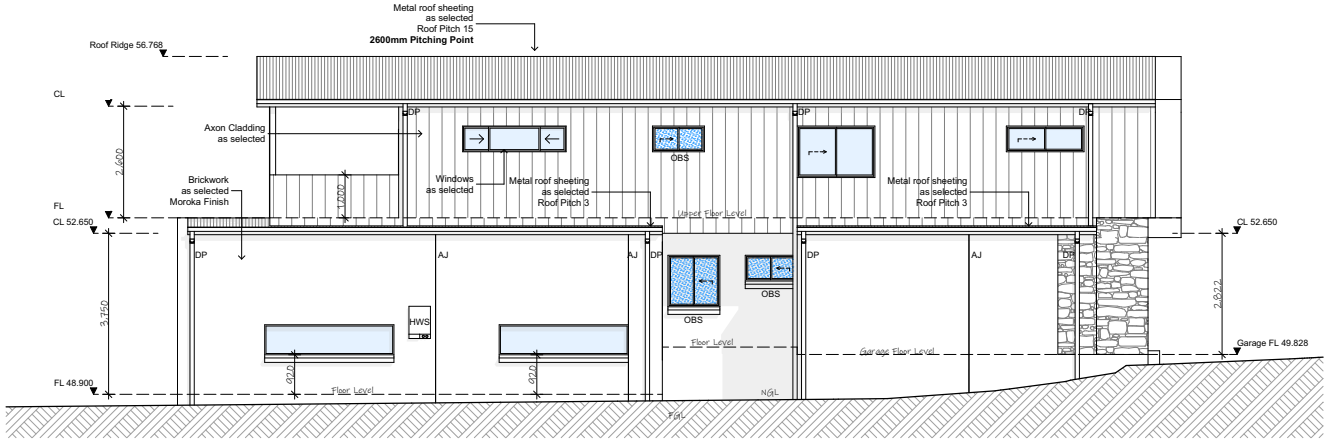
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DP - Downpipe
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Side/East Elevation
1:100



Side/West Elevation
1:100

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