



northern  
beaches  
council

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 28 SEPTEMBER 2022**

**Ashleigh Sherry**  
**Manager Business System and Administration**





**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 28 September 2022  
via teleconference  
Commencing at 10:00am**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 14 September 2022	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
3.1	DA2022/0925 - 1120 Barrenjoey Road PALM BEACH - Alterations and additions to a dual occupancy to create a dwelling house .....	5
3.2	Mod2022/0275 - 1 Drew Place BELROSE - Modification of Development Consent DA2020/1072 granted for Construction of a Seniors Housing development, including demolition works, new access driveway and front fence.....	54
3.3	DA2022/0509 - 25 Montpelier Place MANLY - Alterations and additions to a dwelling house .....	85
3.4	DA2022/0481 - 1 & 2 / 4 Fielding Street COLLAROY - Use of Premises as a tourist and visitor accommodation and associated fit out .....	136

## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 SEPTEMBER 2022**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Development Determination Panel held 14 September 2022 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2022/0925 - 1120 BARRENJOEY ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY TO CREATE A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2022/587359
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plan and Elevations</a> 3 <a href="#">↓ Clause 4.6</a>

#### 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.

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/0925 for alterations and additions to a dual occupancy to create a dwelling house on land at Lot 7 and Lot 8 DP 14538, 1120 Barrenjoey Road PALM BEACH, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0925
<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 7 DP 14538, 1120 Barrenjoey Road PALM BEACH NSW 2108 Lot 8 DP 14538, 1120 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Alterations and additions to a dual occupancy to create a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Bruce Crosby Forster Janece Helene Blythe Forster
<b>Applicant:</b>	Drafting Help Pty Ltd
<b>Application Lodged:</b>	20/06/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	27/06/2022 to 11/07/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 23.53%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 366,300.00

### EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Development Application DA2022/0925 for alterations and additions to an existing attached dual occupancy to create a dwelling house, including an upper floor addition to the building.

The maximum height of the proposed development is 10.5 metres above the existing ground level, which represents a 23.53% variation to Clause 4.3 of Pittwater LEP 2014, which limits the height of buildings to 8.5 metres. This occurs when taking the ground below the existing lower floor slab, which

has been excavated below the natural contours of the site, as 'existing ground level', in accordance with the recent NSW Land and Environment Court case of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. When extrapolating the ground levels around the building footprint in accordance with the NSW Land and Environment Court case of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070, the maximum height of the development measures 8.9 meters, which complies with the 10.0 metre height exemption permitted for this sloping site, pursuant to Clause 4.3 (2D) of Pittwater LEP 2014. The application is referred to the DDP on the basis of the height breach exceeding 10% from the 8.5 metre development standard.

The application has been accompanied by a written request pursuant to Clause 4.6 of Pittwater LEP 2014 to justify the height breach. The applicant has demonstrated that compliance with the height standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.3 of Pittwater LEP 2014. The height breach does not contribute to any unreasonable or excessive building bulk and scale or result in adverse amenity impacts to nearby properties with respect to view sharing, visual bulk or solar access.

When considered on its merits, the bulk and scale of the resulting development is considered to be acceptable in the circumstances of the case, noting that the 3 storey built form corresponds with nearby dwelling houses fronting Barrenjoey Road within the visual catchment of the site. The overall building massing steps down with the slope of the land to alleviate the building bulk and integrate with the landform and landscape.

The application was exhibited for 14 days and did not receive any submissions.

Therefore, it is recommended that the DDP approve the application, subject to the recommended conditions attached to this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for the conversion of an existing attached two storey dual occupancy into a dwelling house, including an upper floor addition to create a third storey. Specifically, the works consist of:

### **Lower Ground Floor**

- Removal of kitchen.
- Replacement of bedroom with storage.
- New internal lift to connect lower and ground floors.

### **Ground Floor**

- Replacement of two bedrooms with study and tv room.
- Demolition of several internal walls to allow for an open-planned lounge, family, dining and tv room.
- Minor internal reconfiguration to allow for internal staircase to proposed first floor.

### **First Floor**

- First floor addition to allow for relocated bedrooms from lower and ground floor, additional bedroom and bathrooms as well as a balcony facing the street frontage.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
 Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality  
 Pittwater 21 Development Control Plan - D12.3 Building colours and materials  
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line  
 Pittwater 21 Development Control Plan - D12.8 Building envelope

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 7 DP 14538 , 1120 Barrenjoey Road PALM BEACH NSW 2108</p> <p>Lot 8 DP 14538 , 1120 Barrenjoey Road PALM BEACH NSW 2108</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of two (2) allotment located on the eastern side of Barrenjoey Road, Palm Beach.</p> <p>The site is irregular in shape with a combined frontage of 12.19 metres and a maximum depth of 38.945 metres. The site has a surveyed area of 457.7m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a two storey attached dual occupancy comprising separate units on the ground and first floors.</p> <p>The site has a steep topography and experiences a fall of approximately 11.4 metres that slopes from the rear to the</p>

front.

The site contains a native canopy tree within the front yard. A large extent of landscaping is confined to the rear of the building footprint, where the site is densely vegetated and contains a number of canopy trees.

The site is environmentally constrained with landslip hazards, in addition to flooding hazards at the front of the property.

#### Description of Surrounding Development

Located directly to the south of the subject site are a number of commercial premises'. To the north and east of the site comprise low density residential development, typically 2 to 3 storeys in height. Located to the west of the site (i.e. opposite side of Barrenjoey Road) is the Pittwater waterway including the Palm Beach Ferry Wharf and a public recreation area.

Map:



#### SITE HISTORY

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

- **Development Application N0152/14** for addition of an upper-level balcony to the front of the dwelling approved by Council on 25 June 2014.
- **Development Application N0311/16** for construction of proposed hardstand car parking space and bin storage area at the front of the property approved by Council on 5 September 2016.



## APPLICATION HISTORY

A site inspection was carried out on 18 August 2022.

An amended Clause 4.6 written request was submitted to correlate with Council's building height measurements, which considered the excavated ground level below the lower ground floor slab as 'existing ground level', as per the recent Land and Environment Court Case of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSW LEC 1582.

This information was subsequently received by Council. As no changes to the building were proposed, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a revised Clause 4.6 written request for the proposed height breach.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development</p>



Section 4.15 Matters for Consideration	Comments
	Control Plan section in this report.  (ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.  (iii) <b>Economic Impact</b> 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	No submissions were received.
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 27/06/2022 to 11/07/2022 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 of the application Council received no submissions.

#### REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development is within the existing dwelling footprint, and does not require the removal of trees or native vegetation. Therefore the development will not significantly impact the local biodiversity values, and complies with the biodiversity planning controls
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is outside of the flood affected part of the property, which is only just inside the western boundary. No flood related development controls applicable.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral

Internal Referral Body	Comments		
	The proposal has been referred to Heritage as the site is within proximity to two heritage items		
	<b>Norfolk Island Pines</b> - Pittwater Park, Palm Beach		
	<b>Palm Beach Wharf</b> - 1149 and 1149A Barrenjoey Road, Palm Beach		
	Details of heritage items affected		
	Details of the items as contained within the Pittwater inventory is as follows:		
	<b>Norfolk Island Pines</b>		
	<u>Statement of Significance</u>		
	The Norfolk Island Pines are of local historic and aesthetic significance as a fine representative example of the widespread use of this species for ornamental plantings in coastal areas.		
	<u>Physical Description</u>		
	A fine planting of mature specimens of Araucaria heterophylla (Norfolk Island Pine) in Pittwater Park, adjacent to the public wharf at Palm Beach and across Barrenjoey Road from Barrenjoey House. The trees are along the western and southern edges of this park which includes a children’s playground and car park. The trees provide welcome shade for picnickers using the Pittwater beach.		
<b>Palm Beach Wharf</b>			
<u>Statement of Significance</u>			
The Palm Beach Wharf has historic, aesthetic and social significance as a very early access point to the Pittwater area. It is associated with the early development and industry of the Northern Beaches and early transport systems to the region.			
<u>Physical Description</u>			
Located at Pittwater Park, off Barrenjoey Road at Palm Beach. This wharf is a recreational, commuter and commercial wharf surrounded by picnic facilities, a playground area and a car parking area.			
Other relevant heritage listings			
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register			
RAIA Register of 20th Century Buildings of	No		

Internal Referral Body	Comments
	Significance
	Other
	N/A
	Consideration of Application
	<p>The proposal seeks consent for a dwelling and a new level on top of the existing structure. The Norfolk Island Pine trees are located directly opposite the site while the wharf is to the north west of the site. Both items are separated from the site by Barrenjoey Road while also being located further west again within their respective properties. Given the physical separation, the proposal is considered to not impact upon the heritage items or their significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
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 was included with this application (see BASIX Certificate No. A456932, dated 22 April 2022). A condition has been recommended to ensure compliance with the aforementioned BASIX Certificate.

**SEPP (Transport and Infrastructure) 2021**Ausgrid

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

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

Comment:

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

**SEPP (Resilience and Hazards) 2021****Chapter 2 – Coastal Management**

The site is located within the Coastal Environment Area and Coastal Use Area pursuant to this Chapter. Accordingly, an assessment is carried out against Divisions 3, 4 and 5 of this Chapter as follows:

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

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

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

Comment:

The application pertains to a change of use and upper floor addition to the existing building and will not have an adverse impact upon the environmental values of the Pittwater catchment, or impact upon native flora and fauna. Existing access arrangements to and along the foreshore will also be maintained. The proposal will also not adversely impact upon Aboriginal cultural heritage, practices and places.

Overall, it is considered that the development has been designed, sited and will be managed to avoid an adverse impact upon the matters referred to in subsection (1).

**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 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:

Properties located to the rear (i.e. upslope) of the subject site are elevated significantly higher than the proposal due to the steep topography. Hence, existing view lines towards the Pittwater waterway will be maintained subsequent to the development. The proposal also does not result in wind funnelling or

overshadowing of the foreshore area.

The 3 storey built form is commensurate with nearby dwelling houses fronting Barrenjoey Road and thus, the proposal will not adversely detract from the visual amenity of the area as a consequence of the building's form and scale. As noted above, the proposal will not adversely impact on Aboriginal heritage or preclude access to or along the foreshore.

The site is located within the visual catchment of a number of items identified with local environmental heritage. Council's Heritage Officers have reviewed the application and raised no heritage related concerns.

The assessment has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development and concluded that the development is acceptable in the context of this coastal setting.

#### **Division 5 General**

#### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

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

#### Comment:

The building works are confined to the footprint of the existing building and the proposal is not likely to increase the risk of coastal hazards within the locality.

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

#### **Chapter 4 – Remediation of Land**

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

#### **Pittwater Local Environmental Plan 2014**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	10.5m	23.53%	No
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**Note:** For the purpose of this calculating building height the existing ground level is taken to be the excavated ground level below the lower ground floor slab, in accordance with the Land and Environment Court Case of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*.

#### Compliance Assessment

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

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5 metres
Proposed:	10.5 metres
Percentage variation to requirement:	23.53%

Clause 4.3 of Pittwater LEP 2014 stipulates that the maximum height of buildings on the subject site must not exceed 8.5 metres, when measured from the existing ground level.

A recent judgement of the NSW Land and Environment Court has provided clarification for the calculation of building height (*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* 'Merman Case'). In that matter, the Court found that for brownfield sites the existing ground level should be taken from an excavated level below the natural ground level of a site. It is noted that the existing lower ground floor has been excavated below the natural contours of the site, creating an artificial ground level. When taking the ground below the existing lower floor slab as 'existing ground level', the maximum building height of the proposed development measures at 10.5 metres, thereby non-compliant with the height standard. Figure 1 below depicts the extent of the non-compliance.

**Figure 1:** area of building exceeding the 8.5m height plane when applying the Merman method for calculating building height



It is important to note that whilst the slope of the land under the building footprint exceeds 30%, the 10 metre exemption provision permitted by Clause 4.3(2D) of Pittwater LEP 2014 is not applicable to this assessment as the proposal exceeds the 10 metre height plane. Hence, the variation is considered against the development standard of 8.5 metres.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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



standard.

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

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

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

*(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

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

The applicant's written request argues, in part:

*"The subject site is identified to have a maximum building height of 8.5m. However it is also noted that Clause 4.3(2D) provides flexibility in the maximum height for land with a maximum building height when the slope of the land exceeds 16.7 degrees (or 30%) where the consent authority is satisfied that the portion of the building above the maximum height is minor.*

*In this instance the proposed development provides a maximum building height of 10.5m is proposed requiring a 2.0m variation to the 8.5m development standard however the subject site is noted to have steep topography which impacts the building height. The requested variation is restricted to the south-western corner of the proposed addition where there is a significant site fall. The area of the non-compliance relates to a small portion of the south-western corner of the dwelling, and will not detrimentally impact on the amenity of the adjoining properties and is in keeping with the established context of the streetscape.*

*The building height of the proposed development is large exacerbated by the existing excavation on the allotment which provides an artificial existing ground level for the calculation of building height, thus an overall building height of 10.5m. When applying the extrapolation method for determining building height this would result in a building height of 8.9m which is a lesser variation to the development standard.*

*The increase to the overall building height is considered to have minimal impact on the overall development in terms of bulk and scale appearance, due to the maximum building height positioned to the front of the dwelling and screened by suitable landscape planting forward of the building line. The proposed development is not considered to be excessive in size, having been designed to include extensive articulation, increased front setback from existing building line and the retainment of suitable existing landscaping that follows the topography of the allotment and softens the visual bulk of the development. The proposed development is in keeping with surrounding developments in an area where the overall height control appears to have been abandoned due to the topography of the allotments. Further the proposed development provides a suitably sized dwelling in keeping with developments of the surrounding area.*

*The proposed alterations and additions is considered to be a reasonable development for the site as three storey dwellings are considered to be a suitable use of the land. The variation directly relates to the topography of the land. Reducing the overall building height of the dwelling is not considered feasible as the reduction in height would detrimentally impact the amenity of the development through reducing ceilings heights that have been minimised as much as practical whilst considering the existing*

*dwelling. Reducing the proposed building height would also result in a development that does not complement the existing dwelling structure and design.*

*Despite the variation the proposed continuation of low density residential land use is considered to be an orderly and economic use and development of the land in an established residential area where increased residential dwelling has set a theme for dwellings in this area of Palm Beach.*

*The variation will result in a maximum increase in height by 2.0m from the permitted overall height. The development will not be visually excessive in size due to maintaining appropriate setbacks, stepping of the front façade, as well as suitable existing landscaping to screen the development from the streetscape and neighbouring properties. The proposed development provides a suitably sized addition to an existing dwelling in keeping with adjacent developments on Barrenjoey Road and in the surrounding area.*

*Whilst being numerically non-compliant with the height of buildings control the proposed development is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy. In fact, the proposed development will result in an improved amenity and streetscape appearance as a result of the urban renewal development and by ensuring that the bulk and scale of the development is consistent with surrounding developments.*

*The proposed development relates to alterations and additions to an existing dwelling within a residential setting. Allowing alterations and additions to an existing dwelling, despite the numerical non-compliance with the height of buildings provisions, ensures that the dwelling can be retained on the site whilst providing improved internal amenity and an improvement to the life span of the built form. Further, allowing the increase in building height ensures that the existing dwelling is enhanced which is considered to promote orderly and economic use and development of the land.*

*Allowing the updating of existing dwellings through alterations and additions within residential area ensures that a range of dwelling and development types are available for residential occupation. The design of the proposed development is for the alteration and addition to an existing built form which promotes good design through improved functionality of the floor plan. Further the proposed alterations and additions provide increased areas within the design ensuring that the amenity of the development is enhanced as a result of the development.*

*The design of the proposed development has given consideration to the streetscape locality, surrounding development along with the orientation of the allotment during the design process. The development appropriately addresses the street frontage and provides visual bulk in keeping with recent development throughout the Palm Beach area. Consideration of these key aspects promotes good design through a high quality architectural development. Further the proposed alterations and additions has been designed to provide high level of amenity to the development and future occupants of the dwellings.*

*Whilst “environmental planning grounds” are not separately defined within the EP&A Act 1979 the proposed development is considered to provide orderly and economic use and development of the land through retention of an existing dwelling. Further the proposal meets good design principals and enhanced amenity of the dwelling through additional bedroom and living spaces without detrimentally impacting the surrounding development by way of visual bulk, privacy, amenity and solar access”.*

Comment:

The justification provided by the applicant is well founded and is agreed with.

In particular, it is noted that when adopting the extrapolation method for calculating building height, as

per the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the maximum building height of the proposed development is 8.9 metres, which would comply with the 10 metre exception provision permitted by Clause 4.3(2D) of Pittwater LEP 2014 for sites that have a slope greater than 30% under the building footprint. Hence, the proposal would be considered a 'compliant building height' in this regard and a Clause 4.6 variation request would not be required. The noncompliance is derived from an artificial ground level that has been created by previous excavation below the natural contours of the site and the proposal will present with a compliant building height when taking the natural contours around the perimeter of the building footprint. It is considered that enforcing strict compliance with the Merman approach for calculating building height would preclude orderly and economic use and development of the land, which is contrary to the objects of the Environment Planning and Assessment Act 1979 (EPA Act 1979).

Furthermore, it is noted that there are a number of three storey dwelling houses that front Barrenjoey Road on the eastern side of the road. The proposed three storey dwelling house is not out of character with these nearby developments within the visual catchment of the site.

In addition, the height non-compliance does not create any adverse amenity impacts to neighbouring properties in relation to view sharing, solar access, visual bulk or privacy.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The proposal responds well to the local context through providing a three storey appearance to Barrenjoey Road, which is consistent with nearby development within the visual catchment of the site. In addition, the building mass steps down in height with the slope of the land to mitigate the bulk and scale of the development. Overall, the proposal is considered to demonstrate consistency with the desired future character of the locality.

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

Comment:

The height and scale of the proposed development is commensurate with nearby three storey dwelling houses fronting Barrenjoey Road.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

The adjacent properties to the south comprise commercial premises' and surrounding residential dwellings will maintain the required 3 hours of solar access to living rooms and private open space.

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

Comment:

Properties located to the rear (i.e. upslope) of the subject site are elevated significantly higher than the proposal due to the steep topography. Hence, existing view lines towards the Pittwater waterway will be maintained subsequent to the development. Furthermore, the proposal does not result in view impacts from the public domain.

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

Comment:

The building mass steps down in height with the slope of the land to mitigate the bulk and scale of the development and to ensure an appropriate response to the natural topography that falls steeply towards Barrenjoey Road from the east.

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

Comment:

The site is located within the visual catchment of a number of items identified with local environmental heritage. Council's Heritage Officers have reviewed the application and raised no heritage related concerns. In addition, the height of the development will sit below the established tree canopy and the development will not have an adverse impact on the natural environment.

**Zone objectives**

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

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

Comment:

The new building works are confined to the existing building footprint and the proposal does not necessitate the removal of prescribed vegetation or alter the site topography. The proposal is considered to constitute low-impact residential development within an environmentally sensitive area.

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

Comment:

The proposal does not have an adverse effect on the ecological, scientific or aesthetic values of the locality.

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

Comment:

The three storey built form corresponds with surrounding residential development within the locality. The building mass also steps down with the natural topography to integrate with the landform and landscape.

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

Comment:

The proposal does not impact any riparian or foreshore vegetation.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under

environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of buildings Development Standard associated with a single dwelling house (Class 1 building).

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10m	11m (new elements of building)	-	Yes
Rear building line	6.5m	13.86m	-	Yes
Side building line	2.5m (north)	1.29m (consistent with existing)	48.4%	No
	1m (south)	1.18m (consistent with existing)	-	Yes
Building envelope	Merit Assessment as > 30% slope (north)	Acceptable on Merit	N/A	Acceptable on Merit - see discussion
	Merit Assessment as > 30% slope (south)	Acceptable on Merit	N/A	Acceptable on Merit - see discussion
Landscaped area	60%	no change	N/A	N/A

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land		
B3.11 Flood Prone Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control		
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	No	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **A4.12 Palm Beach Locality**

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

*"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.*

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from*



hazards.

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

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

*Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.*

*Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.*

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

Comment:

The proposed development results in a part 2-3 storey dwelling house, which exceeds the desired 2 storey built form envisaged for the locality. Whilst the locality statement calls for 2 storey development within low density residential areas, the proposed development is considered to achieve the overall objective of the desired future character statement for the following reasons:

- The 3 storey built form is consistent with established development along the immediate vicinity of Barrenjoey Road.
- The proposed development does not result in unreasonable alterations to the site topography and does not necessitate the removal of significant canopy trees.
- The upper floor façade has been recessed back from the lower floors to provide a degree of stepping with the slope.
- The development is serviced by essential services (i.e. stormwater, vehicular access and parking etc.).
- The hipped roof form and elevated front terraces reflects the desired 'seaside village' appearance.
- The resulting height, bulk and scale of the development is commensurate with surrounding residential development.

### **D12.3 Building colours and materials**

The proposed alterations and additions have been colour matched to the existing building facade to create consistency throughout the site. The existing colours do not meet the 'dark and earthy tones' prescribed by this control. Nevertheless, given the existing colour scheme for the site this is considered reasonable in this circumstance. The existing colours also do not depart significantly from other buildings within the visual catchment of the site, where there are many examples of lighter coloured buildings.

### **D12.6 Side and rear building line**

#### Description of non-compliance

The control requires development be setback at least 2.5 metres from one side boundary and 1 metre from the opposing side boundary. For the purpose of this assessment the 2.5 metre side setback is applied to the northern boundary, whereas the 1 metre side setback applied to the southern.

The northern elevation of the dwelling is setback 1.29 metres from the northern side boundary, which does not satisfy the numeric requirement. This proposed setback correlates with the lower floor.

#### Merit consideration

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

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

#### Comment:

As discussed earlier within this report, the proposal is consistent with the intent of the Palm Beach Desired Future Character Statement.

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

#### Comment:

The proposal responds well to the local context through providing a three storey appearance to Barrenjoey Road, which is consistent with nearby development within the visual catchment of the site. In addition, the building mass steps down in height with the slope of the land to mitigate the bulk and scale of the development.

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

#### Comment:

Properties located to the rear (i.e. upslope) of the subject site are elevated significantly higher than the proposal due to the steep topography. Hence, existing view lines towards the Pittwater waterway will be maintained subsequent to the development. Furthermore, the proposal does not result in view impacts from the public domain.

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

#### Comment:

As noted above, no views are unreasonably compromised by the proposed works.

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

#### Comment:

North and south facing windows on the upper floor addition contain high sills to mitigate

adverse privacy impacts. Moreover, the elevated balcony is orientated towards Barrenjoey Road and does not prompt unreasonable privacy implications. The adjacent properties to the south comprise commercial premises' and nearby residential dwellings will maintain the required amount of solar access.

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

Comment:

The proposal does not result in a reduction in landscaping on the site. The existing canopy trees on the site will soften the built form.

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

Comment:

It is considered that the proposed development is adequately sited to ensure an acceptable level of amenity and a reasonable visual presentation for the subject site and adjacent sites. Hence, flexibility is afforded with regards to the maintenance of the non-compliant side setback.

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

Comment:

The proposal does not result in the removal of vegetation on the site.

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

Comment:

The existing landscaping on the site provides a buffer to the commercial development to the south.

Conclusion

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

**D12.8 Building envelope**

The slope of the land under the building footprint is 31%. For sites with a slope greater than 30% this control is applied on a merit basis. Elements of the upper floor at the front of the building protrude outside of the standard side building envelope for sites with slopes less than 30%. Notwithstanding, the proposal is considered to achieve the underlying outcomes of the control, as demonstrated below as follows:

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

Comment:

As discussed earlier within this report, the proposal is consistent with the intent of the Palm Beach Desired Future Character Statement.

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

Comment:

The resulting building height is situated well below the established tree canopy within the locality.

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

Comment:

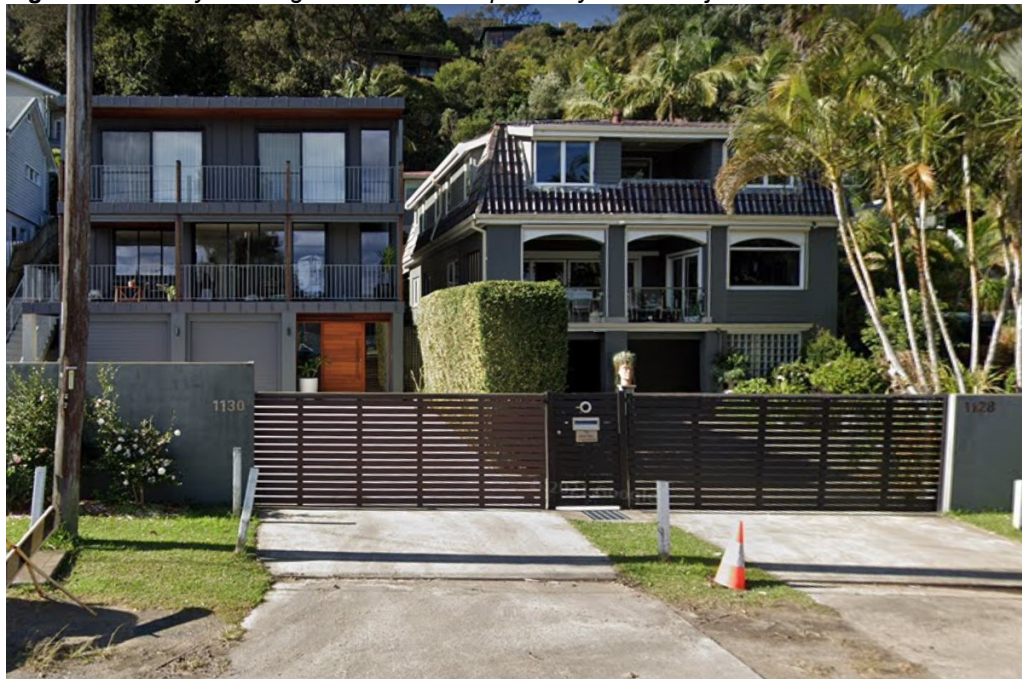
The building appropriately steps up the land, while including a roof line that sensitively responds to the slope of the land.

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

Comment:

The proposal responds well to the local context through providing a three storey appearance to Barrenjoey Road, which is consistent with nearby development within the visual catchment of the site. Figure 2 below depicts 2x 3 storey dwelling houses (including one recently approved at 1130 Barrenjoey Road) located approximately 40 metres to the north of the subject site.

**Figure 2:** 3 storey dwelling houses in close proximity to the subject site



The height, bulk and scale of the proposed development is not inconsistent with these

developments.

In addition, the building mass steps down in height with the slope of the land to mitigate the bulk and scale of the development.

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

Comment:

Properties located to the rear (i.e. upslope) of the subject site are elevated significantly higher than the proposal due to the steep topography. Hence, existing view lines towards the Pittwater waterway will be maintained subsequent to the development. Furthermore, the proposal does not result in view impacts from the public domain.

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

Comment:

North and south facing windows on the upper floor addition contain high sills to mitigate adverse privacy impacts. Moreover, the elevated balcony is orientated towards Barrenjoey Road and does not prompt unreasonable privacy implications. The adjacent properties to the south comprise commercial premises' and nearby residential dwellings will maintain the required amount of solar access.

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

Comment:

The proposal does not result in the removal of vegetation on the site.

Conclusion

Having regard to the above assessment, it is concluded that the outcomes of the control are achieved. Therefore, the proposed building envelope is found to be satisfactory on a merit basis.

**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 \$3,663 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$366,300.

## 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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

## PLANNING CONCLUSION

This proposal, for alterations and additions to an existing attached dual occupancy to create a dwelling house has been referred to the DDP due to the maximum height of the development measuring at 10.5 metres above the existing ground level, which represents a 23.53% variation to Clause 4.3 - Height of Buildings of Pittwater LEP 2014.

The application was publicly exhibited for 14 days and did not attract any submissions.



The critical assessment issue pertains to the significant height breach. However, the severity of the height non-compliance occurs when taking the ground below the existing lower floor slab, which has been excavated below the natural contours of the site, as 'existing ground level', in accordance with the recent NSW Land and Environment Court case of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. When extrapolating the ground levels around the building footprint in accordance with the NSW Land and Environment Court case of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070, the maximum height of the development measures 8.9 meters, which complies with the 10.0 metre height exemption permitted for this sloping site, pursuant to Clause 4.3(2D) of Pittwater LEP 2014.

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

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

When considered on its merits, the bulk and scale of the resulting development is considered to be acceptable in the circumstances of the case, noting that the 3 storey built form corresponds with nearby dwelling houses fronting Barrenjoey Road within the visual catchment of the site.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

Therefore, it is recommended that the DDP approve this application, subject to the recommended conditions attached to this report.

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Building development standard pursuant to Clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0925 for Alterations and additions to a dual occupancy to create a dwelling house on land at Lot 7 DP 14538, 1120 Barrenjoey Road, PALM BEACH, Lot 8 DP 14538, 1120 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Sheet SP	26 April 2022	Drafting Help
Sheet 4	26 April 2022	Drafting Help
Sheet 5	26 April 2022	Drafting Help
Sheet 6	26 April 2022	Drafting Help
Sheet 7	26 April 2022	Drafting Help
Sheet 8	26 April 2022	Drafting Help
Sheet 9	26 April 2022	Drafting Help
Sheet 10	26 April 2022	Drafting Help
Sheet 11	26 April 2022	Drafting Help
Sheet 12	26 April 2022	Drafting Help
Sheet 13	26 April 2022	Drafting Help

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Assessment Ref. AG 22148	29 June 2022	AscentGeo Consulting Geotechnical Engineers
BASIX Certificate No. A456932	22 April 2022	Goal Zero Thermal Performance Assessors

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:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	31 May 2022	Drafting Help

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:

<b>Other Department,</b>	<b>EDMS Reference</b>	<b>Dated</b>
--------------------------	-----------------------	--------------



Authority or Service		
Ausgrid	Ausgrid Referral Response	not dated

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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. This land use is defined below as follows:

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

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

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

### 4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

## 5. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be

maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,663.00 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 \$366,300.00.

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](http://www.northernbeaches.nsw.gov.au)

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

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

**7. Security Bond**

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

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

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

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

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

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

**8. Stormwater 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 Principal Certifier 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 Principal Certifier 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in

the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Compliance with Standards**

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

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

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

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

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

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

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

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

12. **Survey Certificate**

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

approved plans.

13. **Installation and Maintenance of Sediment Control**

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

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

14. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

15. **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 Planning and Environment.

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 Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

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

16. **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 Principal Certifier 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 authority 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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

17. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

18. **Consolidation of Lots 7 and 8**

The approved development occurs over allotments 7 and 8 of DP 14538. To ensure orderly development of land, these allotments are to be consolidated into one (1) new allotment. The new lot is to be registered prior to the issue of an Occupation Certificate.

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

Reason: To ensure orderly development of land.

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

19. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **Noise - Lift**

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

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



#### General Notes

- G1. THESE DRAWINGS SHALL BE READ IN CONJUNCTION WITH ALL ARCHITECTURAL AND OTHER CONSULTANTS DRAWINGS AND SPECIFICATIONS AND WITH NOTICING THE COURSE OF THE PROJECT. ANY DISCREPANCIES ARE TO BE REFERRED TO THE PRINCIPAL FOR DECISION BEFORE PROCEEDING WITH THE WORK.
- G2. ALL DIMENSIONS RELATIVE TO SETTING OUT AND ON SITE FABRICATION WORK SHALL BE VERIFIED BY THE BUILDER BEFORE CONSTRUCTION AND FABRICATION IS COMMENCED.
- G3. DIMENSIONS SHALL NOT BE OBTAINED BY TAPPING THE DIMENSIONAL DIMENSIONS DURING CONSTRUCTION THE STRUCTURE SHALL BE MAINTAINED AS A SILENT CONDITION AND NO PART SHALL BE EXPOSED.
- G4. ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE S.A.C. CODES AND THE PLANS AND DIMENSIONS OF THE RELEVANT BUILDING AUTHORITY.
- G5. ALL DIMENSIONS ARE IN MILLIMETRES UNLESS STATED OTHERWISE. ALL LEVELS ARE EXPRESSED IN METRES.
- G6. FINISHING AND MAKEGOOD COURSE TO BE PLACED IN ACCORDANCE WITH GOOD BUILDING PRACTICES WITH THE SHOWN ON THE DETAILS OR NOT.
- G7. THIS DRAWING TO BE READ IN CONJUNCTION WITH THE GENERAL BUILDING SPECIFICATION.

#### Foundations

- F1. UNDERPOORFILL SHALL BE IN ACCORDANCE WITH AS 2902.
- F2. TOWER TREATMENT SHALL BE IN ACCORDANCE WITH AS 1901.
- F3. THE UNDERPOORFILL BARRIER SHALL BE IN ACCORDANCE WITH AS 2902.
- F4. BENTONITE EXHAUST SHALL CONFORM AND BE PLACED IN ACCORDANCE WITH AS 2902, AS 2901 AND THE ENGINEER'S RECOMMENDATIONS.
- F5. STRUCTURAL CONCRETE SHALL BE IN ACCORDANCE WITH AS 3600. PRE-MIXED CONCRETE SHALL BE MANUFACTURED IN ACCORDANCE WITH AS 1019.
- F6. PROVIDE ADEQUATE CROSS COUNTRY VENTILATION TO THE SPACE UNDER SUSPENDED GROUND FLOOR.
- F7. ALL SLABS SHALL BE CURED IN ACCORDANCE WITH AS 3600.

#### Masonry

- M1. ALL CLAY BRICK AND BRICKWORK SHALL COMPLY WITH AS/NZS 4455, AS/NZS 4456 AND AS 1906.
- M2. CONCRETE BLOCKS ARE TO BE IN ACCORDANCE WITH AS 2703.
- M3. ALL CLAY PIPES CONDUITS SHALL COMPLY WITH AS 1506 AND AS 1506.
- M4. CEMENT VENTILATION PIPE HOLES SHALL BE IN ACCORDANCE WITH AS 1506.
- M5. JOISTERS SHALL COMPLY WITH AS 1506. JOIST TOLERANCES SHALL BE IN ACCORDANCE WITH AS 1506.
- M6. ALL WALL TIES SHALL BE MANUFACTURED IN ACCORDANCE WITH AS 2049 AND BE INSTALLED IN ACCORDANCE WITH AS 1506.

#### Timber Framing

- T1. ALL TIMBER FRAMING SHALL COMPLY WITH AS 1684.
- T2. ROOF FRAMING TO BE IN ACCORDANCE WITH AS 1684.
- T3. TIMBER ROOF TRUSSES TO BE MANUFACTURED IN ACCORDANCE WITH AS 1684.
- T4. TIMBER BRACING TO BE IN ACCORDANCE WITH AS 1684.

#### Tiling

- T1. CEMENT MORTAR AND OTHER ADHESIVES SHALL COMPLY WITH AS 1596.1.
- T2. INSTALLATION OF TILES SHALL BE IN ACCORDANCE WITH AS 1596.

#### Claddings & Linings

- C1. THE LINING OF WET AREA WALLS SHALL BE CONSTRUCTED IN ACCORDANCE WITH AS 1596.
- C2. ALL INTERNAL SET AREAS AND BALCONIES OVER INHABITABLE ROOMS TO BE WATER PROOFED TO AS 1596.

#### Joinery

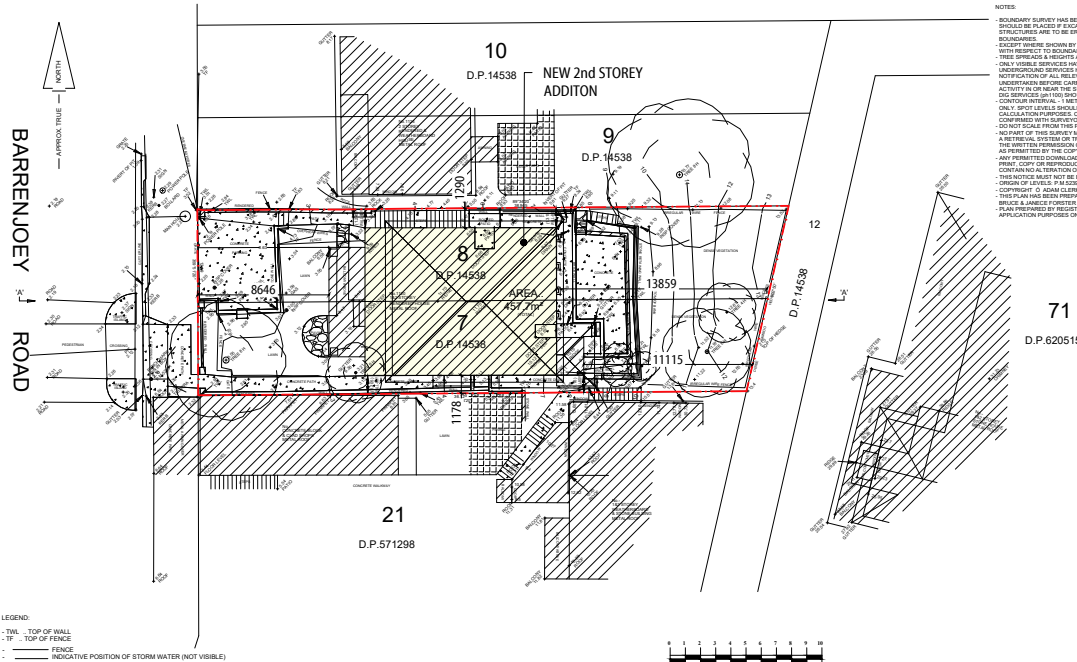
- J1. ALL INTERNAL AND EXTERNAL TIMBER DOORS AND DOOR SETS SHALL BE MANUFACTURED IN ACCORDANCE WITH AS 1684 AND AS 1681.
- J2. ALL GLAZING SHALL COMPLY WITH AS 1208.

#### Steel Framing

- S1. ALL STEEL FRAMING INCLUDING FLOOR, WALLS AND ROOF FRAMING SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS AND AS 2623.

#### Roofing

- R1. CONCRETE AND TERRAZO TILES SHALL COMPLY WITH AS 2049 AND BE INSTALLED IN ACCORDANCE WITH AS 2049.
- R2. METAL RAINWATER GUTTERS SHALL BE MANUFACTURED IN ACCORDANCE WITH AS 2179 AND INSTALLED IN ACCORDANCE WITH AS 2179.
- R3. GUTTERS TO BE PROTECTED IN ACCORDANCE WITH AS 2179.
- R4. ROOFING MEMBRANES AND FLASHINGS SHALL COMPLY WITH AS 2049, AS 1684 AND AS 1596.



- LEGEND:
- TWL - TOP OF WALL
  - TF - TOP OF FENCE
  - FENCE
  - INDICATIVE POSITION OF STORM WATER (NOT VISIBLE)
  - INDICATIVE POSITION OF SEWER MAIN (NOT VISIBLE)
  - POSITION TO BE CONFIRMED BY SYDNEY WATER

## SITE PLAN - PROPOSED

SCALE 1:200

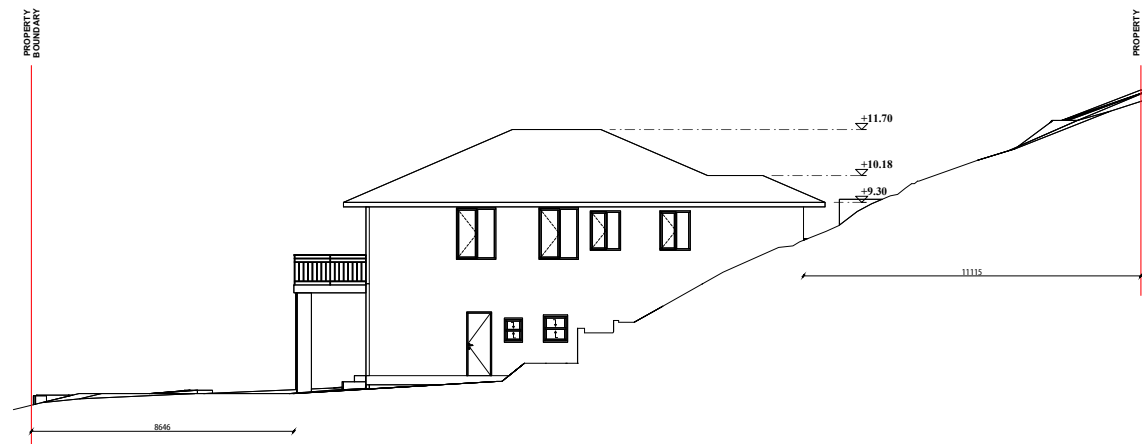
- GENERAL NOTES**
- BUILDER TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS.
  - ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITIES REQUIREMENTS AND B.C.A. REQUIREMENTS.
  - CONNECT OPS TO EXISTING STORMWATER SYSTEM.
  - ALL STRUCTURAL DETAILS TO ENGINEER'S SPECIFICATIONS.

NOTE: THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE. ALL DRAWINGS, PLANS, SKETCHES ETC. ARE PROVIDED TO OUR CLIENT'S BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAWN IN ACCORDANCE WITH COMMON BUILDING PRACTICES AND LOCAL CODES. NONE OF THE EMPLOYEES OF DRAFTING HELP ARE REGISTERED ARCHITECTS, ENGINEERS OR LAND SURVEYORS. ALL DIMENSIONS AND SPECIFICATIONS SHOULD BE VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS. IF DIMENSIONS AND SPECIFICATIONS ARE NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS DRAFTING HELP WILL BE HELD HARMLESS. DRAFTINGHELP ASSUMES NO LIABILITY FOR CHANGES AND/OR REVISIONS MADE TO PLANS BY CLIENT AND/OR CONTRACTOR.

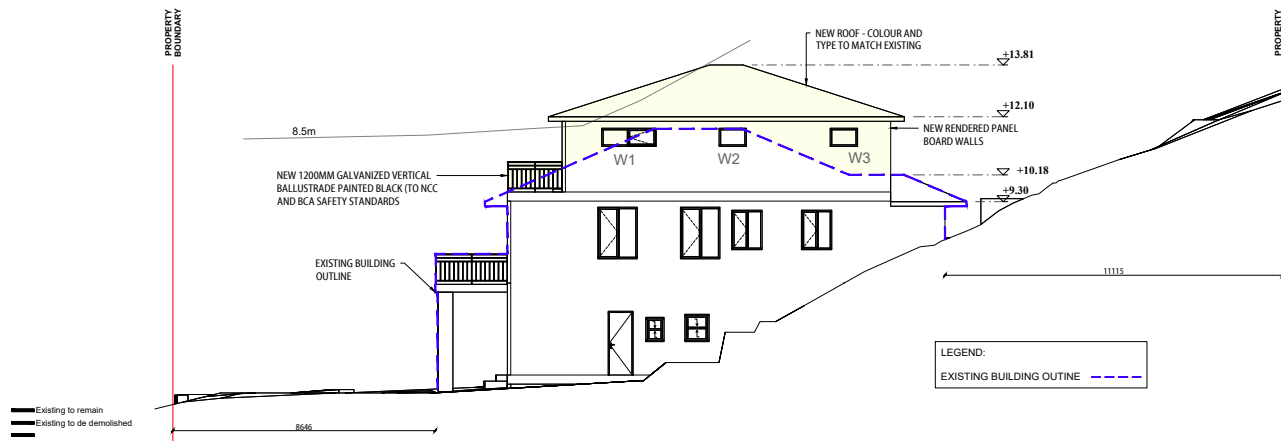
C:\Users\Drafting Help\Dropbox\Drafting Help\JOBS\2021\1120 Barrenjoey rd Palm Beach\CAD\1120 Barrenjoey rd Palm Beach - DA Plans.dwg

<b>ARCHITECTURAL DRAFTING</b> <b>3D VISUALISATION</b> <b>DEVELOPMENT APPLICATION</b> <b>ASSISTANCE</b> <b>COUNCIL COMPLIANT PLANS</b>	
<b>LEGEND:</b> EXISTING BUILDING OUTLINE PROPOSED WORK	<b>General Notes</b>
<p>THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE. ALL DRAWINGS, PLANS, SKETCHES ETC. ARE PROVIDED TO OUR CLIENT'S BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAWN IN ACCORDANCE WITH COMMON BUILDING PRACTICES AND LOCAL CODES. NONE OF THE EMPLOYEES OF DRAFTING HELP ARE REGISTERED ARCHITECTS, ENGINEERS OR LAND SURVEYORS. ALL DIMENSIONS AND SPECIFICATIONS SHOULD BE VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS. IF DIMENSIONS AND SPECIFICATIONS ARE NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS DRAFTING HELP WILL BE HELD HARMLESS. DRAFTINGHELP ASSUMES NO LIABILITY FOR CHANGES AND/OR REVISIONS MADE TO PLANS BY CLIENT AND/OR CONTRACTOR.</p>	
<p>PROUDLY SUPPORTING <b>bear cottage</b> <small>THE AUSTRALIAN BUSH COTTAGE</small></p>	
<p>THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE. ALL DRAWINGS, PLANS, SKETCHES ETC. ARE PROVIDED TO OUR CLIENT'S BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAWN IN ACCORDANCE WITH COMMON BUILDING PRACTICES AND LOCAL CODES. NONE OF THE EMPLOYEES OF DRAFTING HELP ARE REGISTERED ARCHITECTS, ENGINEERS OR LAND SURVEYORS. ALL DIMENSIONS AND SPECIFICATIONS SHOULD BE VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS. IF DIMENSIONS AND SPECIFICATIONS ARE NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS DRAFTING HELP WILL BE HELD HARMLESS. DRAFTINGHELP ASSUMES NO LIABILITY FOR CHANGES AND/OR REVISIONS MADE TO PLANS BY CLIENT AND/OR CONTRACTOR.</p>	
<b>Date:</b> 28/01/2022 <b>Scale:</b> AS SHOWN <b>REC:</b> <b>DP No:</b> 14538 <b>LOT No:</b> 7 + 8	<b>Sheet</b> <b>SP</b>
<b>A</b> <b>ISSUED FOR DA</b> <b>28/01/22</b> <b>No.</b> <b>Revision/Issue</b> <b>Date</b>	
<p><b>dh DRAFTING HELP</b>          5470 Sydney Rd          Balgownie NSW 2203          www.draftinghelp.com.au          02 87763474</p>	
<p><b>Project Name and Address</b>  <b>BRUCE FORSTER</b>  <b>1120 BARRENJOEY RD</b>  <b>PALM BEACH</b>  <b>SYDNEY NSW 2108</b></p>	

**A2 SHEET**



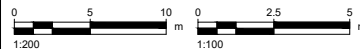
**1 SOUTH ELEVATION - EXISTING**  
Scale 1:100



**1 SOUTH ELEVATION - PROPOSED**  
Scale 1:100

**GENERAL NOTES**

- BUILDER TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS
- ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITIES REQUIREMENTS AND B.C.A. REQUIREMENTS
- CONNECT DIPS TO EXISTING STORMWATER SYSTEM
- ALL STRUCTURAL DETAILS TO ENGINEER'S SPECIFICATIONS

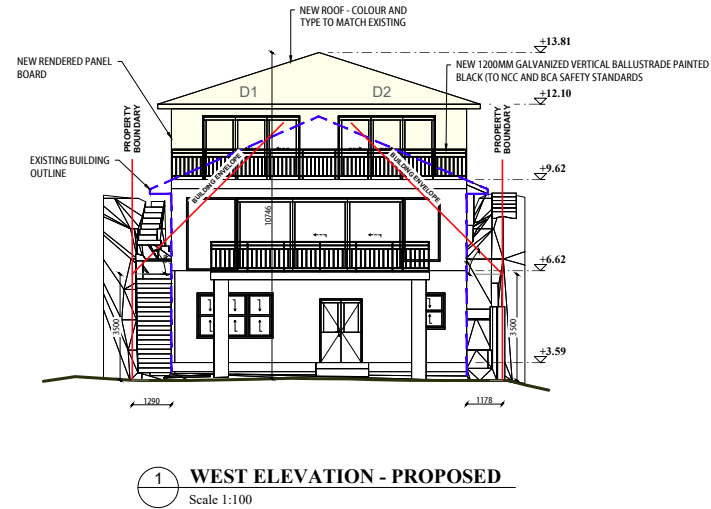
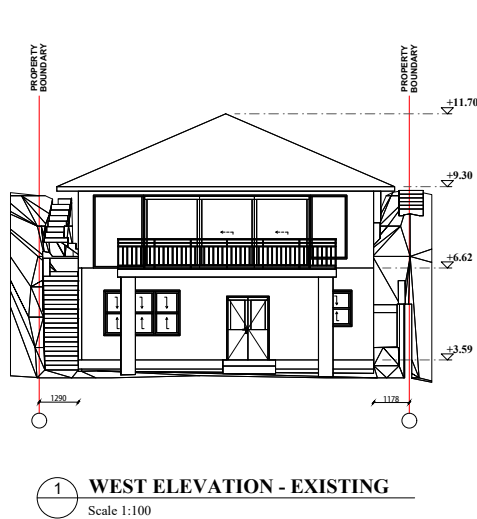


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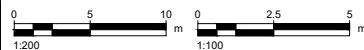
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<p><small>THIS DRAWING IS SUBJECT TO CONTRACT AND NOT BE USED FOR ANY OTHER PURPOSES. ANY REUSE OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF DRAFTING HELP IS PROHIBITED. ALL DIMENSIONS AND NOTES SHOWN ON THIS DRAWING ARE APPROXIMATE. THE DESIGN IS SUBJECT TO A COUNCIL APPROVAL AND IS NOT GUARANTEED TO BE USED FOR CONSTRUCTION PURPOSES.</small></p>																				
<p><b>ADDITIONS AND ALL DIMENSIONS</b></p> <p>Date: 28/09/2022</p> <p>Scale: AS SHOWN</p>	<p><b>Sheet</b></p> <p><b>4</b></p>																			
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<p><b>dh DRAFTING HELP</b></p> <p><small>54/71 Sydney Rd Balgownie NSW 5008 www.draftinghelp.com.au 08 87750474</small></p>																				
<p><b>Project Name and Address</b></p> <p><b>BRUCE FORSTER</b>  <b>1120 BARRENJOEY RD</b>  <b>PALM BEACH</b>  <b>SYDNEY NSW 2108</b></p>																				

**A2 SHEET**



LEGEND:  
EXISTING BUILDING OUTLINE - - - - -

**GENERAL NOTES**  
• REVISOR TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS  
• ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITIES REQUIREMENTS AND S.C.A. REQUIREMENTS  
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ARCHITECTURAL DRAFTING TO VISUALISATION DEVELOPMENT APPLICATION ASSISTANCE COUNCIL COMPLIANT PLANS	
LEGEND: EXISTING BUILDING OUTLINE PROPOSED WORK	
General Notes	
<p>proudly supporting <b>bear cottage</b> <small>PROPERTY OF THE CITY OF SYDNEY</small></p> <p>These documents are subject to copyright and may not be copied, used, or distributed in any form without the written permission of the copyright owner. All dimensions and areas shown on these drawings are approximate only and are subject to change. The client is responsible for ensuring that the drawings are used in accordance with the relevant legislation and standards.</p>	
ADDITIONS AND REVISIONS Date: 28/08/2022 Scale: AS SHOWN SHEET <b>5</b>	PROJECT NO.: 14538 LOT NO.: 7 + 8 ISSUED FOR DA: 28/08/2022 No. Revision/Issue Date
<b>dh DRAFTING HELP</b> 54/71 Sydney Rd Balgownie NSW 2103 www.draftinghelp.com.au 02 87765474	
Project Name and Address <b>BRUCE FORSTER</b> <b>1120 BARRENJOEY RD</b> <b>PALM BEACH</b> <b>SYDNEY NSW 2108</b>	

**A2 SHEET**



**NOTES:**

**PRELIMINARIES**

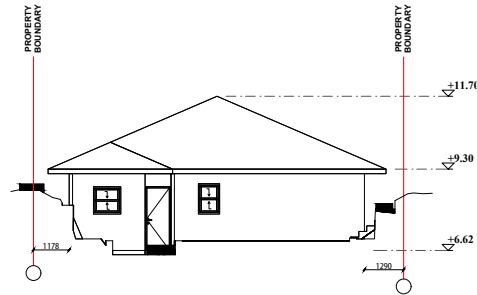
All work to comply with the Building Code of Australia, current editions of the relevant Australian Standards, and industry codes of practice.

Select, store, handle and install propriety products or systems in accordance with the published recommendations of the manufacturer or supplier.

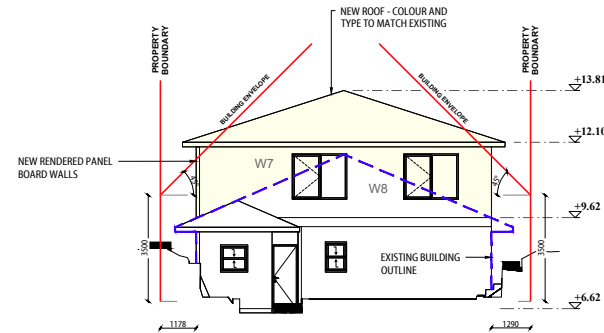
**Dimensions and Setout**  
Do not scale from drawings. Take figured dimensions in preference to scale. Verify all dimensions on site before commencing work. The site foreman shall be responsible for verifying all dimensions and levels prior to the commencement of the Works. In the event of discrepancies in the setout of the Works, the builder should refer to the Project Designer for clarification before proceeding.

**CONCRETE CONSTRUCTION**

Concrete structures generally to AS3600. Ground slabs and footings to AS2870. Ready-mixed concrete to AS1379. All reinforcement to be in accordance with Engineer's drawings and specification. Place all concrete uniformly over the width of the slab to achieve a level face. Provide construction joints as required. Compaction, curing and formwork stripping to comply with Aust. Stds and codes of practice.



**1 EAST ELEVATION - EXISTING**  
Scale 1:100



**1 EAST ELEVATION - PROPOSED**  
Scale 1:100

LEGEND:  
EXISTING BUILDING OUTLINE

**BEARERS AND JOISTS: SPAN AND SPACING OF BEARERS AND JOISTS IS TO CONFORM TO AS1600 SERIES OF STANDARDS IN CONJUNCTION WITH SUPPORTING SUPPLEMENTS RELEVANT TOT BE APPLICABLE WIND CLASSIFICATION AND STRESS.**

**ALL TIMBER GENERALLY SHALL BE OF THE DURABILITY AND STRESS GRADE SPECIFIED AND OR COMPLY WITH AS1728 AND AS1848.**

**ROOF BRACING IN ACCORDANCE WITH TRUSS MANUFACTURERS DETAIL AND SECTION 8 OF AS 1684.**

**WALL FRAMING: WALL FRAME, SIZES AND SPACING SHALL BE IN ACCORDANCE WITH AS1684 OR AS SPECIFIED BY A PRACTISING ENGINEER.**

**GENERAL NOTES**

**BUILDER TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS**  
**ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITIES REQUIREMENTS AND B.C.A. REQUIREMENTS.**  
**CONNECT DIPS TO EXISTING ITC/MANITAB SYSTEM**  
**ALL STRUCTURAL DETAILS TO ENGINEERS SPECIFICATIONS**

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ARCHITECTURAL DRAFTING  
3D VISUALISATION  
DEVELOPMENT APPLICATION  
ASSISTANCE  
COUNCIL COMPLIANT PLANS

LEGEND:  
EXISTING BUILDING OUTLINE  
PROPOSED WORK

General Notes

proudly supporting bear cottage

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ARCHITECTURAL DRAFTING  
28/09/2022  
SCALE  
A2 SHOWN  
RBC  
DP No. 14538  
LOT No. 7 + 8  
A ISSUED FOR DA 28.04.22  
No. Revision/Issue Date

Sheet  
7

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02 87763474

Project Name and Address  
**BRUCE FORSTER**  
**1120 BARRENJOEY RD**  
**PALM BEACH**  
**SYDNEY NSW 2108**

**A2 SHEET**

**Appendix 1 – Clause 4.6 Variation Overall Height**

It is requested that Council consider the following request for a variation under the provisions of Clause 4.6 of *Pittwater Local Environmental Plan 2014 (PLEP2014)* during assessment of this application:

Pittwater Local Environmental Plan 20144.6 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.*

Clause 4.6 of the LEP - Exceptions to development standards provides the opportunity for Council to vary the controls based on the merits of the application. It is considered that the current application satisfies the Clause 4.6 criteria in the LEP, and therefore should be supported, as detailed below.

*(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.*

The overall height development standard is not expressly excluded from the operation of Clause 4.6.

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

As discussed below, it is unreasonable and unnecessary to require compliance with the overall height control as all key Clause 4.6 requirements are satisfied despite the non-compliance.

The proposed floor addition height exceeds the maximum permitted building height for the development by 2.0m. It is considered that the application, and in particular the proposed building height, should be supported as:

The subject site is zoned 'C4 Environmental Living' under Clause 2.1 of the PLEP2014.

The objectives of the zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposed development will maintain a low-density residential dwelling being compatible with the existing and future character of the locality. The proposed development has been designed to meet the day to day needs of the residents and is provided with appropriate services and facilities. Furthermore, the dwelling is designed to provide a high level of amenity for adjoining residents whilst considering the natural restraints of the site.

The proposal, including building height variation, is consistent with the objectives of the C4 Environmental Living zone in that the proposal will continue to provide low-impact residential development, that the proposal maintains overall landscaped area and vegetated character of the site, and that solar access continues to be available to the subject site and existing neighbouring developments.

Therefore, the proposal is considered to meet the objectives of the C4 Zone.

The objectives of Clause 4.3 are:

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

The objective of this control is understood to be a measure to ensure the dwelling does not have an unreasonable impact on adjoining properties or the streetscape by way of overshadowing, overlooking or visual bulk.

The 2.0m non-compliance is the direct result of the topography of the allotment, with a significant fall through the site it is difficult to site the proposed addition without a level of non-compliance to the height provisions. It is considered that some level of variation is anticipated on allotments such as the subject site where the allotment has a significant fall to the street and the need to site the proposed works over existing ground floor walls for structural integrity. Thus, providing a compliant proposal would render re-development of the existing dwelling unviable.

The proposed addition has been designed with consideration given to the existing topography on the site and the existing overall streetscape character. The proposed design incorporates a first floor addition and internal works to modernise the dwelling, increase its lifespan and enhance internal amenity.

The required variation only relates to the southern front portion of the proposed addition. The variation will not detrimentally impact on the amenity of the adjoining properties given the articulated design, adequate side and rear setbacks and building separation distances along with the orientation of the site which will allow for a reasonable level of solar access to living areas and private open space areas of the adjoining properties. The windows proposed to the upper floor bedrooms are not likely to provide opportunities for overlooking as they are appropriately designed, setback and offset. The shadows cast by the proposed development will not have an overall negative impact upon the adjoining properties, whilst there is still some overshadowing, the POS of the adjoining property will have a reasonable level of solar access throughout the day.

The front façade and material choices are anticipated to be in keeping with recent development throughout the area and will help to enhance the character of the street which contains dwelling streetscape appearances of one, two and three storey dwellings. The visual bulk of the proposed addition as viewed from the adjoining dwellings is not considered to be excessive as a result of the variation given the increased setback from front building line, appropriate roof form, articulation provided throughout the design as well as the existing landscaping to the front and sides of the proposal to further reduce the bulk of the development. As there is no perceived impact on the streetscape character of the area or the amenity of adjoining properties beyond that of a compliant proposal, the dwelling is considered to be able to meet the objectives of the height control despite the numerical non-compliance.

In the circumstances of this particular case, it is considered that strict compliance with the overall height requirements of Pittwater Local Environmental Plan 2014 is considered unreasonable and unnecessary as the alterations and additions to an existing dwelling has been designed to reduce the height as much as possible, whilst still providing a design which is in keeping with the existing dwelling and the residents' needs. The increase in height proposed for the residence is the direct result of the topography and is consistent with the development theme in the surrounding area. Despite the non-compliance the proposed development can still attain the objectives of the Environmental Planning and Assessment Act 1979, C4 Environmental Living and the subject development standard.

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

The requested variation relates to Clause 4.3(2) as shown below:

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

The subject site is identified to have a maximum building height of 8.5m. However it is also noted that Clause 4.3(2D) provides flexibility in the maximum height for land with a maximum building height when the slope of the land exceeds 16.7 degrees (or 30%) where the consent authority is satisfied that the portion of the building above the maximum height is minor.



In this instance the proposed development provides a maximum building height of 10.5m is proposed requiring a 2.0m variation to the 8.5m development standard however the subject site is noted to have steep topography which impacts the building height. The requested variation is restricted to the south-western corner of the proposed addition where there is a significant site fall. The area of the non-compliance relates to a small portion of the south-western corner of the dwelling, and will not detrimentally impact on the amenity of the adjoining properties and is in keeping with the established context of the streetscape.

The building height of the proposed development is large exacerbated by the existing excavation on the allotment which provides an artificial existing ground level for the calculation of building height, thus an overall building height of 10.5m. When applying the extrapolation method for determining building height this would result in a building height of 8.9m which is a lesser variation to the development standard.

The increase to the overall building height is considered to have minimal impact on the overall development in terms of bulk and scale appearance, due to the maximum building height positioned to the front of the dwelling and screened by suitable landscape planting forward of the building line. The proposed development is not considered to be excessive in size, having been designed to include extensive articulation, increased front setback from existing building line and the retainment of suitable existing landscaping that follows the topography of the allotment and softens the visual bulk of the development. The proposed development is in keeping with surrounding developments in an area where the overall height control appears to have been abandoned due to the topography of the allotments. Further the proposed development provides a suitably sized dwelling in keeping with developments of the surrounding area.

The proposed alterations and additions is considered to be a reasonable development for the site as three storey dwellings are considered to be a suitable use of the land. The variation directly relates to the topography of the land. Reducing the overall building height of the dwelling is not considered feasible as the reduction in height would detrimentally impact the amenity of the development through reducing ceilings heights that have been minimised as much as practical whilst considering the existing dwelling. Reducing the proposed building height would also result in a development that does not complement the existing dwelling structure and design.

Despite the variation the proposed continuation of low density residential land use is considered to be an orderly and economic use and development of the land in an established residential area where increased residential dwelling has set a theme for dwellings in this area of Palm Beach.

The variation will result in a maximum increase in height by 2.0m from the permitted overall height. The development will not be visually excessive in size due to maintaining appropriate setbacks, stepping of the front façade, as well as suitable existing landscaping to screen the development from the streetscape and neighbouring properties. The proposed development provides a suitably sized addition to an existing dwelling in keeping with adjacent developments on Barrenjoey Road and in the surrounding area.

Whilst being numerically non-compliant with the height of buildings control the proposed development is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy. In fact, the proposed development will result in an improved amenity and streetscape appearance as a result of the urban renewal development and by ensuring that the bulk and scale of the development is consistent with surrounding developments.

The objects of the Environmental Planning and Assessment Act 1979 are understood to be as follows:

### 1.3 Objects of Act

*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 most relevant objects to this development are objects 1.3(c), 1.3(g) and 1.3(h) as outlined above.

The proposed development relates to alterations and additions to an existing dwelling within a residential setting. Allowing alterations and additions to an existing dwelling, despite the numerical non-compliance with the height of buildings provisions, ensures that the dwelling can be retained on the site whilst providing improved internal amenity and an improvement to the life span of the built form. Further, allowing the increase in building height ensures that the existing dwelling is enhanced which is considered to promote orderly and economic use and development of the land.

Allowing the updating of existing dwellings through alterations and additions within residential area ensures that a range of dwelling and development types are available for residential occupation. The design of the proposed development is for the alteration and addition to an existing built form which promotes good design through improved functionality of the floor plan. Further the proposed alterations and additions provide increased areas within the design ensuring that the amenity of the development is enhanced as a result of the development.

The design of the proposed development has given consideration to the streetscape locality, surrounding development along with the orientation of the allotment during the design process. The development appropriately addresses the street frontage and provides visual bulk in keeping with recent development throughout the Palm Beach area. Consideration of these key aspects promotes good design through a high quality architectural development. Further the proposed alterations and additions has been designed to provide high level of amenity to the development and future occupants of the dwellings.

Whilst "environmental planning grounds" are not separately defined within the EP&A Act 1979 the proposed development is considered to provide orderly and economic use and development of the land through retention of an existing dwelling. Further the proposal meets good design principals and enhanced amenity of the dwelling through additional bedroom and living spaces without detrimentally impacting the surrounding development by way of visual bulk, privacy, amenity and solar access.

- (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.*

The proposal is able to satisfy 3(a) and 3(b) as discussed above, therefore the proposed development is considered to being the public interest. Further the proposed alterations and additions are orderly and economic use and development of the land whilst providing good design and amenity for the occupants of the development.

- (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.*

There is considered to be no public benefit in refusing the application (for the reasons stated above) so as to ensure that full compliance with the maximum height of buildings control is achieved. The contravention of the standard does not raise any matters of state or regional significance nor would it be detrimental to the site or surrounding area.

Accordingly, Council's agreement is sought to the proposed variation in maximum overall building height for the site.

**ITEM 3.2**

**MOD2022/0275 - 1 DREW PLACE BELROSE - MODIFICATION OF DEVELOPMENT CONSENT DA2020/1072 GRANTED FOR CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT, INCLUDING DEMOLITION WORKS, NEW ACCESS DRIVEWAY AND FRONT FENCE**

**REPORTING MANAGER** Steve Findlay  
**TRIM FILE REF** 2022/590591  
**ATTACHMENTS**  
1 [↓](#) Assessment Report  
2 [↓](#) Plans and Elevations

**PURPOSE**

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

---

**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

- A. THAT Council as the consent authority **approves** Development Consent to MOD2022/0275 for Modification of Development Consent DA2020/1072 granted for Construction of a Seniors Housing development, including demolition works, new access driveway and front fence on land at Lot 1 & Lot 2 DP 228962, 1 Drew Place BELROSE, subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0275
<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 1 DP 228962, 1 Drew Place BELROSE NSW 2085 Lot 2 DP 228962, 1 Drew Place BELROSE NSW 2085
<b>Proposed Development:</b>	Modification of Development Consent DA2020/1072 granted for Construction of a Seniors Housing development, including demolition works, new access driveway and front fence
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes, under Pursuant to SEPP (HSDP)
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Newpro 19 Pty Ltd
<b>Applicant:</b>	Newquest Property
<b>Application Lodged:</b>	03/06/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	13/06/2022 to 27/06/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks consent for a modification of development consent, DA2020/1072, which approved the demolition of all structures and construction of six (6) x two (2) bedroom/two storey infill self-care housing units and at grade parking for 6 vehicles pursuant to the provisions of SEPP (Housing for Seniors or People with a Disability (HSPD)). The subject modification proposes changes to the roof design and deletion of condition 12 (a)(Amendment to the approved plans) which relates to planter boxes and trellis (screens) to the north facing balconies of Units 5 and 6.

The wording of Condition 12(a) was modified by the DDP under DA2020/1072 having regards to

the Design and Sustainability Advisory Panel (DSAP) recommendations in respect of the needs to provide planters along northern side of Unit 6 terrace in addition to screens to improve the amenity and privacy to 9 Evelyn Place. The condition, as amended by the DDP, requires a planter box to be provided along the northern balustrade of the balconies to Units 5 and 6, with climbers to be planted into the planter boxes with 400mm high trellis above the balustrade.

The application is referred back to the Development Determination Panel (DDP) due to the proposed deletion of a condition of development consent recommended in the council assessment report but which was amended by the panel.

Two unique submissions have been received which raise issues with regards to the deletion of Condition 12(a) and resulting privacy issues. In addition, concern has been raised in regards to the visual impacts on the character of the area as a result of the changes to the roof.

In order to address the privacy concerns, Council's Urban Designer recommended an amendment to condition 12 (a) requiring a 1.7m high vertical louvre elliptical blade fin privacy screen for a minimum length of 4.0m along the northern boundary to the balcony to Unit 5 and a 1.7m high screen to extend along the entire length of the north side of the balcony to Unit 6.

The applicant in response to the amendment to Condition 12(a) argues that a screen along the entire length of the balcony to Unit 6 is excessive and would impact on the amenity of future occupants of Unit 6. The applicant has provided details of an alternative design which proposed a 3.1m long screen to the northern edge of the balcony of Unit 6. The applicants justification for a 1.7m high screen extending the entire length of the balcony to Unit 6 is concurred with, however, the reduced length of 3.1m is insufficient to protect the amenity of neighbouring property. It is therefore recommended that the screen extend the length of the balcony to a height of 400mm in height above the balustrade with a planter bed provided in the western corner to allow for planting to soften the visual impact.

The external changes to the roof will not result in any unreasonable visual impact on the character of the locality subject to a condition requiring the lift overrun to be finished in the same material and colour as the roof is also recommended requiring to appear recessive.

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

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for a modification of Development Consent No. DA2020/1072, which approved a two storey, six unit Seniors Housing Development. In detail, the modifications include:

### Changes to the Roof Design:

- Western pavilion metal roof pitch increased from 5 degrees to 14 degrees.
- Roof pitch to unit 3 increased from 12 degrees to 20 degrees.
- The provision of a gable roof over unit 6.
- The extension of the lift overrun through the breezeway roof.
- The addition of roof sheeting to the first floor pergolas and Pringle Ave first floor unit 5 bedroom balcony.

**\*Note:** there is no change to the overall ridge height and the changes to the approved roof form and pitch to enhance buildability and to ensure appropriate stormwater drainage and roof form integration with the lift overrun also extended through the breezeway roof to meet manufacturer specifications.

### Deletion of Condition 12(a) (Amendments to approved Plans)

Condition 12(a) reads:

*a) A planter box with an internal dimension of 600mm x 400mm is to be provided located adjacent to northern balustrade of the balconies for Units 5 and 6. Climbers to be planted into the planter boxes with wires or trellis provided 400mm above the top of the balustrade to encourage the climber to provide visual softening and enhanced privacy to adjoining properties.*

The applicant states that appropriate levels of privacy and built form screening are afforded through a combination of spatial separation and the implementation of the approved site landscape regime.

In addition, the applicant argues that compliance with Condition 12(a) is not only unreasonable and unnecessary, but also potentially dangerous in the creation of a climbable structure immediately adjacent to the required balustrading and the works required by Condition 12(a) will not comply with the BCA in relation to the installation and performance of the required balustrading.

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D8 Privacy

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 228962 , 1 Drew Place BELROSE NSW 2085 Lot 2 DP 228962 , 1 Drew Place BELROSE NSW 2085
<b>Detailed Site Description:</b>	The development site, which comprises Lot 1 and 2 No 1 Drew Place, is located at the intersection of Pringle Avenue



(primary frontage) and Drew Place (secondary frontage) and has a consolidated site area of 1395.2sqm.

The site is regular in shape with a frontage of 36.8m along Drew Place, 29.3m along Pringle Avenue and a depth of between 29.3m and 36.4m

The site is located within the R2 zone from WLEP 2011 and construction work has commenced for the redevelopment of the site for Seniors Housing. Prior to this the site accommodated a single storey detached dwelling with vehicular access to both street a double garage is located to the Pringle Avenue frontage and a carport to Drew Place.

#### Detailed Description of Adjoining/Surrounding Development

Surrounding development consists primarily of one and two storey detached dwellings with the exception of a two storey Senior's Housing development which has been constructed to the south on the opposite side of Drew Place at No. 36 Pringle Avenue and Frenchs Forest Showground / Oval located to the west on the opposite side of Pringle Avenue.

Map:



#### SITE HISTORY

On 26 March 2020, a pre-lodgement Meeting (PLM), **PLM2020/0055** was held in relation to the development of this site for seniors housing. The proposal sought to demolish the existing structures and construct a two storey building containing six (6) x three (3) bedroom units with six (6) at grade garages with access via Drew Place.

On 2 September 2020, **DA2020/1072** was received for a Seniors Housing development. The proposal



included the demolition of all structures and construction of a six (6) x two (2) bedroom two storey infill self care housing units and at grade parking for 6 vehicles pursuant to the provisions of SEEP (Housing for Seniors or People with a Disability (HSPD)),

On 25 February 2021, the application was presented to the Design and Sustainability Advisory Panel (DSAP) who made a number of recommendations including:

*Recommendation 1*

*1. Ensure privacy for adjoining properties from Unit 6. The Panel notes the privacy screen shown on the north elevation, but suggests that a small pergola over the balcony with a planter and climbers in addition to the screen shown could improve the amenity and privacy further. The panel notes that this may intrude into the 25% single storey zone but consider this to have no adverse impacts, and significant benefits.*

*Recommendation 4*

*4. Consider incorporation of planters along northern side of Unit 6 terrace to improve amenity and privacy to 9 Evelyn Place.*

On 10 March 2021, the application was presented to the DDP with a recommendation of approval. The DDP supported the recommendation, subject to a modification of Condition 12(a) to read:

*(a) A planter box with an internal dimension of 600mm x 400mm is to be provided located adjacent to northern balustrade of the balconies for Units 5 and 6. Climbers to be planted into the planter boxes with wires or trellis provided 400mm above the top of the balustrade to encourage the climber to provide visual softening and enhanced privacy to adjoining properties.*

On 19 May 2022, the subject application, **MOD2022/0275**, was received for modifications to consent No. DA2020/1072.

On 10 August 2022, the applicant submitted a response to the urban design referral including a supplementary Statement of Environmental Effects (SEE) and updated plans including details of the following changes:

- The detailing of the balustrade to Unit 9 has being a change along the upper floor walkway on the inside of the courtyard to include a 760mm high concrete upstand with this amended balustrade detail also adopted for the balustrade located along the northern edge of the Unit 5 balcony.
- A reduction in the size of windows W60 and W61 from 880 x 690 to 730 x 730 to unit 9 and a change from sliding to awning windows.

In response to issues raised in relation to the deletion of Condition 12(a), requiring a planter bed and screening via climbers to the balconies of Unit 5 and 6, the applicant presents the following justification:

*Privacy is afforded through a combination of spatial separation and the implementation of the approved site landscape regime.*

The applicant submitted privacy sight lines and 3D view diagrams from the balconies associated with Units 5 and 6.

The additional information was referred back to Council's Urban Designer who stated that they had no objections subject to conditions, including the need to install a 1.7m high angled privacy screen along

the entire length of northern edge of the balcony to Unit 6.

On 26 August 2022, the applicant submitted an additional response to the proposed urban design condition requiring a 1.7m high angled privacy screen along the entire northern edge of the balcony to Unit 6.

On 29 August 2022, amended plans showing details of the alternative design of the privacy screen to the balconies of Units 5 and 6. The alternative design included a reduced 3.1m long screen located along the northern edge of the balcony to Unit 6 from the eastern corner.

In accordance with the Community Participation Plan (CPP), the amended plans were not re-notified as they will result in a reduction of environmental impacts compared to the original proposal to delete of Condition 12 (a) requiring planter beds and a 400mm high trellis with climbers to the northern edge of the balconies to Units 6 and 7.

#### 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 DA202/1072, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposal seeks consent for changes to the roof pitch and the addition of roof sheeting over some balconies to provide for weather protection. There is no change to the approved height, footprint (setbacks), bulk, scale and massing or landscaping. There will be</p>

Section 4.55(1A) - Other Modifications	Comments
	<p>no new environmental impacts as a result of the proposal on the character of the locality.</p> <p>The applicant also seeks consent for the deletion of condition 12 (a) which relates to a planter and climbers to the first floor rear facing balcony of unit 5 and 6. Subject to a privacy louvre being installed to the balconies in lieu of the planter and climber there will be no unreasonable impacts on neighbouring residential amenity in terms of overlooking / privacy.</p>
(b) 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	<p>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 DA2020/1072 for the following reasons:</p> <p>As discussed above, there is no change to the approved height, footprint (setbacks), bulk, scale and massing or landscaping. The modification is substantially the same as the approved development and the changes to the roof and the privacy treatment to balconies to unit 5 and 6 will not result in any unreasonable visual or amenity impacts.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>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.</p>
(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.	<p>See discussion on "Notification &amp; Submissions Received" in this report.</p>

#### Section 4.15 Assessment

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

the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted with the original application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed</p>

Section 4.15 'Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.  (ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.  (iii) <b>Economic Impact</b> 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, subject to conditions.
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, subject to conditions.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/06/2022 to 27/06/2022 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 3 submission/s from:

Name:	Address:
Mrs Anna Elisabeth Dobson	9 Evelyn Place BELROSE NSW 2085
Glenn Robert Hinson	40 Pringle Avenue BELROSE NSW 2085
Mr Craig Stephen Dobson	9 Evelyn Place BELROSE NSW 2085

The following issues were raised in the submissions:

- **Privacy**

- **Change to the roof**

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns in relation to the deletion of condition requiring a planter bed and trellis to the upper floor balconies to protect neighbouring privacy. The applicants justification is not supported and other privacy screen options are available. The proposal will have unreasonable impacts on neighbouring amenity compared to the approved scheme. The removal of the privacy treatment will allow a direct line from the living room and balcony of Unit 6 into the a child's bedroom and down to the habitable rooms and areas of private open space (pool and deck) to the neighbouring property. The removal of existing vegetation from the property boundary will also add to the privacy concerns.

Comment:

The issues raised in regards to potential privacy impacts are valid. In order to address these issue, it is recommended the fixed angled louvres be installed along the edge of the upper level balconies in-lieu of the planters and trellis. See the detailed discussion under the referral section of this report in addition to Clause D8 privacy.

- **Changes to the roof**

The submissions raised concerns that the design changes will alter the look and finished roof line resulting a building being out of character with the surrounding area.

Comment:

The changes to the roof will not result in unreasonable visual impacts to the overall development, but will have the benefit of adding weather protection. There is no increase in the overall height of the approved development and the subject to a condition requiring the exterior of the lift over-run to be finished in the same material and colour as the roof it passes through there will be no unreasonable visual impact to the character if the surrounding area.


## REFERRALS

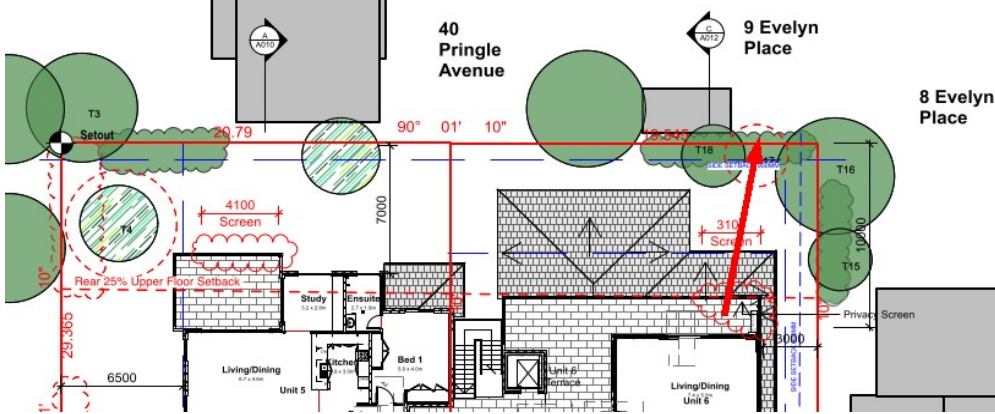

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certificate Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Iss however may be determined at Construction Certificate stage.</p>

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	<p>This advice is provided as an internal referral from the Urban Design Unit to the developer for consideration and coordination with the overall assessment.</p> <p>The application (Mod 2022/0275) seeks consent for modifications to the approved development (DA2020/1072) for the demolition of the existing structures and the construction of a senior the consolidated lot.</p> <p>The applicant has provided updated and additional drawings noting several modifications in response to the Urban Design's previous comments.</p> <p>Urban Design raise no objection to the proposed development subject to conditions, including:</p> <ol style="list-style-type: none"> <li>1. Vertical louvre elliptical blade fin privacy screens are to be included in the following locations:             <ol style="list-style-type: none"> <li>a. Inside the balustrade to the north side of the balcony of Unit 5 and extend from floor level to the underside of the pergola beam, for a minimum 4m from the eastern side/wall of the balcony.</li> <li>banks of louvres: a lower bank from floor to handrail level and an upper bank from handrail level to the pergola beam level. The louvres in the lower bank should be able to move independently of the upper bank vice-versa.</li> <li>b. Outside the handrail to the north side of the balcony of Unit 6 and extend from the top of the handrail to a minimum 1.7m from finished first floor level.</li> </ol> </li> </ol> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing, these will be dealt with under the evaluation by Councils Planning Officer. Any impacts of non-compliance with the DA will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape impacts will be dealt with under the evaluation of Councils Landscape Officers.</p> <p><b><u>Assessment Officers (Planners) Response:</u></b></p> <p>The applicant has reviewed the draft condition relating to the screens and notes the following:</p> <p><i>The original DA condition only called up for trellis wire 400mm above the 1.0m balcony. The requirement for the installation of full height louvre screens to Unit 5, and for Unit 6, louvre screens 700mm high, is considered unreasonable for the following reasons:</i></p> <ul style="list-style-type: none"> <li>• The original condition was problematic (1) Firstly, the balcony width for Unit 6 is very narrow and asks for a 600x400 planter box, so we assume that is 400mm wide. This would render the balcony off the living room for Unit 6 quite useless for putting a small table or chair on it. (2) Secondly, trellis wires even stainless steel stain and could look poor long term. (3) Fourthly, trellis wires could pose a climbing hazard for occasional grandkid visits, having a planter box 600mm high poses a climbing hazard and could then keep climbing up the trellis and topple over.</li> <li>• There is large existing trees along the northern boundary that provided for privacy.</li> <li>• The units will be occupied by elderly occupants and it is highly unlikely that they will</li> </ul>

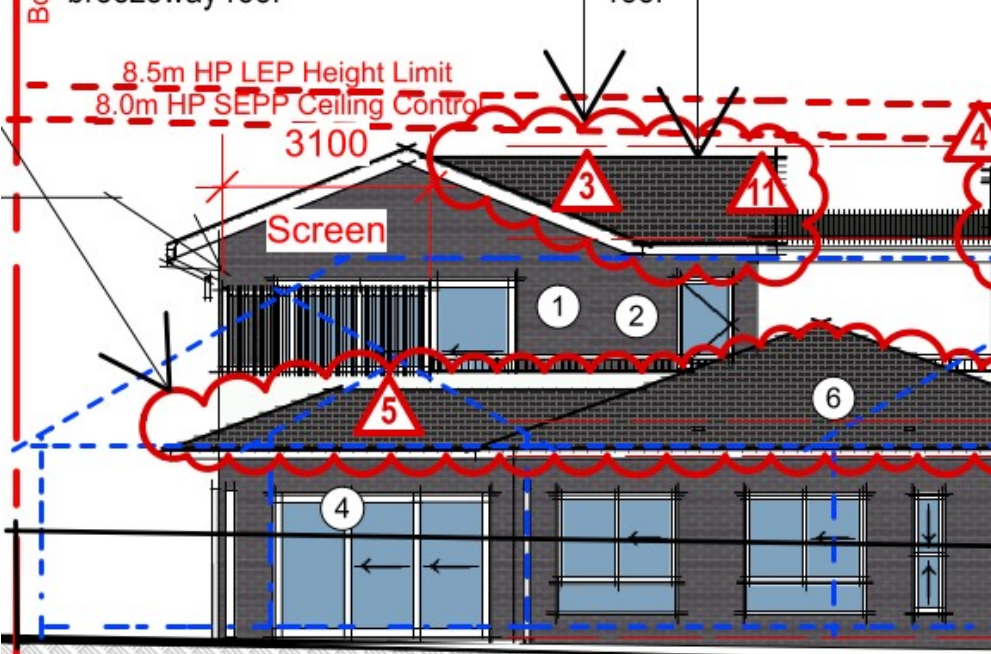

Internal Referral Body	Comments
	<p><i>neighbours in terms of acoustic and visual privacy impacts.</i></p> <ul style="list-style-type: none"> <li>• <i>Louvres along the entire edge of the Unit 6 balcony up to 1.7m would make the am</i></li> <li>• <i>The screens add a significantly greater expense.</i></li> </ul> <p>The applicant has provided the following alternative design for the screens:</p> <p><u>Unit 5</u></p> <ul style="list-style-type: none"> <li>• Screen is full height to underside of pergola</li> <li>• Screen 4.0m in length inside of pergola structure</li> <li>• Length maintains open corner to street</li> <li>• Screen mid-rail at balustrade height to allow upper and lower blades to move indep</li> <li>• Pergola extended 1.4m to face of balcony to support screen</li> <li>• Pergola will match southern end</li> <li>• Planter box deleted wall reduced to hob height of DA approval</li> </ul> <p><u>Unit 6</u></p> <ul style="list-style-type: none"> <li>• Screen 1.7m off Internal Finished Floor</li> <li>• Screen 3.1m length from East corner and will return to wall</li> <li>• This length allows some sky view internally without impacting privacy</li> <li>• Planter box deleted internally</li> </ul> <p>The applicant has submitted additional drawings to show the proposed screens.</p> <p><u>Comment:</u></p> <p>There is no issue with the proposed screening to the balcony to Unit 5.</p> <p>The balcony to Unit 6 measures 49sqm and is located 8.4m from the northern boundary to No. 40 Pringle Avenue.</p>



Internal Referral Body	Comments
	 <p><b><i>Aerial view of subject site (and development under construction) in context to neighbors</i></b></p> <p><b><u>No. 9 Evelyn Place</u></b></p> <p>The critical area to ensure the protect privacy to No. 6 Evelyn Place from the approved building (see photos below). The balcony to Unit 6 narrows to 1.9m in width along the eastern end; the requirement for a 600mm x 400mm planter box, as required under the current condition of the balcony along this section of the space.</p> <p>It is also appreciated that the condition suggested by Council's Urban Designer, for a full height screen along the entire length of the balcony, will result in an unsatisfactory amenity to Unit 6, as it will enclose the balcony. Applicants suggestion that a reduction in the length of the screen to 3.1m from the eastern end of length to ensure that privacy between Unit 6 and No. 9 Evelyn Place is fully protected in the intent of the DSAP recommendations and Condition 12 (a) as modified by the DDP in the condition of the DSAP.</p> <p>It is therefore recommend that the condition be modified to remove the requirement for the eastern section and require a fixed angled privacy screen 400mm above the top of the balcony to ensure privacy to 9 Evelyn Place is protected.</p>

Internal Referral Body	Comments
	 <p><b>First floor plan showing the balcony to unit 6 in relation to the northern boundary.</b></p>  <p><b>Subject site looking north towards No. 9 Evelyn Place</b></p>



Internal Referral Body	Comments
	 <p>Northern elevation showing the location of the 3.1m long screen along the edge of the</p>  <p>Rear garden of No. 9 Evelyn Place showing the detached studio in the corner of the</p> <p><b><u>No 40 Pringle Avenue</u></b></p> <p>There is minimal existing landscape screening along the northern boundary of the subject :</p>

Internal Referral Body	Comments
	<p>Avenue and the applicant relies of existing planting to provide for privacy that is located in at No. 40 Pringle Avenue. Despite this, it is noted that the approved landscape plan include gum to the west of the unit 6 which over time will provide for some protection of privacy. As from the proposed balcony to unit 6 will result in unreasonable privacy impacts to No. 40 P elevated balcony will look down on the private open space / the rear garden if the western treated with some form of privacy treatment.</p>  <p><b><i>Subject site looking north-west towards No. 40 Pringle Avenue</i></b></p> <p>The balcony extends to 2.8m in width to the north of the lift and there is sufficient space for bed which will provide for landscaping to soften the visual impact of the development in accordance with the recommendations of DSAP and the DDP in the original DA. It is therefore recommended that the DA be amended to require a planter bed to be provided at the western end of the balcony in addition to a screen above the balustrade installed along the entire length of the balcony to ensure privacy.</p> <p>In summary, the modified condition will still ensure that there will be no unreasonable impact on privacy as was the intent of the original condition which was a recommendation by DSAP.</p>

**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**

The original DA was supported with a BASIX certificate (Certificate No. 1120493M dated 24 July 2020).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	45	45

The condition requiring compliance with the BASIX report remains relevant.

#### **SEPP (Housing for Seniors or People with a Disability) 2004**

The original development application was lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in fill self care housing.

#### **State Environmental Planning Policy (Housing ) 2021.**

The subject modification requires assessment under State Environmental Planning Policy (Housing ) 2021.

The proposal relates to a change to the privacy screen to the rear balcony of Unit 6, additional weather protection to the upper level balconies and a minor change to the roof. There is no change to the siting of the development (setbacks, LOS provision) or the approved height, bulk and scale of the development. The quality of the design will not be compromised and there will be no visual impact on the character of the area. Subject to a modification of Condition 12(a) requiring a louvred screen to the rear elevated balcony of Unit 6 to replace the planter and climber there will be no unreasonable impacts on the amenity of neighbouring residential properties in terms of overlooking/privacy.

Subject to conditions, the minor modifications do not have any implications in terms of the ability of the development to meet the provisions of SEPP (Housing) 2021.

## SEPP (Transport and Infrastructure) 2021

### Ausgrid

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

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

### Comment:

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

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

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

## Warringah Local Environmental Plan 2011

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

### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.0m	8.0m	N/A	No change

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### Warringah Development Control Plan

##### Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall Height	7.2m	5.3m	5.3m	Yes
B2 Number of Storeys	2 / 3 / N/A	1/2	N/A	Yes
B3 Side Boundary Envelope	4.0m	4.0m	4.0m	Yes
	4.0m	4.0m	4.0m	Yes
B5 Side Boundary Setbacks	0.9m	Eastern Min 1.2m	Eastern Min 1.2m	Yes
	0.9m	Northern Min 2.5m	Northern Min 2.5m	Yes
B7 Front Boundary Setbacks	6.5m	Primary (Pringle Ave) 6.5m to external wall	Primary (Pringle Ave) 6.5m	Primary (Pringle Ave) Yes
B9 Rear Boundary Setbacks	6.0m	Corner allotment N/A	Corner allotment N/A	Corner allotment N/A
D1 Landscaped Open Space and Bushland Setting	40%	35.4%	35.4% No change	<b>No</b> Assessed as acceptable as it complies with the 30% open space requirement in SEPP (Housing) 2021

**Note:** There is no change to the approved height, setbacks or LOS.

#### 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



Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front 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	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

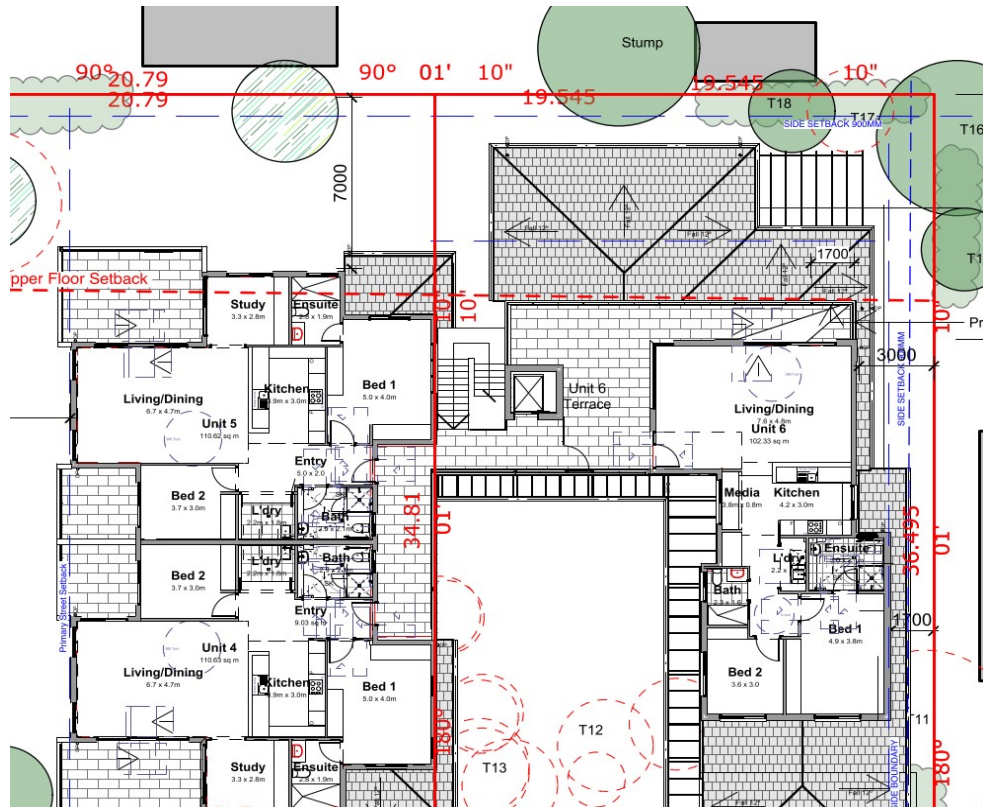
#### **D8 Privacy**

#### Merit Consideration

The proposal seeks to delete Condition No.12(a), which required privacy treatment to Unit 6 as per the recommendation of DSAP.

The elevated balcony to Unit 6 measures 49sqm and is positioned 8.4m from the northern boundary and 3.0m to the eastern boundary, refer to first floor plan below.





**Approved first floor plan showing Units 5 and 6**

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

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

Comment:

Valid concerns have been raised in submissions from neighbours regarding privacy impacts associated with the deletion of the condition requiring a privacy treatment along the edge of the elevated balcony. For greater detail, please refer to the submissions section.

In order to ensure that the design continues to provide a high level of visual and acoustic privacy for the occupants and neighbours, in accordance with the recommendation by DSAP, it is recommended that the condition be amended to require a 400mm high privacy screens along the northern edge of the upper floor balcony of Unit 6 and a 4.0m long full height screen to the balcony to Unit 5 (Refer to detailed discussion in the Referral section of this report).

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

Comment:

The vertical blade fin privacy screens are an innovative design solution which will improve the urban environment protecting privacy which ensuring BCA compliance.

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

Comment:

Subject to conditions, the proposal will continue to provide personal and property security for occupants and visitors.

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 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

## PLANNING CONCLUSION

This proposal is for a modification to Development Consent No. DA2020/1072, granted for a Seniors Housing Development (6 units).

The subject modification proposes changes to the roof design and deletion of Condition No. 12 (a) (Amendment to the Approved plans) which relates to planter boxes and trellis (screens) to the north facing balconies of Units 5 and 6.

The application is referred back to the Development Determination Panel (DDP), as the proposal involves the deletion of a condition (Condition 12 (a) which was considered by the Panel and subsequently amended by the Panel.

Two (2) submissions have been received which raise concerns in relation to privacy impact as a result of the deletion of the screens to the balcony and visual impacts as a result of the design changes to the roof. The deletion of Condition 12(a) and the applicants alternative solution for a 3.1m screen to the eastern end of the balcony to Unit 6 are not supported.

It is recommended that Condition 12 (a) be modified to require a 400mm fixed angled privacy screen to the balcony of Unit 6, in lieu of the trellis, with a planter bed to be located within the western end of the balcony. The proposed full height screen of 4.0m in length on the balcony to Unit 5 is supported.

The external changes to the roof will not result in any unreasonable visual impact on the character of the locality subject to a condition requiring the lift overrun to be finished in the same material and colour as the roof is also recommended requiring to appear recessive.

Subject to the amended conditions, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal is recommended for **approval**, subject to the changes to the conditions as described. 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. Mod2022/0275 for Modification of Development Consent DA2020/1072 granted for Construction of a Seniors Housing development, including demolition works, new access driveway and front fence on land at Lot 1 DP 228962,1 Drew Place, BELROSE, Lot 2 DP 228962,1 Drew Place, BELROSE, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>	
<b>Drawing No.</b>	<b>Dated</b>
DA00 Rev B Cover Sheet	08.03.2022
DA02 Rev H Roof Plan	29.08.2022
DA04 Rev G First Floor Plan	29.08.2022
DA 05 Rev C Section 01	08.03.2022
DA06 Rev C Section 02	08.03.2022
DA07 Rev C Section 03	08.03.2022
DA08 Rev C Elevation 01	08.03.2022
DA09 Rev F Elevation 02	29.08.2022
DA10 Rev D Elevation 03	31.03.2022

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

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

**B. Modify Condition 12 Amendment to the approved plans to read as follows:**

**(a) Vertical louvre privacy screens**

(i) **Unit 5** - Vertical louvre fin privacy screens are to be included inside the balustrade to the north side of the balcony of Unit 5 and extend from floor level to at minimum the underside of the pergola beam, for a minimum 4.0m in length from the eastern side/wall of the balcony.

(ii) **Unit 6** - A planter box with an internal dimension of 600mm x 400mm is to be provided adjacent to northern balustrade of the balconies for Units 6 within the western side / wall of the balcony. Vertical louvre fin privacy screens are to be included outside the handrail to the north side of the balcony of Unit 6 and extend from the top of the balustrade wall to a minimum 400mm above the top of the balustrade.

The finish of the louvres should consider sunlight reflectivity and seek to minimise impact on surrounding properties.

**(b) Study not to be used as a bedroom**

The study shall remain open to the living room, no doors are permitted to enclose the space which cannot be used as a bedroom.

**(c) Landscape Plan**

The Landscape Plan is to be amended to include landscaping plantings along the eastern boundary with mixture of species and heights to soften the visual impact of the two storey elevation

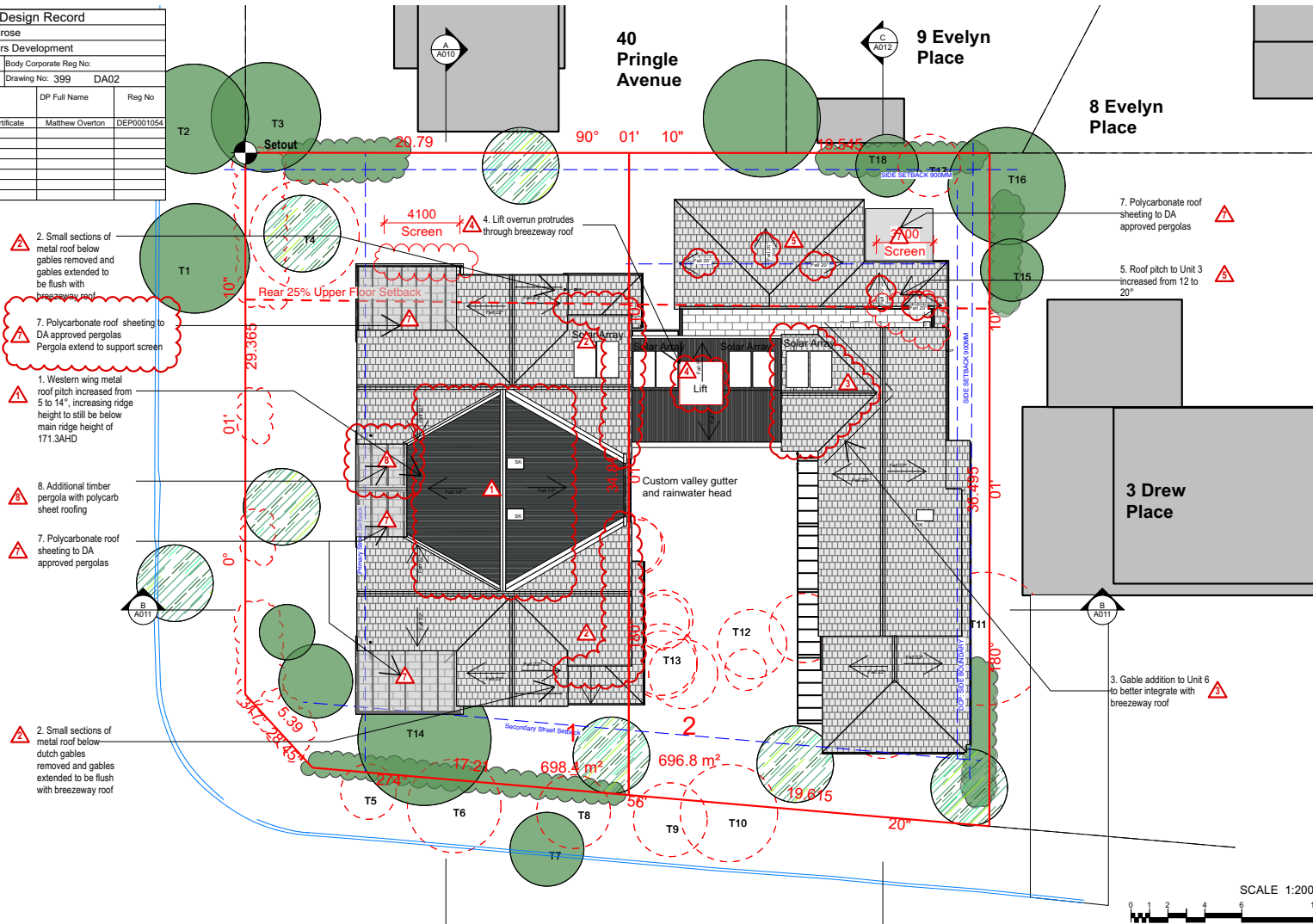
**(d) Lift Overrun**

The exterior of the lift over-run is to be finished in the same material & colour as the roof it passes through and is to appear a recessive roof element

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

Reason: To achieve development outcomes with high standard, quality urban design that responds to the existing or desired future character of areas and to maintain and improve the amenity of public and private land.

Regulated Design Record				
Project Address: 1 Drew Place, Belrose				
Project Title: Newquest - Seniors Development				
Consent No:		Body Corporate Reg No:		
Drawing Title: Roof Plan		Drawing No: 399 DA02		
Rev	Date	Description	DP Full Name	Reg No
1	19/4/22	For Construction Certificate	Matthew Overton	DEP0001054



DrewPlace CC Plans v022 CP/wep

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www.turnerhughes.com.au  
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t.h.a@turnerhughes.com.au  
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ISS	DESCRIPTION	BY	DATE
E	Unit 5 reduced pergola	TB	13/21
F	Section 4.5.5	RP	8/3/22
G	S4.55 - Revised for Hydraulic Co-ordination	MO	31/3/22
H	Revise Screens as per Council discussions		29/8/20
			22

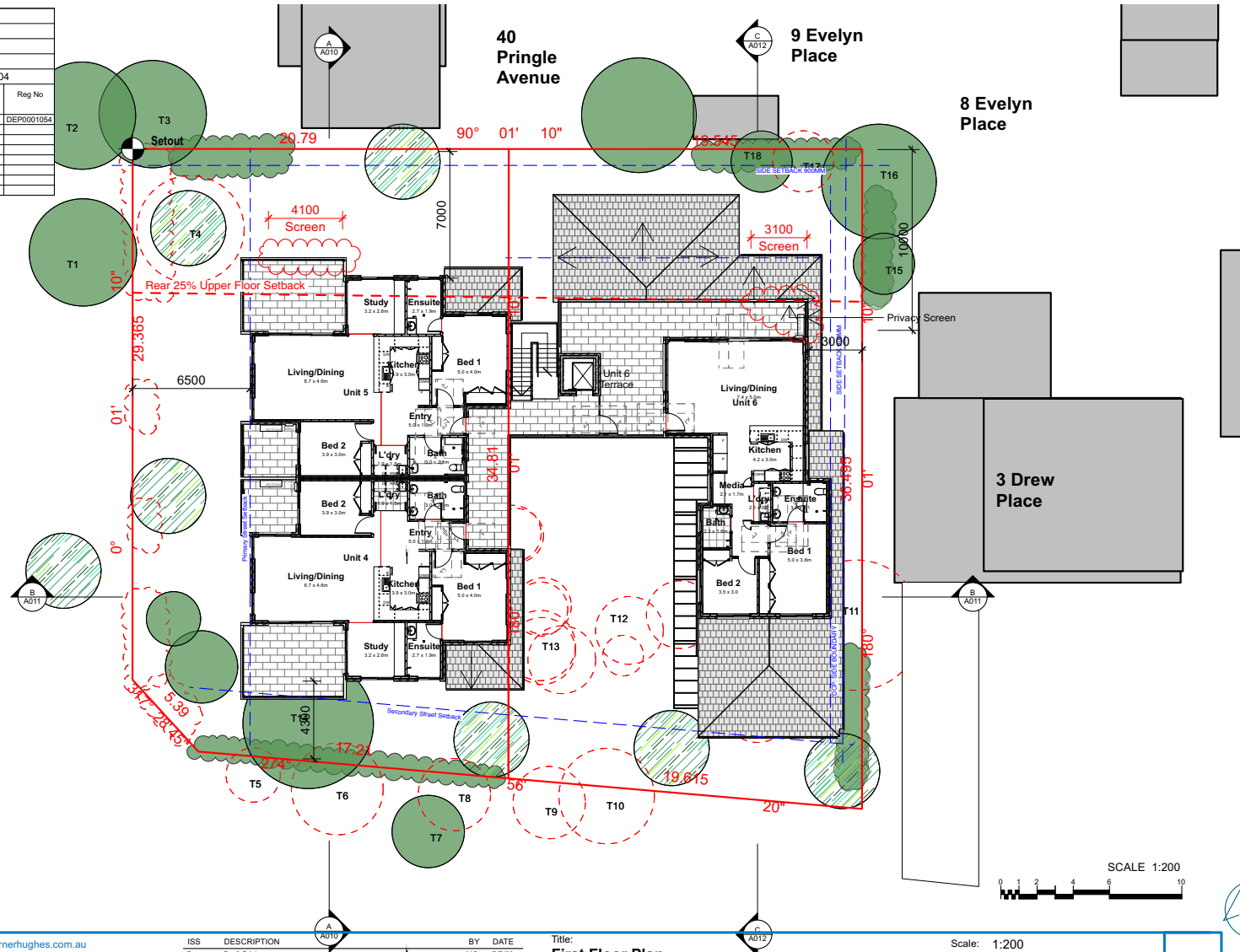
Title: **Roof Plan**  
Project: **Newquest - Seniors Development**  
1 Drew Place, Belrose

Scale: 1:200  
Date: 23/7/20  
Drawn: MO  
Drawing Number: 399 DA02

Rev: H



Regulated Design Record				
Project Address: 1 Drew Place, Belrose				
Project Title: Newquest - Seniors Development				
Consent No:		Body Corporate Reg No:		
Drawing Title: First Floor Plan		Drawing No: 399 DA04		
Rev	Date	Description	DP Full Name	Reg No
1	19/4/22	For Construction Certificate	Matthew Overton	DEP0001054



DrawPlace CC Plans v022 CP/wep

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ISS	DESCRIPTION	BY	DATE
D	Draft DA Issue	MC	7/7/20
E	Draft DA Issue	MO	9/7/20
F	DA Issue	MO	23/7/20
G	Revise Screens as per Council discussions	MO	29/8/20

Title:  
**First Floor Plan**

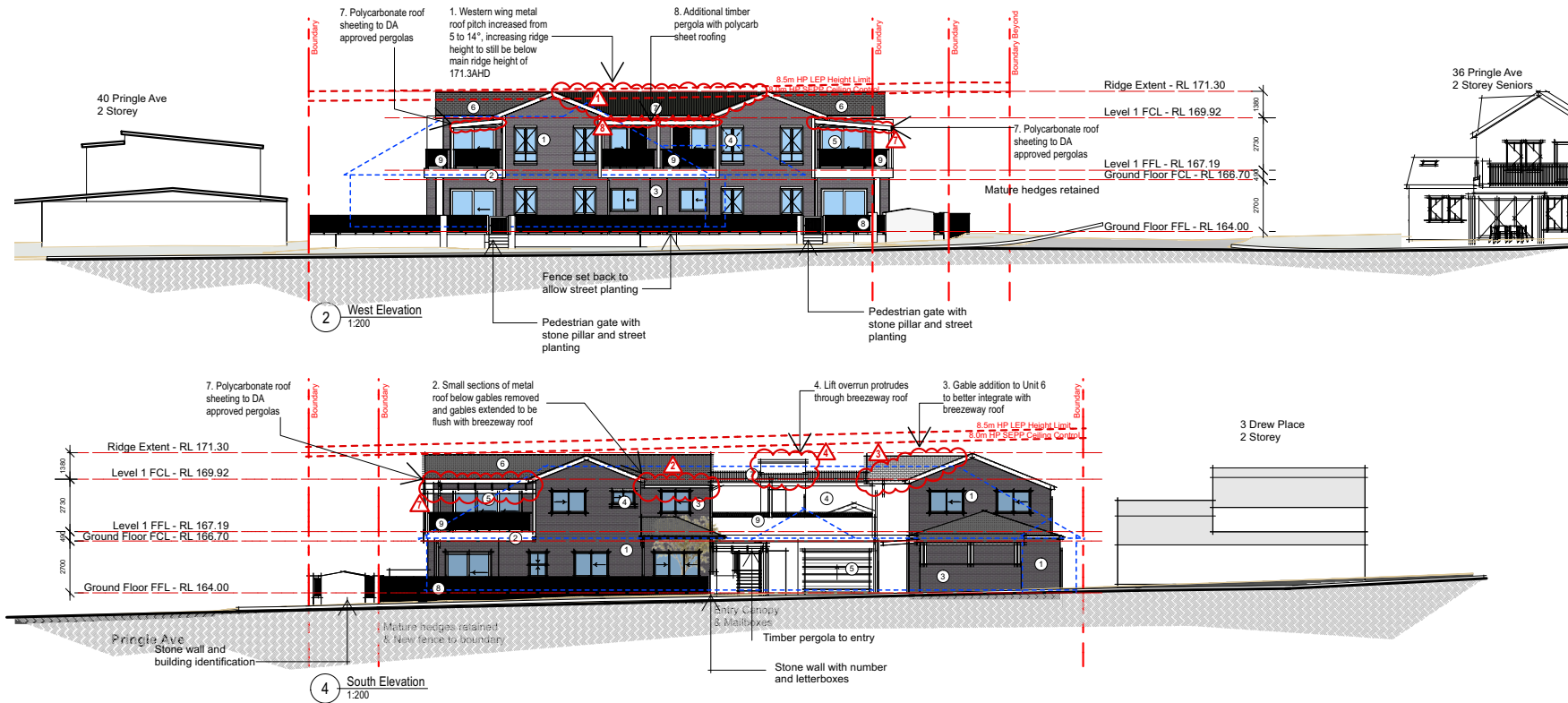
Project:  
**Newquest - Seniors Development**  
1 Drew Place, Belrose

Scale: 1:200  
Date: 23/7/20

Drawn:  
Drawing Number: **399 DA04**  
Rev: **G**

Regulated:  
**1**





**MATERIALS LEGEND**



SCALE 1:200

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ABN: 93 053 938 579  
Nom. Architect - Rick Turner NSW 4318  
DrewPlace CC Elevations S4.55 v2022.vwx  
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The contractor is to verify all dimensions from the actual works.

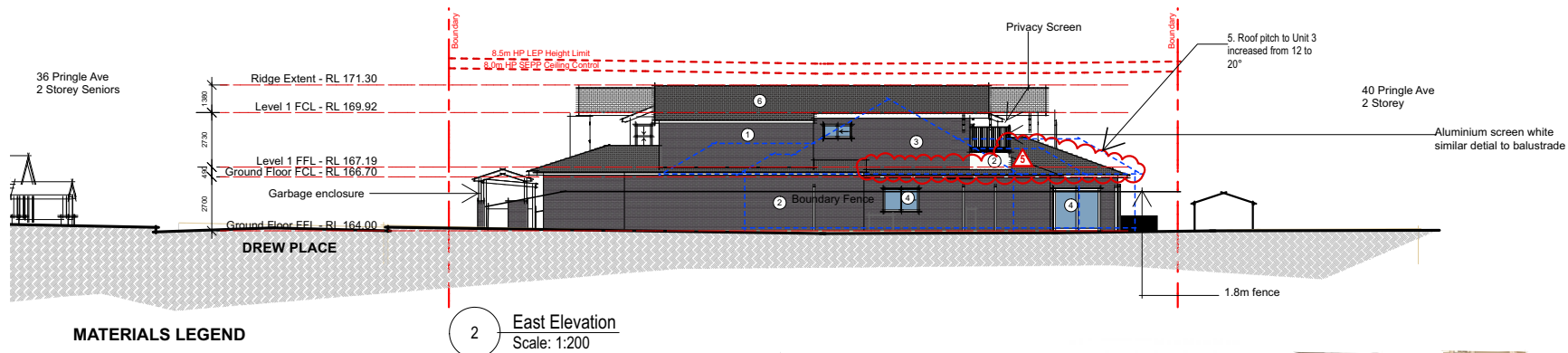
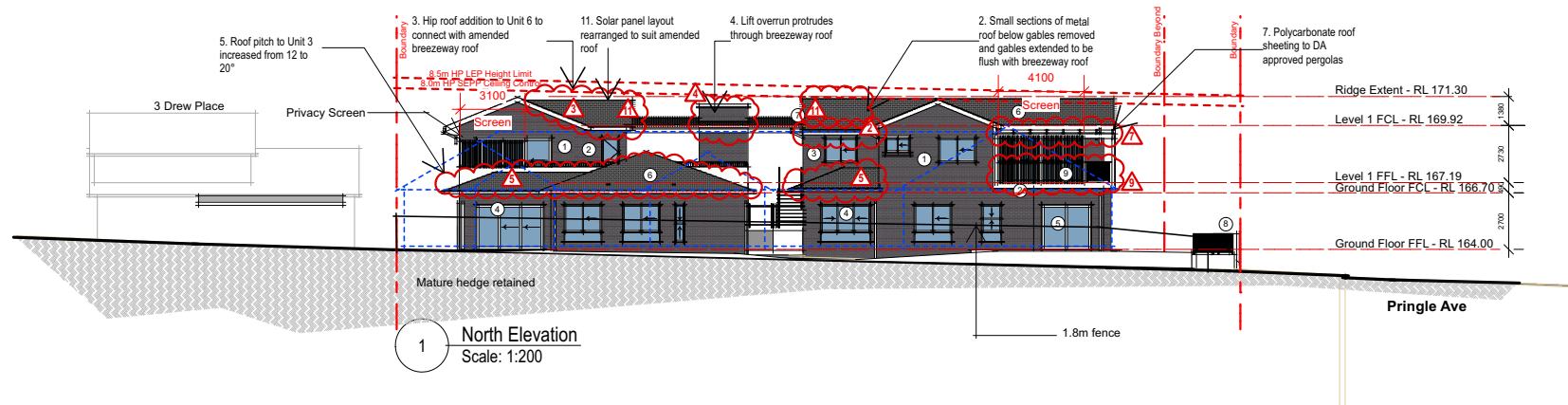
REV	DESCRIPTION	BY	DATE
A	Draft DA Issue	MO	8/7/20
B	DA Issue	MO	23/7/21
C	Section 4.55	RP	8/3/22

Title:  
**Elevations 01**  
Project:  
**Seniors Development - Newquest**  
1 Drew Place, Belrose

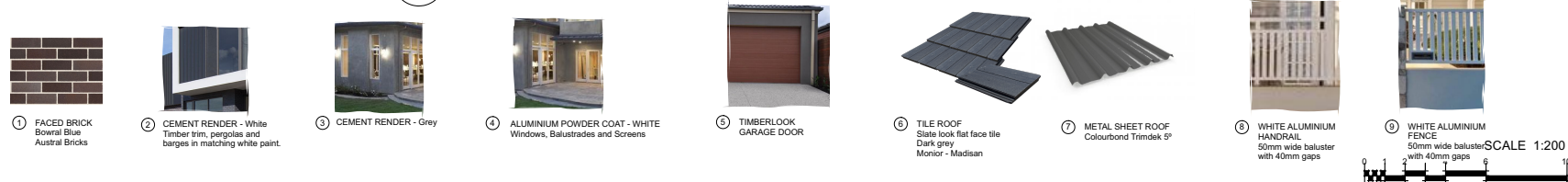
Date: 8/3/22  
Drawn:  
Checked:  
Drawing Number: DA08  
Rev: C







**MATERIALS LEGEND**



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Nom. Architect - Rick Turner NSW 4318  
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REV	DESCRIPTION	BY	DATE
C	Section 4.55	RP	8/3/22
D	S4.55 include amendments 9, 10 and 11	RP	23/6/22
E	Response to council comments	MO	2/8/2022
F	Revise Screens as per Council discussions	MO	29/8/2022

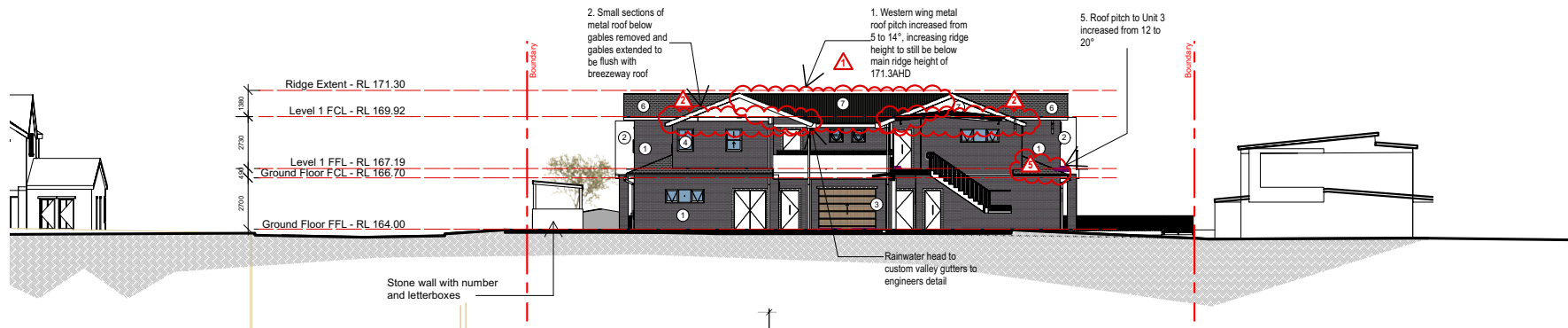
Title:  
**Elevations 02**

Project:  
**Seniors Development - Newquest  
1 Drew Place, Belrose**

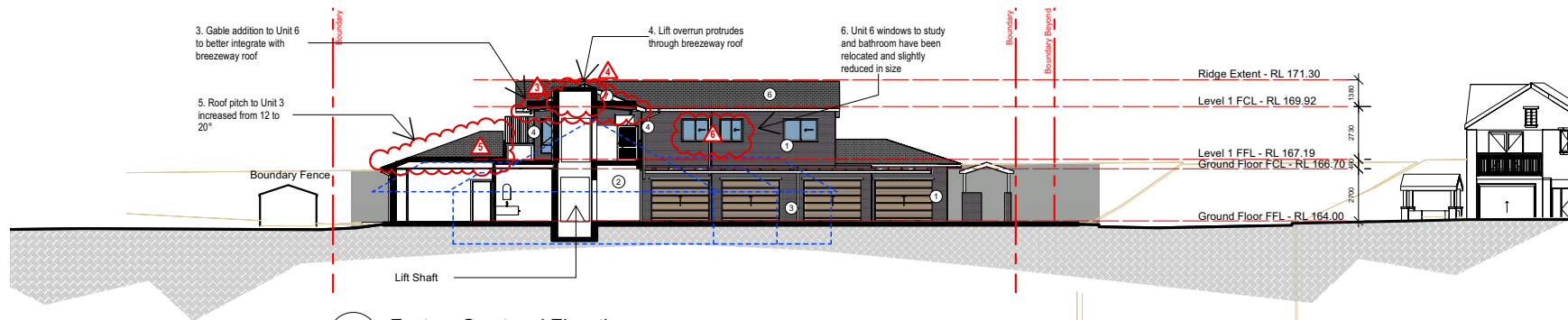
Date: 29/8/2022  
Drawn:  
Checked:

Drawing Number: **DA09**  
Rev: **F**





**1** **Courtyard Elevation West**  
Scale: 1:200



**2** **Eastern Courtyard Elevation**  
Scale: 1:200

**MATERIALS LEGEND**



**1** **FACED BRICK**  
Bowral Blue  
Austral Bricks



**2** **CEMENT RENDER - White**  
Timber trim, pergolas and  
bargees in matching white paint.



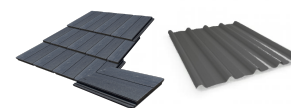
**3** **CEMENT RENDER - Grey**



**4** **ALUMINIUM POWDER COAT - WHITE**  
Windows, Balustrades and Screens



**5** **TIMBERLOOK**  
GARAGE DOOR



**6** **TILE ROOF**  
Slate look flat face tile  
Dark grey  
Monitor - Madisan



**7** **METAL SHEET ROOF**  
Colourbond Trimdek 5°



**8** **WHITE ALUMINIUM**  
HANDRAIL  
50mm wide baluster  
with 40mm gaps

**9** **WHITE ALUMINIUM**  
FENCE  
50mm wide baluster  
with 40mm gaps

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REV	DESCRIPTION	BY	DATE
A	Draft DA Issue	MO	8/7/20
B	DA Issue	MO	23/7/21
C	Section 4.55	RP	8/3/22
D	S4.55 - Revised for Hydraulic Co-ordination	RP	31/3/22

**Title:**  
**Elevations 03**

**Project:**  
**Seniors Development - Newquest**  
1 Drew Place, Belrose

Date: 31/3/22  
Drawn:  
Checked:

Scale: 1:200  
Other1

Drawing Number: DA10  
Rev: D



ITEM 3.3	DA2022/0509 - 25 MONTPELIER PLACE MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2022/587248
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations 3 <a href="#">↓</a> 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 and floor space ratio.

---

## RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/0509 for Alterations and additions to a dwelling house on land at Lot 25 DP 1105469, 25 Montpelier Place MANLY, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0509
<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 25 DP 1105469, 25 Montpelier Place MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Julian Anthony Duffy Prue Adele Larcombe
<b>Applicant:</b>	Prue Adele Larcombe
<b>Application Lodged:</b>	07/04/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	20/04/2022 to 04/05/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 2% 4.4 Floor space ratio: 34.47%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 834,482.55

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing dwelling including an upper level extension over the rear of the existing building and internal layout changes.

The application is referred to the Development Determination Panel (DDP) due to a breach of the floor space ratio (FSR) development standard by more than 10% and involves a Class 1 dwelling. The FSR of the proposed development has been measured at 0.605:1 which represents a variation of 34.47% to the maximum prescribed FSR of 0.45:1. The proposal also involves a 2% breach to the building height development standard.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. One objection was received during the public exhibition of the application. Concern raised in the objection predominantly relates to the potential impact of additional overshadowing.

Despite being non-compliant with the prescribed FSR and building height requirements, the proposal 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 non-compliant elements of the proposal are contained within the existing building footprint and will be commensurate with the existing built form. Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for alterations and additions to the existing dwelling including an upper level extension over the rear of the existing building and internal layout changes.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 25 DP 1105469 , 25 Montpelier Place MANLY NSW 2095



**Detailed Site Description:**

The subject site consists of one (1) allotment located on the southern side of Montpelier Place.

The site is irregular in shape with a frontage of 17.56m along Montpelier Place and a maximum depth of 42.85m. The site has a surveyed area of 571.8m<sup>2</sup>.

The site is located within the R2 Low Density Residential zone and accommodates a part three-storey residential dwelling.

The site falls approx. 8m from the south towards the north.

The site contains a landscaped front yard with ornamental vegetation and a landscaped rear yard with grass and gardens.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by low density detached dwellings and townhouses.

Map:



**SITE HISTORY**

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

Application **DA0144/2003** for a 26 lot land subdivision (Precincts 1 & 13 of St Patrick's Estate) was approved on 05/05/2004 by the former Manly Development Assessment Unit.

Application **DA0110/2008** for construction of a two storey dwelling with garage, swimming pool and

landscaping was approved on 04/08/2008 by the former Manly Development Assessment Unit.

## 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)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a revised clause 4.6 variation request.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the</p>

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

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 15/09/2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/04/2022 to 04/05/2022 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 process council is in receipt of 1 submission/s from:



Name:	Address:
Mr Ian Wilton	26 Montpelier Place MANLY NSW 2095

The following issues were raised in the submissions:

- Overshadowing
- Construction vehicle parking

The above issues are addressed as follows:

- **Overshadowing**

*The submissions raised concerns that the proposed development will cause additional overshadowing of adjacent properties.*

Comment:

Council has considered the impact of overshadowing on adjacent properties. The proposed development demonstrates compliance with the minimum solar access requirements. Therefore, any overshadowing impact is considered to be reasonable in the context of the site and surrounds.

- **Construction vehicle parking**

*The submissions raised concerns that construction vehicles may park in areas that will impede other residents.*

Comment:

The parking of trades vehicles during construction works is not a matter for consideration in this assessment. Regardless, all parked vehicles must abide by the road rules including not parking in no stopping areas or across driveways. A violation to the road rules may be reported to Council for further investigation.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following applicable biodiversity-related provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• Manly LEP Clause 6.5 Terrestrial Biodiversity</li> <li>• Manly DCP Clause 5.4.2 Threatened Species and Critical Habitat Lands</li> <li>• Manly DCP Clause 3.3.1 Landscaping Design</li> </ul> <p>The subject site is within declared habitat for the endangered</p>

Internal Referral Body	Comments
	<p>population of Long-nosed Bandicoots at North Head. As such, a threatened species test of significance ('five part test') for the endangered population is required to be submitted with the DA. An ecological impact assessment has been submitted with the DA and includes the requisite five part test prepared by a suitably qualified ecologist. The assessment concludes that the proposal will not result in a significant impact to the endangered bandicoot population. Given that the proposed works are limited to the existing development footprint and will not require impact to native vegetation or other habitat, this conclusion is supported.</p>
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;</li> <li>• Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021 (clause 2.12); and</li> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The application is supported without conditions.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	<b>Discussion of reason for referral</b>
	<p>This application has been referred as the site adjoins a heritage item, being <b>Item 1131 St Patricks Estate</b>, which is listed in Schedule 5 of Manly LEP 2013. St Patrick's Estate is also listed as a State heritage item under the provisions of the Heritage Act, 1977.</p>
	<b>Details of heritage items affected</b>
	<p>Details of this adjoining heritage item, as contained within the Heritage Inventory, are:</p> <p><b>Item 1131 St Patricks Estate</b></p> <p><b>Statement of Significance</b></p> <p>St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The 1885-1935 buildings and grounds of the estate make up one of Australia's most outstanding collegiate ensembles unrivalled for its completeness, grandeur and extraordinary siting. A monument to the establishment of Catholicism and the Catholic priesthood in Australia, St Patrick's Estate represents Australia's first national Catholic ecclesiastical seminary, the largest in the southern hemisphere at the time of its construction, the official national residence for the Archbishop for nearly a century, one of Australia's most extensive ecclesiastical estates and one of the oldest land grants to the Catholic Church. The College and the Archbishop's Residence have historical significance as important physical manifestations of Cardinal</p>

Internal Referral Body	Comments		
	<p>Moran's concepts and plans for the development of Catholicism in Australasia. The buildings have historical significance also for their associations people involved in the development of the College and Australia's priesthood.</p> <p>Isolated physically and geographically on the Manly site, the Seminary buildings reflected the Church's perceptions of its special position and needs in the late 19th century. Social and cultural changes are evident in the further development of the site during the 20th century. The St Patrick's Estate has a significant relationship with the natural environment of North Head. Although isolated from the remainder of North Head by the construction of the sandstone boundary walls and the substantial clearing of the indigenous vegetation on the Estate, the St Patrick's Estate still maintains its historical and visual relationship with North Head.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	
	National Trust of Aust (NSW) Register	Yes	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>This application proposes alterations and additions to an existing two storey dwelling, including the addition of 2 bedrooms on the first level at the rear, a new sloping roof to replace an operative roof on the Montpelier Road frontage, along with a number of internal changes.</p> <p>The heritage item is located adjoining the rear boundary to the south. The buildings of St Patricks are located some 130 metres from the property and there is substantial vegetation on this boundary which screens this dwelling from the St Patricks site. The site also falls to the north from the St Patricks site, so this dwelling is not visible from the heritage site.</p> <p><b>Therefore, no objections are raised on heritage grounds and no conditions required.</b></p>		

Internal Referral Body	Comments
	<p>Consider against the provisions of CL5.10 of MLEP 2013</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A</p> <p>Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p> <p>Further Comments</p> <p>COMPLETED BY: Janine Formica, Heritage Planner</p> <p>DATE: 29 April 2022</p>

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. A441550\_02, dated 17/03/2022). 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 (Biodiversity and Conservation) 2021**

### **Chapter 10 – Sydney Harbour Catchment**

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

An assessment of the proposal against Section 10.1(2) (aims of the Chapter), Section 10.11 (nominated planning principles), Section 10.20 (relating to public access to and use of foreshores and waterways), Section 10.21 (relating to maintenance of a working harbour), Section 10.23 (relating to interrelationship of waterway and foreshore uses), Section 10.23 (relating to foreshore and waterways scenic quality), Section 10.24 (relating to maintenance, protection and enhancement of views) and Section 10.24 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the Chapter. Given the scale of the development and the works proposed, referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 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 5 General**

#### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding 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.

#### **Manly Local Environmental Plan 2013**

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

#### **Principal Development Standards**

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.67m	2%	No
Floor Space Ratio:	0.45:1 (257.3m <sup>2</sup> )	0.605:1 (346.3m <sup>2</sup> )	34.47% (89m <sup>2</sup> )	No

#### **Compliance Assessment**

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.19 Development in St Patrick's Estate	Yes

#### **Detailed Assessment**

#### **4.6 Exceptions to development standards**

Description of non-compliance:

--

Development standard:	Height of buildings & Floor space ratio
Requirement:	HOB - 8.5m
	FSR - 0.45:1
Proposed:	HOB - 8.67m
	FSR - 0.605:1
Percentage variation to requirement:	HOB - 2%
	FSR - 34.47%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards are not expressly excluded from the operation of this clause.

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

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

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

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

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

*(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act(cf previous s 5)**

*The objects of this Act are as follows:*

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



*health and safety of their occupants,*

*(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

*(j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

*Sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment and the fact that the additional non-compliant floor space is generally located within the existing footprint.*

Council generally concurs with the applicant's justification that the breach of the building height and floor space ratio development standards is reasonable in the context of the site and its surrounds and will not result in adverse amenity impact to adjacent properties or the public domain.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings and Floor space ratio development standards 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 MLEP 2013 are:

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

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

Comment:

The dwelling will retain its existing presentation to the street as a two-storey building with basement parking. The proposed development does not exceed the existing upper roof ridge level and the roof form is consistent with that of the dwelling and other dwellings in the locality. The proposal is considered to be generally consistent with the topographic landscape, the prevailing building height and the streetscape character of the locality.

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

Comment:

The height, bulk and scale of the proposed development is generally consistent with that of other dwellings in the locality.

*c) to minimise disruption to the following:*

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

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

*(iii) views between public spaces (including the harbour and foreshores),*

Comment:

No views or vistas are expected to be unreasonably impacted as a result of the development

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

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties

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

Comment:

Not applicable.

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 bulk and scale of the proposed development is considered to be in keeping with the

prevailing bulk and scale of other two and three storey dwellings in the locality

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

Comment:

The proposed development is considered to exhibit an acceptable level of bulk in the context of the subject site. The level of impact to landscape and townscape features is considered reasonable in the context of the site and surrounds.

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

Comment:

It is considered the proposal demonstrates an acceptable visual relationship with the existing low density residential character and landscape of the area.

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

Comment:

It is demonstrated that the proposed development is designed in a manner that minimises impact on adjacent properties and the public domain.

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

Comment:

Not applicable.

## Zone objectives

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

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

Comment:

The proposed development maintains the low density residential land use of the site and provides a more functional dwelling for occupants.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal does not alter the existing residential land use of the site.

Conclusion:

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

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

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

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

**Manly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 571.8m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
4.1.2.1 Wall Height	W: 6.5m (based on nil gradient)	6.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Unaltered, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	W: 2.145m (based on wall height)	1.4m (existing)	Existing	Acceptable, as existing
4.1.4.4 Rear Setbacks	8m	4m (existing)	Existing	Acceptable, as existing
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (314.5m <sup>2</sup> )	41% (234.4m <sup>2</sup> ) [existing]	Existing	Acceptable, as existing
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (82m <sup>2</sup> )	46.9% (109.9m <sup>2</sup> )	N/A	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup> per dwelling	>18m <sup>2</sup>	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	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	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.3 St Patrick's Estate, Manly	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

##### 4.1.3 Floor Space Ratio (FSR)

MLEP 2013 prescribes a floor space ratio of 0.45:1 to the site.

The proposed development has a floor space ratio of 0.605:1 (346.3m<sup>2</sup>), which represents a variation of 34.47%.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

### **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 \$8,345 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$834,483.

### **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 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and clause 4.4 Floor Space Ratio development 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 DA2022/0509 for Alterations and additions to a dwelling house on land at Lot 25 DP 1105469, 25 Montpelier Place, MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
22012 DA01 Rev A	30/08/2022	Wolski Coppin Architecture
22012 DA02	30/08/2022	Wolski Coppin Architecture
22012 DA03	30/08/2022	Wolski Coppin Architecture
22012 DA04	30/08/2022	Wolski Coppin Architecture
22012 DA05	30/08/2022	Wolski Coppin Architecture
22012 DA06	30/08/2022	Wolski Coppin



		Architecture
22012 DA07	30/08/2022	Wolski Coppin Architecture
22012 CD04	30/08/2022	Wolski Coppin Architecture
22012 CD05	30/08/2022	Wolski Coppin Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A441550_02	17/03/2022	Senica Consultancy Group
Bushfire Assessment Report (Ref: 25Mon-01)	15/09/2021	Bushfire Consultancy Australia
Terrestrial Biodiversity Report (Ref: MP25TBR01)	14/09/2021	GIS Environmental Consultants

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	07/03/2022	Wolski Coppin Architecture

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

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

## 2. 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	10/05/2022

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

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

### 3. **Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, as defined by the Manly Local Environment Plan 2013 Dictionary.

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

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

### 4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

#### 5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

- change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
  - (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
  - (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
  - (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
  - (k) Prior to the commencement of any development onsite for:
    - i) Building/s that are to be erected
    - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
    - iii) Building/s that are to be demolished
    - iv) For any work/s that is to be carried out
    - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
  - (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
  - (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
  - (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
    - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

      - (i) Swimming Pools Act 1992
      - (ii) Swimming Pools Amendment Act 2009
      - (iii) Swimming Pools Regulation 2018
      - (iv) Australian Standard AS1926 Swimming Pool Safety
      - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
      - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
    - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by

- Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,344.83 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 \$834,482.55.

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](http://www.northernbeaches.nsw.gov.au)

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

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

### 7. Security Bond

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

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

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

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

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

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

8. **Compliance with Ecologist's Recommendations – Pre-construction**

Any pre-construction biodiversity-related measures specified in Section 7 of the submitted Terrestrial Biodiversity Report (GIS Environmental Consultants, 14 October 2021) and these conditions of consent must be implemented at the appropriate stage of the development. Compliance with pre-construction measures is to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

9. **Stormwater Drainage Disposal**

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

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Principal Certifier 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 Principal Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

10. **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 Principal Certifier prior to the issue of the Construction Certificate.

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

### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Compliance with Ecologist Recommendations - During Construction and Demolition**  
Any biodiversity-related measures specified in Section 7 of the submitted Terrestrial Biodiversity Report (GIS Environmental Consultants, 14 October 2021) that are to be implemented during construction and demolition must be undertaken at the appropriate stage of the development. Compliance is to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Occupation Certificate.

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

12. **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 Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

13. **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 Certifier.

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

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

Reason: To protect native wildlife.

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

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

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.



Reason: To protect wildlife habitat.

16. **Fencing for Wildlife Passage**

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

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

Reason: To preserve wildlife corridors.

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 Principal Certifier prior to the issue of an Occupation Certificate, and;

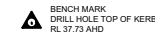
If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

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 authority 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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.



NOTES:

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WOLSKI + COPPIN ARCHITECTURAL DESIGN 1001 10TH AVE. SE, SUITE 100, SEASIDE, CA 94132

REVISIONS:

DATE	REV	DESCRIPTION

LEGEND

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<div></div>	NEW WALLS
<div></div>	WALLS TO BE DEMOLISHED
<div></div>	EXISTING BUILDING
<div></div>	NEW WORKS

ARCHITECT:

WOLSKI + COPPIN

ARCHITECTURE

1001 10TH AVE. SE, SUITE 100, SEASIDE, CA 94132  
TEL: 415.447.1000  
WWW.WOLSKI+COPPIN.COM

1001 10TH AVE. SE, SUITE 100, SEASIDE, CA 94132

PROJECT TITLE:

ALTERATIONS & ADDITIONS TO EXISTING RESIDENCE

PROJECT ADDRESS:

25 Montpelier Place , Marly

CLIENT:

Prue & Julian Duffy

DRAWING TITLE:

SITE / ROOF PLAN

PROJECT No.:

22012

DRAWING No.:

DA04

SCALE:

1:100 @ A2

PLOT DATE:

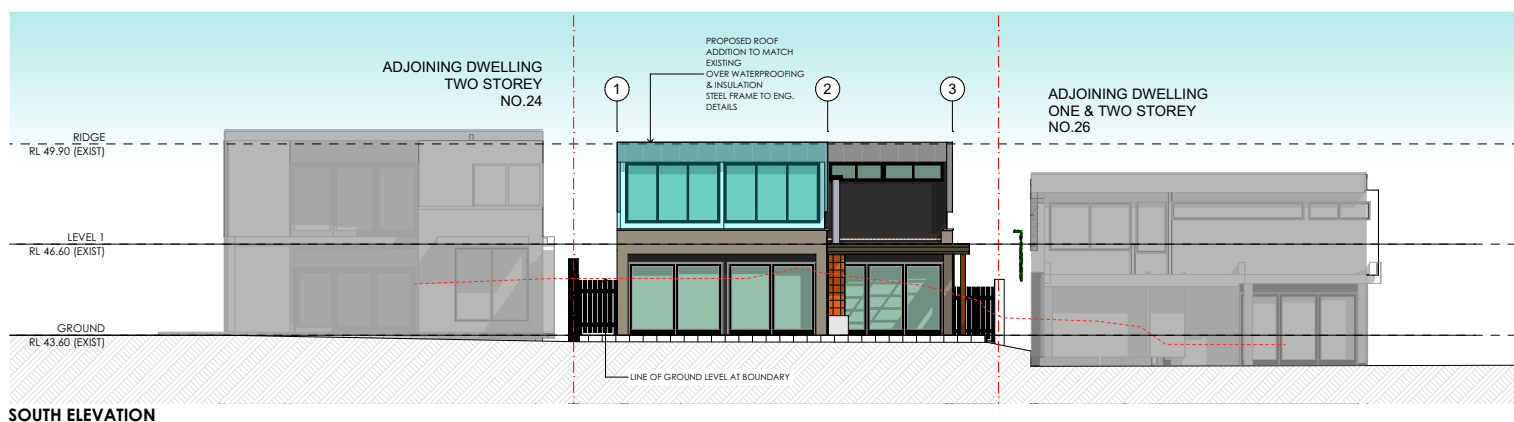
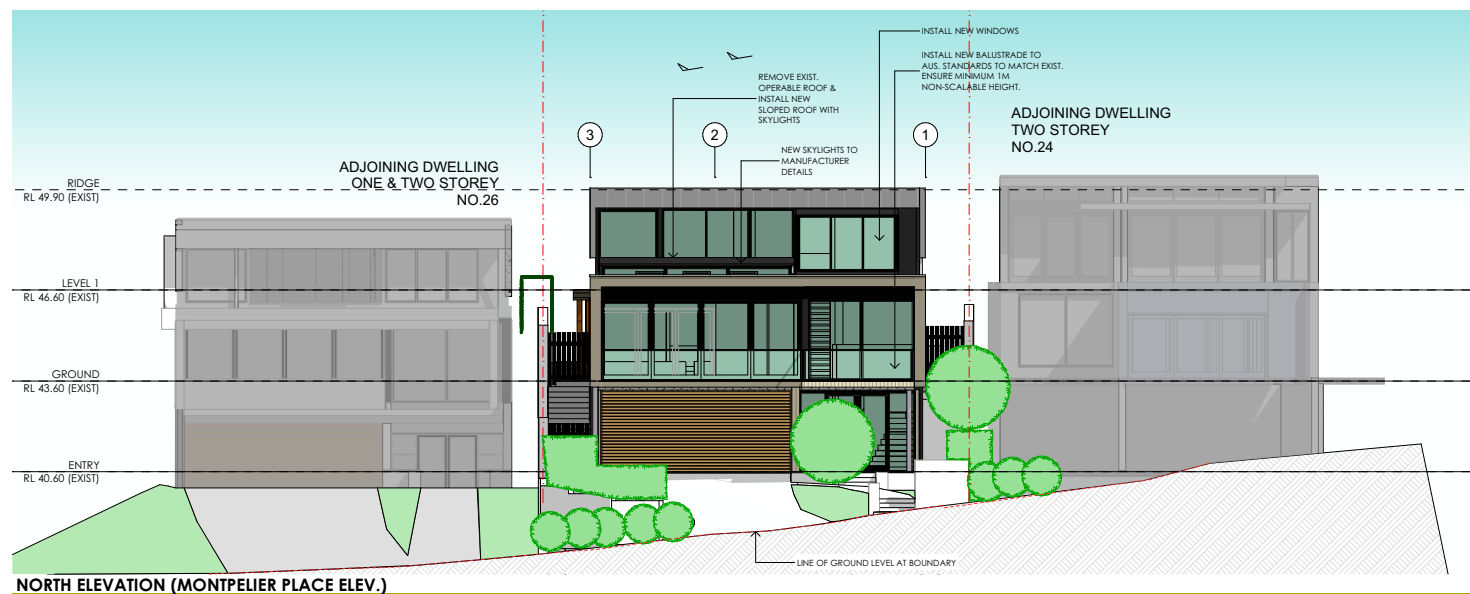
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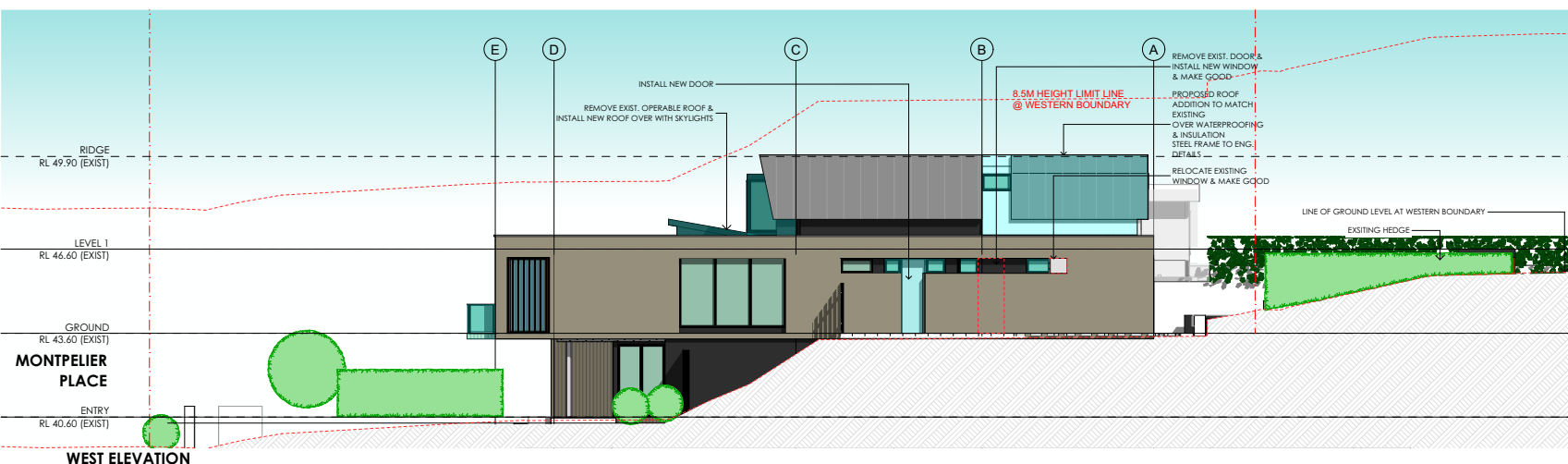
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NOTES:

CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND THE RELEVANT AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND THE RELEVANT AUTHORITIES. 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NOTES:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL BUILDING REGULATIONS AND THE NATIONAL BUILDING CODE OF AUSTRALIA (NBS) AND THE NATIONAL BUILDING STANDARDS (NBS).

2. THE DESIGNER SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING AND THE DESIGN OF THE BUILDING SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL BUILDING REGULATIONS AND THE NATIONAL BUILDING CODE OF AUSTRALIA (NBS) AND THE NATIONAL BUILDING STANDARDS (NBS).

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WOLSKI ARCHITECT DAVIS WOLSKI 0017

REVISIONS:

DATE	REV	DESCRIPTION

LEGEND

<div></div>	EXISTING WALLS
<div></div>	NEW WALLS
<div></div>	WALLS TO BE DEMOLISHED
<div></div>	EXISTING BUILDING
<div></div>	NEW WORKS

ARCHITECT:

WOLSKI . COPPIN

A R C H I T E C T U R E

SUITE 1, 127 MACARTHUR STREET  
SYDNEY NSW 2000  
TEL: 02 9550 1000  
WWW.WOLSKICOPPIN.COM.AU

DAVID WOLSKI

0017

PROJECT TITLE:

ALTERATIONS & ADDITIONS TO EXISTING RESIDENCE

PROJECT ADDRESS:

25 Montpelier Place , Manly

CLIENT:

Prue & Julian Duffy

DRAWING TITLE:

ELEVATIONS 02

PROJECT No:

22012

DRAWING No:

DA06

SCALE:

1:100@ A2

PLOT DATE:

30/08/2024

FILE PATH:

\\server\projects\22012\22012 DA06 ELEVATIONS 02.dwg

REVISION:

1

NORTH POINT:

**WOLSKI . COPPIN**  
ARCHITECTURE

David P Wolski B Arch (Hons) MUDD (UNSW)  
ARAIA NSW ARB No. 5297

Prepared by  
**David Wolski**  
Master of Urban Design and Development UNSW

25 August 2022

**Clause 4.6 variation request – Floor space ratio**  
DA 2021/1558  
Alterations and Additions to existing dwelling  
**25 Montpelier Place Manly**

**Development Standard: Northern Beaches Council**  
Manly LEP 2013 – cl. 4.4 Floor Space Ratio

## 1.0 Introduction

This clause 4.6 variation request has been prepared in support of a floor space ratio (FSR) variation associated with alterations and additions and the construction of additional accommodation as depicted on the following plans prepared by Wolski Coppin Architecture

### DWG No. ARCHITECTURAL DRAWINGS COMPLIANCE DRAWINGS

DA00 COVER PAGE	CD01 SITE ANALYSIS
DA01 LOWER GROUND FLOOR	CD02 GFA CALCULATIONS
DA02 GROUND FLOOR	CD03 SHADOW DIAGRAMS
DA03 LEVEL 1	CD04 FINISHES SCHEDULE
DA04 SITE / ROOF PLAN	CD05 DEMOLITION PLAN
DA05 ELEVATIONS 01	CD06 NOTIFICATION PLAN
DA06 ELEVATIONS 02	
DA07 SECTIONS	

The proposed alterations and additions to the dwelling house are limited to:

#### 01 LOWER GROUND

- Unaltered

#### 02 GROUND

- Conversion of 2 existing bedrooms to master bedroom & dressing area
- Relocate existing laundry.
- Install new external door to laundry.
- Update existing bathroom layout.
- Remove internal glazed walls bounding central enclosed living space.
- New timber flooring to central enclosed living space to match existing.
- Modify existing stairs leading to level 1.
- Minor addition to existing northern balcony.

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- **03 LEVEL 1**
  - 2-bedroom addition over ground level bedrooms.
  - Remove existing operable roof over ground floor central enclosed living space and install new sloped roof with skylights.
  - Reconfigure existing master bedroom & ensuite into 2 bedrooms.
- **04 ROOF**
  - Construct new roof over first floor extension to match existing.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Eather v Randwick City Council* [2021] NSWLEC 1075 and *Petrovic v Randwick City Council* [202] NSW LEC.

**Clause 4.6 of MLEP 2013** outlines how a development standard can be varied. The objectives of this clause are:  
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and  
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This application seeks, through cl 4.6, a variation to the FSR development standard contained in clause 4.3 +4.4 – Building Height +FSR respectively, of the Manly LEP 2013. Building Height 8500 (FSR 0.45:1)

### 2.0 Manly Local Environmental Plan 2013 (MLEP)

#### 2.1 Clause 4.3 – Building Height

Pursuant to Clause 4.3 Building Height of MLEP, the building must not exceed 8500

The proposed north facing roofs are 8670 above the Lower ground Floor slab below

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**Clause 4.4 – Floor space ratio**

Pursuant to clause 4.4 of MLEP, development on the site must not exceed a floor space ratio of 0.45:1 which based on a site area of 571.8m<sup>2</sup> represents an allowable gross floor area of 257.5m<sup>2</sup>.

The existing FSR is 298sm ie 0.52:1

The proposed additional FSR is 46.4sm ie 346.3sm or .605:1

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied.

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Clause 4.6(4) states 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*

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

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

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

## 2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the floor space ratio provision at 4.4 of MLEP which specifies a maximum floor space however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

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

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 20<sup>th</sup> May 2020, attached to the Planning Circular PS 20-002 issued on 20<sup>th</sup> May 2020, to each consent authority, that it may

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assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

### 3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

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20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].*

*The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and

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- (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?
- 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
- 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

#### 4.0 Request for variation

##### 4.1 Is clause 4.4 of MLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

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Clause 4.4 MLEP prescribes a fixed floor space ratio provision that seeks to control the bulk and scale of certain development. Accordingly, clause 4.4 MLEP is a development standard.

#### **4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary**

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

#### Consistency with objectives of the Building Height standard

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

#### **Response:**

This objective relates to streetscape character and in this regard the existing dwelling house will continue to present as a two storey house with a basement carparking and entry from Montpelier Place.

The proposed rear additions are approximately 2150 below the height limit using relative levels of 43.6 at ground and 49.95 for the parapet.

The proposed street side 1.75 metre by 3.4 metre extension of the Study has a roof at RL 49 270 ,the Lower Ground Floor below has a RL of 40 600 ,the height above the slab is 8670 or 170 above 8500.

The interpolated level appears to be 42060 at the NE corner giving a building height of 7210 The proposed study extension is 680 below the highest point of the roof above and projects past the roof over, by 400 .

The proposed roof infilled internal courtyard skillion roof has a maximum RL 49270 and the Garage below has a floor level RL 40 600 , the height above the slab is 8670 or 170 above 8500. And will not be seen from the street.

As such the extension will be insignificant in the overall building composition and the streetscape character will remain the same..



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

Response:

As the rear additions are well below the height limit over an existing Ground Floor, the Study extension is generally below the existing roof parapet and the infill courtyard is within the building footprint the additional bulk of building is well controlled

*(c) to minimise disruption to the following:*

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

Response:

Not Applicable

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

Response:

Not Applicable

*(iii) views between public spaces (including the harbour and foreshores)*

Response:

Not Applicable

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

Response:

Not Applicable

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

Response:

Not Applicable

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#### Consistency with objectives of the floor space ratio standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

#### Response:

This objective relates to streetscape character and in this regard the existing dwelling house will continue to present as a two storey house with a basement carparking and entry from Montpelier Place with the proposed addition located where it is from street view. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct of Montpelier Place

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

This objective is satisfied, notwithstanding the FSR variation, as 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,*

#### Response:

I note that neither MLEP 2013 or Manly DCP (MDCP) identify important landscape and townscape features however MDCP does define townscape as follows:

*means the total appearance of a locality and contributes to its character. A high level of townscape quality will result in an area being experienced, not as a number of disconnected parts, but as a whole, with one recognisable area leading into another. The determination of the townscape of a locality should examine this sense of place and the sense of unity from the following perspectives:*

- (i) *From a distance;*  
(ii) *The spaces within the locality formed by and between the buildings and the elements; and*  
(iii) *The buildings themselves: their details and relationship to each other.*

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When the proposed additions are viewed from various vantage points being the street and St Patricks Estate grounds to obtain an understanding of the spatial relationship between neighbouring buildings and vegetation, it is apparent that the proposed additions will not obscure any important townscape features or visually significant landscape features as they are not visible from the street and obscured by vegetation from the Estate grounds

Accordingly, this objective is satisfied notwithstanding the non-compliant FSR proposed.

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

#### Response:

It has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character*. Notwithstanding the FSR non-compliance the proposed additions maintains an appropriate visual relationship between existing neighbouring houses and the vegetated quality of the precinct as they sit on the ground floor below and as such do not reduce the existing landscaped areas;

The aesthetic of the additions references the existing finishes and massing of materials in the existing and neighbouring houses.

Notwithstanding its FSR non-compliance, the additions achieve the objective as they 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,*

#### Response:

In responding to this objective. views, privacy, solar access and visual amenity are identified as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

The proposal achieves the objective of minimising adverse environmental impacts in terms of both public and private views.

#### Privacy

The triangular shape of the rear boundary to St Patrick's Estate means the west wall of the rear additions has very limited field of vision into the rear yard of 24 Montpelier Place.

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The offset nature of 26 Montpelier place to 25 means the SW corner of the blank west wall is 9500 at its closest point to the proposed additions windows. A substantial hedge along the boundary provides additional screening

#### Solar access

In relation to shadowing impact, the height and location the proposed rear additions relative to the established surrounding built form and landscaped areas will ensure that no unacceptable overshadowing will occur to adjoining development between 9am and 3pm on 21<sup>st</sup> June as a consequence of the non-compliant floor space. No unacceptable overshadowing will occur to the public domain.

Refer view from sun dwgs

This objective is satisfied notwithstanding the non-compliant FSR proposed.

#### Visual amenity/ building bulk and scale

As indicated in response to objective (a) Building Height and FSR , the bulk and scale of the existing building with the additional modifications is contextually appropriate with the additional floor space appropriately located in the existing buildings bulk and foot print to achieve acceptable streetscape and residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

It is reasonable that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and 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.*

Response: This objective is not applicable.

Having regard to the above, the proposed additional building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard.

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Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Such conclusion is supported by the findings of Handley JA Giles JA Sheppard AJA in the matter of *Fast Buck\$ v Byron Shire Council* [1999] NSWCA 19 (19 February 1999) where they found that strict compliance could be found to be unreasonable and unnecessary where a modest variation was proposed to a development standard and in circumstances where the underlying objectives of the standard were not defeated.

#### Consistency with zone objectives

The subject property is zoned R2 Low Density Residential pursuant to MLEP 2013 with swelling houses permissible in the zone with consent. An assessment of the proposal against the zone objectives is as follows:

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

Response: The application proposes the addition of two bedrooms and living space as an ancillary component of the existing dwelling house. The FSR non-compliance will enhance the existing residential environment with the dwelling better meeting the housing needs of a growing family within the community. This objective is achieved notwithstanding the FSR non-compliance proposed.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Response:

This objective is not applicable to the proposal.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

#### **4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning*

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*grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”.*

*The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

#### **Sufficient environmental planning grounds**

Sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site’s visual catchment and the fact that the additional non-compliant floor space is generally located within the existing footprint

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [202] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

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- The development represents good design and provides for high levels of amenity for the future and current occupants of the dwelling house. The proposed additions will enable the current owners family to age in their current home (1.3(g))
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test.*

*The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

#### **4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone**

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

*"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives*

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*for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

#### 4.4 Secretary's concurrence

By Planning Circular dated 20<sup>th</sup> May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

#### 5.0 Conclusion

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### A R C H I T E C T U R E

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Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance

**ITEM 3.4****DA2022/0481 - 1 & 2 / 4 FIELDING STREET COLLAROY - USE  
OF PREMISES AS A TOURIST AND VISITOR  
ACCOMMODATION AND ASSOCIATED FIT OUT****REPORTING MANAGER** Adam Richardson**TRIM FILE REF** 2022/590897**ATTACHMENTS**  
1 [↓](#) Assessment Report  
2 [↓](#) Site Plans**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **refuses** Development Consent to DA2022/0481 for Use of Premises as a tourist and visitor accommodation and associated fit out on land at Lot 1 SP 58219, 1 / 4 Fielding Street COLLAROY and Lot 2 SP 58219, 2 / 4 Fielding Street COLLAROY, for the reasons for refusal set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0481
<b>Responsible Officer:</b>	Dean Pattalis
<b>Land to be developed (Address):</b>	Lot 2 SP 58219, 2 / 4 Fielding Street COLLAROY NSW 2097 Lot 1 SP 58219, 1 / 4 Fielding Street COLLAROY NSW 2097
<b>Proposed Development:</b>	Use of Premises as a tourist and visitor accommodation and associated fit out
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jeffrey John Bliss Tinika Bliss Murdochfund Pty Ltd
<b>Applicant:</b>	Think Planners
<b>Application Lodged:</b>	12/04/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Tourist
<b>Notified:</b>	25/04/2022 to 09/05/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	8
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 287,628.20

### EXECUTIVE SUMMARY

The application seeks consent for the change of use of the commercial premises on the ground floor of an existing mixed-use building into a tourist and visitor accommodation, in the form of a serviced apartment. An associated fit-out and alteration of the existing commercial office space to convert it into a layout commensurate with a serviced apartment (residential) layout is also proposed.

A serviced apartment, as a type of tourist and visitor accommodation, is a permitted use in the B2 Local

Centre zone. The introduction of the serviced apartment use does not alter the overland use of the building to which the application relates, remaining as a mixed use development as defined within the WLEP 2011.

When assessing the application on its merits, it is considered that the proposed development adequately responds to the relevant objectives of WLEP 2011 and WDCP 2011 including parking, waste facilities, noise, safety and security. No physical changes are proposed to the built form characteristics or presentation of the existing building which therefore is considered in keeping with the existing character of the Fielding Street streetscape. The development has also been supported by a detailed plan of management, the objective of which is to mitigate the impacts of the use on the established residents of the development.

Council's Building Assessment, Environmental Health, Urban Design and Waste Officers have also reviewed the application and raised no objection to approval, subject to recommended conditions.

Notwithstanding the above, the applicant has failed to provide owner's consent from the owner's corporation of the subject strata building. As defined under the Local Government Act 1993, in the case of land that is the subject of a strata scheme under the Strata Schemes Development Act 2015, a land owner includes the owners corporation for that scheme constituted under the Strata Schemes Management Act 2015. Therefore, insufficient information has been submitted to enable the assessment of the application, pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979.

The application was exhibited for community consultation and attracted a total of 8 individual submissions objecting to the proposal, which therefore requires delegation to the Development Determination Panel (DDP). One of the objectors subsequently withdrew their objection and advised their support of the application. The key concerns raised within the submissions primarily pertain to safety and security and acoustic privacy. These concerns have been addressed in the relevant section of the assessment report.

The applicant was requested to withdraw the application as a result of the failure to provide owner's consent, however elected against doing so.

Refusal of the development application is therefore recommended to the Development Determination Panel (DDP).

## **PROPOSED DEVELOPMENT IN DETAIL**

The development application proposes to convert the commercial premises (Units 1 & 2) on the ground floor of an existing mixed-use building into tourist and visitor accommodation, in the form of a serviced apartment.

Historically, the area of the serviced apartments was previously two separate commercial tenancies that was subsequently merged into a single commercial tenancy and office space.

An internal reconfiguration of the units is also proposed.

## **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone B2 Local Centre

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 2 SP 58219 , 2 / 4 Fielding Street COLLAROY NSW 2097</p> <p>Lot 1 SP 58219 , 1 / 4 Fielding Street COLLAROY NSW 2097</p>
<b>Detailed Site Description:</b>	<p>The subject site is legally described as SP58219, though is more commonly known as 4 Fielding Street, Collaroy. The development site is zoned B2 Local Centre.</p> <p>Residing within an established residential area, the development site is located on the southern side of Fielding Street, approximately 40m west from the intersection of Fielding Street and Pittwater Road. The site is located within Collaroy Town Centre and within close proximity to Collaroy Beach and public transport.</p> <p>The development site is a rectangular shaped north-south oriented mid-block land parcel with a frontage to Fielding Street and a site area of approximately 620m<sup>2</sup>.</p> <p>The existing on-site building is four (4) storeys that is strata subdivided. The building includes the following:</p> <ul style="list-style-type: none"> <li>• Basement carparking for fifteen (15) vehicles including 2 visitor spaces</li> <li>• Ground floor having two residential sole occupant units (SOU's) and two commercial SOU's. The Commercial SOU's known as Units 1 and 2 have been amalgamated on site into a single SOU.</li> <li>• First Floor having four residential sole occupant units.</li> </ul>

- Second Floor having three residential sole occupant units.

The surrounding built form comprises of a mix of 3-4 storey shop top housing and residential flat buildings of mixed ages and architectural styles.

Map:



## SITE HISTORY

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

Application **1996/314** for Erection of a mixed residential/commercial development containing (9) residential and two (2) commercial units to be constructed on three levels above a ground level carpark containing sixteen (16) car spaces (Endorsement date 10 January 1997)

## 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 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, <u>Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 23</u> of the EP&amp;A Regulation 2021 requires that a development application may be made by the owner of the land to which the development application relates, or another person, with the consent of the owner of the land. An owner, as defined by the Local Government Act 1993, in the case of land that is the subject of a strata scheme under the Strata Schemes Development Act 2015, includes the owners corporation for that scheme constituted under the Strata Schemes Management Act 2015. The applicant has failed to provide owner's consent from the owners corporation (formalised with a common seal stamp) of the subject strata scheme building and as such, the application has not been properly made and not able to be approved, despite its merits.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to additional detail required in the Plan of Management, as well as Waste Management. The additional information does not result in any additional environmental impact and therefore does not require further public exhibition in accordance with Council's Community Participation Plan.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;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 recommended condition of consent.</p>
Section 4.15 (1) (b) – the	(i) <b>Environmental Impact</b>

Section 4.15 Matters for Consideration	Comments
likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 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 process council is in receipt of 8 submission/s from:

Name:	Address:
Irene Harmon	28 Norfolk Avenue COLLAROY NSW 2097
Mr Arthur Laurence Harmon	28 Norfolk Avenue COLLAROY NSW 2097
Mr Peter Russell Foster	11 / 26 Macpherson Street WARRIEWOOD NSW 2102
Ms Judith Lynette Roberts	40 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Ms Marketa Novakova	10 / 4 Fielding Street COLLAROY NSW 2097
Sopheia Seang	Address Unknown
Miss Kirby Louise Sainsbury	6 / 4 Fielding Street COLLAROY NSW 2097
Neil Richard Linz	11 / 4 Fielding Street COLLAROY NSW 2097

Following the public exhibition period Council received a total of 8 submissions. Of those submissions 8 were objecting to the proposed development, however 1 objector subsequently withdrew their submission and advised Council they were now in support of the application.

The following issues were raised in the submissions and each are addressed below as follows:

### **Safety and Security**

#### Comment:

Concerns have been raised regarding the safety and security of the building being compromised by potential visitors to the tourist and visitor accommodation. As per the Plan of Management (PoM), the serviced apartment shall be frequented by travelling workers/families with an intended length of stay anywhere between 2 and 12 weeks with a maximum occupancy of 6 people at any given time and no visitors permitted after 10pm. It is not intended to operate a short-term rental accommodation as would be typical in an 'AirBnb' context as is the impression for several of the objectors.

A complaints management system has also been included in the PoM and management of the accommodation are obligated to respond within short timeframes and be responsible for contracts and contacts with maintenance persons and companies. Neighbours within the broader apartment complex will be provided by way of letter box drop the details of the operation and the point of contact for management of the premise including an email and phone number. A Management Diary and an Incident Register is to be kept and complainants shall be notified.

The house rules have also been included in the PoM which details the prohibition of large gatherings and parties on the premises or any form of anti-social behaviour. It also states that 'each occupant is required to ensure they do not do anything or allow anything to occur that will impact on the quiet enjoyment of neighbours'. Any breach of the house rules will result in warnings initially, and in the case of persistent and serious breaches, termination of the lease and eviction from the premises. It is noted that the mixed use classification of the building and permissible landuses in the B2 zone are such that varying uses could occupy the ground floor and have a similar scope of potential impact in this regard.

### **Acoustic Privacy**

#### Comment:

The submissions raised concern in regards to acoustic privacy impacts resulting from parties and large congregations in the tourist and visitor accommodation. As per above, there are strict limitations imposed on noise emissions from the serviced apartment as well as the number of occupants permitted in the serviced apartment at any given time, whilst breaches of these restrictions shall result in eviction. Any parties or gatherings are prohibited. Notwithstanding this, noise complaints are a civil matter and could arise separately within the existing building / residential units.

### **Privacy Screen and Gate**

#### Comment:

The submissions raised concern in regards to the visual impact of the proposed external privacy screen and gate located on the balcony. As per the strata plan extract provided with the application, the privacy screen and gate adjoins common property. As no owner's consent has been provided by the owner's corporation of the building, the screen and gate can not be considered for approval.

### **Financial Penalty**

#### Comment:

The submissions raised concern in regards to potential personal financial impacts as a result of a rise in property insurance premiums. Speculating future financial impacts in terms of property values or fees is not a planning consideration under Environmental Planning and Assessment Act 1979.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Approved, subject to conditions</b></p> <p>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.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p><b>Approved, subject to conditions</b></p> <p>The applicant seeks approval to convert a commercial office space into to a 3-bedroom 'serviced apartment' within an existing 4-storey mixed use building. The conversion will involve demolition of a portion of internal walls, bathrooms and fixtures. No external construction will be undertaken.</p> <p>Residential amenity should not be adversely affected by the introduction of a serviced apartment. A 'Plan of Management' was developed to address potential amenity disturbance. Environmental Health recommends the 'Plan of Management' be amended to include the method by which neighbours will be supplied and updated with the relevant contact details to make complaints about amenity disturbances.</p>
Strategic and Place Planning (Urban Design)	<p><b>Approved, without conditions</b></p> <p>Urban Design have no further comment.</p>
Waste Officer	<p><b>Approved, subject to conditions</b></p> <p>Waste Management Assessment 5 August 2022 Amended plan of management - submitted 3 August 2022 The plan of management now complies with waste services requirements Emma Torain Coordinator Waste Operations</p> <p>Waste Management Assessment 2 August 2022 Waste services acknowledge there is a dedicated area shown on the strata subdivision for the storage of waste from lots 1 &amp; 2. This area should only be used to store commercial bins for the short term accommodation units. The residential waste bins must not be used by</p>

Internal Referral Body	Comments
	<p>the commercial units.</p> <p>The waste management and collection section in the Plan of Management must be amended to reflect that the council garbage collection is not to be used for the commercial units and that a separate commercial waste collection service will be in place.</p> <p>Emma Torain Coordinator Waste Operations</p> <p>Waste Management Assessment 15 July 2022</p> <p>The plans need show a separate commercial waste storage area (which should already be part of the building). The plan of management refers to using Council's garbage collection service. As this is a commercial enterprise, residential bins are not available for use. They must have a separate commercial waste storage area and service.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Approved, without conditions</b></p> <p>The proposal was referred to Ausgrid who raised no objections.</p>

#### 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 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,

- (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the change of use and internal fit-out of two existing ground floor units of a mixed-use development for the provision of a single serviced apartment.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application, as it is not the erection of a new building, the substantial redevelopment or refurbishment of an existing building or the conversion of an existing building into a residential flat building as defined by the SEPP.

#### **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.

#### **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 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 considered likely to cause an adverse impact on safe access to and along the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands, or cultural and built environment heritage.

## **Division 5 General**

### **2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

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

Comment:

The proposed development is not likely to cause 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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial 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

The application proposes an internal fit-out only and does not involve any changes to the external built form of the existing building.

#### Compliance Assessment

Clause	Compliance with Requirements
5.8 Conversion of fire alarms	Yes

#### Detailed Assessment

#### Zone B2 Local Centre

Proposed Use	Permitted or Prohibited
Serviced Apartment (Tourist and Visitor Accommodation)	Permitted with consent

The existing building was approved by Warringah Council on 10 January 1997 (Development Application No. 1996/314) as a mixed-use development. Despite the proposed change of use of Units 1 & 2, the characterisation of the building as a mixed-use development is retained under this application.

The Warringah Local Environmental Plan 2011 (WLEP 2011) provides definitions for the following land uses:

- **Mixed-Use Development** means a building or place comprising 2 or more different land uses.
- **Shop Top Housing** means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

(Note - Shop top housing is a type of residential accommodation—see the definition of that term.)

- **Serviced Apartments** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

(Note— Serviced apartments are a type of tourist and visitor accommodation—see the definition of that term.)

The current building contains two (now amalgamated into one) commercial office units on the ground

floor, as well as two residential units on the ground floor and seven more residential units on the first and second floors. However, despite the location of residential accommodation above a commercial premises on the ground floor, it is not considered an existing *Shop Top Housing* building.

In *Hrsto v Canterbury City Council* [2014] NSWLEC 121 it was determined that a 5 and 6 story mixed use development that proposed 224 residential units across 5 separate buildings was prohibited because it could not be categorised as *Shop Top Housing* due to a number of residential units being proposed on the ground floor of 2 of the buildings.

The court held that to qualify as "shop top housing" the residential component of the building must be truly "above" the relevant retail or commercial parts, i.e. the lowest point of any dwelling that is proposed to be regarded as shop top housing, must be entirely above the ground floor commercial premises.

Therefore, as there are two residential units and two commercial units on the ground floor of the existing building at 4 Fielding Street, Collaroy, it cannot be classified as *Shop Top Housing*.

The proposal seeks consent for the use of the ground floor commercial premises in units 1 and 2 to be converted into Serviced Apartments (a type of Tourist and Visitor Accommodation). A Serviced Apartment does not constitute as Residential Accommodation or a Commercial Premises (as defined) pursuant to the WLEP 2011.

Relevantly, *Commercial Premises* is defined as:

- **Commercial Premises** means any of the following:
  - (a) *business premises*,
  - (b) *office premises*,
  - (c) *retail premises*.

Serviced Apartments do not constitute a business premises, office premises or retail premises. Serviced apartments are a type of *tourist and visitor accommodation*.

As such, the proposed development remains characterised as a *mixed-use development*, in that it proposes a building comprising two or more different land uses. The proposed mixed-use building seeks to comprise *tourist and visitor accommodation* and *residential accommodation*, replacing the existing mixed-use of a *commercial premises* and *residential accommodation*.

The proposed development for *tourist and visitor accommodation* is permitted with consent in the B2 zone. Likewise, the building will remain as a mixed use development and remains permissible within the zone.

## Warringah Development Control Plan

### Built Form Controls

The application proposes an internal fit-out only and does not involve any changes to the external built form of the existing building.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	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

#### 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 \$2,876 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$287,628.

#### 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 and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is

considered to be:

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

## PLANNING CONCLUSION

The application seeks consent for the change of use of the commercial premises on the ground floor of an existing mixed-use building to be converted into a tourist and visitor accommodation, in the form of a serviced apartment. An associated fit-out of the existing commercial office space is also proposed, converting it to a floor layout that is suitable for accommodation for tourist and visitor accommodation.

An assessment of permissibility and suitability, has been addressed and considered acceptable.

When assessing the application on its merits, it is concluded that the proposed development adequately responds to the relevant objectives of WLEP 2011 and WDCP 2011 including parking, waste facilities, noise, safety and security. No physical changes are proposed to the built form characteristics or presentation of the existing building which therefore is considered in keeping with the existing character of the Fielding Street streetscape.

Notwithstanding the above, due to the applicant's failure to provide owner's consent, insufficient information has been submitted to enable the assessment of the application, pursuant to Section 4.15 (1)(a)(iv) of the Environmental Planning and Assessment Act 1979.

The application was exhibited for community consultation and attracted a total of 8 individual submissions objecting to the proposal, with one objector subsequently withdrawing their objections. The key concerns raised within the submissions pertain to safety and security and acoustic privacy, have been addressed in the assessment report.

The applicant was requested to withdraw the application as a result of the failure to provide owner's consent, however elected against doing so.

Refusal of the development application is therefore recommended to the Development Determination Panel (DDP).

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

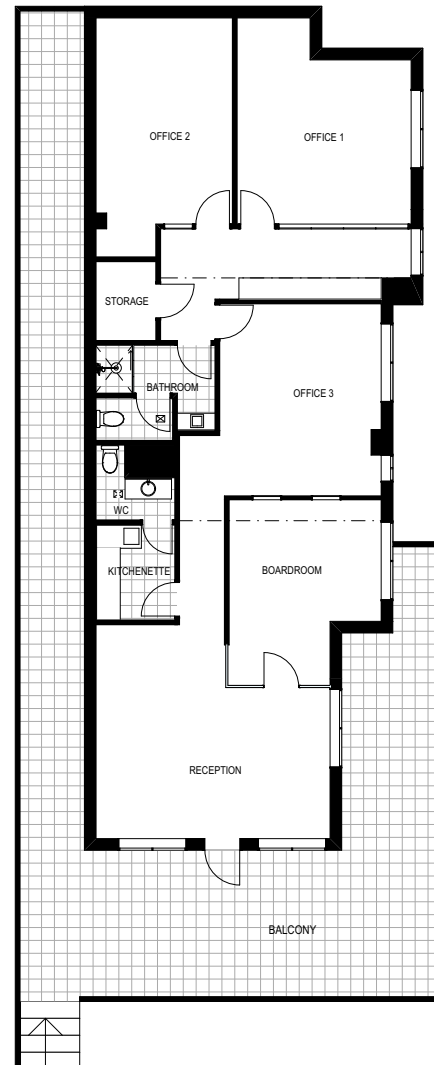
THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0481 for the Use of Premises as a tourist and visitor accommodation and associated fit out on land at Lot 2 SP 58219,2 / 4 Fielding Street, COLLAROY, Lot 1 SP 58219,1 / 4 Fielding Street, COLLAROY, for the reasons outlined as follows:

### 1. Incomplete application

The application has not been properly made with Owners Consent

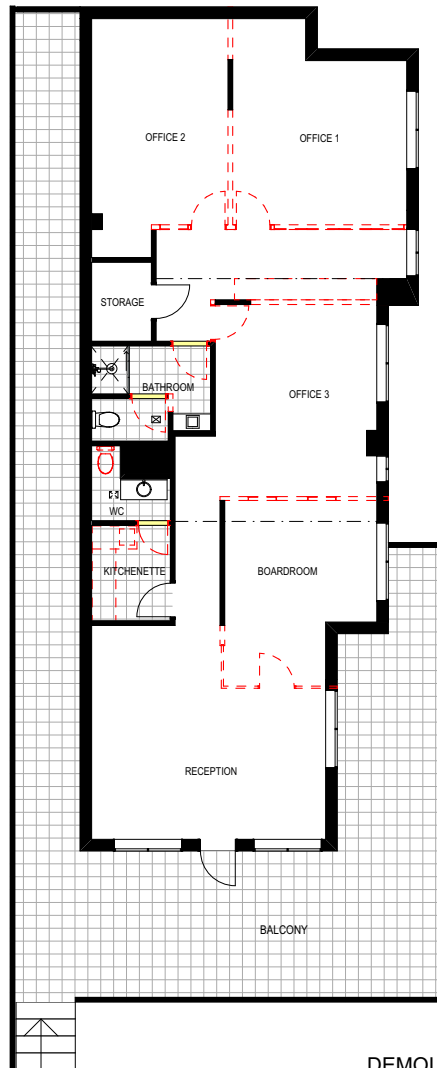
Particulars:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, owners consent from the Strata Body Corporate to which the application relates has not been provided with the application and therefore the application has not been correctly made as prescribed by Clause 23 of the Environmental Planning and Assessment Regulations, 2021.

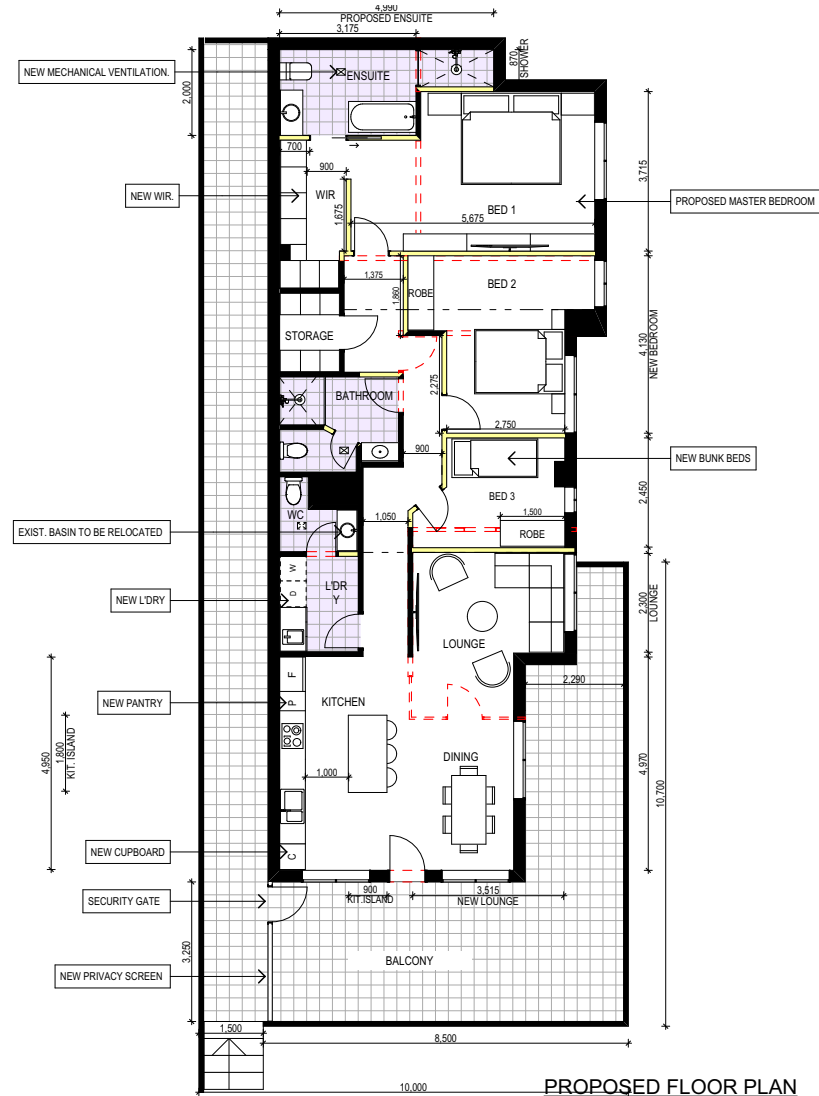


EXISTING FLOOR PLAN

	<div>NOTES (E &amp; OE)</div> <ul style="list-style-type: none"><li>• All structures including stormwater &amp; drainage to engineer's details.</li><li>• Do not obtain dimensions by scaling drawings.</li><li>• All dimensions are to be checked on site prior to starting work.</li><li>• These drawings are to be read in conjunction with all other consultant's drawings and specifications.</li><li>• All workmanship &amp; materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards &amp; local council requirements.</li><li>• New materials are to be used throughout unless otherwise noted.</li><li>• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</li></ul>	<div>JJ Drafting</div> <div>Division of JLDRAFTING AUSTRALIA PTY LTD</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541   Email: jjdraft@tpg.com.au</div> <div>www.jjdrafting.com.au</div>	<div>REV: DATE: DESCRIPTION:</div> <div>A09.02.2022AMENDMENTS TO DRAWINGS</div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>1,2 AND 4 FIELDING ST. COLLAROY</div> <div>CLIENT:</div> <div>FIELDING STREET PTY LTD</div>	<div>DATE:</div> <div>12/21</div>	<div>DRAWN BY:</div> <div>EV</div>	<div>SCALE:</div> <div>1:100 @ A3</div>
				<div>DRAWING TITLE:</div> <div>EXIST. FLOOR PLAN</div>	<div>JOB No:</div> <div>976/21</div>	<div>CHECKED BY:</div> <div>JJ</div>	<div>DRAWING No:</div>



**DEMOLITION FLOOR PLAN**



**PROPOSED FLOOR PLAN**

**NOTES (E & OE)**

- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
- Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.

**JJ Drafting**  
Division of JLDRAFTING AUSTRALIA PTY LTD

2690 Mona Vale Road, Mona Vale, NSW, 2103  
PO Box 687, Dee Why, NSW, 2099  
Mob. 0414 717 541 | Email: jjdraft@tpg.com.au  
www.jjdrafting.com.au  
ACN 651 693 346

REV:	DATE:	DESCRIPTION:
A	09.02.2022	AMENDMENTS TO DRAWINGS

PROPOSED ALTERATIONS AND ADDITIONS  
1,2 AND 4 FIELDING ST. COLLAROY  
CLIENT:  
FIELDING STREET PTY LTD  
DRAWING TITLE:  
PROPOSED FLOOR PLAN

DATE: 12/21	DRAWN BY: EV	SCALE: 1:100 @ A3
JOB No: 976/21	CHECKED BY: JJ	DRAWING No: